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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

Office of the Secretary

7 CFR Part 3

Agricultural Marketing Service

7 CFR Parts 46, 110, 205, 1150, and 1160

Food and Nutrition Service

7 CFR Parts 246 and 278

[0510-AA01]

Department of Agriculture Civil Monetary Penalties Adjustment

AGENCY: Office of the Secretary, Agricultural Marketing Service, Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, this final rule adjusts civil monetary penalties imposed by agencies within USDA to incorporate an inflation adjustment.

DATES: *Effective date:* Effective June 23, 2005.

FOR FURTHER INFORMATION CONTACT: Adam J. Hermann, Esq., OGC, USDA, Room 2011–S, 1400 Independence Avenue, SW., Washington, DC 20250–1400, (202) 260–1615.

SUPPLEMENTARY INFORMATION:

I. The Federal Civil Penalties Inflation Adjustment Act of 1990

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410; 28 U.S.C. 2461 note) (Act), as amended, requires Federal agencies to periodically adjust certain civil monetary penalties (CMPs) for inflation. Under the Act, a CMP is defined as any penalty, fine, or other sanction for which a Federal statute specifies a monetary amount, including a range of minimum and maximum amounts. Each Executive agency is responsible for adjusting, pursuant to the Act, all CMPs within the agency's jurisdiction. The Act does not apply to any CMP under the Internal Revenue Code of 1986, Tariff Act of 1930, Occupational Safety and Health Act of 1970, or Social Security Act.

The Act requires each Executive agency to make an initial inflation adjustment for all applicable CMPs not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) (*i.e.*, April 26, 1996), and subsequent inflation adjustments at least once every 4 years thereafter. USDA published its initial round of inflation adjustments in the **Federal Register** on July 31, 1997, and those adjustments became effective on September 2, 1997 (62 FR 40924, July 31, 1997). The USDA initial CMP adjustments are codified in subpart E of part 3 of title 7 of the Code of Federal Regulations (7 CFR 3.91).

This final rule amends 7 CFR 3.91(b) to reflect the second round of USDA inflation adjustments. In addition, this final rule amends 7 CFR 3.91(a) by: (1) Emphasizing that any increases in CMP dollar amounts reflected in this rule apply only to violations occurring after the effective date of this rule; (2) emphasizing that the descriptions of the CMPs listed in 7 CFR 3.91(b) are for illustrative purposes only, that 7 CFR 3.91 does not amend, interpret, implement, or alter in any way the statutory provisions in which the listed CMPs are set, and that persons should consult the statutory text in which the CMPs are set and any implementing regulations to make applicability determinations; and (3) adding two definitions. This final rule also makes conforming amendments to other agency regulations that currently specify dollar amounts for CMPs that are being adjusted by this final rule.

Method of Calculation

Under the Act, the required inflation adjustment is determined by adjusting each applicable CMP by the ''cost-of-living adjustment'' (COLA). The COLA is defined in the Act as the percentage (if any) by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law. As required by the Act, USDA used the CPI for all urban consumers published by the U.S. Department of Labor. In calculating the COLA, USDA rounded to the nearest tenth.

When USDA first adjusted its CMPs pursuant to the Act in 1997, USDA explained that ''[t]he rule contained in this notice reflects the initial adjustment to the listed civil monetary penalties required by the Act'' (62 FR 40924; July 31, 1997). USDA continues to interpret the Act such that all listed CMPs undergo the required adjustment whenever USDA adjusts those CMPs by regulation pursuant to the Act and publishes the regulation in the **Federal Register**. In other words, a CMP is considered to have been adjusted even though the dollar amount of the penalty does not increase (a situation that arises due to application of the rounding formulas in section 5(a) of the Act). Thus, all CMPs contained in this final rule are being adjusted pursuant to the Act. USDA believes that this interpretation most accurately reflects the plain language of the statutory text.

For all CMP adjustments in this final rule, USDA used the CPI for the month of June 2004 (189.7) as the numerator CPI. However, USDA used different denominator CPI values depending on the penalty being adjusted:

(1) For those CMPs that were last adjusted in 1997 via regulation (62 FR 40924, July 31, 1997), USDA used the CPI for the month of June 1997. Nearly all of the CMPs being adjusted in this final rule fall into this category.

(2) For those CMPs specified in statutory provisions that became effective after the effective date of the initial round of USDA CMP adjustments (Sept. 2, 1997), USDA used the CPI for the month of June of the year in which those CMPs were last set in statute. The CMPs in this category are specified in the following 13 subparagraphs of 7 CFR 3.91(b), as amended by this final rule: (1)(l), (l)(li), (1)(lii), (1)(liii), (2)(iii), (2)(v), (2)(vi), (2)(vii), (3)(v), (3)(vi), (7)(ii), (8)(ii), and (8)(iii).

(3) For those CMPs specified in statutory provisions that were effective prior to Sept. 2, 1997, but were erroneously excluded from the initial round of USDA CMP adjustments, USDA used the CPI for the month of June of the year in which those CMPs were last set in statute. The CMPs in that category are specified in the following 2 subparagraphs of

7 CFR 3.91(b), as amended by this final rule: (2)(xiii) and (8)(i).

Limitations on Adjustment—Rounding

The adjustment of these CMPs is limited by six specific rounding formulas set forth in section 5(a) of the Act. Under the Act, raw inflationary increases are rounded to the nearest: (1) Multiple of $10 in the case of penalties less than or equal to $100; (2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000; (3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; (4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; (5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and (6) multiple of $25,000 in the case of penalties greater than $200,000.

Due to these restrictive rounding rules, not all CMP amounts are being increased in this final rule. For example, the CMP for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act was adjusted to $11,000 in the initial round of USDA CMP adjustments in 1997. The inflation rate from June 1997 to June 2004 increased by a factor of 1.2, resulting in a raw adjustment of $2,200 for this second round of adjustments. The Act specifies that inflationary increases for penalties greater than $10,000 but less than or equal to $100,000 must be rounded to the nearest multiple of $5,000. $2,200, rounded to the nearest multiple of $5,000, is 0. Therefore, in this final rule, USDA did not increase the $11,000 amount for this CMP.

Determining which rounding formula to apply depends on the current amount of the CMP at the time the calculation is performed, not on the size of the raw inflationary increase. Thus, in the example above, the $2,200 raw inflationary increase is subject to rounding formula #4 because the amount of that CMP is $11,000.

Limitations on Adjustment—The ''10 Percent'' Cap on Initial Adjustments

Adjustment of CMPs under the Act is limited in another important respect. The Act specifies that the first adjustment of a CMP may not exceed 10 percent of such penalty. Again, USDA interprets the Act such that the required adjustment takes place each time USDA adjusts its CMPs under the Act via regulation published in the **Federal Register**. Therefore, all CMPs that are currently in 7 CFR 3.91 underwent their initial adjustment and were subject to the ''10 percent'' cap when that regulation became effective on September 2, 1997.

In this final rule, USDA applied the ''10 percent'' cap only to those CMPs specified in statutes (1) that became effective after the effective date of the initial round of USDA CMP adjustments (Sept. 2, 1997); or (2) that became effective prior to Sept. 2, 1997, but were erroneously excluded from the initial round of USDA adjustments. The CMPs in these two categories are considered to have undergone their initial adjustment in this final rule, regardless of whether the CMP dollar amounts are being increased.

Special Considerations

In adjusting the CMPs in this final rule, USDA determined that some CMPs currently set forth in 7 CFR 3.91 were not adjusted correctly when that regulation was published in 1997. For those penalties, USDA re-calculated the COLA and applied the statutory rounding formulas to determine what the adjusted CMP amount(s) should have been when 7 CFR 3.91 was promulgated in 1997. USDA then used the corrected dollar amount in determining the adjusted CMP figures in this final rule. However, USDA will not retroactively apply these corrected dollar amounts to violations occurring prior to the effective date of this regulation.

Old section	New section	Old incorrect CMP amount(s)	Old corrected CMP amount(s)	New CMP amount(s)
7 CFR 3.91(b)(1)(xxxviii)	7 CFR 3.91(b)(1)(xxxviii)	$530	550	650
		5,300	5,500	6,500
7 CFR 3.91(b)(1)(xxxix)	7 CFR 3.91(b)(1)(xxxix)	5,300	5,500	6,500
7 CFR 3.91(b)(1)(xl)	7 CFR 3.91(b)(1)(xl)	1,030	1,100	1,100
7 CFR 3.91(b)(1)(xli)	7 CFR 3.91(b)(1)(xli)	520	550	650
7 CFR 3.91(b)(2)(xv)	7 CFR 3.91(b)(2)(x)	25,000	27,500	32,500
7 CFR 3.91(b)(2)(xvi)	7 CFR 3.91(b)(2)(xi)	12,000	13,200	18,200
7 CFR 3.91(b)(2)(xvii)	7 CFR 3.91(b)(2)(xii)	500	550	650
7 CFR 3.91(b)(3)(ii)	7 CFR 3.91(b)(3)(ii)	20,000	22,000	27,000
		40,000	44,000	54,000
7 CFR 3.91(b)(3)(iii)	7 CFR 3.91(b)(3)(iii)	20,000	22,000	27,000
		40,000	44,000	54,000
7 CFR 3.91(b)(3)(iv)	7 CFR 3.91(b)(3)(iv)	100,000,000	110,000,000	132,000,000
7 CFR 3.91(b)(7)	7 CFR 3.91(b)(7)(i)	10,000	11,000	11,000

II. Civil Monetary Penalties Affected by This Rule

Several USDA agencies administer laws that provide for the imposition of CMPs being adjusted by this final rule. Those agencies are: (1) Agricultural Marketing Service; (2) Animal and Plant Health Inspection Service; (3) Food and Nutrition Service; (4) Food Safety and Inspection Service; (5) Forest Service; (6) Grain Inspection, Packers and Stockyards Administration; (7) Federal Crop Insurance Corporation; and (8) Rural Housing Service. The CMPs in this final rule are listed according to the applicable administering agency.

III. Waiver of Proposed Rulemaking

In developing this final rule, we are waiving the usual notice of proposed rulemaking and public comment procedures contained in 5 U.S.C. 553. We have determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking comports and is consistent with the statutory authority required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, with no issue of policy discretion. Accordingly, we have determined that opportunity for prior comment is unnecessary and contrary to the public interest, and are issuing this revised regulation as a final rule that will apply to all future cases.

IV. Procedural Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of Executive Order 12866, Regulatory Planning and Review, and has determined that it does not meet the criteria for a significant regulatory action. As indicated above, the provisions of this final rulemaking contain inflation adjustments in compliance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, for specific applicable civil monetary penalties. The great majority of individuals, organizations, and entities affected by this regulation do not engage in prohibited activities and practices, and as a result, we believe that any aggregate economic impact of this revised regulation will be minimal, affecting only those limited few who may engage in prohibited behavior in violation of the statutes.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because USDA was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 7 CFR Parts 3, 46, 110, 205, 246, 278, 1150, and 1160

Administrative practice and procedure, Claims, Debt management, Penalties.

■ For the reasons set forth in the preamble, amend 7 CFR parts 3, 46, 110, 205, 246, 278, 1150, and 1160 as follows:

PART 3—DEBT MANAGEMENT

Subpart E—Adjusted Civil Monetary Penalties

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

Authority: 28 U.S.C. 2461 note.

■ 2. Revise subpart E to read as follows:

Subpart E—Adjusted Civil Monetary Penalties

§ 3.91 Adjusted civil monetary penalties.

(a) *In general.* (1) The Secretary will adjust the civil monetary penalties, listed in paragraph (b) of this section, to take account of inflation at least once every 4 years as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended.

(2) Any increase in the dollar amount of a civil monetary penalty listed in paragraph (b) of this section shall apply only to violations occurring after June 23, 2005.

(3) The descriptions of the civil monetary penalties listed in paragraph (b) of this section are for illustrative purposes only. This section does not amend, interpret, implement, or alter in any way the statutory provisions in which the civil monetary penalties listed in paragraph (b) are set. Moreover, the descriptions of the civil monetary penalties listed in paragraph (b) do not necessarily contain a complete description of the circumstances (*e.g.*, requirements regarding the ''state of mind'' of the violator(s), requirements regarding the type of law or issuance violated, etc.) under which the penalties are assessed. Persons should consult the statutory text in which the civil monetary penalties are set and any implementing regulations to make applicability determinations.

(4) As used in this section, the following terms have the following meanings:

(i) *Secretary* means the Secretary of Agriculture; and

(ii) *Department* means the United States Department of Agriculture.

(b) *Penalties*—(1) *Agricultural Marketing Service*—(i) Civil penalty for improper pesticide recordkeeping, codified at 7 U.S.C. 136i–1(d), has:

(A) A maximum of $650 in the case of the first offense; and

(B) A minimum of $1,100 in the case of subsequent offenses, except that the penalty shall be less than $1,100 if the Secretary determines that the person made a good faith effort to comply.

(ii) Civil penalty for a violation of the unfair conduct rule under the Perishable Agricultural Commodities Act, in lieu of license revocation or suspension, codified at 7 U.S.C. 499b(5), has a maximum of $2,200.

(iii) Civil penalty for a violation of the licensing requirements under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499c(a), has a maximum of $1,200 for each such offense and not more than $350 for each day it continues, or a maximum of $350 for each such offense if the Secretary determines the violation was not willful.

(iv) Civil penalty in lieu of license suspension under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499h(e), has a maximum of $2,000 for each violative transaction or each day the violation continues.

(v) Civil penalty for a violation of the Export Apple Act, codified at 7 U.S.C. 586, has a minimum of $110 and a maximum of $11,000.

(vi) Civil penalty for a violation of the Export Grape and Plum Act, codified at 7 U.S.C. 596, has a minimum of $110 and a maximum of $11,000.

(vii) Civil penalty for a violation of an order issued by the Secretary under the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 608c(14)(B), has a maximum of $1,100.

(viii) Civil penalty for failure to file certain reports under the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 610(c), has a maximum of $110.

(ix) Civil penalty for a violation of a seed program under the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of $37.50 and a maximum of $650.

(x) Civil penalty for failure to collect any assessment or fee or for a violation of the Cotton Research and Promotion Act, codified at 7 U.S.C. 2112(b), has a maximum of $1,100.

(xi) Civil penalty for a violation of a cease and desist order, or for deceptive marketing, under the Plant Variety Protection Act, codified at 7 U.S.C. 2568(b), has a minimum of $650 and a maximum of $11,000.

(xii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(1), has a minimum of $650 and a maximum of $6,500.

(xiii) Civil penalty for failure to obey a cease and desist order under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(3), has a maximum of $650.

(xiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(1), has a minimum of $650 and a maximum of $6,500.

(xv) Civil penalty for failure to obey a cease and desist order under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(3), has a maximum of $650.

(xvi) Civil penalty for failure to remit any assessment or fee or for a violation of a program under the Beef Research and Information Act, codified at 7

U.S.C. 2908(a)(2), has a maximum of $6,500.

(xvii) Civil penalty for failure to remit any assessment or for a violation of a program regarding wheat and wheat foods research, codified at 7 U.S.C. 3410(b), has a maximum of $1,100.

(xviii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(1), has a minimum of $650 and a maximum of $6,500.

(xix) Civil penalty for failure to obey a cease and desist order under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(3), has a maximum of $650.

(xx) Civil penalty for a violation of an order under the Dairy Promotion Program, codified at 7 U.S.C. 4510(b), has a maximum of $1,100.

(xxi) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(1), has a minimum of $650 and a maximum of $6,500.

(xxii) Civil penalty for failure to obey a cease and desist order under the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(3), has a maximum of $650.

(xxiii) Civil penalty for a violation of a program under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(1)(A)(i), has a maximum of $1,100.

(xxiv) Civil penalty for failure to obey a cease and desist order under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(3)(A), has a maximum of $650.

(xxv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(1), has a minimum of $650 and a maximum of $6,500.

(xxvi) Civil penalty for failure to obey a cease and desist order under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(3), has a maximum of $650.

(xxvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(c)(1), has a minimum of $1,100 and a maximum of $11,000.

(xxviii) Civil penalty for failure to obey a cease and desist order under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(e), has a maximum of $1,100.

(xxix) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(c)(1), has a minimum of $650 and a maximum of $6,500.

(xxx) Civil penalty for failure to obey a cease and desist order under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(e), has a maximum of $650.

(xxxi) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(c)(1), has a minimum of $650 and a maximum of $6,500.

(xxxii) Civil penalty for failure to obey a cease and desist order under the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(e), has a maximum of $650.

(xxxiii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(c)(1)(A), has a maximum of $1,100.

(xxxiv) Civil penalty for failure to obey a cease and desist order under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(e), has a maximum of $6,500.

(xxxv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(c)(1)(A), has a minimum of $650 and a maximum of $6,500, or in the case of a violation that is willful, codified at 7 U.S.C. 6411(c)(1)(B), has a minimum of $11,000 and a maximum of $130,000.

(xxxvi) Civil penalty for failure to obey a cease and desist order under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(e), has a maximum of $6,500.

(xxxvii) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act of 1990, codified at 7 U.S.C. 6519(a), has a maximum of $11,000.

(xxxviii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(c)(1)(A)(i), has a minimum of $650 and a maximum of $6,500.

(xxxix) Civil penalty for failure to obey a cease and desist order under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(e)(1), has a maximum of $6,500.

(xl) Civil penalty for a violation of a program under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(c)(1)(A), has a maximum of $1,100.

(xli) Civil penalty for failure to obey a cease and desist order under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(e), has a maximum of $650.

(xlii) Civil penalty for a violation of an order or regulation issued under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(c)(1), has a minimum of $1,200 and a maximum of $12,000 for each violation.

(xliii) Civil penalty for a violation of a cease and desist order under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(e), has a minimum of $1,200 and a maximum of $12,000 for each day the violation occurs.

(xliv) Civil penalty for a violation of an order or regulation issued under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(c)(1)(A)(i), has a maximum of $1,200 for each violation.

(xlv) Civil penalty for a violation of a cease and desist order under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(e), has a maximum of $6,000 for each day the violation occurs.

(xlvi) Civil penalty for a violation of an order or regulation issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(c)(1), has a minimum of $600 and a maximum of $6,000 for each violation.

(xlvii) Civil penalty for a violation of a cease and desist order under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(e), has a maximum of $600 for each day the violation occurs.

(xlviii) Civil penalty for a violation of an order or regulation issued under the Popcorn Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7487(a), has a maximum of $1,200 for each violation.

(xlix) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $6,500 for each violation.

(l) Civil penalty for a violation of an order or regulation issued under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(c)(1)(A)(i), has a minimum of $1,100 and a maximum of $11,000 for each violation.

(li) Civil penalty for failure to obey a cease and desist order under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(e)(1), has a maximum of $11,000 for each offense.

(lii) Civil penalty for a violation of certain provisions of the Livestock Mandatory Reporting Act of 1999, codified at 7 U.S.C. 1636b(a)(1), has a maximum of $11,000 for each violation.

(liii) Civil penalty for failure to obey a cease and desist order under the Livestock Mandatory Reporting Act of 1999, codified at 7 U.S.C. 1636b(g)(3), has a maximum of $11,000 for each violation.

(2) Animal and Plant Health Inspection Service—(i) Civil penalty for a violation of the imported seed provisions of the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of $37.50 and a maximum of $650.

(ii) Civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of $3,750, and knowing failure to obey a cease and desist order has a civil penalty of $1,650.

(iii) Civil penalty for any person that causes harm to, or interferes with, an animal used for the purposes of official inspections by the Department, codified at 7 U.S.C. 2279e(a), has a maximum of $11,000.

(iv) Civil penalty for a violation of the Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of $11,000.

(v) Civil penalty for any person that violates the Plant Protection Act (PPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in the PPA, codified at 7 U.S.C. 7734(b)(1), has a maximum of the greater of: $55,000 in the case of any individual (except that the civil penalty may not exceed $1,100 in the case of an initial violation of the PPA by an individual moving regulated articles not for monetary gain), $275,000 in the case of any other person for each violation, and $550,000 for all violations adjudicated in a single proceeding; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided for in the PPA that results in the person deriving pecuniary gain or causing pecuniary loss to another.

(vi) Civil penalty for any person [except as provided in 7 U.S.C. 8309(d)] that violates the Animal Health Protection Act (AHPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under the AHPA, codified at 7 U.S.C. 8313(b)(1), has a maximum of the greater of: $55,000 in the case of any individual, except that the civil penalty may not exceed $1,100 in the case of an initial violation of the AHPA by an individual moving regulated articles not for monetary gain, $275,000 in the case of any other person for each violation, and $550,000 for all violations adjudicated in a single proceeding; or twice the gross gain or gross loss for any violation or forgery, counterfeiting, or unauthorized use, alteration, defacing or destruction of a certificate, permit, or other document provided under the AHPA that results in the person's deriving pecuniary gain or causing pecuniary loss to another person.

(vii) Civil penalty for any person that violates certain regulations under the Agricultural Bioterrorism Protection Act of 2002 regarding transfers of listed agents and toxins or possession and use of listed agents and toxins, codified at 7 U.S.C. 8401(i)(1), has a maximum of $275,000 in the case of an individual and $550,000 in the case of any other person.

(viii) Civil penalty for a violation of the Horse Protection Act, codified at 15 U.S.C. 1825(b)(1), has a maximum of $2,200.

(ix) Civil penalty for failure to obey Horse Protection Act disqualification, codified at 15 U.S.C. 1825(c), has a maximum of $4,300.

(x) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any provision of the Endangered Species Act of 1973, any permit or certificate issued thereunder, or any regulation issued pursuant to section 9(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d) (other than regulations relating to recordkeeping or filing reports), (f), or (g) of the Endangered Species Act of 1973 (16 U.S.C. 1538(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d), (f), and (g)), as set forth at 16 U.S.C. 1540(a), has a maximum of $32,500.

(xi) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any other regulation issued under the Endangered Species Act of 1973, as set forth at 16 U.S.C. 1540(a), has a maximum of $18,200.

(xii) Civil penalty for any other violation, with respect to terrestrial plants, of the Endangered Species Act of 1973, or any regulation, permit, or certificate issued thereunder, as set forth at 16 U.S.C. 1540(a), has a maximum of $650.

(xiii) Civil penalty for knowingly and willfully violating 49 U.S.C. 80502 with respect to the transportation of animals by any rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel, codified at 49 U.S.C. 80502(d), has a minimum of $110 and a maximum of $550.

(3) Food and Nutrition Service—(i) Civil penalty for hardship fine in lieu of disqualification, codified at 7 U.S.C. 2021(a), has a maximum of $11,000 per violation.

(ii) Civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of $27,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is $54,000.

(iii) Civil penalty for the sale of firearms, ammunition, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of $27,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is $54,000.

(iv) Civil penalty for any entity that submits a bid to supply infant formula to carry out the Special Supplemental Nutrition Program for Women, Infants and Children and discloses the amount of the bid, rebate or discount practices in advance of the bid opening or for any entity that makes a statement prior to the opening of the bids for the purpose of influencing a bid, codified at 42 U.S.C. 1786(h)(8)(H)(i), has a maximum of $132,000,000.

(v) Civil penalty for a vendor convicted of trafficking in food instruments, codified at 42 U.S.C. 1786(o)(1)(A) and 42 U.S.C. 1786(o)(4)(B), has a maximum of $11,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is $44,000.

(vi) Civil penalty for a vendor convicted of selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments, codified at 42 U.S.C. 1786(o)(1)(B) and 42 U.S.C. 1786(o)(4)(B), has a maximum of $11,000 for each violation, except that

the maximum penalty for violations occurring during a single investigation is $44,000.

(4) Food Safety and Inspection Service—(i) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $6,500 for each violation.

(ii) Civil penalty for failure to timely file certain reports, codified at 21 U.S.C. 467d, has a maximum of $110 per day for each day the report is not filed.

(iii) Civil penalty for failure to timely file certain reports, codified at 21 U.S.C. 677, has a maximum of $110 per day for each day the report is not filed.

(iv) Civil penalty for failure to timely file certain reports, codified at 21 U.S.C. 1051, has a maximum of $110 per day for each day the report is not filed.

(5) Forest Service—(i) Civil penalty for a willful disregard of the prohibition against the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(1)(A), has a maximum of $650,000 per violation or three times the gross value of the unprocessed timber, whichever is greater.

(ii) Civil penalty for a violation in disregard of the Forest Resources Conservation and Shortage Relief Act of 1990 or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(i), has a maximum of $97,500 per violation.

(iii) Civil penalty for a person that should have known that an action was a violation of the Forest Resources Conservation and Shortage Relief Act of 1990 or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(ii), has a maximum of $65,000 per violation.

(iv) Civil penalty for a willful violation of the Forest Resources Conservation and Shortage Relief Act of 1990 or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(iii), has a maximum of $650,000.

(v) Civil penalty for a violation involving protections of caves, codified at 16 U.S.C. 4307(a)(2), has a maximum of $11,000.

(6) Grain Inspection, Packers and Stockyards Administration—(i) Civil penalty for a packer or swine contractor violation, codified at 7 U.S.C. 193(b), has a maximum of $11,000.

(ii) Civil penalty for a livestock market agency or dealer failure to register, codified at 7 U.S.C. 203, has a maximum of $650 and not more than $37.50 for each day the violation continues.

(iii) Civil penalty for operating without filing, or in violation of, a stockyard rate schedule, or of a regulation or order of the Secretary made thereunder, codified at 7 U.S.C. 207(g), has a maximum of $650 and not more than $37.50 for each day the violation continues.

(iv) Civil penalty for a stockyard owner, livestock market agency and dealer violation, codified at 7 U.S.C. 213(b), has a maximum of $11,000.

(v) Civil penalty for a stockyard owner, livestock market agency and dealer compliance order violation, codified at 7 U.S.C. 215(a), has a maximum of $650.

(vi) Civil penalty for a failure to file required reports, codified at 15 U.S.C. 50, has a maximum of $110.

(vii) Civil penalty for live poultry dealer violations, codified at 7 U.S.C. 228b–2(b), has a maximum of $27,000.

(viii) Civil penalty for a violation, codified at 7 U.S.C. 86(c), has a maximum of $97,500.

(7) Federal Crop Insurance Corporation—(i) Civil penalty for any person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation or to an approved insurance provider with respect to an insurance plan or policy that is offered under the authority of the Federal Crop Insurance Act, codified at 7 U.S.C. 1506(n)(1)(A), has a maximum of $11,000.

(ii) Civil penalty for any person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation or to an approved insurance provider with respect to an insurance plan or policy that is offered under the authority of the Federal Crop Insurance Act, or who fails to comply with a requirement of the Federal Crop Insurance Corporation, codified at 7 U.S.C. 1515(h)(3)(A), has a maximum of the greater of: The amount of pecuniary gain obtained as a result of the false or inaccurate information or the noncompliance; or $11,000.

(8) Rural Housing Service—(i) Civil penalty for a violation of section 536 of Title V of the Housing Act of 1949, codified at 42 U.S.C. 1490p(e)(2), has a maximum of $110,000 in the case of an individual, and a maximum of $1,100,000 in the case of an applicant other than an individual.

(ii) Civil penalty for equity skimming under section 543(a) of the Housing Act of 1949, codified at 42 U.S.C. 1490s(a)(2), has a maximum of $27,500.

(iii) Civil penalty under section 543(b) of the Housing Act of 1949 for a violation of regulations or agreements made in accordance with Title V of the Housing Act of 1949, by submitting false information, submitting false certifications, failing to timely submit information, failing to maintain real property security in good repair and condition, failing to provide acceptable management for a project, or failing to comply with applicable civil rights statutes and regulations, codified at 42 U.S.C. 1490s(b)(3)(A), has a maximum of the greater of: Twice the damages the Department, guaranteed lender, or project that is secured for a loan under Title V, suffered or would have suffered as a result of the violation; or $55,000 per violation.

PART 46—REGULATIONS (OTHER THAN RULES OF PRACTICE) UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930.

■ 3. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

■ 4. Revise § 46.45(c)(1)(iii) to read as follows:

§ 46.45 Procedure in administering section 2(5) of the Act.

* * * * *

(c) * * *

(iii) (A) The schedule for informal disposition is as follows:

Violation		Disposition
1st		(1)
2d		(1)
	(2)	(3)
3d	$200	$250
4th	350	500
5th	500	1,000
6th	1,000	2,200
7th	2,200	2,200

[1] Warning letter.
[2] If serious violation.
[3] Very serious violation.

(B) Informal disposition of misrepresentation violations is not limited to seven occurrences and will be considered for further violations.

* * * * *

PART 110—RECORDKEEPING ON RESTRICTED USE PESTICIDES BY CERTIFIED APPLICATORS; SURVEYS AND REPORTS.

■ 5. The authority citation for part 110 continues to read as follows:

Authority: 7 U.S.C. 136a(d)(1)(C), 136i–1, and 450; 7 CFR 2.17, 2.50.

■ 6. Revise § 110.7 to read as follows:

§ 110.7 Penalties.

Any certified applicator who violates 7 U.S.C. 136i–1(a), (b), or (c) or this part shall be subject to a civil penalty of not more than the amount specified in section § 3.91(b)(1)(i)(A) of this title in the case of the first offense, and in the case of subsequent offenses, be subject to a civil penalty of not less than the amount specified in § 3.91(b)(1)(i)(B) of this title for each violation, except that the civil penalty shall be less than the amount specified in § 3.91(b)(1)(i)(B) of this title if the Administrator determines that the certified applicator made a good faith effort to comply with 7 U.S.C. 136i–1(a), (b), and (c) and this part.

PART 205—NATIONAL ORGANIC PROGRAM

■ 7. The authority citation for part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

§ 205.100 [Amended]

■ 8. Amend § 205.100(c)(1) by removing ''$10,000'' and adding in its place ''the amount specified in § 3.91(b)(1)(xxxvii) of this title''.

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

■ 9. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

§ 246.12 [Amended]

■ 10. Amend § 246.12(l)(1)(x)(C) as follows:

■ a. Remove in the third sentence ''shall be $10,000.'' and add in its place ''shall be $10,000, except for those violations listed in paragraph (l)(1)(i) of this section, where the civil money penalty shall be the maximum amount per violation specified in § 3.91(b)(3)(v) of this title for trafficking violations, or § 3.91(b)(3)(vi) of this title for selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments.''; and

■ b. Remove in the fifth sentence ''may not exceed $40,000.'' and add in its place ''may not exceed $40,000, except for those violations listed in paragraph (l)(1)(i) of this section, where the total amount of civil money penalties may not exceed the maximum amount for violations occurring during a single investigation specified in § 3.91(b)(3)(v) of this title for trafficking violations, or § 3.91(b)(3)(vi) of this title for selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments.''.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

■ 11. The authority citation for part 278 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

§ 278.6 [Amended]

■ 12. Amend § 278.6(j) as follows:

■ a. Remove ''$20,000'' and add in its place ''the amount specified in § 3.91(b)(3)(ii) of this title;'' and

■ b. Remove ''$40,000'' and add in its place ''the amount specified in § 3.91(b)(3)(ii) of this title''.

PART 1150—DAIRY PROMOTION PROGRAM

■ 13. The authority citation for part 1150 continues to read as follows:

Authority: 7 U.S.C. 4501–4513.

§ 1150.156 [Amended]

■ 14. Amend § 1150.156(b) by removing ''$1,000'' and adding in its place ''the amount specified in § 3.91(b)(1)(xx) of this title''.

PART 1160—FLUID MILK PROMOTION PROGRAM

■ 15. The authority citation for part 1160 continues to read as follows:

Authority: 7 U.S.C. 6401–6417.

§ 1160.214 [Amended]

■ 16. Amend § 1160.214(b) as follows:

■ a. Remove in the first sentence ''not less than $500 nor more than $5,000 for each such violation'' and add in its place ''not less than nor more than the minimum and maximum amounts specified in § 3.91(b)(1)(xxxv) of this title for each such violation''; and

■ b. Remove in the second sentence ''not less than $10,000 nor more than $100,000 for each such violation'' and add in its place ''not less than nor more than the minimum and maximum amounts specified in § 3.91(b)(1)(xxxv) of this title for each such violation''.

Done at Washington, DC, this 11th day of May, 2005.

Mike Johanns,

Secretary, U.S. Department of Agriculture.

(For amendments to 7 CFR Part 3)

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

(For amendments to 7 CFR Parts 46, 110, 205, 1150, and 1160)

Roberto Salazar,

Administrator, Food and Nutrition Service.

(For amendments to 7 CFR Parts 246 and 278)

[FR Doc. 05–10153 Filed 5–23–05; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 04–065–1]

Tuberculosis; Reduction in Timeframe for Movement of Cattle and Bison From Modified Accredited and Accreditation Preparatory States or Zones Without an Individual Tuberculin Test

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning tuberculosis in cattle and bison by reducing, from 6 months to 60 days, the period following a whole herd test during which animals may be moved interstate from a modified accredited State or zone or from an accreditation preparatory State or zone without an individual tuberculin test. We have determined that the 6-month period during which individual tuberculin tests have not been required is too long given the risks of exposure to tuberculosis that exist in modified accredited and accreditation preparatory States or zones, especially in such States or zones where there are wildlife populations affected with tuberculosis. This interim rule will lower the potential risk of movement of infected animals and decrease the likelihood of tuberculosis transmission.

DATES: This interim rule is effective May 18, 2005. We will consider all comments that we receive on or before July 25, 2005.

ADDRESSES: You may submit comments by any of the following methods:

• EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.

• Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–065–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–065–1.

• Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

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

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Dutcher, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD, 20737–1231, (301) 734–5467.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal.

At the beginning of the last century, bovine tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for bovine tuberculosis in livestock. Federal regulations implementing this program are contained in 9 CFR part 77, ''Tuberculosis'' (referred to below as the regulations), and in the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of tuberculosis.

Under § 77.3 of the regulations, the Administrator of the Animal and Plant Health Inspection Service (APHIS) classifies each State or zone according to its level of occurrence of bovine tuberculosis. This classification system consists of five designations: Accredited free States or zones; modified accredited advanced States or zones; modified accredited States or zones; accreditation preparatory States or zones; and nonaccredited States or zones. A modified accredited State or zone is defined as a State or zone in which bovine tuberculosis has been prevalent in less than 0.1 percent of the total number of herds of cattle and bison in the State or zone for the most recent year and which complies with the provisions of the UMR. At this time, Michigan is the only State with a zone designated as modified accredited for cattle and bison. An accreditation preparatory State or zone is defined as a State or zone in which bovine tuberculosis has been prevalent in less than 0.5 percent of the total number of herds of cattle and bison in the State or zone and which complies with the provisions of the UMR. At this time no States or zones are designated as accreditation preparatory for cattle and bison.

The regulations relating to bovine tuberculosis in cattle and bison have required, among other things, that cattle or bison that originate in a modified accredited State or zone or an accreditation preparatory State or zone and that are not known to be infected with or exposed to bovine tuberculosis be tested as a herd within 1 year prior to the date of movement. Sexually intact cattle or bison that are not from an accredited herd, are officially identified, and are accompanied by a certificate stating that the herd from which they originated was negative to a whole herd test (WHT) conducted within 1 year prior to the date of movement are subject to an additional official tuberculin test that must be conducted on the individual animals of the herd within 60 days prior to the date of movement, unless the WHT was performed less than 6 months prior to movement.

We have determined that the 6-month period during which individual tuberculin tests have not been required is too long given the risks of exposure to tuberculosis that exist in modified accredited and accreditation preparatory States or zones, especially in such States or zones where there are wildlife populations affected with tuberculosis. Therefore, in this interim rule we are amending the regulations in § 77.12 to state that, for cattle and bison moving from a modified accredited State or zone, individual bovine tuberculosis tests are required when the animals to be moved were included in a WHT and the WHT was conducted more than 60 days prior to the date of interstate movement. We are also amending the regulations in § 77.14 to state that for cattle and bison moving from an accreditation preparatory State or zone, individual bovine tuberculosis tests are required when the animals to be moved were included in a WHT and the WHT was conducted more than 60 days prior to the date of interstate movement. These changes will reduce by 4 months the period following a WHT during which cattle and bison may be moved interstate from a modified accredited State or zone or an accreditation preparatory State or zone without an individual tuberculin test.

Immediate Action

Immediate action is necessary to ensure that potentially exposed cattle and bison originating from modified accredited or accreditation preparatory States or zones are not moving out of the area as infected animals. The 6-month exemption time between a WHT and individual tuberculin testing is too long when considering the high potential for exposure to bovine tuberculosis from feral deer or other wildlife. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider all comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule modifies the current exemption for bovine tuberculosis testing of individual animals moving from a modified accredited State or zone or from an accreditation preparatory State or zone following a WHT so that it is only applicable for 60 days rather than 6 months following the WHT. At this time, there are no accreditation preparatory States or zones, and the State of Michigan is the only State to contain a modified accredited zone for cattle and bison. The modified accredited zone of Michigan for cattle and bison includes: Alcona, Alpena, Antrim, Cheboygan, Charlevoix, Crawford, Emmet, Montmorency, Oscoda, Otsego, and Presque Isle Counties and portions of Ogemaw and Iosco Counties that are north of the southernmost boundaries of the Huron National Forest and Au Sable State Forest. The remainder of the State is classified as a modified accredited advanced zone. A modified accredited advanced State or zone is one that complies with the provisions of the UMR and in which bovine tuberculosis is prevalent in less than 0.01 percent of the total number of herds of cattle and bison for each of the most recent 2 years. Therefore, this rulemaking will primarily affect only those entities in counties in the modified accredited zone in Michigan with respect to both cattle and bison movement.

The 2002 Census of Agriculture for Michigan estimates that there are 14,495 farms with an inventory of 998,204 cattle and calves. According to the Census of Agriculture, a farm is any place from which $1,000 or more of agricultural products were produced or sold, or normally would have been sold, during the census year. More recently, the 2004 Agricultural Statistics, which defines an operation or farm as any place having one or more head of cattle on hand at any time during the year, records approximately 15,000 cattle operations in Michigan, with an inventory totaling 990,000 head of cattle. Of these 15,000 operations, over 90 percent are considered small businesses. A small cattle operation is considered to be one having $750,000 or less in annual receipts. The value per head of cattle in Michigan in 2003 was $840, with a reported total cash value of $831.6 million, according to the National Agricultural Statistics Service. Nationally, the average value per head of cattle is $728, which translates into a total value of cattle in the United States as $69.9 billion.

In addition, 2002 census data for Michigan estimates that there were 162 farms with a total inventory of 4,057 bison. We believe it is safe to assume that the majority of these bison farms fall under Small Business Administration (SBA) definitions for a small entity. Consequently, this analysis of the economic effects of this interim rule is also sufficient for analyzing the small entity impact.

All or portions of 13 counties in Michigan are contained in the modified accredited zone. In this modified accredited zone, 2002 census data indicate that there are 1,292 farms with a combined inventory of 72,689 cattle and calves. Therefore, these 13 counties contribute about 7 percent to Michigan's statewide inventory of cattle and calves. Census data also show that there are 22 bison farms located within the modified accredited zone in Michigan; however, the exact number of farmed bison in these 13 counties and their corresponding contribution to the total State population of farmed bison is unknown.

As a result of the interim rule, producers in the modified accredited zone of Michigan will be subject to tighter interstate movement restrictions, thereby resulting in a corresponding increase in production expenses due to increasing compliance costs of moving and selling animals, including, but not limited to, labor, veterinary, and feeding expenses surrounding tuberculin testing for cattle and bison.

APHIS is currently in the process of researching the average cost to producers of identifying and testing for bovine tuberculosis and we welcome public comment on these costs with respect to cattle and bison. Preliminary research indicates the average cost of bovine tuberculin testing ranges from $10 to $12 per head. This interim rule reduces the period during which a WHT is sufficient for movement from a modified accredited State or zone by 4 months; therefore, producers will be required to perform an additional official tuberculin test on those animals they wish to move during this period and will incur increased expenses. These costs are not expected to be a significant economic burden to producers however, as even the $12 per animal cost of testing only represents about 2 percent of the national per head value of cattle and 1.5 percent of Michigan's average per head value.

Moreover, in Michigan there is an intensive effort to eradicate bovine tuberculosis in livestock. Thus, the Michigan Department of Agriculture, along with APHIS, Michigan State University, and private veterinarians, has launched a statewide livestock testing program. Additionally, with the implementation of split-State status for Michigan, a new State rule was passed that provides producers in Michigan with one annual WHT paid for by the State; within 60 days of the test, they may freely move any of the tested animals. After the 60-day period has passed, producers in the modified accredited zone have the option of requesting either a State veterinarian or a private veterinarian, whose expenses will also be covered by the State, to test any individual animals the producer wishes to move. Producers can request this optional movement test at any time of the year, although it is expected most cattle and bison owners would request the test in the fall, when the majority of calves from the year are sold. Once this optional, State-subsidized test is performed, any additional testing for movement would then be done at the producer's expense.

In light of this testing program in Michigan, this interim rule will not pose any undue financial burden on producers located in the modified accredited zone. While we recognize this rule may have other, non-monetary effects in terms of inconvenience and tighter movement restrictions, we do not believe these impacts will be significant.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

■ Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 77.12 [Amended]

■ 2. In § 77.12, paragraph (d) is amended by removing the words ''6 months'' and adding the words ''60 days'' in their place.

§ 77.14 [Amended]

■ 3. In § 77.14, paragraph (d) is amended by removing the words ''within 6 months'' and adding the words ''within 60 days'' in their place.

Done in Washington, DC, this 18th day of May 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–10308 Filed 5–23–05; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1197]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation DD, which implements the Truth in Savings Act, and the staff commentary to the regulation, to address concerns about the uniformity and adequacy of information provided to consumers when they overdraw their deposit accounts. The amendments, in part, address certain types of services—sometimes referred to as ''bounced-check protection'' or—courtesy overdraft protection''—which are offered by many depository institutions to pay consumers' checks, and which allow other overdrafts when there are insufficient funds in the account. These services are typically automated services provided to transaction account consumers as an alternative to a traditional overdraft line of credit. Among other things, the final rule creates a new section to the regulation that requires institutions that promote the payment of overdrafts in an advertisement to disclose on periodic statements, total fees imposed for paying overdrafts and total fees imposed for returning items unpaid on periodic statements, both for the statement period and the calendar year to date, and to include certain other disclosures in advertisements of overdraft services.

DATES: The rule is effective July 1, 2006.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Eurgubian, Attorney, or Ky Tran-Trong or Krista P. DeLargy, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. The Truth in Savings Act

The Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, is implemented by the Board's Regulation DD (12 CFR part 230). The purpose of the act and regulation is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the annual percentage yield (APY), the interest rate, and other account terms. An official staff commentary interprets the requirements of Regulation DD (12 CFR part 230 (Supp. I)). Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration.

Under TISA and Regulation DD, disclosures must be given upon a consumer's request and before an account is opened. Institutions are not required to provide periodic statements, but if they do, the act requires that fees, yields, and other information be provided on the statements. Notice must be given to accountholders before an adverse change in account terms occurs and prior to the renewal of certificates of deposit (time accounts).

TISA and Regulation DD contain rules for advertising deposit accounts. Under TISA, there is a prohibition against advertisements, announcements, or solicitations that are inaccurate or misleading, or that misrepresent the deposit contract. Institutions also are prohibited from describing an account as free (or using words of similar meaning) if a regular service or transaction fee is imposed, if a minimum balance must be maintained, or if a fee is imposed when a customer exceeds a specified number of transactions. In addition, the act and regulation impose substantive restrictions on institutions' practices regarding the payment of interest on accounts and the calculation of account balances.

II. Concerns About Overdraft Services

Historically, depository institutions have used their discretion on an ad hoc basis to pay overdrafts for consumers on transaction accounts, usually imposing a fee. Over the years, some institutions automated the process for considering whether to honor overdrafts to reduce the costs of reviewing individual items, but generally institutions did not inform customers of their internal policies for determining whether an item would be paid or returned. More recently, third-party vendors have developed and sold overdraft programs to institutions, particularly to smaller institutions. These programs generally build upon or add to the institution's existing internal reporting systems to enable the institution to automate its payment of overdrafts.[1] What generally distinguishes the vendor programs from institutions' in-house automated processes is the addition of marketing plans that appear designed to promote the generation of fee income by disclosing to account-holders the dollar amount that the consumer typically will be allowed to overdraw their accounts. Some institutions also encourage consumers to use the service to meet short-term borrowing needs.

Paying consumers' occasional or inadvertent overdrafts is a long-established customer service provided by depository institutions. The Board recognized this longstanding practice when it initially adopted Regulation Z in 1969, to implement the Truth in Lending Act (TILA); the regulation provided that these transactions are generally exempt from coverage under Regulation Z where there is no written agreement between the consumer and institution to pay an overdraft and impose a fee. *See* § 226.4(c)(3). The exemption from Regulation Z was designed to facilitate depository institutions' ability to accommodate consumers on an ad-hoc basis.

[1] The Board's proposal referred to ''bounced-check protection'' services. These services also are sometimes referred to as ''courtesy overdraft protection.'' Because some institutions'' overdraft services apply to non-check transactions, for clarity the services are referred to generically as ''overdraft services.''

Although overdraft services vary among institutions, many institutions provide the coverage automatically for consumers who meet the institution's criteria (*e.g.*, the account has been open for a certain number of days, and the consumer makes deposits regularly). Consumers are not required to apply for the coverage and the institution performs no credit underwriting. Many institutions clearly inform consumers that payment of an overdraft is discretionary on the part of the institution; deposit account agreements typically disclaim any legal obligation to pay any overdraft. Some institutions extend the overdraft service to non-check transactions, for example, withdrawal requests made at automated teller machines (''ATMs''), purchases made using a debit card, pre-authorized automatic debits from a consumer's account, telephone-initiated funds transfers, or on-line banking transactions. A flat fee is charged each time the service is triggered and an overdraft item is paid; often the fee for paying an overdraft is the same amount that the institution would charge when a check drawn on insufficient funds is returned unpaid. In some cases, a daily fee may be imposed for each day the account remains overdrawn.

In November 2002, the Board solicited comment and information from the public about institutions' current overdraft services, to assist the Board in determining the need for guidance to depository institutions under Regulation Z (Truth in Lending) and other laws. 67 FR 72618 (December 6, 2002). In response to the Board's request for comment, consumer advocates, state agency representatives, and others stated that certain overdraft services should be subject to the TILA and Regulation Z. They noted that in addition to warning consumers about the high cost of the services, TILA disclosures would apprise consumers about the true nature of these services as a credit transaction. Industry commenters opposed coverage under Regulation Z, stating that institutions currently provide adequate disclosures pursuant to TISA and Regulation DD, and that coverage under Regulation Z would be burdensome.

The Board's study of overdraft services identified a number of other concerns about some programs. One major concern relates to the adequacy of information provided to consumers whose accounts are eligible for the service. For example, some institutions do not clearly inform consumers that ATM withdrawals, debit card transactions, or other electronic transfers may routinely be authorized under these overdraft services and that fees will be imposed in such cases.

Other concerns center on institutions' marketing practices. Although the service may be designed to protect consumers against occasional inadvertent overdrafts, some institutions' promotional materials make the service appear to be a line of credit, apparently to promote a consumer's repeated use of the service. Many institutions inform consumers of the availability of the overdraft service, and also of the maximum aggregate dollar amount of overdrafts the institution will pay. Some marketing plans encourage consumers to use the service to meet short-term credit needs, and not just as protection against inadvertent overdrafts. Some institutions have encouraged consumers specifically to use an overdraft as an advance on their next paycheck. Notwithstanding the marketing promises, however, qualifying language disclaims any legal obligation by the institution to pay any overdraft. In some cases, deposit accounts that are promoted as being ''free'' also promote overdraft services that involve substantial fees.

III. Concerns About Uniform Disclosure of Overdraft Fees

The Board also has concerns about the uniformity and adequacy of cost disclosures provided to consumers regarding overdraft and returned-item fees under Regulation DD. Many institutions already provide timely information to consumers about particular overdrafts and the fees imposed by sending a notice at the time an overdraft occurs. Institutions' practices and disclosures are not uniform, however, and some consumers may not receive adequate information on a timely basis.

Fees for paying overdrafts and for returning items unpaid are typically flat fees unrelated to the amount of the item. These amounts may be significant when there are multiple overdrafts even though the items may represent relatively small dollar amounts. Even when consumers are aware that an account is or may become overdrawn, they do not necessarily know the number of overdraft items that will result or the total fees that will be imposed, both of which are determined by the order in which items drawn on the account are presented and the institution's policies concerning the order in which items are paid. Consumers may not be aware of the total fees imposed until the next periodic statement, and when the periodic statement is provided, it may intersperse fees for overdrafts and fees for returned items among other transactions rather than provide a total. As a result, the overall cost associated with overdrawing the account may not be clearly presented to consumers.

IV. The Board's Proposed Revisions to Regulation DD

In May 2004, the Board proposed revisions to Regulation DD and the staff commentary to address concerns about the uniformity and adequacy of institutions' disclosure of overdraft fees generally, and to address concerns about advertised overdraft services in particular. 69 FR 31760 (June 7, 2004). Specifically, the Board proposed to revise Regulation DD to expand the prohibition against misleading advertisements to cover communications with current consumers about existing accounts; the staff commentary provided examples of advertisements that would ordinarily be misleading. The proposed revisions also required additional fee and other disclosures about overdraft services, including disclosures on periodic statements of the total dollar amounts for all overdraft fees and for all returned-item fees, for the statement period and for the calendar year to date; however, the Board solicited comment on whether the periodic statement requirement to disclose calendar year-to-date totals should be limited to institutions that market overdraft services. Further, the Board proposed to require institutions that market automated overdraft services that are not covered by TILA to include certain disclosures about the service in their advertisements, including the fee for the payment of each overdraft item and the circumstances under which the institution would not pay an overdraft.

Overview of Public Comments

Approximately 300 comments were received; the majority of comments were received from depository institutions or their trade associations. About 100 of these comment letters were received from consumer advocates and individual consumers, including about 60 nearly identical form letters sent by consumers through the same Internet site.

Almost all the comments from consumers and consumer advocates oppose the proposed amendments to Regulation DD, and instead urge the Board to cover certain overdraft services under Regulation Z. Few of these comment letters contained substantive suggestions on the proposed revisions to Regulation DD. One Member of Congress submitted a letter also

requesting the Board to cover certain overdraft services under Regulation Z.

Industry commenters were uniform in agreeing that overdraft protection is a deposit service that should be covered under Regulation DD rather than Regulation Z. Industry representatives that commented generally oppose covering overdraft services under Regulation Z. Industry representatives stated that disclosing an annual percentage rate (APR) for overdraft services would impose substantial compliance burdens without leaving consumers better-informed about the cost of credit or better able to compare the costs of different credit products.

Although generally agreeing that coverage of overdraft services was more appropriate under Regulation DD, virtually all industry commenters have concerns about specific aspects of the proposal. The most frequent objection to the proposal concerns the requirements for disclosing aggregate totals for overdraft fees and returned item fees on periodic statements. In particular, most industry commenters cite the costs of implementing the new disclosures and assert that consumers are already provided sufficient information about these fees. Industry commenters also asked for clarification about the types of overdraft services that would be covered under the rule, focusing on the Board's use of the term ''automated overdraft service'' to describe the overdraft service that would be subject to the additional advertising disclosures. Finally, many industry commenters oppose the requirement to disclose in advertisements the circumstances under which an overdraft would not be paid, because it could suggest an agreement to pay overdrafts in other circumstances contrary to the ''discretionary'' nature of the product. Additional comments are discussed in the section-by-section analysis.

V. The Final Rule

Pursuant to the Board's authority under Section 269(a) of TISA (12 U.S.C. 4308(a)), the Board is adopting final revisions to Regulation DD and the staff commentary generally as proposed. Some clarifications and modifications to the proposal have been made to respond to commenters' concerns; in particular, the requirement to disclose aggregate overdraft and returned item fees on periodic statements has been limited to institutions that promote the payment of overdrafts in an advertisement. The final rule consolidates the guidance for institutions that promote the payment of overdrafts in a new § 205.11 of the regulation to facilitate compliance. To give institutions sufficient time to implement the necessary system changes to comply with the regulation, compliance with the final rule will not become mandatory until July 1, 2006.

Summary of Revisions to the Regulation

The following is a summary of the final revisions to the regulation and the staff commentary. These revisions are discussed in detail below in the section-by-section analysis.

Disclosures Concerning Overdraft Fees

Periodic Statements

- Institutions that promote the payment of overdrafts in an advertisement must separately disclose on their periodic statements, the total amount of fees or charges imposed on the deposit account for paying overdrafts and the total amount of fees charged for returning items unpaid. These disclosures must be provided for the statement period and for the calendar year to date for any account to which the advertisement applies. The final rule is narrower than the proposal, which would have applied to all institutions, regardless of whether they market the payment of overdrafts. Thus, institutions that do not promote the payment of overdrafts would not be required to provide the new periodic statement disclosures under the final rule.
- To facilitate compliance, the staff commentary provides specific examples of when an institution is promoting the payment of overdrafts in an advertisement. For example, stating the overdraft limit for an account on a periodic statement or stating an account balance that includes available overdraft funds on an ATM receipt would be considered an advertisement triggering the required disclosures.
- An institution that does not otherwise promote the payment of overdrafts would not trigger the requirement to provide aggregate fee disclosures on periodic statements solely by:

(1) Communicating information about the payment of overdrafts in response to a consumer-initiated inquiry about overdrafts or deposit accounts generally. Providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, an ATM, or an institution's Internet site, is not a response to a consumer-initiated inquiry for purposes of this provision, and would trigger the periodic statement disclosure requirements;

(2) Providing educational materials that do not specifically describe the institution's overdraft service;

(3) Promoting in an advertisement a traditional line of credit that is subject to the Board's Regulation Z (Truth in Lending);

(4) Engaging in an in-person discussion with a consumer;

(5) Making a disclosure required by Federal or other applicable law;

(6) Including information on a periodic statement or providing a notice informing a consumer about a specific overdrawn item or the amount the account is overdrawn;

(7) Including in a deposit account agreement a discussion of the institution's right to pay overdrafts; or

(8) Notifying a consumer that completing a requested transaction, such as an ATM withdrawal, may trigger an overdraft fee, or providing a general notice that items overdrawing an account may trigger an overdraft fee.

Account-Opening Disclosures

- Institutions must specify in TISA's account-opening disclosures the categories of transactions for which an overdraft fee may be imposed. An exhaustive list of transactions is not required; it is sufficient to state that the fee is imposed for overdrafts created by checks, in-person withdrawals, ATM withdrawals, or by other electronic means, as applicable. This requirement applies to all institutions, including institutions that do not promote the payment of overdrafts in an advertisement.

Advertising Rules

- To avoid confusion with traditional lines of credit, institutions that promote the payment of overdrafts are required to include certain disclosures in their advertisements about the service: the applicable fees or charges, the categories of transactions covered, the time period consumers have to repay or cover any overdraft, and the circumstances under which the institution would not pay an overdraft. Stating the available overdraft limit or the amount of funds available on a periodic statement would be considered an advertisement triggering the required disclosures.
  - The final rule provides safe harbors from the advertising requirements similar to those described above for the periodic statement disclosure requirements. Thus, for example, the advertising disclosure requirements would not apply to institutions when they provide educational materials, respond to a consumer-initiated inquiry about overdrafts or deposit accounts, or notify a consumer about a specific overdraft in their account.
  - Advertising disclosures are not required on ATM receipts, due to space

limitations. Similarly, advertising disclosures are not required for advertisements using broadcast media, billboards, or telephone response systems. This parallels an exemption in Regulation DD which applies to other types of advertising disclosures. Limited advertising disclosures are required on ATM screens, telephone response machines and indoor signs.

Prohibiting Misleading Advertisements

- TISA's prohibition against advertisements, announcements, or solicitations that are misleading or that misrepresent the deposit contract is extended to communications with consumers about the terms of their existing accounts.

Examples of Misleading Advertisements

- The staff commentary is revised to provide five examples of advertisements that would ordinarily be deemed misleading:

(1) Representing an overdraft service as a ''line of credit;''

(2) Representing that the institution will honor all checks or transactions, when the institution retains discretion at any time not to honor any transaction;

(3) Representing that consumers with an overdrawn account are allowed to maintain a negative balance when the terms of the account's overdraft service require consumers to promptly return the deposit account to a positive balance;

(4) Describing an overdraft service solely as protection against bounced checks, when the institution also permits overdrafts for a fee in connection with ATM withdrawals and other electronic fund transfers that permit consumers to overdraw their account; and

(5) Describing an account as ''free'' or ''no cost'' in an advertisement that also promotes a service for which there is a fee (including an overdraft service), unless the advertisement clearly and conspicuously indicates there is a cost associated with the service.

Possible Coverage Under the Truth in Lending Act

The amendments to Regulation DD recognize that an overdraft service is provided as a feature and term of a deposit account, and that the fees associated with the service are assessed against the deposit account. As noted above, consumer advocates and some others who commented on the proposed revisions to Regulation DD believe that certain overdraft services should be covered by Regulation Z. These commenters state that overdraft services compete with traditional credit products—open-end lines of credit, credit cards, and short-term closed-end loans—all of which are covered under TILA and Regulation Z and provide consumers with the cost of credit expressed as a dollar finance charge and an APR. They believe that TILA disclosures would enhance consumers' understanding of the cost of overdraft services and their ability to compare costs of competing financial services.

At its October 2004 meeting, the Board's Consumer Advisory Council also discussed this issue, including ways to distinguish between an institution's infrequent, ad hoc accommodation of a customer, and an overdraft service that operates more like a line of credit. Some Council members believed that overdraft services that are the functional equivalent of a traditional overdraft line of credit should be subject to Regulation Z, but that institutions' historical practice of paying occasional overdrafts on an ad hoc basis should not be covered by Regulation Z.

The Board's adoption of final rules under Regulation DD does not preclude a future determination that TILA disclosures would also benefit consumers. The Board expressly stated in its proposal that further consideration of the need for coverage under Regulation Z may be appropriate in the future.

VI. Section-by-Section Analysis

Section 230.2 Definitions

2(b) Advertisement

TISA prohibits institutions from making any advertisement, announcement, or solicitation relating to a deposit account that is inaccurate or misleading or that misrepresents its deposit contract. 12 U.S.C. 4302(e). Regulation DD currently defines ''advertisement'' to include ''a commercial message appearing in any medium, that promotes directly or indirectly the availability of, or a deposit in, an account.'' *See* § 230.2(b). Under the existing staff commentary, institutions' communications with consumers about existing accounts are not considered ''advertisements'' under Regulation DD. *See* comment 2(b)-2.iii.

The Board proposed to revise the definition of ''advertisement'' to include an institution's communications with existing customers for purposes of TISA's prohibition against advertisements that are misleading or inaccurate or that misrepresent the deposit contract. The Board also proposed to expand the definition to cover communications with existing customers that promote the institutions' overdraft services, which would trigger additional disclosures about the costs and terms of the service.

The final rule adopts the revised definition of ''advertisement'' as proposed under § 230.2(b)(1). Section 230.2(b)(2) of the final rule provides that for purposes of the prohibition on misleading advertisements in § 230.8(a) and the new disclosure requirements in § 230.11, the definition of ''advertisement'' includes the terms of, or a deposit in, a new or existing account. The staff commentary has been modified to address commenters' concerns about the need to clarify the scope of the revised definition.

Most commenters who addressed this aspect of the proposal did not oppose applying the prohibition on misleading or inaccurate advertisements to communications about existing accounts. Many commenters believe, however, that modifications are necessary to clarify the scope of the proposed definition. In particular, several commenters expressed concern that, without clarification, the definition would be interpreted to apply to routine communications, such as notices commonly sent to inform accountholders that their account has become overdrawn. Other commenters asked the Board to provide additional guidance on types of communications that would constitute promoting an overdraft service and thus satisfy the definition of ''advertisement.''

Comment 2(b)–2 currently provides examples of messages that are not considered advertisements. The Board proposed to re–designate comment 2(b)–2 as comment 2(b)–3. The re-designation is not necessary in the final rule. In response to commenters' concerns, comment 2(b)–2 has been revised to provide additional examples of messages that are not advertisements. Paragraph 2(b)–2.iii is revised for conformity with the final rule. Paragraph 2(b)–2.iv. clarifies that an institution is not promoting a deposit or service solely by providing information about a particular transaction in an account, such as in a notice or a periodic statement advising a consumer about a specific overdrawn item.

Paragraph 2(b)–2.v. provides that an institution is not promoting a deposit or service solely by providing legally required disclosures. Similar guidance had been included in proposed comment 2(b)–2. The guidance in the final rule has been revised by deleting the specific reference to disclosures provided at account-opening, on periodic statements, and on electronic terminal receipts, to address commenters' concerns that other required disclosures should also be

excluded from the definition of ''advertisement.'' If an institution combines promotional material with the required disclosures, however, this additional information would be considered an advertisement. An institution that includes promotional materials about its overdraft service with required disclosures generally would be required to provide the new disclosures in § 230.11 (discussed below). Paragraph 2(b)–2.vi. clarifies that an account agreement is not an advertisement.

The revised definition of advertisement does not affect rules for triggering additional disclosures when an advertisement states an APY or bonus. The previous definition of ''advertisement'' continues to apply for this purpose and has been redesignated as § 230.2(b)(1). Modifications have been made only for stylistic consistency; no substantive change is intended.

Section 230.4 Account Disclosures

4(b) Content of Account Disclosures

4(b)(4) Fees

Under TISA and Regulation DD, before an account is opened, institutions must provide a schedule describing all fees that may be charged in connection with the account. The schedule must also disclose the amount of the fee and the conditions under which the fee will be imposed. 12 U.S.C. 4303; § 230.4(b)(4). When terms required to be disclosed in the schedule change and adversely affect accountholders, notice of the change must be provided 30 days in advance. 12 U.S.C. 4305; § 230.5(a).

Currently, the guidance for describing fees is quite general, and provides that ''naming and describing the fee will typically satisfy these requirements.'' *See* comment 4(b)(4)–3. The Board proposed comment 4(b)(4)–5 to require institutions to state in their account-opening disclosures the types of transactions for which an overdraft fee may be imposed. As proposed, describing the fee solely as a ''fee for overdrafts'' or fee for ''overdraft items'' would not provide sufficient notice to consumers as to whether the fee applies to overdrafts by check only, or whether it also applies to overdrafts by other means, such as by ATM withdrawal or other electronic transactions. The revisions are being adopted substantially as proposed, with some modifications to address commenters' concerns, and would apply to all institutions, regardless of whether they promote the payment of overdrafts.

A few commenters that support the proposed comment affirm that they already provide such disclosures. Most commenters do not oppose the proposed change, but encourage the Board to clarify that an exhaustive list of transactions for which an overdraft fee may be imposed, is not required. These commenters express concern that requiring disclosure of an exhaustive list of transactions could necessitate a change-in-terms notice as new technologies are implemented. For example, several commenters believe that an institution solely disclosing that overdraft fees may be imposed for transfers initiated using the Internet might have to provide a change-in-terms notice if telephone transfers are subsequently allowed. These commenters assert that an illustrative list of transactions would sufficiently notify the consumer that overdraft fees will apply in multiple circumstances, while allowing institutions to avoid the need to provide a change-in-terms notice if, subsequently, overdrafts are permitted through another channel. A few commenters asked the Board to provide model language to ease compliance.

To address commenters' concerns, comment 4(b)(4)–5 has been revised to clarify that an exhaustive list of transactions is not required. As revised, the comment provides that institutions may specify categories of transactions for which an overdraft fee may be imposed. The final comment also includes model language. Institutions may satisfy the requirements by stating that the fee applies to overdrafts ''created by check, in-person withdrawal, ATM withdrawal, or other electronic means,'' as applicable. The model language is sufficiently broad to cover most situations in which overdrafts can occur, but institutions are free to add additional categories. For example, an institution using the model language would not be required to change its disclosures when implementing a system for making electronic transfers by telephone. But if an institution only discloses that overdraft fees are imposed in connection with the payment of checks, new disclosures would be required if the institution subsequently imposes the fees for overdrafts created by ATM withdrawals or other electronic means.

Institutions are not required to provide new account-opening disclosures or change-in-terms notices to consumers who previously received overdraft fee disclosures under existing guidance currently in the staff commentary. However, to the extent that an institution's prior disclosures suggested the overdraft service only covers checks, institutions should consider informing their customers that the service is broader and applies to overdrafts by in-person withdrawals, ATM withdrawals, and by other electronic means, as applicable.

Section 230.6 Periodic Statement Disclosures

6(a) General Rule

6(a)(3) Fees Imposed

The Board proposed to revise Regulation DD, by adding § 230.6(a)(3)(ii), to require all institutions to disclose separately, the total dollar amount of overdraft fees and the total dollar amount of returned-item fees, for the statement period and the calendar year to date. As further discussed below, this provision has been moved to new § 230.11(a), and the requirements are limited to institutions that promote the payment of overdrafts in an advertisement. Proposed comment 6(a)(3)–2 has been adopted, with some modifications, to clarify that fees for paying overdrafts and fees for returning items unpaid may not be grouped together as fees for insufficient funds.

Section 230.8 Advertising

As discussed above, the Board is revising Regulation DD to apply the prohibition in § 230.8(a) on misleading advertisements to communications with consumers about the terms of their existing accounts. The Board also proposed to revise the staff commentary to provide examples of advertisements that would ordinarily be misleading. In addition, to reduce consumer confusion about how overdraft services differ from a traditional line of credit, the proposed rule required institutions that promote automated overdraft services to include certain disclosures in their advertisements about the service. In the final rule, the prohibition on guidance regarding misleading and inaccurate advertisements in § 230.8(a) is being revised. The proposed examples in the commentary of advertisements that would ordinarily be misleading are being adopted largely as proposed under § 230.8(a), with some modifications for clarity. The additional disclosure requirements for advertisements that promote the payment of overdrafts in proposed § 230.8(f) are contained in new § 230.11(b), discussed below.

8(a) Misleading or Inaccurate Advertisements

In the final rule, § 230.8(a) has been reorganized, as proposed. To provide guidance on the types of advertisements that may violate the rule, the Board proposed to add comment 8(a)–10. The proposed comment provided five examples of advertisements that would

ordinarily be misleading, inaccurate, or misrepresent the deposit contract. The examples of misleading advertisements in proposed comment 8(a)–10 are adopted as proposed, with some revisions for clarity.

The first example is an advertisement that represents an overdraft service as a ''line of credit'' unless the service is subject to the Board's Regulation Z. The second example is an advertisement that misleads consumers by representing that the institution will honor all checks or authorize all transactions that overdraw an account, with or without a specified dollar limit, when the institution retains discretion at any time not to honor checks or authorize transactions.

A third example states that an advertisement could mislead consumers by representing that consumers with overdrawn accounts are allowed to maintain a negative balance when the terms of the account's overdraft service require consumers to promptly return the deposit account to a positive balance. The fourth example provides that promotional materials describing a service solely as protection against bounced checks could mislead consumers if the service also applies to ATM withdrawals, and other debit card transactions, and electronic fund transfers.

The fifth example of misleading advertisements relates to the advertisement of free accounts. Under Regulation DD, an institution may not describe an account as ''free'' (or use a similar term) if any maintenance or activity fee may be imposed on the account. As the Board noted in the proposal, fees for overdraft services are not considered maintenance or activity fees, because the fees do not relate to the use of the consumer's own funds in the account. Thus, institutions may impose overdraft fees in connection with ''free'' accounts. The example addresses concerns about institutions that advertise overdraft services (or other services) as a feature of their free checking accounts in a manner that could mislead consumers to believe that the service is without cost. Accordingly, an advertisement would be deemed misleading if the account is described as ''free'' and the advertisement also promotes account-related services for which there is a fee, unless the advertisement clearly and conspicuously indicates there is a cost associated with the advertised service.

Most commenters agree that the misleading advertising practices identified by the Board should be prohibited, and support the proposed examples. One consumer group, however, believes that the proposed examples are not sufficient because they do not prohibit institutions from encouraging consumers to use the service for intentional overdrafts. The final rule does not contain such an example. Although advertisements that encourage intentional overdrafts may under some circumstances mislead consumers about the terms of the service, such a determination must be made on a case-by-case basis.

A few industry commenters objected to the scope of the fifth example which pertains to advertisements that promote ''free'' accounts as well as services for which a fee is charged. These commenters believe the example should be limited to advertisements promoting overdraft services in connection with free accounts. Although comment 8(a)–10.v. addresses concerns that consumers may be misled into thinking that overdraft protection is without cost when the service is advertised as a feature of free checking accounts, the same possibility of misleading consumers exists when other account-related services are advertised in connection with free accounts. Thus, the scope of the final comment is not limited to the promotion of overdraft services.

TISA's limitation on advertising an account as free is currently implemented in § 230.8(a). This provision has been redesignated as § 230.8(a)(2), without any substantive change.

8(f) Additional Disclosures in Connection With Overdraft Services

Proposed § 230.8(f) would have required advertisements promoting an automated overdraft service to include certain fee and other information about the service. This requirement is in § 230.11(b) in the final rule. Section 230.8(f) of the final rule contains a cross-reference to the new advertising disclosures in § 230.11(b).

Section 230.11 Additional Disclosure Requirements for Institutions Advertising the Payment of Overdrafts

New § 230.11 consolidates the disclosure requirements previously set forth in §§ 230.6(a)(3) and 230.8(f) of the proposed rule. Section 230.11(a) contains the disclosure requirements for periodic statements. The final rule is narrower than the proposal and only applies to institutions that promote the payment of overdrafts in advertisements. Section 230.11(a) requires these institutions to separately disclose the total fees for paying overdrafts and the total fees for returning items unpaid on periodic statements. The disclosures must be made for the statement period and for the calendar year to date for each account to which the advertisement applies. Section 230.11(b) requires institutions that promote the payment of overdrafts in advertisements to provide certain additional disclosures about the nature of the overdraft service. The Board believes that consolidating these rules in a new section will help facilitate compliance with the regulation for institutions that choose to promote the payment of overdrafts.

11(a) Periodic Statement Disclosures of Fees for Overdrafts and for Returned Items Unpaid

To assist consumers in better understanding the costs associated with overdrawing their accounts, the Board proposed to revise the requirements for providing cost disclosures on periodic statements. Although periodic statements are not required by TISA, an institution that provides such statements must disclose any fees or charges imposed on the account during the statement period. Under Regulation DD, fees must be itemized on a periodic statement by type, for example, by separately listing the monthly service charge, ATM fees, and returned check fees. When multiple fees of the same type are charged in a single period, comment 6(a)(3)–2 in the current staff commentary states that institutions have the option of showing each fee as a separate charge or, alternatively, aggregating all fees of the same type and disclosing a single dollar amount for that category. The Board proposed to add § 230.6(a)(3)(ii) to require *all* institutions to disclose separately the total dollar amount of overdraft fees and the total dollar amount of returned-item fees on an aggregate basis for the statement period and for the calendar year to date. As discussed above, under § 230.11(a)(1) of the final rule, only institutions that promote the payment of overdrafts in an advertisement are required to provide the aggregate fee disclosures on periodic statements. Institutions must provide the disclosures for all accounts to which the institution's advertisement applies.

Section 230.11(a)(2) describes certain communications that institutions may make concerning the payment of overdrafts that would not trigger the new periodic statement disclosures. Sections 230.11(a)(3) through (5) provide guidance on how an institution can comply with the rule after it commences advertising the payment of overdrafts, and after an institution acquires accounts through a merger or acquisition. Additional comments have

been added for clarity in response to concerns raised by commenters.

Consumer representatives that commented believe that consumers need better information about the cost of using certain overdraft services, but they assert that disclosing aggregate fees for the statement cycle and year to date would be insufficient to provide consumers with the information necessary to compare the cost of overdraft services with the costs of alternative forms of short-term credit such as payday loans, tax refund anticipation loans, and traditional overdraft lines of credit. They recommend that instead of adopting the proposed revisions to Regulation DD, the Board should cover certain overdraft services under Regulation Z so that periodic statements would provide consumers with an APR.

Where the institution has not agreed in writing to pay overdrafts, a charge assessed against a deposit account for paying an overdraft has not been considered a finance charge and disclosures under Regulation Z are not required. This exception was established in Regulation Z from its inception in 1969. As noted above, the Board's adoption of final rules under Regulation DD does not preclude a future determination that TILA disclosures would also benefit consumers.

Industry commenters generally oppose the proposed requirement to disclose aggregate totals for overdraft fees and returned-item fees because they believe it would be costly and would provide little benefit to consumers. Several commenters disagree with the view that consumers do not receive sufficient information about the costs associated with overdrawing their account, observing that consumers receive a schedule of fees at account-opening, notice of fees imposed upon each overdraft, and an itemization of fees on periodic statements. Many of these commenters also assert that the itemization of fees on periodic statements provides a sufficient basis for consumers to determine an aggregate total for fees imposed during the statement cycle and calendar year to date. Most industry commenters stated that the typical industry practice of providing a notice after each overdraft is a more effective and timely means of alerting consumers about the cost of overdrafts. Some financial institutions oppose additional disclosures about overdraft fees on periodic statements because, in their view, it would detract from information on the periodic statement about other types of fees, such as ATM withdrawal fees. A few industry commenters question how an institution can provide year-to-date totals that would be reset to zero each January when a statement period is not tied to a calendar month.

Most industry commenters express concern about the cost of implementing changes to the way fees are disclosed on periodic statements, which would involve changes to data collection and reporting systems, as well as training and compliance management costs. They note that most institutions' systems do not currently aggregate fee data across different statement cycles, which would be necessary to disclose year-to-date totals. Some commenters also note that systems changes would be needed for some institutions to distinguish between fees imposed for paying overdrafts and fees for handling items that are returned unpaid. Six financial institutions provided cost estimates. At the low end, one institution that stated it uses a third-party vendor for data processing estimated the cost at $20,000, while two other institutions that outsource data processing estimated the cost to be about $300,000. Two institutions (including one with $1.5 billion in assets) provided cost estimates between $50,000 and $125,000. Bank of America, noting that it operates the largest banking network in the United States, estimated that expenses for the initial systems modifications for paper statements would exceed $1 million.

The Board specifically asked for comment on whether the requirement to disclose cumulative year-to-date fee totals on periodic statements should be limited to institutions that market overdraft services. Industry commenters were divided. Several banks that do not promote overdraft services supported limiting the rule; these were generally larger institutions that stated the proposed revisions should focus on institutions whose marketing practices have raised the most concerns. These commenters urged the Board to exempt institutions that do not market overdraft services from being required to disclose aggregate fees for the statement period and year to date. But more industry commenters stated that the rule, if adopted, should apply to all institutions and not just institutions that market overdraft services. Some of these commenters believe a rule based on ''marketing'' would be too vague; others assert that if the cost disclosure is useful, it would be just as beneficial to consumers regardless of whether the service is marketed. One commenter also noted that institutions' contracts with third-party vendors may limit the cost of system changes from being imposed directly on individual depository institutions if the changes must be made by all institutions.

TISA was enacted, in part, for the purpose of requiring clear and uniform disclosures regarding deposit account terms and the fees assessable against these accounts. Such disclosures allow consumers to make informed judgments about the use of their accounts, including the consideration of other available options. In proposing that institutions disclose the aggregate amount of fees imposed for overdrafts and returned items, the Board sought to ensure that consumers are more clearly presented with the overall cost of overdrawing their accounts, particularly in light of the fact that institutions' payment of overdrafts has become more routine due to the use of automated systems, and that many institutions encourage consumers to use their overdraft service. Currently, institutions may itemize each fee on the periodic statement, including overdraft and returned-item fees; the itemized charges may be interspersed among other transactions in the account. A periodic statement that itemizes each transaction and fee during the statement cycle, without isolating the total cost of overdrawing the account, does not present a clear picture of the total cost associated with overdrawing the account.

Fees for paying overdrafts and for returned items are typically flat fees unrelated to the amount of the transaction. These amounts may be significant when there are multiple overdrafts, although the items may represent relatively small dollar amounts. Even when consumers are aware that their account is or may become overdrawn, they do not necessarily know the number of overdraft items that will be paid or returned, or the total fees that will be imposed, both of which are determined by the order in which items are presented and the institution's policies regarding the order in which items are paid. Thus, consumers may not be aware of the total amount of fees being imposed and the amount by which the account is overdrawn until the next periodic statement is received. The Board believes disclosure of the aggregate costs may better enable consumers to consider their approach to account management and determine whether the account's terms and features are suited to their needs or whether other types of accounts or services would be more appropriate.

The Board is also mindful, however, of the compliance costs associated with the proposed rule. Limiting the rule to

institutions that advertise the payment of overdrafts avoids imposing compliance burdens on institutions that pay overdrafts infrequently, such as institutions that only pay overdrafts on an ad hoc basis. Requiring institutions to provide aggregate fee disclosures if they promote the payment of overdrafts would provide better cost information for consumers who are encouraged to overdraw their accounts and who are most likely to benefit from the aggregate fee disclosures.

There may be consumers who use overdraft services frequently even though their institution does not market the service; however, a rule based on individual consumer behavior is more difficult to administer. Accordingly, under § 230.11(a)(1), the requirement for disclosing aggregate fees for paying overdrafts and for returning items unpaid is limited to institutions that promote the payment of overdrafts in an advertisement. The total dollar amount for paying overdrafts includes all fees or charges imposed by an institution for paying overdrafts or other items when there are insufficient funds and the account becomes overdrawn. The final rule also clarifies that the required disclosures must be provided for the statement period and for the calendar year to date, for any account to which the advertisement applies. Institutions that do not promote the payment of overdrafts and have merely automated their traditional practice of paying overdrafts on an ad hoc basis are not covered by § 230.11(a)(1). These institutions may continue to itemize fees on periodic statements but whether they itemize fees or group them together by type, institutions must distinguish between fees for paying overdrafts and fees for returning unpaid items. Institutions that do not promote the payment of overdrafts may also group like fees together and provide a total for the statement period on a voluntary basis, consistent with the current rules.

The definition of ''advertisement'' is broad and includes ''a commercial message appearing in any medium, that promotes directly or indirectly the availability'' the terms of a deposit account. Thus, the rules for overdraft services would cover any type of promotion, regardless of the advertisement's content, format or the marketing channel used. For example, messages posted on a depository institution's Internet site would be covered, as would promotional e-mail messages and messages printed on an institution's periodic statement. Oral messages communicated in a telephone solicitation would also be covered. *See* comment 11(a)(1)–1(i).

To ease compliance, the final rule specifies certain types of communications and practices that would not trigger the requirement for disclosing aggregate fees on periodic statements. *See* § 205.11(a)(2). The safe harbors seek to provide additional certainty to institutions in determining whether compliance with the rule is required in particular circumstances. For example, the safe harbors clarify that an institution is not promoting the payment of overdrafts when providing information about the status of the account or a particular transaction, such as when notifying a consumer that the account has become overdrawn or when including the amount the account is overdrawn on a periodic statement. Similarly, an institution is not deemed to be promoting the payment of overdrafts when it provides notice to a consumer, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing the account, or when it provides a general notice that items overdrawing an account may trigger a fee.

An institution also is not promoting overdraft services by providing legally required disclosures, by discussing in a deposit account agreement the institution's right to pay overdrafts, or by providing educational materials that do not specifically describe the institution's overdraft service (such as the brochure on ''bounce protection'' published by the Federal financial regulatory agencies). The rules for overdraft services also would not apply to advertisements for overdraft lines of credit covered by TILA and Regulation Z.

The safe harbors also provide relief in circumstances where institutions would have practical difficulties in complying with the rule. In particular, there are safe harbors for consumer-initiated and face-or-face discussions to relieve institutions of the burden of monitoring individual conversations and responses; this also enables institutions to respond to consumers' direct questions about their accounts without concern that the discussion might trigger additional disclosure requirements. The final rule clarifies that institutions are within the safe harbor when responding (whether by telephone, electronically, or otherwise) to consumer-initiated inquiries about deposit accounts and overdrafts. The revised final rule also explains the limits of this safe harbor; the safe harbor for consumer-initiated inquiries does not apply to institutions' automated systems that are programmed to provide information about the institution's overdraft service, such as an ATM machine, a telephone response machine, or the institution's Internet site. In these cases, the consumer initiates the contact, but the institution has control over the pre-programmed message that provides information about available overdraft limits, and thus, the same compliance issues as individual inquiries are not presented.

Section 230.11(a)(3) addresses the timing of the aggregate fee disclosures after an institution begins promoting the payment of overdrafts. An institution must make the disclosures under § 230.11(a)(1) for accounts to which the advertisement applies, starting with the first statement period that begins after the institution advertises the payment of overdrafts. For example, if a consumer's statement period typically closes on the 15th of each month, an institution that promotes the payment of overdrafts with respect to the consumer's account on July 1, 2006 must provide the aggregate fee disclosures on subsequent periodic statements for that consumer beginning with the statement reflecting the period from July 16, 2006, through August 15, 2006. In calculating and disclosing total fees for the year-to-date, institutions have the option of including fees imposed since the beginning of the calendar year, or starting with the first full statement period that begins after the institution advertises the payment of overdrafts with respect to the consumer's account.

Comment 11(a)(3)–1 explains that only institutions that continue to advertise the payment of overdrafts on or after the mandatory compliance date of July 1, 2006 will be required to provide aggregate fee periodic statement disclosures for their consumers. Under § 230.11(a)(4) of the final rule, an institution is no longer required to provide the disclosures under § 230.11(a)(1) two years after the institution last promotes its overdraft service with respect to that account, when the likely effect of the advertisement on consumers' use is presumably dissipated.

Where an institution acquires deposit accounts, for example, by merging with or acquiring another institution, under § 230.11(a)(5) the acquiring institution must thereafter provide the aggregate fee disclosures required by § 230.11(a)(1) only if the acquiring institution promotes the payment of overdrafts with respect to the acquired accounts. If disclosures are required for the acquired accounts, the acquiring institution may, but is not required, to include fees imposed prior to the acquisition in the aggregate totals. Comment 11(a)(5)–1 explains that if the acquiring institution does not advertise the payment of overdrafts, or its advertisements do not

apply to the acquired accounts, the institution need not provide the aggregate fee disclosures for the acquired accounts even if the depository institution that previously held the accounts advertised the payment of overdrafts for those accounts.

In response to commenters' requests for clarification, additional guidance has been added to the staff commentary. Comment 11(a)(1)–1 provides examples of circumstances in which an institution would trigger the periodic statement requirements. For example, an institution promotes the payment of overdrafts by stating an overdraft limit or includes the amount of funds available for overdrafts on a periodic statement. *See* comment 11(a)–1(ii). Similarly, an institution promotes the payment of overdrafts if it states an overdraft limit or includes the dollar amount of the overdraft limit in an account balance disclosed on an ATM receipt or by a telephone response system. *See* comment 11(a)–1(iii). Comment 11(a)(1)–3 provides that an institution does not promote the payment of overdrafts, however, if it promotes a service providing for the transfer of funds from another deposit account of the consumer to avoid creating an overdraft.

Comment 11(a)(1)–2 explains that the aggregate fee disclosures must be provided on periodic statement for all accounts to which an advertisement promoting the payment of overdrafts applies. Accordingly, if an institution specifies the types of accounts for which the overdraft service applies, the institution is not required to provide the disclosures for other types of accounts offered by the institution. An institution is required to provide the new aggregate fee disclosures for all of its accounts, however, if the institution generally promotes the payment of overdrafts without specifying the accounts to which the advertisement applies.

Comment 11(a)(1)–4 clarifies that the total dollar amount disclosed for fees charged to the account for paying overdrafts includes per-item fees as well as interest charges, daily or other periodic fees, and fees charged for maintaining an account in overdraft status. It also includes fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. The disclosure would not include, however, fees for transferring funds from another account to avoid an overdraft, or fees charged in connection with a line of credit where the institution agrees in writing to pay items that overdraw the account and the service is subject to the Board's Regulation Z.

Comment 11(a)(1)–5 clarifies that in disclosing fees for returning items unpaid, an institution should not include fees imposed when the account holder deposits items that are returned.

In some cases, an institution may provide a statement for the current period reflecting that fees imposed during a previous period were waived and credited to the account. In response to commenters' request for clarification, comment 11(a)(1)–6 provides that such adjustments should not affect the total disclosed for fees imposed during the current statement period. The comment also notes, however, that institutions may, but are not required to, reflect the adjustment in the fee total for the calendar year to date.

In response to commenters' suggestions, comment 11(a)(1)–7 provides guidance on how depository institutions may disclose the year-to-date fee totals when the institution's statement cycle does not coincide with the calendar month. In such cases, the institution may disclose a year-to-date total by aggregating fees for 12 monthly cycles, starting with the cycle that begins during January. Alternatively, the institution may provide a year-to-date total based on the calendar year.

Comment 11(a)(1)–8 provides that institutions that promote the payment of overdrafts may continue to itemize overdraft and returned item fees on periodic statements as an additional voluntary disclosure in addition to the disclosures required by § 230.11(a)(1).

11(b) Advertising Disclosures for Overdraft Services

TISA and Regulation DD require additional information to be provided if an advertisement for a deposit account refers to a specific rate of interest, yield, or rate of earnings. 12 U.S.C. 4302; § 230.8(c). Advertisements for bonuses on deposit accounts also trigger additional information. § 230.8(d). TISA authorizes the Board to exempt ''broadcast and electronic media and outdoor advertising from stating some additional information, if the Board finds the disclosures to be unnecessarily burdensome.'' 12 U.S.C. 4302(b). These limited disclosure rules are implemented in § 230.8(e)(1). The exemptions for broadcast and electronic media do not extend to advertisements posted on the Internet or sent by e-mail.

A principal concern about institutions' promotion of the payment of overdrafts is that consumers may be led to believe that the service represents a traditional line of credit. Some advertisements of overdraft services focus on the dollar amount of the overdraft limit, which may mislead some consumers to believe that a line of credit for that amount will be provided. Other advertisements create the impression that the payment of overdrafts can be relied upon to obtain short-term extensions of credit from time to time (up to a given amount) at minimal cost. These promotions may mislead or confuse consumers regarding the nature, costs, terms, and limitations of the service. This problem may be magnified somewhat because marketed overdraft services are relatively new.

Additional disclosures in advertising could reduce the potential that some consumers would be misled, and enable consumers to compare the terms offered by different financial institutions. Accordingly, the Board proposed to add § 230.8(f) to require that the following disclosures be included in advertisements for ''automated'' overdraft services not subject to Regulation Z: (1) The fee for overdrawing an account; (2) the types of transactions covered; (3) the amount of time consumers have to repay or cover any overdraft; and (4) the circumstances under which the institution would not pay an overdraft. The proposed disclosures would have been required for print media and marketing on Internet sites; but because of the practical limitations of time or space, there was an exemption for advertisements using broadcast media, outdoor billboards, and telephone response machines, which would mirror the exemptions in Regulation DD for other types of advertising disclosures. The Board also proposed to add comments 8(f)–1 through 8(f)–3, to provide guidance in applying the new disclosure requirements. The final rule adopts these provisions largely as proposed in § 230.11(b) and the accompanying commentary.

Several industry commenters asked the Board to clarify which ''automated'' overdraft services would be subject to the advertising disclosures, noting that all institutions automate their processing of overdrafts to some extent. These commenters generally urge the Board to draw a clear line to aid in compliance. The final rule omits the reference to ''automated'' overdraft services to eliminate unnecessary confusion. The rule was intended to apply to all overdraft services that are advertised by depository institutions. Institutions that have a policy of paying overdrafts only on an ad hoc basis generally do not advertise the service and are expected to be unaffected by the new advertising disclosure requirements.

Most commenters did not disagree with the idea that some additional

information about marketed overdraft services might be helpful to consumers. But several industry commenters have concerns about the scope of the proposed disclosures, or have questions about how the disclosures would be implemented. A few industry commenters express the view that additional disclosures in advertisements would be burdensome and would, therefore, discourage banks from advertising overdraft services; others suggest that the additional disclosures would provide too much information and could confuse consumers. One trade association stated that disclosing specific costs and terms in advertisements might have the unintended effect of encouraging additional use of the service.

On balance, the Board continues to believe that additional disclosures about the terms of overdraft services would benefit consumers, particularly since institutions often add the overdraft feature without consumers' specific request. The final rule thus adopts the new advertising disclosure requirements under § 230.11(b)(1) and the staff commentary largely as proposed, with some modifications and clarifications.

Consistent with the rule for periodic statement disclosures, § 230.11(b)(2)(i) through (xi) specifies circumstances where an institution would not be required to provide the additional advertising disclosures in § 230.11(b)(1). For example, an institution need not provide the disclosures if the advertisement is for a service where the payment of overdrafts is agreed upon in writing and subject to Regulation Z. *See* § 230.11(b)(2)(i). The advertising disclosures also are not applicable when an institution informs consumers about a specific overdrawn item, when it provides disclosures required by law, or when an institution provides educational materials that do not specifically describe the institution's overdraft service. *See* § 230.11(b)(2)(vii), (viii), (xi). The advertising disclosures also do not apply to in-person discussions with a consumer, or when institutions are responding to consumer-initiated inquiries about deposit accounts or overdrafts. *See* § 230.11(b)(2)(ii), (vi).

The final rule also recognizes that in some circumstances, there may be practical limitations on the ability to provide meaningful advertising disclosures. No disclosures would be required for broadcast or outdoor media, consistent with the current advertising rules in Regulation DD, or on ATM receipts, due to space limitations. *See* §§ 230.11(b)(2)(iii)–(v). The safe harbor for advertisements using broadcast or electronic media applies to radio and television, but does not extend to advertisements posted on an Internet site, ATM screens, or on telephone response machines, or advertisements sent by e-mail. *See* comment 11(b)–3. Nevertheless, the advertising disclosures required for ATM screens and telephone response machines are limited to information about fees and the time period for repaying overdrafts. *See* § 230.11(b)(3).

An institution that advertises the payment of overdrafts on an indoor lobby sign is only required to state that fees may apply and that consumers should contact an employee for information about applicable fees and terms. (An ATM screen would not be considered an indoor sign for purposes of this exemption.) *See* § 230.11(b)(4). An indoor sign may also direct consumers to additional sources of information, such as the institution's Internet site. While institutions advertising the payment of overdrafts using broadcast or outdoor media, ATMs, telephone response machines or lobby signs may qualify for complete or partial exemptions from the advertising disclosures in § 230.11(b)(1), they would nevertheless continue to be required to provide aggregate fee disclosures on periodic statements under § 230.11(a)(1) for the statement period and the calendar year to date.

The staff commentary contains additional guidance to clarify the obligations of institutions that promote the payment of overdrafts in advertisements. Comment 11(b)–2 clarifies that disclosures are not required if the advertised service provides for the transfer of funds from another consumer account to avoid creating an overdraft. Comment 11(b)–4 describes the types of fees that must be disclosed in an advertisement.

Comment 11(b)–5 provides guidance on disclosing the types of transactions covered by an advertised overdraft service. This guidance was previously in proposed comment 8(f)–1. The guidance is consistent with the disclosures required at account opening. *See* comment 4(b)(4)–5. Institutions are not required to provide an exhaustive list of transactions. Disclosing that a fee may be imposed for covering overdrafts ''created by check, in-person withdrawal, ATM withdrawal, or other electronic means,'' as applicable, would satisfy the rule.

Comment 11(b)–6 provides guidance on disclosing the time period for repayment, which is intended to warn consumers that, unlike a line of credit, they are expected to cover the overdraft in a relatively short period. Some industry commenters noted that an institution's deposit agreement may require immediate repayment even though, in practice, the institution allows consumers to cover the overdraft with their next regular deposit. Other industry commenters assert the disclosure might encourage consumers to defer repayment of the overdraft. In response to the comments, comment 11(b)–6 clarifies that if a depository institution reserves the right to require a consumer to pay an overdraft immediately or on demand instead of affording consumers a specific time period to bring their account to a positive balance, it may disclose that fact to satisfy the rule.

Comment 11(b)–7 provides guidance on how institutions may describe the circumstances under which an institution will not pay an overdraft. This guidance previously was in proposed comment 8(f)–2. Some industry commenters stated that such a disclosure could imply an agreement or promise to pay overdrafts in all other circumstances, which would be contrary to the ''discretionary'' nature of the overdraft service. Many commenters suggested a more generic disclosure noting that payment of any overdraft is discretionary. The final commentary provision has been revised to address the commenters' concerns and provides model language. An institution must describe the circumstances under which it will not pay an overdraft, but it is sufficient to state, as applicable: ''Whether your overdrafts will be paid is discretionary and we reserve the right not to pay. For example, we typically do not pay overdrafts if your account is not in good standing, or you are not making regular deposits, or you have too many overdrafts.''

Comment 11(b)–8 clarifies the relationship between the general guidance in comment 8(a)–10.v. (the rules for advertisements that promote free accounts as well as an account-related service for which a fee is charged) and the requirements of § 230.11(b)(1) when the account-related service being advertised is an overdraft service. This guidance previously was in proposed comment 8(f)–3. When the advertised service is an overdraft service, institutions must disclose the fee or fees for the payment of each overdraft, not merely that a cost is associated with the overdraft service, as well as other required information.

VII. Regulatory Flexibility Analysis

The Board has prepared a final regulatory flexibility analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

1. *Statement of the need for and objectives of the proposal.* TISA was enacted, in part, for the purpose of requiring clear and uniform disclosures regarding deposit account terms and fees assessable against these accounts. Such disclosures allow consumers to make meaningful comparisons between different accounts and also allow consumers to make informed judgments about the use of their accounts. 12 U.S.C. 4301. TISA requires the Board to prescribe regulations to carry out the purpose and provisions of the statute. 12 U.S.C. 4308(a)(1). The Board is adopting revisions to Regulation DD to address the uniformity and adequacy of institutions' disclosure of fees associated with overdraft services generally, and to address concerns about advertised overdraft services in particular. As stated more fully above, the existing regulation is amended to require depository institutions offering certain overdraft services to provide more complete information regarding those services. The Board believes that the revisions to Regulation DD discussed above are within the Congress' broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute.

2. *Summary of issues raised by comments in response to the initial regulatory flexibility analysis.* One commenter questioned the statement in the proposal that no Federal rules duplicate, overlap, or conflict with the proposed revisions to Regulation DD because there are other laws that depository institutions must consider when administering an overdraft protection program. Although other laws and regulations may apply to depository institutions' payment of overdrafts, the final revisions to Regulation DD do not duplicate or conflict with the requirements imposed by these other laws. The Board has also considered the interagency guidance on overdraft protection programs issued in February 2005, and has determined that issuance of the final revisions to Regulation DD is consistent with the interagency guidance.

3. *Description of small entities affected by the proposal.* Approximately 14,242 depository institutions in the United States that must comply with the Truth in Savings Act have assets of $150 million or less and thus are considered small entities for purposes of the Regulatory Flexibility Act, based on 2004 call report data. Approximately 5,765 are institutions that must comply with the Board's Regulation DD; approximately 8,477 are credit unions that must comply with National Credit Union Administration's Truth in Savings regulations, which must be substantially similar to the Board's Regulation DD.

The Board believes that almost all small depository institutions that offer accounts where overdraft or returned-item fees are imposed currently send periodic statements on those accounts, although the number of small depository institutions that promote their overdraft services is unknown. For those institutions that promote the payment of overdrafts in an advertisement, periodic statement disclosures will need to be revised to display aggregate overdraft and aggregate returned-item fees for the statement period and year to date. All small depository institutions will have to review, and perhaps revise account-opening disclosures and marketing materials.

4. *Recordkeeping, reporting, and compliance requirements.* The revisions to Regulation DD require all financial institutions to provide more complete information to consumers regarding overdraft services. Account-opening disclosures and marketing materials would describe more completely how fees may be triggered. As discussed in more detail above, institutions that promote their overdraft service in an advertisement must separately disclose on periodic statements the total dollar amount of fees and charges imposed on the account for paying overdrafts and the total dollar amount for returning items unpaid. These disclosures must be provided for the statement period and for the calendar year to date for each account to which the advertisement applies. Certain advertising practices are prohibited, and additional disclosures on advertisements of overdraft services are required.

5. *Steps taken to minimize the economic impact on small entities.* The Board solicited comment on how the burden of disclosures on institutions could be minimized. In response to comments received, the final rule limits the requirement to disclose aggregate totals for overdraft and returned-item fees for the statement period and the calendar year to date to institutions that promote the payment of overdrafts in an advertisement, and thereby encourage the routine use of the service. The final rule also specifies certain practices that would not trigger the new overdraft disclosures. The safe harbors provide additional certainty to institutions in determining whether compliance with the rule is required in particular circumstances. Consistent with the rule requiring periodic statement disclosures, the final rule also provides safe harbors to specify circumstances when an institution would not be required to provide additional advertising disclosures.

Under the final rule, institutions are permitted to provide an illustrative list of categories by which overdrafts may be created, to generally eliminate the need to provide a change-in-terms notice each time a new channel for creating overdrafts is added. The final rule also provides additional guidance regarding the types of fees that should be included in the total dollar amount of fees and charges imposed on the account for paying overdrafts and in the total dollar amount for returning items unpaid.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0271.

The collection of information that is revised by this rulemaking is found in 12 CFR part 230 and in Appendix B. This collection is mandatory (15 U.S.C. 4301 *et seq.*) to evidence compliance with the requirements of Regulation DD and the Truth in Savings Act (TISA). Institutions are required to retain records for twenty-four months. The respondents/recordkeepers are for-profit depository institutions, including small businesses. This regulation applies to all types of depository institutions, not just Federal Reserve-regulated institutions. Under Paperwork Reduction Act regulations, however, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for Federal Reserve-regulated institutions. Other agencies account for the paperwork burden on their depository institutions under this regulation.

The revisions provide that depository institutions offering certain overdraft payment services would be required to provide more complete information regarding those services. Account-opening disclosures and other marketing materials describe more completely how fees may be triggered. Institutions that promote the payment of overdrafts must separately disclose on periodic statements the total dollar amount of fees and charges imposed on the account for paying overdrafts and the total dollar amount of fees charged to the account for returning items

unpaid. These disclosures must be provided for the statement period and for the calendar year to date for each account to which an advertisement applies. Certain advertising practices are prohibited, and additional disclosures in advertisements for the payment of overdrafts are required. Although the final rule adds these requirements, it is expected that these revisions would not significantly increase the ongoing paperwork burden of depository institutions. However, respondents would face a one-time burden to reprogram and update their systems to include these new notice requirements. The Federal Reserve estimates that it will take the respondents, on average, 8 hours (one business day) to make these system changes; therefore, the Federal Reserve estimates that the total annual burden for revising the periodic disclosure and the account-opening disclosure to be 10,072 hours. Respondents would also face a one-time burden to revise and update their advertising materials. The estimated time to update these materials is approximately 40 hours (one business week); therefore, the Federal Reserve estimates that the total annual burden for this requirement to be 50,360 hours.

With respect to Federal Reserve-regulated institutions, it is estimated that there are 1,259 respondent/recordkeepers. The current annual burden is estimated to be 187,365 hours. The proposed annual burden is estimated to be 247,979, an increase of 60,432 hours.

All depository institutions, of which there are approximately 18,554, potentially are affected by this collection of information, and thus are respondents for purposes of the PRA. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. The other federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimates. The total estimated annual burden for all financial institutions, including Federal Reserve regulated institutions, subject to Regulation DD would be approximately 3,755,261 hours, using the same burden methodology as above.

Because the records are maintained at depository institutions and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: the Office of Management and Budget, Paperwork Reduction Project (7100–0271), Washington, DC 20503, with copies of such comments sent to Michelle Long, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Reporting and recordkeeping requirements, Truth in savings.

■ For the reasons set forth in the preamble, the Board amends Regulation DD, 12 CFR part 230, as set forth below:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

■ 1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

■ 2. Section 230.2 is amended by revising paragraph (b) to read as follows:

§ 230.2 Definitions.

* * * * *

(b) *Advertisement* means a commercial message, appearing in any medium, that promotes directly or indirectly:

(1) The availability or terms of, or a deposit in, a new account; and

(2) For purposes of § 230.8(a) and § 230.11 of this part, the terms of, or a deposit in, a new or existing account.

* * * * *

■ 3. Section 230.6 is amended by republishing paragraph (a) and revising paragraph (a)(3) to read as follows:

§ 230.6 Periodic statement disclosures.

(a) *General rule.* If a depository institution mails or delivers a periodic statement, the statement shall include the following disclosures:

* * * * *

(3) *Fees imposed.* Fees required to be disclosed under § 230.4(b)(4) of this part that were debited to the account during the statement period. The fees shall be itemized by type and dollar amounts. Except as provided in § 230.11(a)(1) of this part, when fees of the same type are imposed more than once in a statement period, a depository institution may itemize each fee separately or group the fees together and disclose a total dollar amount for all fees of that type.

* * * * *

■ 4. Section 230.8 is amended by revising paragraph (a), and adding a new paragraph (f) to read as follows:

§ 230.8 Advertising.

(a) *Misleading or inaccurate advertisements.* An advertisement shall not:

(1) Be misleading or inaccurate or misrepresent a depository institution's deposit contract; or

(2) Refer to or describe an account as ''free'' or ''no cost'' (or contain a similar term) if any maintenance or activity fee may be imposed on the account. The word ''profit'' shall not be used in referring to interest paid on an account.

* * * * *

(f) *Additional disclosures in connection with the payment of overdrafts.* Institutions that promote the payment of overdrafts in an advertisement shall include in the advertisement the disclosures required by § 230.11(b) of this part.

■ 5. Section 230.11 is added to read as follows:

§ 230.11 Additional disclosure requirements for institutions advertising the payment of overdrafts.

(a) *Periodic statement disclosures.*

(1) *Disclosure of Total Fees.* (i) Except as provided in paragraph (a)(2) of this section, if a depository institution promotes the payment of overdrafts in an advertisement, the institution must separately disclose on each periodic statement:

(A) The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient funds and the account becomes overdrawn; and

(B) The total dollar amount for all fees imposed on the account for returning items unpaid.

(ii) The disclosures required by this paragraph must be provided for the statement period and for the calendar year to date, for any account to which the advertisement applies.

(2) *Communications not triggering disclosure of total fees.* The following communications by a depository institution do not trigger the disclosures required by paragraph (a)(1) of this section:

(i) Promoting in an advertisement a service for paying overdrafts where the institution's payment of overdrafts will be agreed upon in writing and subject to the Board's Regulation Z (12 CFR part 226);

(ii) Communicating (whether by telephone, electronically, or otherwise)

about the payment of overdrafts in response to a consumer-initiated inquiry about deposit accounts or overdrafts. Providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, an automated teller machine (ATM), or an institution's Internet site, is not a response to a consumer-initiated inquiry for purposes of this paragraph;

(iii) Engaging in an in-person discussion with a consumer;

(iv) Making disclosures that are required by Federal or other applicable law;

(v) Providing a notice or including information on a periodic statement informing a consumer about a specific overdrawn item or the amount the account is overdrawn;

(vi) Including in a deposit account agreement a discussion of the institution's right to pay overdrafts;

(vii) Providing a notice to a consumer, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or providing a general notice that items overdrawing an account may trigger a fee; or

(viii) Providing informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the institution's overdraft service.

(3) *Time period covered by disclosures.* An institution must make the disclosures required by paragraph (a)(1) of this section for the first statement period that begins after an institution advertises the payment of overdrafts. An institution may disclose total fees imposed for the calendar year by aggregating fees imposed since the beginning of the calendar year, or since the beginning of the first statement period that year for which such disclosures are required.

(4) *Termination of promotions.* Paragraph (a)(1) of this section shall cease to apply with respect to a deposit account two years after the date of an institution's last advertisement promoting the payment of overdrafts applicable to that account.

(5) *Acquired accounts.* An institution that acquires an account must thereafter provide the disclosures required by paragraph (a)(1) of this section for the first statement period that begins after the institution promotes the payment of overdrafts in an advertisement that applies to the acquired account. If disclosures under paragraph (a)(1) of this section are required for the acquired account, the institution may, but is not required to, include fees imposed prior to acquisition of the account.

(b) *Advertising disclosures for overdraft services.*

(1) *Disclosures.* Except as provided in paragraphs (b)(2),(b)(3), and (b)(4) of this section, any advertisement promoting the payment of overdrafts shall disclose in a clear and conspicuous manner:

(i) The fee or fees for the payment of each overdraft;

(ii) The categories of transactions for which a fee for paying an overdraft may be imposed;

(iii) The time period by which the consumer must repay or cover any overdraft; and

(iv) The circumstances under which the institution will not pay an overdraft.

(2) *Communications about the payment of overdrafts not subject to additional advertising disclosures.* Paragraph (b)(1) of this section does not apply to:

(i) An advertisement promoting a service where the institution's payment of overdrafts will be agreed upon in writing and subject to the Board's Regulation Z (12 CFR part 226);

(ii) A communication by an institution about the payment of overdrafts in response to a consumer-initiated inquiry about deposit accounts or overdrafts. Providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, ATM, or an institution's Internet site, is not a response to a consumer-initiated inquiry for purposes of this paragraph;

(iii) An advertisement made through broadcast or electronic media, such as television or radio;

(iv) An advertisement made on outdoor media, such as billboards;

(v) An ATM receipt;

(vi) An in-person discussion with a consumer;

(vii) Disclosures required by federal or other applicable law;

(viii) Information included on a periodic statement or a notice informing a consumer about a specific overdrawn item or the amount the account is overdrawn;

(ix) A term in a deposit account agreement discussing the institution's right to pay overdrafts;

(x) A notice provided to a consumer, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or a general notice that items overdrawing an account may trigger a fee; or

(xi) Informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the institution's overdraft service.

(3) *Exception for ATM screens and telephone response machines.* The disclosures described in paragraphs (b)(1)(ii) and (b)(1)(iv) of this section are not required in connection with any advertisement made on an ATM screen or using a telephone response machine.

(4) *Exception for indoor signs.* Paragraph (b)(1) of this section does not apply to advertisements for the payment of overdrafts on indoor signs as described by § 230.8(e)(2) of this part, provided that the sign contains a clear and conspicuous statement that fees may apply and that consumers should contact an employee for further information about applicable fees and terms. For purposes of this paragraph (b)(4), an indoor sign does not include an ATM screen.

* * * * *

■ 6. In Supplement I to part 230:

■ a. Under § 230.2 Definitions, under *(b) Advertisement,* the introductory sentence to paragraph 2. is republished, paragraph 2.iii. is revised, and new paragraphs 2.iv. through 2.vi. are added.

■ b. Under § 230.4 Account disclosures, under *(b)(4) Fees*, a new paragraph 5. is added.

■ c. Under § 230.6 Periodic statement disclosures, under *(a)(3) Fees imposed,* paragraph 2. is revised.

■ d. Under § 230.8 Advertising, under *(a) Misleading or inaccurate advertisements,* a new paragraph 10. is added.

■ e. A new § 230.11 Additional disclosure requirements for institutions advertising the payment of overdrafts, is added to the end of Supplement I.

Supplement I To Part 230—Official Staff Interpretations

* * * * *

Section 230.2 Definitions

* * * * *

(b) Advertisement

* * * * *

2. *Other messages.* Examples of messages that are not advertisements are—

* * * * *

iii. For purposes of § 230.8(b) of this part through § 230.8(e) of this part, information given to consumers about existing accounts, such as current rates recorded on a voice-response machine or notices for automatically renewable time account sent before renewal

iv. Information about a particular transaction in an existing account

v. Disclosures required by federal or other applicable law

vi. A deposit account agreement

* * * * *

Section 230.4 Account Disclosures

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(b) Content of account disclosures

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(b)(4) Fees

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5. *Fees for overdrawing an account.* Under § 230.4(b)(4) of this part, institutions must disclose the conditions under which a fee may be imposed. In satisfying this requirement institutions must specify the categories of transactions for which an overdraft fee may be imposed. An exhaustive list of transactions is not required. It is sufficient for an institution to state that the fee applies to overdrafts ''created by check, in-person withdrawal, ATM withdrawal, or other electronic means,'' as applicable. Disclosing a fee ''for overdraft items'' would not be sufficient.

* * * * *

Section 230.6 Periodic statement disclosures

(a) General rule

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(a)(3) Fees imposed

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2. *Itemizing fees by type.* In itemizing fees imposed more than once in the period, institutions may group fees if they are the same type. (See § 230.11(a)(1) of this part regarding certain fees that are required to be grouped when an institution promotes the payment of overdrafts.) When fees of the same type are grouped together, the description must make clear that the dollar figure represents more than a single fee, for example, ''total fees for checks written this period.'' Examples of fees that may not be grouped together are—

i. Monthly maintenance and excess-activity fees

ii. ''transfer'' fees, if different dollar amounts are imposed'' such as $.50 for deposits and $1.00 for withdrawals

iii. fees for electronic fund transfers and fees for other services, such as balance-inquiry or maintenance fees

iv. fees for paying overdrafts and fees for returning checks or other items unpaid

* * * * *

Section 230.8 Advertising

(a) Misleading or inaccurate advertisements

* * * * *

10. *Examples.* Examples of advertisements that would ordinarily be misleading, inaccurate, or misrepresent the deposit contract are:

i. Representing an overdraft service as a ''line of credit,'' unless the service is subject to the Board's Regulation Z, 12 CFR part 226.

ii. Representing that the institution will honor all checks or authorize payment of all transactions that overdraw an account, with or without a specified dollar limit, when the institution retains discretion at any time not to honor checks or authorize transactions.

iii. Representing that consumers with an overdrawn account are allowed to maintain a negative balance when the terms of the account's overdraft service require consumers promptly to return the deposit account to a positive balance.

iv. Describing an institution's overdraft service solely as protection against bounced checks when the institution also permits overdrafts for a fee for overdrawing their accounts by other means, such as ATM withdrawals, debit card transactions, or other electronic fund transfers.

v. Advertising an account-related service for which the institution charges a fee in an advertisement that also uses the word ''free'' or ''no cost'' (or a similar term) to describe the account, unless the advertisement clearly and conspicuously indicates that there is a cost associated with the service. If the fee is a maintenance or activity fee under § 230.8(a)(2) of this part, however, an advertisement may not describe the account as ''free'' or ''no cost'' (or contain a similar term) even if the fee is disclosed in the advertisement.

* * * * *

Section 230.11 Additional disclosure requirements for institutions advertising the payment of overdrafts

(a) Periodic statement disclosures.

(a)(1) Disclosure of total fees.

1. *Examples of institutions advertising the payment of overdrafts.* An institution would trigger the periodic statement disclosures if it:

i. Promotes the institution's policy or practice of paying some overdrafts (unless the service would be subject to the Board's Regulation Z (12 CFR part 226)), in advertisements using broadcast media, brochures, telephone solicitations or electronic mail, or on Internet sites, ATM screens or receipts, billboards, or indoor signs. (But see § 230.11(a)(2) of this part regarding communications about the payment of overdrafts that would not trigger periodic statement disclosures);

ii. Includes a message on a periodic statement informing the consumer of an overdraft limit or the amount of funds available for overdrafts. For example, an institution that includes a message on a periodic statement informing the consumer of a $500 overdraft limit or that the consumer has $300 remaining on the overdraft limit, is promoting an overdraft service;

iii. Discloses an overdraft limit or includes the dollar amount of an overdraft limit in a balance disclosed by any means, including on an ATM receipt or on an automated system, such as a telephone response machine, ATM screen, or the institution's Internet site.

2. *Applicability of periodic statement disclosures.* The periodic statement disclosures apply to all accounts for which the institution has advertised the payment of overdrafts. For example, if an advertisement promoting the payment of overdrafts specifies the types of accounts to which the advertisement applies, the institution would not be required to provide the periodic statement disclosures for other types of accounts offered by the institution for which the advertisement does not apply. If an advertisement does not specify the types of accounts to which it applies, the advertisement would be considered to apply to all of an institution's deposit accounts.

3. *Transfer services.* The overdraft services covered by § 230.11(a)(1) of this part do not include a service providing for the transfer of funds from another deposit account of the consumer to permit the payment of items without creating an overdraft, even if a fee is charged for the transfer.

4. *Fees for paying overdrafts.* An institution that advertises the payment of overdrafts must disclose on periodic statements a total dollar amount for all fees charged to the account for paying overdrafts. The institution must disclose separate totals for the statement period and for the calendar year to date. The total dollar amount includes per-item fees as well as interest charges, daily or other periodic fees, or fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. It also includes fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. It does not include fees for transferring funds from another account to avoid an overdraft, or fees charged when the institution has previously agreed in writing to pay items that overdraw the account and the service is subject to the Board's Regulation Z, 12 CFR part 226.

5. *Fees for returning items unpaid.* An institution that advertises the payment of overdrafts must disclose a total dollar amount for all fees charged to the account for dishonoring or returning checks or other items drawn on the account. The institution must disclose separate totals for the statement period and for the calendar year to date. Fees imposed when deposited items are returned are not included.

6. *Waived fees.* In some cases, an institution may provide a statement for the current period reflecting that fees imposed during a previous period were waived and credited to the account. Institutions may, but are not required to, reflect the adjustment in the total for the calendar year to date. Such adjustments should not affect the total disclosed for fees imposed during the current statement period.

7. *Totals for the calendar year to date.* Some institutions' statement periods do not coincide with the calendar month. In such cases, the institution may disclose a calendar year-to-date total by aggregating fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2006 through January 9, 2007 may disclose the year-to-date total for fees imposed from January 10, 2006 through January 9, 2007. Alternatively, the institution could provide a statement for the cycle ending January 9, 2007 showing the year-to-date total for fees imposed January 1, 2006 through December 31, 2006.

8. *Itemization of fees.* An institution may itemize each fee in addition to providing the disclosures required by § 230.11(a)(1) of this part.

(a)(3) Time period covered by disclosures

1. *Periodic statement disclosures.* The disclosures under § 230.11(a)(1) of this part must be included on periodic statements provided by an institution reflecting the first statement period that begins after the institution advertises the payment of overdrafts. For example, if a consumer's statement period typically closes on the 15th

of each month, an institution that promotes the payment of overdrafts on July 1, 2006 must provide the disclosures required by § 230.11(a)(1) of this part on subsequent periodic statements for that consumer beginning with the statement reflecting the period from July 16, 2006 through August 15, 2006. Only depository institutions that promote the payment of overdrafts in an advertisement on or after July 1, 2006 must provide disclosures on periodic statements under § 230.11(a)(1) of this part.

(a)(5) Acquired accounts

1. *Examples.* As provided in § 230.11(a)(5) of this part, an institution that acquires deposit accounts through merger or acquisition must provide the disclosures required by paragraph (a)(1) of this section for the first statement period that begins after the institution promotes the payment of overdrafts in an advertisement that applies to the acquired account. If the acquiring institution does not advertise the payment of overdrafts, or the advertisement does not apply to the acquired accounts, the institution need not provide the disclosures required by § 230.11(a)(1) of this part for the acquired accounts even if the depository institution that previously held the accounts advertised the payment of overdrafts with respect to those accounts.

(b) Advertising Disclosures in Connection With Overdraft Services

1. *Examples of institutions promoting the payment of overdrafts.* A depository institution would be required to include the advertising disclosures in § 230.11(b)(1) of this part if the institution:

i. Promotes the institution's policy or practice of paying overdrafts (unless the service would be subject to the Board's Regulation Z (12 CFR part 226)). This includes advertisements using print media such as newspapers or brochures, telephone solicitations, electronic mail, or messages posted on an Internet site. (But see § 230.11(b)(2) of this part for communications that are not subject to the additional advertising disclosures);

ii. Includes a message on a periodic statement informing the consumer of an overdraft limit or the amount of funds available for overdrafts. For example, an institution that includes a message on a periodic statement informing the consumer of a $500 overdraft limit or that the consumer has $300 remaining on the overdraft limit, is promoting an overdraft service.

iii. Discloses an overdraft limit or includes the dollar amount of an overdraft limit in a balance disclosed on an automated system, such as a telephone response machine, ATM screen or the institution's Internet site. (See, however, § 230.11(b)(3) of this part.).

2. *Transfer services.* The overdraft services covered by § 230.11(b)(1) of this part do not include a service providing for the transfer of funds from another deposit account of the consumer to permit the payment of items without creating an overdraft, even if a fee is charged for the transfer.

3. *Electronic media.* The exception for advertisements made through broadcast or electronic media, such as television or radio, does not apply to advertisements posted on an institution's Internet site, on an ATM screen, provided on telephone response machines, or sent by electronic mail.

4. *Fees.* The fees that must be disclosed under § 230.11(b)(1) of this part include per-item fees as well as interest charges, daily or other periodic fees, and fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. The fees also include fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. The fees do not include fees for transferring funds from another account to avoid an overdraft, or fees charged when the institution has previously agreed in writing to pay items that overdraw the account and the service is subject to the Board's Regulation Z, 12 CFR part 226.

5. *Categories of transactions.* An exhaustive list of transactions is not required. Disclosing that a fee may be imposed for covering overdrafts ''created by check, in-person withdrawal, ATM withdrawal, or other electronic means' would satisfy the requirements of § 230.11(b)(1)(ii) of this part where the fee may be imposed in these circumstances. See comment 4(b)(4)–5 of this part.

6. *Time period to repay.* If a depository institution reserves the right to require a consumer to pay an overdraft immediately or on demand instead of affording consumers a specific time period to establish a positive balance in the account, an institution may comply with § 230.11(b)(1)(iii) of this part by disclosing this fact.

7. *Circumstances for nonpayment.* An institution must describe the circumstances under which it will not pay an overdraft. It is sufficient to state, as applicable: ''Whether your overdrafts will be paid is discretionary and we reserve the right not to pay. For example, we typically do not pay overdrafts if your account is not in good standing, or you are not making regular deposits, or you have too many overdrafts.''

8. *Advertising an account as ''free.''* If the advertised account-related service is an overdraft service subject to the requirements of § 230.11(b)(1) of this part, institutions must disclose the fee or fees for the payment of each overdraft, not merely that a cost is associated with the overdraft service, as well as other required information. Compliance with comment 8(a)–10.v. is not sufficient.

By order of the Board of Governors of the Federal Reserve System, May 19, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–10348 Filed 5–23–05; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9205]

RIN 1545–BE17

Credit for Increasing Research Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the computation and allocation of the credit for increasing research activities for members of a controlled group of corporations or a group of trades or businesses under common control. These temporary regulations reflect changes made to section 41 by the Revenue Reconciliation Act of 1989 (1989 Act), which introduced the current computational regime for the credit, and the Small Business Job Protection Act of 1996, which introduced the alternative incremental research credit. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

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

Applicability Dates: For dates of applicability see §§ 1.41–6T(j) and 1.41–8T(b)(5).

FOR FURTHER INFORMATION CONTACT: Nicole R. Cimino (202) 622–3120 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2003, the Treasury Department and the IRS published in the **Federal Register** (68 FR 44499) proposed amendments to the regulations under section 41(f) (REG–133791–02) (the 2003 proposed regulations) relating to the computation and allocation of the credit for increasing research activities (research credit) under section 41 for members of a controlled group of corporations or a group of trades or businesses under common control (controlled groups). The 2003 proposed regulations withdrew the proposed regulations published in the **Federal Register** on January 4, 2000 (65 FR 258) (REG–105606–99) (the 2000 proposed regulations). In general, the 2000 proposed regulations required

controlled groups to compute a group credit and then to allocate that group credit among the members of the controlled group. The allocation of the group credit under the 2000 proposed regulations was based on the relative increases of each member's qualified research expenses (QREs) over a base amount that was computed by multiplying that member's most recent average annual gross receipts by the controlled group's fixed-base percentage.

Although the 2003 proposed regulations did not modify the rules relating to the computation of the group credit, the 2003 proposed regulations did modify the rules relating to the allocation of the group credit among the members of the controlled group. In particular, the 2003 proposed regulations allocated the group credit in proportion to the credit, if any, that a member of a controlled group would be entitled to claim if it were not a member of a controlled group (the stand-alone entity credit). In addition, based on the comments to the 2000 proposed regulations, the 2003 proposed regulations did not propose special rules that would apply to consolidated groups that were members of a controlled group. A public hearing on the 2003 proposed regulations was held on November 13, 2003. After considering the written comments and the statements at the public hearing, the Treasury Department and the IRS are withdrawing the 2003 proposed regulations and are issuing temporary regulations and proposed regulations cross-referencing the temporary regulations. In substantial part, the temporary regulations retain the rules contained in the 2003 proposed regulations with certain modifications discussed below.

Summary of Comments and Explanation of Provisions

Computation of the Group Credit

Section 41(f)(1)(A)(i) provides that ''all members of the same controlled group of corporations shall be treated as a single taxpayer'' in determining the amount of the research credit under section 41. Section 41(f)(1)(B)(i) provides a similar rule for a group of trades or businesses under common control. The 2003 proposed regulations applied the section 41 computational rules on an aggregate basis for purposes of determining the amount of the group credit. Additionally, a controlled group would have been treated as a start-up company for purposes of determining the group's fixed-base percentage only if each member of the group qualified as a start-up company. Therefore, a controlled group with only two members would have been subject to the start-up rules if one member of the group had QREs but no gross receipts in 1983 and the other member had gross receipts but no QREs in 1983.

Commentators generally agreed with the proposed rules for computing the group credit. Commentators were concerned, however, with perceived ambiguities related to the application of the start-up company rules to a controlled group. For example, commentators asked that the regulations clarify what a controlled group's start-up date is if all the members of the group are start-up companies with different start-up dates.

These temporary regulations retain the rules in the 2003 proposed regulations for the computation of the group credit, except for the start-up company rules. The temporary regulations state that a controlled group is treated as a start-up company for purposes of computing the group credit if (A) the first taxable year in which at least one member of the group had gross receipts and at least one member of the group had QREs begins after December 31, 1983, or (B) there were fewer than three taxable years beginning after December 31, 1983, and before January 1, 1989, in which at least one member of the group had gross receipts and at least one member of the group had QREs. Consistent with this approach, the first taxable year in which a controlled group has gross receipts for purposes of the start-up company rules is the first year in which at least one member of the group has gross receipts. Likewise, the first taxable year in which a controlled group has QREs for purposes of the start-up company rules is the first year in which at least one member of the group has QREs. The Treasury Department and the IRS believe that this approach is more consistent with treating a controlled group as a single taxpayer because a controlled group with two members is not subject to the start-up rules if one member of the group had QREs but no gross receipts in 1983 and the other member had gross receipts but no QREs in 1983. Additionally, the temporary regulations specifically state that for purposes of determining the fixed-base percentage, the first taxable year after December 31, 1993, for which a controlled group has QREs is the first taxable year in which at least one member of the group has QREs.

Allocation of the Group Credit

Section 41(f)(1)(A)(ii) provides that ''the [portion of the group] credit (if any) allowable by this section to each such member shall be its proportionate shares of the qualified research expenses and basic research payments giving rise to the credit.'' Section 41(f)(1)(B)(ii) provides a similar rule for a group of trades or businesses under common control. The 2003 proposed regulations apply these provisions by allocating the group credit based on the relative amounts of each individual member's stand-alone entity credit.

A number of commentators requested changes to the method of allocating the group credit contained in the 2003 proposed regulations. In general, these comments reflected dissatisfaction either with the stand-alone entity credit method in the 2003 proposed regulations or with any single, prescribed method. Consequently, commentators either proposed specific alternatives or stated that final regulations should allow members to allocate the group credit using any reasonable method. One commentator advocated that a method that allocates the group credit based on the relative amounts of each member's total QREs (gross QREs method) is the only allocation method permitted under the statute. Another commentator urged the Treasury Department and the IRS to adopt an allocation method that, based on techniques of differential calculus, allocates the group credit based on the marginal contribution to the group credit of each member's QREs for the current year, QREs for the base years, and gross-receipts for the base years, as well as the controlled group's fixed-base percentage and the growth in gross receipts for the controlled group (marginal contribution method). Other commentators suggested that no single allocation method can appropriately allocate the group credit in all cases; therefore, members of a controlled group should be permitted to use any reasonable method to allocate the group credit. For the reasons discussed below, these temporary regulations generally retain the stand-alone entity credit method of the 2003 proposed regulations with some modifications.

The preamble to the 2003 proposed regulations sets out at length the reasons why the Treasury Department and the IRS believe that the allocation method under section 41(f) should be based on a group member's QREs in excess of a base amount. The stand-alone entity credit method reflects the incremental nature of the credit and also is consistent with the Treasury Department and the IRS' view of the purpose of section 41(f). As stated in the preamble to the 2003 proposed regulations:

The legislative history to the research credit, as originally enacted in 1981, indicates that the group credit computation and aggregation rules were enacted to ensure that the research credit would be allowed only for actual increases in research expenditures. These aggregation rules were intended to prevent taxpayers from creating artificial increases in research expenditures by shifting expenditures among commonly controlled or otherwise related persons. H. Rep. No. 97–201, 1981–3 C.B. (Vol. 2) 364, and Sen. Rep. 97–144, 1981–3 C.B. (Vol. 2) 442. In effect, the group credit computation rule serves as a cap on the maximum amount of credit that the members of the group, in the aggregate, may claim.

Prior to the 1989 Act, the research credit was computed by multiplying the credit rate by the excess of the taxpayer's current year QREs over the taxpayer's average QREs for the preceding three years. Final regulations issued in 1989, prescribing rules for the allocation of the group credit prior to the 1989 Act, allocated the group credit based on what effectively would have been each member's stand-alone entity credit (without giving effect to the minimum base period amount in computing each member's stand-alone entity credit). The 1989 Act significantly modified the computation of the credit while retaining the incremental approach of the pre-1989 Act credit. Congress did not indicate in either the statute or the legislative history that either the purpose or the application of section 41(f) was being changed. Although the phrase ''increase in'' in sections 41(f)(1)(A)(ii) and 41(f)(1)(B)(ii) was deleted by the 1989 Act, for the reasons set out in the preamble to the 2003 proposed regulations, the Treasury Department and the IRS concluded that this change to the statute was intended to reflect only the fact that a taxpayer's entitlement to the research credit after the 1989 Act no longer depended on whether the taxpayer had increased its current year QREs over its average QREs for the preceding three years.

With respect to the alternative allocation methods suggested by the commentators, the Treasury Department and the IRS conclude that these methods are inconsistent with the purpose of section 41 generally and section 41(f) specifically. A gross QREs method is at odds fundamentally with the incremental nature of the research credit, and the Treasury Department and the IRS continue to believe that neither the statute nor the legislative history suggests that Congress intended that the allocation of the group credit be based solely on a member's total QREs without reference to whether those QREs exceed a base amount.

Similarly, the Treasury Department and the IRS do not believe that the suggested marginal contribution method is consistent with section 41(f). The Treasury Department and the IRS recognize the potential for that method to more closely associate the amount of group credit allocated to a particular member to the contributions of that member's QREs for the current year, gross receipts for the current year, QREs for the base years, and gross receipts for the base years to the amount of the group credit. The marginal contribution method proposed, however, has significant flaws that would change the function of the aggregation rules in section 41(f) in a manner that the Treasury Department and the IRS do not believe was intended by Congress. First, the method would allow allocations of credit to members that have no QREs, a result the Treasury Department and the IRS believe is contrary to the statutory directive to allocate the group credit in proportion to a member's share of QREs giving rise to the credit. Second, the method uses different formulas for groups that are affected by special rules, such as the maximum fixed-base percentage rule. As a result, it is possible that a member of a group that increases its QREs by a relatively small amount, that is enough to make the group subject to a special rule, could be allocated proportionately less credit than if the member had not increased its QREs. Finally, by relying on the group's gross receipts and the group's fixed-base percentage, the marginal contribution method appears to encourage planning and shifting among group members, a result that is inconsistent with the purpose of section 41(f). The Treasury Department and the IRS believe that an appropriate allocation method should encourage a member to focus on incrementally increasing its own research efforts.

The Treasury Department and the IRS also decline to adopt an allocation rule that would permit the members of a controlled group to use any reasonable method to allocate the group credit. Neither the statute nor the legislative history indicates that Congress intended the allocation of the group credit to be based on any reasonable method selected by a member individually or the controlled group collectively. Furthermore, a rule permitting the use of any reasonable method to allocate the credit could result in continuing controversy. As discussed in the preamble to the 2003 proposed regulations, the Treasury Department and the IRS believe that the purpose of section 41(f) is undermined if the members of a controlled group use different allocation methods to claim more than 100 percent of the group credit. The Treasury Department and the IRS believe that a single, prescribed method is necessary to preclude such potential for abuse.

Accordingly, the Treasury Department and the IRS continue to believe that the purposes of the research credit statute generally and the provisions of section 41(f) specifically are best furthered by an allocation method that allocates the group credit based on each member's stand-alone entity credit.

Special Allocation Rule for Excess Group Credit Situations

Under the 2003 proposed regulations, if the group credit exceeded the sum of the stand-alone entity credits of the members of a controlled group, the members with stand-alone entity credits would be entitled to the entire group credit. In addition, if no member of the controlled group had a stand-alone entity credit, none of the group credit would be allocated to the members of the controlled group.

To address these situations, these temporary regulations modify the allocation method of the 2003 proposed regulations in cases in which the group credit exceeds the sum of the members' stand-alone entity credits, including cases in which no member has a stand-alone entity credit. If the group credit exceeds the sum of the members' stand-alone entity credits, each member is allocated an amount of group credit equal to that member's stand-alone entity credit. The remaining, or excess, amount of group credit is then allocated among all the members of the controlled group based on the ratio of an individual member's QREs to the sum of all the members' QREs.

Computation of Stand-Alone Entity Credits

Commentators questioned whether members must use the same method, *i.e.*, the method described in section 41(a) (regular credit method) or the alternative incremental research credit (AIRC) method described in section 41(c)(4), in computing the stand-alone entity credit as that used to compute the group credit. The Treasury Department and the IRS do not believe that requiring taxpayers to be consistent in the method used to compute the group credit and the stand-alone entity credit would serve the purpose of section 41. Section 41(f) was intended to encourage taxpayers to increase their individual research efforts to maximize the group credit and thus their share of the group credit. The Treasury Department and

the IRS believe that allowing the members to compute their stand-alone entity credits without regard to the method used to compute the group credit will encourage increasing research efforts. Thus, the temporary regulations provide that a member's stand-alone entity credit must be computed using whichever method results in the greater stand-alone entity credit for that member, without regard to the method used to compute the group credit.

Commentators also pointed out that the computation of the stand-alone entity credits under the 2003 proposed regulations would no longer require the intra-group transaction rules of § 1.41–6(e) (re-designated in these temporary regulations as § 1.41–6(i)) to apply. Although the intent of the stand-alone entity credit rule is to compute a credit that is similar to that to which a member would be entitled if there were no research credit aggregation rules for controlled groups, the intent was not to render the intra-group transaction rules or the acquisition/disposition rules of section 41(f)(3) inapplicable. Therefore, these temporary regulations specifically provide that taxpayers must apply the intra-group transaction rules and the acquisition/disposition rules when computing the stand-alone entity credits. For example, to the extent that a member's gross receipts and QREs have been reduced for purposes of computing the group credit as a result of the application of the acquisition/disposition rules, the member's stand-alone entity credit must be computed using the same gross receipts and QREs.

Special Allocation Rule for Consolidated Groups

The preamble to the 2003 proposed regulations states that the Treasury Department and the IRS considered comments requesting a special allocation rule for consolidated groups, but decided not to adopt such a rule. Several commentators further commented on that issue. One commentator suggested that if the group credit were allocated in proportion to QREs, no special consolidated group rule would be necessary. Given that this commentator's proposed allocation method is not the one adopted in these temporary regulations, the Treasury Department and the IRS are not persuaded that a special consolidated group rule is unnecessary. Another commentator suggested that a consolidated group should be treated as a single member of a controlled group for purposes of allocating the group credit and that the failure to treat the consolidated group in such a manner would result in abuse.

The Treasury Department and the IRS believe that treating a consolidated group as a single member of a controlled group for purposes of allocating the group credit is consistent with the treatment of a consolidated group as a single taxpayer under a number of the consolidated return regulations. Therefore, these temporary regulations provide that, for purposes of allocating the group credit, a consolidated group whose members are members of a controlled group is treated as a single member of the controlled group. Accordingly, a consolidated group whose members are members of a controlled group is treated as a single member of the controlled group and a single stand-alone entity credit is computed for the consolidated group. If the consolidated group is the only member of the controlled group, the stand-alone entity credit computed for the consolidated group is equal to the group credit.

The portion of the group credit allocated to a consolidated group must be allocated among the members of the consolidated group. The Treasury Department and the IRS believe that the method of allocating among the members of the consolidated group the portion of the group credit allocated to the consolidated group should be no different than the method of allocating the group credit among members of the controlled group. Therefore, a stand-alone entity credit is computed for each member of the consolidated group, and the portion of the group credit allocated to the consolidated group is allocated among the members of the consolidated group in proportion to the stand-alone entity credits of the members of the consolidated group. One commentator argued that separately computing the stand-alone credit for each member of a consolidated group would be prohibitively burdensome. The Treasury Department and the IRS, however, do not believe that computing a stand-alone entity credit for each member of a consolidated group imposes a greater burden than computing a stand-alone entity credit for a corporation that is not a member of a consolidated group. Moreover, providing a rule for allocating the portion of the group credit allocated to a consolidated group among its members that is different than the method used for allocating the controlled group credit would create additional administrative complexity that seems unwarranted.

Alternative Incremental Research Credit

Section 41(c)(4) provides an election to determine the research credit using the AIRC computation. Section 41(c)(4)(B) provides that the election to use the AIRC applies to all succeeding taxable years unless revoked with the consent of the Secretary. Many issues have arisen regarding how the AIRC election is made in the case of a consolidated group and in the case of a controlled group, all members of which are not included on a single consolidated federal income tax return. These issues include: (1) How is an AIRC election made by members of a controlled group for purposes of computing the group credit under section 41(f)(1); (2) what happens when a controlled group has made an AIRC election and a member leaves the group or a member that has not made an AIRC election enters the group; (3) what happens if a member that has made an AIRC election joins a controlled group that has not made an AIRC election; and (4) when will a request to revoke an AIRC election be granted.

Generally, the Treasury Department and the IRS assume that taxpayers will elect to use the AIRC method if the AIRC method provides more credit than the regular method, or if a taxpayer does not have the books and records necessary to compute the base amount under the regular method. Once a taxpayer elects the AIRC method, the Treasury Department and the IRS believe that the AIRC method will continue to be the better method in the future as well, unless the taxpayer has a substantial change in its trade or business, such as the acquisition or disposition of an entire trade or business. If such a substantial change occurs, the Treasury Department and the IRS believe that it is appropriate to allow the taxpayer to revoke its AIRC election. The IRS has received many requests for consent to revoke AIRC elections from taxpayers in such situations. To reduce the burden on taxpayers, provide simplification, and ease administrative burden, the Treasury Department and the IRS have determined that it is appropriate to grant automatic consent to revoke an AIRC election on a prospective basis in situations in which a taxpayer makes the revocation on an original return. The Treasury Department and the IRS do not believe, however, that allowing an AIRC election or revocation on an amended return furthers the goal of simplification and ease of administration.

Therefore, these temporary regulations provide that a taxpayer that has made an AIRC election is deemed to

have requested and been granted consent to revoke the election if the taxpayer completes the portion of Form 6765, ''Credit for Increasing Research Activities,'' relating to the regular credit and attaches the completed form to the taxpayer's timely filed original return for the year to which the revocation applies. This provision is similar to the provisions in the existing regulations for making an AIRC election, which require the taxpayer to complete the portion of Form 6765 relating to the AIRC and attach the completed form to the taxpayer's timely filed original return for the year to which the election applies. Once an election/revocation is made for a taxable year, the taxpayer may not change the election/revocation on an amended return.

The temporary regulations provide special rules for controlled groups under section 41(f)(1) (in which one or more of the members do not join in filing a consolidated return). As discussed above, in this situation many questions have arisen regarding which members of a controlled group must make (or revoke) an AIRC election to have a valid election (or revocation) for the controlled group. Attempting to track elections across members of a controlled group, in which one or more of the members do not join in filing a consolidated return would create additional administrative complexity and increase the potential for controversy. Thus, to reduce the additional administrative complexity created by the additional computation, these temporary regulations provide that in the case of a controlled group, all the members of which are not included on a single consolidated return, the designated member must make (or revoke) an AIRC election on behalf of the members of the group. The election (or revocation) by the designated member is binding on all of the members of the group for the taxable year to which the election (or revocation) relates. The temporary regulations provide that the *designated member* is that member of the group that is allocated the greatest amount of the group credit. In the event the members of a group compute the group credit using different methods (either the regular method or the AIRC method) and at least two members of the group qualify as the *designated member,* the designated member is the member that computes the group credit using the method that yields the greater group credit. The Treasury Department and the IRS believe that these rules will simplify the election and revocation of the AIRC method. Furthermore, granting automatic consent to revoke an AIRC election also simplifies acquisitions and dispositions of members of controlled groups. For example, when a new member joins a group, the member must use the method used by the controlled group. In the taxable year after a member leaves a group, the member is free to use either method, assuming the member has not joined another controlled group. If all members of a controlled group are members of a single consolidated group, the AIRC election is made by the agent of the consolidated group, determined pursuant to the rules of § 1.1502–77.

Effective Date

The preamble to the 2003 proposed regulations stated that the Treasury Department and the IRS intended to make those regulations effective for taxable years beginning on or after the date that final regulations are published in the **Federal Register**. The preamble to the 2003 proposed regulations also addressed the limited application of final regulations to taxable years prior to that effective date to prevent abuse. Because the Treasury Department and the IRS have decided to retain the general rules for the computation and allocation of the group credit contained in the 2003 proposed regulations, with the modifications described above, these regulations are being issued in temporary form and will be effective for taxable years ending on or after May 24, 2005.

For taxable years prior to those covered by these temporary regulations, a taxpayer generally may use any reasonable method of computing and allocating the group credit. For the reasons set out in the preamble to the 2003 proposed regulations, the Treasury Department and the IRS believe that these temporary regulations should be retroactive in limited circumstances to prevent abuse. Accordingly, paragraph (b) of these temporary regulations, relating to the computation of the group credit, and paragraph (c) of these temporary regulations, relating to the allocation of the group credit, apply to taxable years ending on or after December 29, 1999, if the members of a controlled group, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b). In the case of a controlled group whose members have different taxable years and whose members use inconsistent methods of allocation, the members of the controlled group are deemed to have, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b).

Since the issuance of the 2003 proposed regulations, questions have arisen regarding what constitutes a reasonable method of allocating the group credit. Any allocation method used by a member of a controlled group that is consistent with either the 2000 proposed regulations, the 2003 proposed regulations, these temporary regulations, or subsequent final regulations will be accepted by the IRS as reasonable if the same allocation method was used by all members of the controlled group. In addition, for taxable years ending before December 29, 1999, any such method will be accepted by the IRS as reasonable regardless of the allocation method or methods used by other members of the controlled group and regardless of whether the members of the controlled group, in the aggregate, claimed more than 100 percent of the group credit. Although the reasonableness of any other allocation method may depend on the particular facts and circumstance of that taxpayer, in general, the IRS, solely for purposes of what constitutes a reasonable method of allocating the group credit for taxable years ending before December 29, 1999, will treat as reasonable a gross QREs method even if the members of the controlled group use inconsistent allocation methods to claim, in the aggregate, more than 100 percent of the group credit. Such treatment of a gross QREs method as reasonable for such years is for administrative convenience only.

Special Analyses

It has been determined that this Treasury Department decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of the proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Nicole R. Cimino, Office of Associate Chief Counsel (Passthroughs and Special Industries).

However, personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.41–6T also issued under 26 U.S.C. 1502. * * *

■ **Par. 2.** In § 1.41–0, the table of contents is amended by removing the entries for § 1.41–6 and § 1.41–8 and adding entries for § 1.41–6T and § 1.41–8T to read as follows:

§ 1.41–0 Table of contents.

* * * * *

§ 1.41–6T Aggregation of expenditures (temporary).

(a) Controlled groups of corporations; trades or businesses under common control.
(1) In general.
(2) Consolidated groups.
(3) Definitions.
(b) Computation of the group credit.
(1) In general.
(2) Start-up companies.
(c) Allocation of the group credit.
(1) In general.
(2) Stand-alone entity credit.
(d) Special rules for consolidated groups.
(1) In general.
(2) Start-up company status.
(3) Special rule for allocation of group credit among consolidated group members.
(e) Examples.
(f) For taxable years beginning before January 1, 1990.
(g) Tax accounting periods used.
(1) In general.
(2) Special rule when timing of research is manipulated.
(h) Membership during taxable year in more than one group.
(i) Intra-group transactions.
(1) In general.
(2) In-house research expenses.
(3) Contract research expenses.
(4) Lease payments.
(5) Payment for supplies.
(j) Effective date.

* * * * *

§ 1.41–8T Special rules for taxable years ending on or after January 3, 2001 (temporary).

(a) Alternative incremental credit.
(b) Election.
(1) In general.
(2) Time and manner of election.
(3) Revocation.
(4) Special rules for controlled groups.
(5) Effective date.

§ 1.41–6 [Removed]

■ **Par. 3.** Section 1.41–6 is removed.

■ **Par. 4.** Section 1.41–6T is added to read as follows:

§ 1.41–6T Aggregation of expenditures (temporary).

(a) *Controlled group of corporations; trades or businesses under common control*—(1) *In general.* To determine the amount of research credit (if any) allowable to a trade or business that at the end of its taxable year is a member of a controlled group, a taxpayer must—

(i) Compute the group credit in the manner described in paragraph (b) of this section; and

(ii) Allocate the group credit among the members of the group in the manner described in paragraph (c) of this section.

(2) *Consolidated groups.* For special rules relating to consolidated groups, see paragraph (d) of this section.

(3) *Definitions.* For purposes of this section:

(i) *Trade or business.* A trade or business is a sole proprietorship, a partnership, a trust, an estate, or a corporation that is carrying on a trade or business (within the meaning of section 162). Any member of a commonly controlled group shall be deemed to be carrying on a trade or business if any other member of that group is carrying on any trade or business.

(ii) *Controlled group.* The terms *group* and *controlled group* mean a controlled group of corporations, as defined in section 41(f)(5), or a group of trades or businesses under common control. For rules for determining whether trades or businesses are under common control, see § 1.52–1 (b) through (g).

(iii) *Group credit.* The term *group credit* means the research credit (if any) allowable to a controlled group.

(iv) *Consolidated group.* The term *consolidated group* has the meaning set forth in § 1.1502–1(h).

(v) *Credit year.* The term *credit year* means the taxable year for which the member is computing the credit.

(b) *Computation of the group credit*—(1) *In general.* All members of a controlled group are treated as a single taxpayer for purposes of computing the research credit. The group credit is computed by applying all of the section 41 computational rules on an aggregate basis. All members of a controlled group must use the same method of computation, either the method described in section 41(a) or the alternative incremental research credit (AIRC) method described in section 41(c)(4), in computing the group credit for a credit year.

(2) *Start-up companies*—(i) *In general.* For purposes of computing the group credit, a controlled group is treated as a start-up company for purposes of section 41(c)(3)(B)(i) if—

(A) The first taxable year in which at least one member of the group had gross receipts and at least one member of the group had qualified research expenditures (QREs) begins after December 31, 1983; or

(B) There were fewer than 3 taxable years beginning after December 31, 1983, and before January 1, 1989, in which at least one member of the group had gross receipts and at least one member of the group had QREs.

(ii) *Example.* The following example illustrates the principles of paragraph (b)(2)(i) of this section:

Example. A, B, and C, all of which are calendar year taxpayers, are members of a controlled group. During the 1983 taxable year, A had QREs, but no gross receipts; B had gross receipts, but no QREs; and C had no QREs or gross receipts. The 1984 taxable year was the first taxable year for which each of A, B, and C had both QREs and gross receipts. Because the first taxable year for which each of A, B, and C had both QREs and gross receipts began after December 31, 1983, each of A, B, and C is a start-up company under section 41(c)(3)(B)(i) and each is a start-up company for purposes of computing the stand-alone entity credit. During the 1983 taxable year, at least one member of the group, A, had QREs and at least one member of the group, B, had gross receipts, thus, the group had both QREs and gross receipts in 1983. Therefore, the controlled group is not a start-up company because the first taxable year for which the group had both QREs and gross receipts did not begin after December 31, 1983.

(iii) *First taxable year after December 31, 1993, for which the controlled group had QREs.* In the case of a controlled group that is treated as a start-up company under section 41(c)(3)(B)(i) and paragraph (b)(2)(i) of this section, for purposes of determining the group's fixed-base percentage under section 41(c)(3)(B)(ii), the first taxable year after December 31, 1993, for which the group has QREs is the first taxable year in which at least one member of the group has QREs.

(iv) *Example.* The following example illustrates the principles of paragraph (b)(2)(iii) of this section:

Example. D, E, and F, all of which are calendar year taxpayers, are members of a controlled group. The group is treated as a start-up company under section 41(c)(3)(B)(i) and paragraph (b)(2)(i) of this section. The

first taxable year after December 31, 1993, for which D had QREs was 1994. The first taxable year after December 31, 1993, for which E had QREs was 1995. The first taxable year after December 31, 1993, for which F had QREs was 1996. Because the 1994 taxable year was the first taxable year after December 31, 1993, for which at least one member of the group, D, had QREs, for purposes of determining the group's fixed-based percentage under section 41(c)(3)(B)(ii), the 1994 taxable year was the first taxable year after December 31, 1993, for which the group had QREs.

(c) *Allocation of the group credit*—(1) *In general.* (i) To the extent the group credit (if any) computed under paragraph (b) of this section does not exceed the sum of the stand-alone entity credits of all of the members of a controlled group, computed under paragraph (c)(2) of this section, such group credit shall be allocated among the members of the controlled group in proportion to the stand-alone entity credits of the members of the controlled group, computed under paragraph (c)(2) of this section:

$$\text{group credit that does not exceed sum of all the members' stand-alone entity credits} \times \frac{\text{member's stand-alone entity credit}}{\text{sum of all the members' stand-alone entity credits.}}$$

(ii) To the extent that the group credit (if any) computed under paragraph (b) of this section exceeds the sum of the stand-alone entity credits of all of the members of the controlled group, computed under paragraph (c)(2) of this section, such excess shall be allocated among the members of a controlled group in proportion to the QREs of the members of the controlled group:

$$(\text{group credit} - \text{sum of all the members' stand-alone entity credits}) \times \frac{\text{member's QREs}}{\text{sum of all the member's QREs.}}$$

(2) *Stand-alone entity credit.* The term *stand-alone entity credit* means the research credit (if any) that would be allowable to a member of a controlled group if the credit were computed as if section 41(f)(1) did not apply, except that the member must apply the rules provided in paragraphs (d)(1) (relating to consolidated groups) and (i) (relating to intra-group transactions) of this section. Each member's stand-alone entity credit for any credit year must be computed under whichever method (the method described in section 41(a) or the method described in section 41(c)(4)) results in the greater stand-alone entity credit for that member, without regard to the method used to compute the group credit.

(d) *Special rules for consolidated groups*—(1) *In general.* For purposes of applying paragraph (c) of this section, a consolidated group whose members are members of a controlled group is treated as a single member of the controlled group and a single stand-alone entity credit is computed for the consolidated group.

(2) *Start-up company status.* A consolidated group's status as a start-up company and the first taxable year after December 31, 1993, for which a consolidated group has QREs are determined in accordance with the principles of paragraph (b)(2) of this section.

(3) *Special rule for allocation of group credit among consolidated group members.* The portion of the group credit that is allocated to a consolidated group is allocated to the members of the consolidated group in accordance with the principles of paragraph (c) of this section. However, for this purpose, the stand-alone entity credit of a member of a consolidated group is computed without regard to section 41(f)(1), but with regard to paragraph (i) of this section.

(e) *Examples.* The following examples illustrate the provisions of this section. Unless otherwise stated, no members of a controlled group are members of a consolidated group, and except as provided in *Example 6,* the group has not made an AIRC election:

Example 1. Group credit is less than sum of members' stand-alone entity credits—(i) *Facts.* A, B, and C, all of which are calendar-year taxpayers, are members of a controlled group. Neither A, B, nor C made any basic research payments for their taxable year ending December 31, 2004. For purposes of computing the group credit for the 2004 taxable year (the credit year), A, B, and C had the following:

	A	B	C	Group aggregate
Credit Year QREs	$200x	$20x	$110x	$330x
1984–1988 QREs	$40x	$10x	$100x	$150x
1984–1988 Gross Receipts	$1,000x	$350x	$150x	$1,500x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	$1,200x	$200x	$300x	$1,700x

(ii) *Computation of the group credit*—(A) *In general.* The research credit allowable to the group is computed as if A, B, and C were one taxpayer. The group credit is equal to 20 percent of the excess of the group's aggregate credit year QREs ($330x) over the group's base amount ($170x). The group credit is 0.20 × ($330 − $170×), which equals $32x.

(B) *Group's base amount*—(1) *Computation.* The group's base amount equals the greater of: The group's fixed-base percentage (10 percent) multiplied by the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year ($1,700x), or the group's minimum base amount ($165x). The group's base amount, therefore, is $170x, which is the greater of: 0.10 × $1,700x, which equals $170x, or $165x.

(2) *Group's minimum base amount.* The group's minimum base amount is 50 percent of the group's aggregate credit year QREs. The group's minimum base amount is 0.50 × $330x, which equals $165x.

(3) *Group's fixed-base percentage.* The group's fixed-base percentage is the lesser of: the ratio that the group's aggregate QREs for the taxable years beginning after December 31, 1983, and before January 1, 1989, bear to

the group's aggregate gross receipts for the same period, or 16 percent (the statutory maximum). The group's fixed-base percentage, therefore, is 10 percent, which is the lesser of: $150x/$1,500x, which equals 10 percent, or 16 percent.

(iii) *Allocation of the group credit.* Under paragraph (c)(2) of this section, each member's stand-alone entity credit must be computed using the method that results in the greater stand-alone entity credit for that member. The stand-alone entity credit for each of A, B, and C is greater using the method described in section 41(a). Therefore, the stand-alone entity credit for each of A, B, and C must be computed using the method described in section 41(a). A's stand-alone entity credit is $20x. B's stand-alone entity credit is $2x. C's stand-alone entity credit is $11x. The sum of the members' stand-alone entity credits is $33x. Because the group credit of $32x is less than the sum of the stand-alone entity credits of all the members of the group ($33x), the group credit is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the group. The $32x group credit is allocated as follows:

	A	B	C	Total
Stand-Alone Entity Credit	$20x	$2x	$11x	$33x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	20/33	2/33	11/33	
Multiplied by: Group Credit	$32x	$32x	$32x	
Equals: Credit Allocated to Member	$19.39x	$1.94x	$10.67x	$32x

Example 2. Group credit exceeds sum of members' stand-alone entity credits—(i) *Facts.* D, E, F, and G, all of which are calendar-year taxpayers, are members of a controlled group. Neither D, E, F, nor G made any basic research payments for their taxable year ending December 31, 2004. For purposes of computing the group credit for the 2004 taxable year (the credit year), D, E, F, and G had the following:

	D	E	F	G	Group Aggregate
Credit Year Qualified Research Expenses (QREs)	$580x	$10x	$70x	$15x	$675x
1984–1988 QREs	$500x	$25x	$100x	$25	$650x
1984–1988 Gross Receipts	$4,000x	$5,000x	$2000x	$10,000x	$21,000x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	$5,000x	$5,000x	$2,000x	$5,000x	$17,000x

(ii) *Computation of the group credit*—(A) *In general.* The research credit allowable to the group is computed as if D, E, F, and G were one taxpayer. The group credit is equal to 20 percent of the excess of the group's aggregate credit year QREs ($675x) over the group's base amount ($526.19x). The group credit is 0.20 × ($675x − $526.19x), which equals $29.76x.

(B) *Group's base amount*—(1) *Computation.* The group's base amount equals the greater of: the group's fixed-base percentage (3.1 percent) multiplied by the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year ($17,000x), or the group's minimum base amount ($337.50x). The group's base amount, therefore, is $526.19x, which is the greater of: 0.031 × $17,000x, which equals $526.19x, or $337.50x.

(*2*) *Group's minimum base amount.* The group's minimum base amount is 50 percent of the group's aggregate credit year QREs. The group's minimum base amount is 0.50 × $675x, which equals $337.50x.

(*3*) *Group's fixed-base percentage.* The group's fixed-base percentage is the lesser of: the ratio that the group's aggregate QREs for the taxable years beginning after December 31, 1983, and before January 1, 1989, bear to the group's aggregate gross receipts for the same period, or 16 percent (the statutory maximum). The group's fixed-base percentage, therefore, is 3.10 percent, which is the lesser of: $650x/$21,000x, which equals 3.10 percent, or 16 percent.

(iii) *Allocation of the group credit.* Under paragraph (c)(2) of this section, each member's stand-alone entity credit must be computed using the method that results in the greater stand-alone entity credit for that member. The stand-alone entity credits for D ($19.46x) and F ($1.71x) are greater using the AIRC method. Therefore, the stand-alone entity credits for D and F must be computed using the AIRC method. The stand-alone entity credit for G ($0.50x) is greater using the method described in section 41(a). Therefore, the stand-alone entity credit for G must be computed using the method described in section 41(a). E's stand-alone entity credit computed under either method is zero. The sum of the members' stand-alone entity credits is $21.67x. Because the group credit of $29.76x is greater than the sum of the stand-alone entity credits of all the members of the group ($21.67), each member of the group is allocated an amount of the group credit equal to that member's stand-alone entity credit. The excess of the group credit over the sum of the members' stand alone entity credits ($8.09) is allocated among the members of the group based on the ratio that each member's QREs bear to the sum of the QREs of all the members of the group. The $29.76x group credit is allocated as follows:

	D	E	F	G	Total
Group Credit					$29.76×
Minus: Sum of Stand-Alone Entity Credits	$19.467x	$0.00x	$1.71x	$0.50x	$21.67x
Equals: Excess Group Credit					$8.09x
Excess Group Credit	8.09x	8.09x	8.09x	8.09x	
Multiplied By Allocation Ratio: QREs/Sum of QREs	580/675	10/675	70/675	15/675	
Excess Group Credit Allocated	$6.95x	$0.12x	$0.84x	$0.18x	
Plus: Stand-Alone Entity Credit	$19.46x	$0.00x	$1.71x	$0.50x	
Equals: Credit Allocated to Member	$26.41x	$0.12x	$2.55x	$0.68x	$29.76x

Example 3. Consolidated group within a controlled group—(i) *Facts.* The facts are the same as in *Example 2*, except that D and E file a consolidated return.

(ii) *Allocation of the group credit*—(A) *In general.* For purposes of allocating the controlled group's research credit of $29.76x among the members of the controlled group, D and E are treated as a single member of the controlled group.

(B) *Computation of stand-alone entity credits.* The stand-alone entity credit for the

consolidated group is computed by treating D and E as a single entity. Under paragraph (c)(2) of this section, the stand-alone entity credit for each member must be computed using the method that results in the greater stand-alone entity credit for that member. The stand-alone entity credit for each of the DE consolidated group ($17.55x) and F ($1.71x) is greater using the AIRC method. Therefore, the stand-alone entity credit for each of the DE consolidated group and F must be computed using the AIRC method. The stand-alone entity credit for G ($0.50x) is greater using the method described in section 41(a). Therefore, the stand-alone entity credit for G must be computed using the method described in section 41(a). The sum of the members' stand-alone entity credits is $19.76x.

(C) *Allocation of controlled group credit.* Because the group credit of $29.76x is greater than the sum of the stand-alone entity credits of all the members of the group ($19.76x), each member of the group is allocated an amount of the group credit equal to that member's stand-alone entity credit. The excess of the group credit over the sum of the members' stand alone entity credits ($10.00x) is allocated among the members of the group based on the ratio that each member's QREs bear to the sum of the QREs of all the members of the group. The group credit of $29.76x is allocated as follows:

	DE	F	G	Total
Group Credit				$29.76x
Minus: Sum of Stand-Alone Entity Credits	$17.55x	$1.71x	$0.50x	$19.76x
Equals: Excess Group Credit				$10.00x
Excess Group Credit	10.00x	10.00x	10.00x	
Multiplied By Allocation Ratio: QREs/Sum of QREs	590/675	70/675	15/675	
Excess Group Credit Allocated	$8.74x	$1.04x	$0.22x	
Plus: Stand-Alone Entity Credit	$17.55x	$1.71x	$0.50x	
Equals: Credit Allocated to Member	$26.29x	$2.75x	$0.72x	$29.76x

(iii) *Allocation of the group credit allocated to consolidated group*—(A) *In general.* The group credit that is allocated to a consolidated group is allocated among the members of the consolidated group in accordance with the principles of paragraph (c) of this section.

(B) *Computation of stand-alone entity credits.* Under paragraph (c)(2) of this section, the stand-alone entity credit for each member of the consolidated group must be computed using the method that results in the greater stand-alone entity credit for that member. The stand-alone entity credit for D ($19.46x) is greater using the AIRC method. Therefore, the stand-alone entity credit for D must be computed using the AIRC method. The stand-alone entity credit for E is zero under either method. The sum of the stand-alone entity credits of the members of the consolidated group is $19.46x.

(C) *Allocation among members of consolidated group.* Because the amount of the group credit allocated to the consolidated group ($26.29x) is greater than $19.46x, the sum of the stand-alone entity credits of all the members of the consolidated group, the amount of the group credit allocated to the consolidated group is allocated to each member of the consolidated group in an amount equal to the member's stand-alone entity credit. The excess of the group credit allocated to the consolidated group over the sum of the consolidated group members' stand alone entity credits ($6.83x) is allocated among the members of the consolidated group based on the ratio that each member's QREs bear to the sum of the QREs of all the members of the consolidated group. The group credit of $26.29x allocated to the DE consolidated group is allocated between D and E as follows:

	D	E	Total
Group Credit			$26.29x
Minus: Sum of Stand-Alone Entity Credits	$19.46x	$0.00x	$19.46x
Excess Group Credit			$6.83x
Excess Group Credit	6.83x	6.83x	
Multiplied By Allocation Ratio: QREs/Sum of QREs	580/590	10/590	
Excess Group Credit Allocated	$6.71x	$0.12x	
Plus: Stand-Alone Entity Credit	$19.46x	$0.00x	
Equals: Credit Allocated to Member	$26.17x	$0.12x	$26.29x

Example 4. Member is a start-up company—(i) *Facts.* H, I, and J, all of which are calendar-year taxpayers, are members of a controlled group. The first taxable year for which J has both QREs and gross receipts begins after December 31, 1983, therefore, J is a start-up company under section 41(c)(3)(B)(i). The first taxable year for which H and I had both QREs and gross receipts began before December 31, 1983, therefore, H and I are not start-up companies under section 41(c)(3)(B)(i). Neither H, I, nor J made any basic research payments during the 2004 taxable year. For purposes of computing the group credit for the 2004 taxable year (the credit year), H, I, and J had the following:

	H	I	J	Group Aggregate
Credit Year QREs	$200x	$20x	$50x	$270x
1984–1988 QREs	$55x	$15x	$0x	$70x
1984–1988 Gross Receipts	$1,000x	$400x	$0x	$1,400x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	$1,200x	$200x	$0x	$1,400x

(ii) *Computation of the group credit*—(A) *In general.* The research credit allowable to the group is computed as if H, I, and J were one taxpayer. The group credit is equal to 20 percent of the excess of the group's aggregate credit year QREs ($270x) over the group's base amount ($135x). The group credit is 0.20 × ($270x − $135x), which equals $27x.

(B) *Group's base amount*—(*1*) *Computation.* The group's base amount equals the greater of: The group's fixed-base percentage (5 percent) multiplied by the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year ($1,400x), or the group's minimum base amount ($135x). The group's base amount, therefore, is $135x, which is

the greater of: 0.05 x $1,400x, which equals $70x, or $135x.

(*2*) *Group's minimum base amount.* The group's minimum base amount is 50 percent of the group's aggregate credit year QREs. The group's minimum base amount is 0.50 x $270x, which equals $135x.

(*3*) *Group's fixed-base percentage.* Because the first taxable year in which at least one member of the group has QREs and at least one member of the group has gross receipts does not begin after December 31, 1983, the group is not a start-up company. Therefore, the group's fixed-base percentage is the lesser of: the ratio that the group's aggregate QREs for the taxable years beginning after December 31, 1983, and before January 1, 1989, bear to the group's aggregate gross receipts for the same period, or 16 percent (the statutory maximum). The group's fixed-base percentage, therefore, is 5 percent, which is the lesser of: $70x/$1,400x, which equals 5 percent, or 16 percent.

(iii) *Allocation of the group credit.* Under paragraph (c)(2) of this section, the stand-alone entity credit for each member of the group must be computed using the method that results in the greater stand-alone entity credit for that member. The stand-alone entity credits for H ($20x), I ($2x), and J ($5x) are greater using the method described in section 41(a). Therefore, the stand-alone entity credits for each of H, I, and J must be computed using the method described in section 41(a). The sum of the stand-alone entity credits of the members of the group is $27x. Because the group credit of $27x is equal to the sum of the stand-alone entity credits of all the members of the group ($27x), the group credit is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the group. The group credit of $27x is allocated as follows:

	H	I	J	Total
Stand-Alone Entity Credit	$20x	$2x	$5x	$27x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	20/27	2/27	5/27	
Multiplied by: Group Credit	$27x	$27x	$27x	
Equals: Credit Allocated to Member	$20x	$2x	$5x	$27x

Example 5. Group is a start-up company—(i) *Facts.* K, L, and M, all of which are calendar-year taxpayers, are members of a controlled group. The taxable year ending on December 31, 1999, is the first taxable year in which each of K, L, and M had both QREs and gross receipts. Therefore, the taxable year ending on December 31, 1999, is the first taxable year in which at least one member of the group had QREs and at least one member of the group had gross receipts. The 2004 taxable year is the fifth taxable year beginning after December 31, 1993, for which at least one member of the group had QREs. Neither K, L, nor M made any basic research payments during the 2004 taxable year. For purposes of computing the group credit for the 2004 taxable year (the credit year), K, L, and M had the following:

	K	L	M	Group Aggregate
Credit Year QREs	$255x	$25x	$100x	$380x
1984–1988 QREs	$0x	$0x	$0x	$0x
1984–1988 Gross Receipts	$0x	$0x	$0x	$0x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	$1,600x	$340x	$300x	$2,240x

(ii) *Computation of the group credit*—(A) *In general.* The research credit allowable to the group is computed as if K, L, and M were one taxpayer. The group credit is equal to 20 percent of the excess of the group's aggregate credit year QREs ($380x) over the group's base amount ($190x). The group credit is 0.20 × ($380x − $190x), which equals $38x.

(B) *Group's base amount*—(*1*) *Computation.* The group's base amount equals the greater of: the group's fixed-base percentage (3 percent) multiplied by the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year ($2,240x), or the group's minimum base amount ($190x). The group's base amount, therefore, is $190x, which is the greater of: 0.03 ''$2,240x, which equals $67.20x, or $190x.

(*2*) *Group's minimum base amount.* The group's minimum base amount is 50 percent of the group's aggregate credit year QREs. The group's minimum base amount is 0.50 '' $380x, which equals $190x.

(*3*) *Group's fixed-base percentage.* Because the first taxable year in which at least one member of the group has QREs and at least one member of the group has gross receipts begins after December 31, 1983, the group is treated as a start-up company under section 41(c)(3)(B)(i) and paragraph (b)(2)(i) of this section. Because the 2004 taxable year is the fifth taxable year beginning after December 31, 1993, for which at least one member of the group had QREs, under section 41(c)(3)(B)(ii)(I), the group's fixed-base percentage is 3 percent.

(iii) *Allocation of the group credit.* Under paragraph (c)(2) of this section, the stand-alone entity credit for each member of the consolidated group must be computed using the method that results in the greater stand-alone entity credit for that member. The stand-alone entity credit for each of K ($25.5x), L ($2.5x), and M ($10x) is greater using the method described in section 41(a). Therefore the stand-alone entity credits for each of K, L, and M must be computed using the method described in section 41(a). The sum of the stand-alone entity credits of all the members of the group is $38x. Because the group credit of $38x is equal to sum of the stand-alone entity credits of all the members of the group ($38x), the group credit is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the group. The $38x group credit is allocated as follows:

	K	L	M	Total
Stand-Alone Entity Credit	$25.5x	$2.5x	$10x	$38x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	25.5/38	2.5/38	10/38	
Multiplied by: Group Credit	$38x	$38x	$38x	
Equals: Credit Allocated to Member	$25.5x	$2.5x	$10x	$38x

Example 6. Group alternative incremental research credit—(i) *Facts.* N, O, and P, all of which are calendar-year taxpayers, are members of a controlled group. The research credit under section 41(a) is not allowable to the group for the 2004 taxable year because

the group's aggregate QREs for the 2004 taxable year are less than the group's base amount. The group credit is computed using the AIRC rules of section 41(c)(4). For purposes of computing the group credit for the 2004 taxable year (the credit year), N, O, and P had the following:

	N	O	P	Group aggregate
Credit Year QREs	$0x	$20x	$110x	$130x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	$1,200x	$200x	$300x	$1,700x

(ii) *Computation of the group credit.* The research credit allowable to the group is computed as if N, O, and P were one taxpayer. The group credit is equal to the sum of: 2.65 percent of so much of the group's aggregate QREs for the taxable year as exceeds 1 percent of the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year, but does not exceed 1.5 percent of such average; 3.2 percent of so much of the group's aggregate QREs as exceeds 1.5 percent of such average but does not exceed 2 percent of such average; and 3.75 percent of so much of such QREs as exceeds 2 percent of such average. The group credit is [0.0265 − [($1,700x x 0.015) − ($1,700x x 0.01)]] + [0.032 − [($1,700x x 0.02)—($1,700x x 0.015)]] + [0.0375 − [$130x − ($1,700x − 0.02)]], which equals $4.10x.

(iii) *Allocation of the group credit.* Under paragraph (c)(2) of this section, the stand-alone entity credit for each member of the group must be computed using the method that results in the greater stand-alone entity credit for that member. The stand-alone entity credit for N is zero under either method. The stand-alone entity credit for each of O ($0.66x) and P ($3.99x) is greater using the AIRC method. Therefore, the stand-alone entity credits for each of O and P must be computed using the AIRC method. The sum of the stand-alone entity credits of the members of the group is $4.65x. Because the group credit of $4.10x is less than the sum of the stand-alone entity credits of all the members of the group ($4.65x), the group credit is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the group. The $4.10x group credit is allocated as follows:

	N	O	P	Total
Stand-Alone Entity Credit	$0.00x	$0.66x	$3.99x	$4.65x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	0/4.65	0.66/4.65	3.99/4.65	
Multiplied by: Group Credit	$4.10x	$4.10x	$4.10x	
Equals: Credit Allocated to Member	$0.00x	$0.58x	$3.52x	$4.10x

(f) *For taxable years beginning before January 1, 1990.* For taxable years beginning before January 1, 1990, see § 1.41–6 as contained in 26 CFR part 1, revised April 1, 2005.

(g) *Tax accounting periods used*—(1) *In general.* The credit allowable to a member of a controlled group is that member's share of the group credit computed as of the end of that member's taxable year. In computing the group credit for a group whose members have different taxable years, a member generally should treat the taxable year of another member that ends with or within the credit year of the computing member as the credit year of that other member. For example, Q, R, and S are members of a controlled group of corporations. Both Q and R are calendar year taxpayers. S files a return using a fiscal year ending June 30. For purposes of computing the group credit at the end of Q's and R's taxable year on December 31, S's fiscal year ending June 30, which ends within Q's and R's taxable year, is treated as S's credit year.

(2) *Special rule when timing of research is manipulated.* If the timing of research by members using different tax accounting periods is manipulated to generate a credit in excess of the amount that would be allowable if all members of the group used the same tax accounting period, then the appropriate Internal Revenue Service official in the operating division that has examination jurisdiction of the return may require each member of the group to calculate the credit in the current taxable year and all future years as if all members of the group had the same taxable year and base period as the computing member.

(h) *Membership during taxable year in more than one group.* A trade or business may be a member of only one group for a taxable year. If, without application of this paragraph, a business would be a member of more than one group at the end of its taxable year, the business shall be treated as a member of the group in which it was included for its preceding taxable year. If the business was not included for its preceding taxable year in any group in which it could be included as of the end of its taxable year, the business shall designate in its timely filed (including extensions) return the group in which it is being included. If the return for a taxable year is due before July 1, 1983, the business may designate its group membership through an amended return for that year filed on or before June 30, 1983. If the business does not so designate, then the appropriate Internal Revenue Service official in the operating division that has examination jurisdiction of the return will determine the group in which the business is to be included.

(i) *Intra-group transactions*—(1) *In general.* Because all members of a group under common control are treated as a single taxpayer for purposes of determining the research credit, transfers between members of the group are generally disregarded.

(2) *In-house research expenses.* If one member of a group performs qualified research on behalf of another member, the member performing the research shall include in its QREs any in-house research expenses for that work and shall not treat any amount received or accrued as funding the research. Conversely, the member for whom the research is performed shall not treat any part of any amount paid or incurred as a contract research expense. For purposes of determining whether the in-house research for that work is qualified research, the member performing the research shall be treated as carrying on any trade or business carried on by the member on whose behalf the research is performed.

(3) *Contract research expenses.* If a member of a group pays or incurs contract research expenses to a person outside the group in carrying on the member's trade or business, that member shall include those expenses as QREs. However, if the expenses are not

paid or incurred in carrying on any trade or business of that member, those expenses may be taken into account as contract research expenses by another member of the group provided that the other member—

(i) Reimburses the member paying or incurring the expenses; and

(ii) Carries on a trade or business to which the research relates.

(4) *Lease payments.* The amount paid or incurred to another member of the group for the lease of personal property owned by a member of the group is not taken into account for purposes of section 41. Amounts paid or incurred to another member of the group for the lease of personal property owned by a person outside the group shall be taken into account as in-house research expenses for purposes of section 41 only to the extent of the lesser of—

(i) The amount paid or incurred to the other member; or

(ii) The amount of the lease expenses paid to the person outside the group.

(5) *Payment for supplies.* Amounts paid or incurred to another member of the group for supplies shall be taken into account as in-house research expenses for purposes of section 41 only to the extent of the lesser of—

(i) The amount paid or incurred to the other member; or

(ii) The amount of the other member's basis in the supplies.

(j) *Effective date.* These temporary regulations are applicable for taxable years ending on or after May 24, 2005. Generally, a taxpayer may use any reasonable method of computing and allocating the credit for taxable years beginning before the date these regulations are published in the **Federal Register** as final regulations. However, paragraph (b), relating to the computation of the group credit, and paragraph (c), relating to the allocation of the group credit, will apply to taxable years ending on or after December 29, 1999, if the members of a controlled group, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b). In the case of a controlled group whose members have different taxable years and whose members use inconsistent methods of allocation, the members of the controlled group shall be deemed to have, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b).

§ 1.41–8 [Removed]

■ **Par. 5.** Section 1.41–8 is removed.

■ **Par. 6.** Section 1.41–8T is added to read as follows:

§ 1.41–8T Special rules for taxable years ending on or after January 3, 2001 (temporary).

(a) *Alternative incremental credit.* At the election of the taxpayer, the credit determined under section 41(a)(1) equals the amount determined under section 41(c)(4).

(b) *Election*—(1) *In general.* A taxpayer may elect to apply the provisions of the alternative incremental research credit (AIRC) in section 41(c)(4) for any taxable year of the taxpayer beginning after June 30, 1996. If a taxpayer makes an election under section 41(c)(4), the election applies to the taxable year for which made and all subsequent taxable years unless revoked in the manner prescribed in paragraph (b)(3) of this section.

(2) *Time and manner of election.* An election under section 41(c)(4) is made by completing the portion of Form 6765, ''Credit for Increasing Research Activities,'' relating to the election of the AIRC, and attaching the completed form to the taxpayer's timely filed (including extensions) original return for the taxable year to which the election applies. An election under section 41(c)(4) may not be made on an amended return.

(3) *Revocation.* An election under this section may not be revoked except with the consent of the Commissioner. A taxpayer is deemed to have requested, and to have been granted, the consent of the Commissioner to revoke an election under section 41(c)(4) if the taxpayer completes the portion of Form 6765 relating to the regular credit and attaches the completed form to the taxpayer's timely filed (including extensions) original return for the year to which the revocation applies. An election under section 41(c)(4) may not be revoked on an amended return.

(4) *Special rules for controlled groups*—(i) *In general.* In the case of a controlled group of corporations, all the members of which are not included on a single consolidated return, the designated member must make (or revoke) an election under section 41(c)(4) on behalf of the members of the group. An election (or revocation) by the designated member under this paragraph (b)(4) of this section shall be binding on all the members of the group for the credit year to which the election (or revocation) relates.

(ii) *Designated member.* For purposes of this paragraph (b)(4) of this section, for any credit year, the term *designated member* means that member of the group that is allocated the greatest amount of the group credit under paragraph (c) of § 1.41–6T. If the members of a group compute the group credit using different methods (either the method described in section 41(a) or the AIRC method of section 41(c)(4)) and at least two members of the group qualify as the designated member, then the term *designated member* means that member that computes the group credit using the method that yields the greater group credit. For example, A, B, C, and D are members of a controlled group but are not members of a consolidated group. For the 2005 taxable year, the group credit using the method described in section 41(a) is $10x. Under this method, A would be allocated $5x of the group credit, which would be the largest share of the group credit under this method. For the 2005 taxable year, the group credit using the AIRC method is $15x. Under the AIRC method, C would be allocated $5x of the group credit, which is the largest share of the group credit computed using the AIRC method. Because the group credit is greater using the AIRC method and C is allocated the greatest amount of credit under that method, C is the designated member. Therefore, C's section 41(c)(4) election is binding on all the members of the group for the 2005 taxable year.

(5) *Effective date.* These temporary regulations are applicable for taxable years ending on or after May 24, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: May 16, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF JUSTICE

28 CFR Part 75

[Docket No. CRM 103; AG Order No. 2765–2005]

RIN 1105–AB05

Inspection of Records Relating to Depiction of Sexually Explicit Performances

AGENCY: Department of Justice

ACTION: Final rule.

SUMMARY: This rule amends the record-keeping and inspection requirements of 28 CFR part 75 to bring the regulations up to date with current law, to improve understanding of the regulatory system, and to make the inspection process effective for the purposes set by Congress in enacting the Child Protection and Obscenity Enforcement

Act of 1988, as amended, relating to the sexual exploitation and other abuse of children.

DATES: This final rule is effective June 23, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew Oosterbaan, Chief, Child Exploitation and Obscenity section, Criminal Division, United States Department of Justice, Washington, DC 20530; (202) 514–5780. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 2004, the Department of Justice published a proposed rule in the **Federal Register** at 69 FR 35547, to update the regulations implementing the record-keeping requirements of the Child Protection and Obscenity Enforcement Act of 1988. The proposed rule updated those regulations to account for changes in technology, particularly the Internet, and to implement the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. 108–21, 117 Stat. 650 (April 30, 2003) (''2003 Amendments''). The statute requires producers of sexually explicit matter to maintain certain records concerning the performers to assist in monitoring the industry. *See* 18 U.S.C. 2257. The statute requires the producers of such matter to ''ascertain, by examination of an identification document containing such information, the performer's name and date of birth,'' to ''ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name,'' and to record this information. 18 U.S.C. 2257(b). Violations of these record-keeping requirements are criminal offenses punishable by imprisonment for not more than five years for a first offense and not more than ten years for subsequent offenses. *See* 18 U.S.C. 2257(i). These provisions supplement the federal statutory provisions criminalizing the production and distribution of materials visually depicting minors engaged in sexually explicit conduct. *See* 18 U.S.C. 2251, 2252.

The record-keeping requirements apply to ''[w]hoever produces'' the material in question. 18 U.S.C. 2257(a). The statute defines ''produces'' as ''to produce, manufacture, or publish any book, magazine, periodical, film, video tape, computer-generated image, digital image, or picture, or other similar matter and includes the duplication, reproduction, or reissuing of any such matter, but does not include mere distribution or any other activity which does not involve hiring, contracting for[,] managing, or otherwise arranging for the participation of the performers depicted.'' 18 U.S.C. 2257(h)(3).

The Attorney General, under 18 U.S.C. 2257(g), issued regulations implementing the record-keeping requirements on April 24, 1992. *See* 57 FR 15017 (1992); 28 CFR 75. In addition to the record-keeping requirements specifically discussed in section 2257, the regulations require producers to retain copies of the performers' identification documents, to cross-index the records by ''[a]ll names(s) of each performer, including any alias, maiden name, nickname, stage name or professional name of the performer; and according to the title, number, or other similar identifier of each book, magazine, periodical, film, videotape, or other matter,'' and to maintain the records for a specified period of time. 28 CFR 75.2(a)(1), 75.3, 75.4.

Most recently, in 2003, Congress made extensive amendments to the child exploitation statutory scheme based on detailed legislative findings, which the Department adopts as grounds for proposing this rule. *See* 2003 Amendments.

The Department agrees with each of these findings, and hereby amends the regulations in 28 CFR part 75 to comport with these specific findings. As explained more fully below, the rules implement a more detailed inspection system to ensure that children are not used as performers in sexually explicit depictions.

Need for the Rule

Recent federal statutory enactments and judicial interpretations have highlighted the urgency of protecting children against sexual exploitation and, consequently, the need for more specific and clear regulations detailing the records and inspection process for sexually explicit materials to assure the accurate identity and age of performers.

The identity of every performer is critical to determining and assuring that no performer is a minor. The key Congressional concern, evidenced by the child exploitation statutory scheme, was that all such performers be verifiably not minors, *i.e.* not younger than 18. 28 U.S.C. 2256(1), 2257(b)(1). Minors—children—warrant a special concern by Congress for several reasons as discussed more specifically in relation to the inspection process. Children themselves are incapable of giving voluntary and knowing consent to perform or to enter into contracts to perform. In addition, children often are involuntarily forced to engage in sexually explicit conduct. For these reasons, visual depictions of sexually explicit conduct that involve persons under the age of 18 constitute unlawful child pornography.

This rule provides greater details for the record-keeping and inspection process in order to ensure that minors are not used as performers in sexually explicit depictions. The rule does not restrict in any way the content of the underlying depictions other than by clarifying the labeling on and record-keeping requirements pertaining to, that underlying depiction. Cf. 27 CFR 16.21 (alcoholic beverage health warning statement; mandatory label information). However, compliance with the record-keeping requirements of this part has no bearing on the legality or illegality of the underlying sexually explicit material.

Moreover, the growth of Internet facilities in the past five years, and the proliferation of pornography on Internet computer sites or services, requires that the regulations be updated. In the rule, a number of definitions are revised to facilitate the application of the rule to the modern modes of communication.

Response to Public Comments on the Proposed Rule

The Department of Justice published the proposed rule on June 25, 2004, and comments were due to the Department on or before August 24, 2004. The following discussion responds to comments received from the public and explains why the Department either adopted changes or declined to adopt changes to the proposed rule in response to the comments. Many commenters commented on identical issues, and as a result, the number of comments exceeds the number of issues addressed below. Commenters addressed issues that can be separated into five general categories: General Legal Issues; Vagueness/Overbreadth Issues; Burdensomeness; Privacy Concerns; and Miscellaneous Issues.

General Legal Issues

Four commenters commented that the proposed rule encroached on adult citizens' constitutional right to view pornography under the guise of protecting children from exploitation. The Department disagrees with this comment. The final rule does not impinge upon the constitutionally protected right to free speech. This claim was fully litigated following enactment of the statute and the publication of the first version of the section 2257 regulations. The D.C. Circuit, while invalidating certain

provisions of the regulations, held in *American Library Ass'n* v. *Reno*, 33 F.3d 78 (D.C. Cir.1994), that the statute and its implementing regulations were content-neutral measures that served the compelling state interest in protecting children and were therefore ''constitutional as they apply to the vast majority of the materials affected by them, namely, the commercially produced books, magazines, films, and videotapes that cater to ''adult'' tastes.'' Id. at 94.

Citing the Tenth Circuit's holding in *Sundance Assoc., Inc.* v. *Reno*, 139 F.3d 804 (10th Cir.1998), several commenters commented that the rule's application to secondary producers exceeds the Department's statutory authority. Furthermore, the commenters claimed that application of the rule to secondary producers as defined by the rule would have an unconstitutionally burdensome and chilling effect, and four commenters noted that small businesses would be particularly burdened with regard to maintaining segregated records, copies of depictions, and cross-indexed records. In Sundance, the court held that the statutory definition of producer did not distinguish between primary and secondary producers and entirely exempted from the record-keeping requirements those who merely distribute or those whose activity ''does not involve hiring, contracting for, managing, or otherwise arranging for the participation of the performers depicted.'' 18 U.S.C. 2257(h)(3). In contrast, the D.C. Circuit in *American Library Ass'n* v. *Reno* implicitly accepted that the distinction between primary and secondary producers was valid. The D.C. Circuit there held that the requirement that secondary producers maintain records was not a constitutionally impermissible burden on protected speech, particularly since secondary producers can comply by maintaining copies of the records of the primary producers, an option permitted by this rule. In so holding, the court implicitly considered the distinction between primary and secondary producers to be legitimate. Consistent with the D.C. Circuit's holding, which the Department believes reflects the correct view of the law, the Department declines to adopt these comments. For the same reason, the Department declines to adopt the comment of four commenters that the exclusions to the definition of producer in § 75.1(c)(4)(iii) eliminate the reference to primary and secondary producers contained in § 75.1(c)(1)–(2).

More specifically, two commenters commented that the expanded definition of producer to include any person who creates a computer-generated image is contrary to the ruling in *Ashcroft* v. *Free Speech Coalition*, 535 U.S. 234 (2002), which permits restrictions only on those who produce depictions of actual persons. The commenters claimed, too, that the provision is contradictory in that it covers computer-generated images while limiting its coverage to ''depiction[s] of actual sexually explicit conduct.'' 28 CFR 75.1(c)(1)–(2). Thus, the commenters argued, all statutory references to computer-generated images and depictions not involving possible child abuse to actual children in their creation should be removed. The Department notes that the Supreme Court in *Ashcroft* v. *Free Speech* Coalition determined that virtual child pornography could not be constitutionally prohibited under that statute, which did not require that the material be either obscene or the product of sexual abuse. The ruling does not, however, restrict the government's ability to ensure that performers in sexually explicit depictions are not in fact children. Nevertheless, the Department has made a slight change to the final rule in response to these comments by clarifying that the rule applies to those who digitally manipulate images of actual human beings but not to those who generate computer images that do not depict actual human beings (*e.g.*, cartoons).

Thirty-three commenters commented that the rule included an improper starting date from which records must be maintained. These commenters claimed that the Department previously stated, in accordance with the court's order in *American Library Ass'n* v. *Reno*, Civil Action No. 91–0394 (SSS) (D.D.C. July 28, 1995), that July 3, 1995, was the effective date for enforcement of section 2257. Nevertheless, the commenters said, §§ 75.2(a), 75.6, and 75.7(a)(1) of the proposed rule refer to November 1, 1990, and §§ 75.2(a)(1) and (2), 75.6, and 75.7(a)(1) refer to May 26, 1992. The commenters argued that the effective dates of the regulation should be changed to be consistent with the Department's representations or, in the alternative, made purely prospective in order to provide producers a chance to comply. Further, they argued, no obligations should be imposed concerning images made prior to the effective date.

Based on the Department's decision not to appeal *American Library Ass'n* v. *Reno* and its representation regarding the effective date of the regulation to non-parties to *American Library Ass'n* v. *Reno*, the Department has amended the proposed rule and in the final rule makes July 3, 1995, the effective date of the regulation and imposes no obligations on producers concerning sexually explicit depictions manufactured prior to that effective date.

Several commenters commented that the provision permitting seizure of records is unconstitutionally broad, could lead to prior restraint, and does not define what specific materials may be seized. The Department declines to adopt this comment. The Department notes that the regulatory and inspection scheme outlined in the final rule is a constitutional exercise of government power and, therefore, the presence of a law enforcement officer on the premises of the entity being inspected is authorized. In such a case, evidence of a crime may be seized by a law enforcement officer under the plain-view exception to the Fourth Amendment warrant requirement, and the materials seized do not need to be specifically described in the regulation that authorized the inspection.

Four commenters objected to the inclusion in the definition of producer of parent organizations and subsidiaries of producers, claiming it was beyond the Department's statutory authority, did not specify which entities must comply with the statute, overrode state laws on business associations, and violated the principles of *Sundance Assoc., Inc.* v. *Reno*. While not confirming the validity of, or adopting, the specific objections of the commenters, the Department has eliminated the inclusion of parent and subsidiary organizations in the definition of producer.

Citing *American Library Ass'n* v. *Reno*, three commenters claimed that the proposed rule's requirement to ascertain performers' aliases appeared to impose an obligation on the producer to verify all aliases, whereas, according to them, *American Library Ass'n* v. *Reno* requires only that the producer obtain the aliases from performers themselves. Three commentators claimed that the proposed rule's requirement that information in the label be accurate as of the date on which material is sold violates *American Library Ass'n* v. *Reno*, which required accuracy on the date the material was produced or reproduced.

The Department, having reviewed *American Library Ass'n* v. *Reno*, agrees with the commenters that minor changes should be made to the proposed rule for publication as a final rule in order to comply with the D.C. Circuit's decision. The final rule clarifies that the producers may rely on the representations regarding aliases that

performers make and are not obligated to investigate further. In addition, the final rule requires that information in the label be accurate as of the date the material is produced or reproduced.

The Department rejects, however, two commenters' claims that the Department does not have authority to require a date on the label in the first instance. Although section 2257 does not explicitly require a date on the label, the Attorney General has the statutory authority to issue appropriate regulations to implement the section and has determined that the purposes of the section cannot be accomplished without such a date. There would be no way to determine whether a performer is underage without knowing the date that the material was produced or reproduced.

Two commenters commented that the proposed rule did not exempt printers, film processors, and video duplicators from the definition of producer, as required by *American Library Ass'n* v. *Reno*. The Department adopts this comment, and the final rule provides such an exemption.

One commenter commented that section 2257 was restricted to producers of sexually explicit material that was produced with materials that had traveled in interstate or foreign commerce or was intended to be shipped, or was in fact shipped, in interstate or foreign commerce, while the proposed rule applied to ''[a]ny producer'' of any sexually explicit depiction with no such limitation. The Department agrees that the regulation needs to contain the same federal jurisdictional nexus as the statute. The Department has therefore accordingly amended the proposed rule so that the final rule contains a limitation such that it applies only to producers of material that was produced with materials that had traveled in interstate or foreign commerce or was intended to be shipped, or was in fact shipped, in interstate or foreign commerce.

One commenter commented that protecting children could be accomplished by requiring a credit card to access a pornographic website. The commenter apparently erroneously confused this regulation, which is designed to protect children from being exploited as performers, with protecting children from viewing pornography, which is the subject of other statutes and regulations. No change is being made in response to this comment.

Vagueness/Overbreadth

Thirty-two commenters commented that the definitions of URL and URL associated with the depiction are vague. According to the commenters, it is not clear what constitutes a copy of a Web page, which may be constantly changing, for purposes of maintaining a copy of the depiction. The commenters claim that some sites may use technologies that may not even use a URL for downloading a picture (*e.g.*, peer-to-peer systems, telephonic bulletin boards, and other technologies). Furthermore, they claim, requiring the use of certain technologies to comply with the statute presents a situation in which unconstitutional restrictions are placed upon the manner and media in which content is presented. The Department declines to adopt this comment with regard to the concern that web pages are constantly changing. It is for this very reason that the proposed rule required producers to maintain copies of every iteration of a web page in order to create a record of which performers were featured over the course of time. The Department adopts this comment insofar as it notes that some sites do not utilize URLs for downloading, and will modify the rule to require records of the URL or, if no URL is associated with the depiction, another uniquely identifying reference associated with the location of the depiction on the Internet.

In addition, thirty-three commenters commented that it is unclear whether the term copy in the rule refers to only digital images, computer-generated images, and web cam images, or whether there must be a copy of the image that was in the magazine and film in the records, as well. The Department has amended the rule to clarify that there must be copy of any and every depiction, whether digital, computer-generated, print in a magazine, or on film. Maintaining copies of each depiction is critical to making the inspection process meaningful, whether those copies be in digital, paper, or videotape format. Reviewing identification records in a vacuum would be meaningless without being able to cross-reference the depictions, and having the depictions on hand is necessary to determine whether in fact age-verification files are being maintained for each performer in a given depiction. In addition, without the depictions, inspectors could not confirm that each book, magazine, periodical, film, videotape or other matter has affixed to it a statement describing the location of the records, as required by the existing regulations.

Twenty-four commenters commented that the exclusion of providers of web-hosting services who do not manage the content of the site or service is vague and may be under-inclusive because some services manage or control certain website content, *e.g.*, advertisements, but not the sexually explicit content. According to the commenters, it is similarly unclear whether editing content only for copyright infringement purposes would constitute control of content. The Department adopts this comment. The exclusion of providers of web-hosting services who reasonably cannot manage the content of the site will be clarified to exclude providers of web-hosting services who reasonably cannot manage the sexually explicit content of the site (for either technical or contractual reasons).

Three commenters also commented that the definition of secondary producers as those who ''manage content'' on a computer site could be construed to include those who operate posting services such as Usenet, bulletin boards, and other similar services. According to those commenters, someone who removes illegal material such as child pornography could thereby submit themselves to the requirements of Part 75, while if that person did not remove such material, the person would be liable to prosecution for hosting child pornography. The Department declines to adopt this comment. Operators of such sites are obligated by law to remove child pornography from their sites and to report the attempt to post such pornography to law enforcement. Compliance with that legal obligation could not be construed as converting the operator into a producer of pornography for purposes of section 2257 and this regulation.

Five commenters commented that the definitions of producer and secondary producer would encompass on-line distributors of pornography who digitize the covers of videos, DVDs, and magazines but are not involved in the actual production of the material. One of these commenters also claimed that the definition of producer should be changed to allow on-line distributors to rely upon records provided to them by the immediately preceding secondary producer, in accordance with the Department's representation to the court in *American Library Ass'n* v. *Reno.* The Department declines to adopt these comments. The definition of producer is of necessity broad enough to encompass those who digitize images—even for distribution purposes—because in so doing, a new sexually explicit depiction is created. The Department has determined that it is not possible to change the definition in such a way as to exclude distributors while not also creating an unacceptable loophole in the coverage of the regulation. This

definition does not alter the Department's representation to the court in *American Library Ass'n* v. *Reno,* and it remains true that a secondary producer not in privity with the primary producer may rely upon records provided to it by the immediately preceding secondary producer. However, on-line distributors who digitize depictions on the covers of videos, DVDs, magazines, and other material such that new depictions are created and displayed on the Internet are covered by the definition of producer and must maintain the required records.

Three commenters commented that it is unclear whether the requirement that the statement include date of production, manufacturing, publication, duplication, reproduction, or re-issuance must include all of the listed events or only one. In addition, according to these commenters, the only relevant date for the statute's purposes is the date of creation, *i.e.*, the date the actual live event was depicted. Finally, claimed these commenters, the term date of production is also vague in that it is not clear how a producer should date a film made over several days. The Department declines to adopt this comment. Given the statute's purpose of protecting minors against sexual exploitation, with respect to primary producers, clearly the date of production is the most pertinent because it will reflect the youngest age of the performer involved. Secondary producers should list whichever date or dates are relevant to their conduct. Moreover, this requirement already existed before the proposed rule was published, and therefore, this comment does not pertain to the proposed rule. *See* 28 CFR 75.6(a)(2) (2003).

Two commenters commented that the definition of picture identification card is vague, in particular because it does not include documents issued by a foreign government but does include as an example a foreign passport. In response to these comments, the Department has clarified that the definition includes a foreign government-issued passport or any other document issued by a foreign government or a political subdivision thereof only when both the person who is the subject of the picture identification card and the producer maintaining the required records are located outside the United States. The definition also clarifies that it includes a U.S. government-issued Permanent Resident Card (commonly known as a ''Green Card'') or other U.S. government-issued Employment Authorization Document.

Two commenters commented that the proposed rule did not define qualifications for, or process for authorization of, inspectors. The Department declines to adopt this comment. Through 18 U.S.C. 2257 Congress has authorized the Attorney General to inspect records, and the Attorney General may delegate this authority to any agency deemed appropriate by virtue of the Attorney General's delegation authority under 28 U.S.C. 510.

One commenter commented that the inclusion in the definition of secondary producer of anyone who ''enters into a contract, agreement, or conspiracy'' to produce a sexually explicit depiction was irrational because such a person was not likely to have had a relationship with the performer and may not have had knowledge of the content of the depiction. The Department declines to adopt this comment. The statute contemplates such relationships as being covered by its requirements.

One commenter commented that the definition of a primary producer as anyone who ''digitizes an image'' could be read to include anyone who scans or digitizes a photograph or negative. The commenter suggested that someone who performs that activity should be exempted from the record-keeping requirements in the same way that photo processors are exempt under § 75.1(c)(4)(i). The Department adopts this comment and has clarified in the final rule that someone who solely digitizes a pre-existing photograph or negative as part of a commercial enterprise and has no other commercial interest in the production, reproduction, sale, distribution, or other transfer of the sexually explicit depiction is exempt from the requirements of § 75. As reflected in the phrase ''has no other commercial interest in the production, reproduction, sale, distribution, or other transfer of the sexually explicit depiction,'' this definition is intended to apply to businesses that are analogous to photo processors in their lack of commercial interest in the sexually explicit material, and who are separate and distinct from the on-line distributors of pornography who digitize the covers of videos, DVDs, etc., who are included in the definition of secondary producer, as discussed above.

One commenter commented that the requirement regarding the placement of the statement in films and videotapes in § 75.8 was unclear as to whether the statement was required in the ''end credits,'' ''end titles,'' or ''final credits'' and what constituted those sections of the film. The commenter also suggested that § 75.8(b) and (c) be combined more easily to describe the placement of the statement. The Department adopts this comment. It has combined § 75.8(b) and (c) and clarified that the statement must appear in the end credits of films and videotapes that have such end credits, which are defined as the section of the film that lists information about the production, direction, distribution, names of performers, or any other matter that is normally understood as constituting ''end credits'' of a commercial film or videotape.

One commenter commented that the definition of sell, distribute, redistribute, and re-release in § 75.1(d) is redundant because it restricts the terms to their commercial meaning but then notes that the terms do not apply to noncommercial or educational distribution. In addition, the commenter comments, it provides examples of the type of education institutions whose distributions would not be covered. According to the commenter, this list is also redundant. The Department declines to adopt this comment. The definition's plain language is not redundant; rather, it is as specific as possible regarding what is commercial and what is noncommercial. In addition, the examples clearly constitute a non-exhaustive list of institutions and clarify the meaning of the term noncommercial.

One commenter commented that the rule should define the term transfer, as used in section 2257, in order to, *e.g.*, specify whether the statement is required if a husband mails to his wife a sexually explicit videotape depicting the couple engaged in consensual sexual activity. The Department declines to adopt this comment. The Department believes that the definition of sell, distribute, redistribute, and re-release in § 75.1(d) subsumes the statute's use of the term transfer, which is not used in the proposed or final rule in a way requiring definition. In addition, the definition in § 75.1(d) makes clear that only commercial transfers are covered and the hypothetical transfer that the commenter posits would by the plain meaning of the rule never be covered.

One commenter commented that the requirement that the statement appear on the home page of a Web site is vague because many web sites operate with subdomains, making the actual homepage or principal URL difficult to identify. The Department declines to adopt this comment. Subdomains, as the name implies, are URLs that share the top-level domain name's basic URL and have additional identifying address information to provide additional content on a separate Web page. Each subdomain thus has its own homepage

and each homepage must feature the statement. For example, *http://www.usdoj.gov* is the full domain name of the Web site of the Department of Justice. *http://www.usdoj.gov/criminal* is the Web page of the Criminal Division, which is hosted by the Department's Web site. Under this rule, *http://www.usdoj.gov* would be required to have a statement and that statement would cover anything contained on *http://www.usdoj.gov/criminal.* However, *http://www.ojp.usdoj.gov* is a subdomain of the full domain *http://www.usdoj.gov* and would be required to have its own statement on that page, which would then cover any material on a Web page linked to it, such as *http://www.ojp.usdoj.gov/ovc/,* the Web page of the Office for Victims of Crime.

One commenter commented that the exception under § 75.1(c)(4)(iv–v) for Web hosting, electronic communication, and remote computing services should be extended to 18 U.S.C. 2257(f)(4). Providers of Web hosting, bulletin boards, or electronic mail services could be found liable for not ascertaining that the appropriate label was affixed to a depiction transferred by one of their users. The Department declines to adopt this comment, which would require an amendment to the statute and is beyond the authority of the Department to change by regulation. Moreover, the Department notes that 18 U.S.C. 2257(f)(4) makes it a crime for a person ''knowingly to sell or otherwise transfer'' any sexually explicit material that does not have a statement affixed describing the location of the records. Thus, knowledge on the part of the transferor is an element of the offense.

One commenter commented that the proposed rule's record-keeping requirements were troublesome in light of the 2003 amendment to section 2257(d), which authorizes the use of such records as evidence in prosecuting obscenity or child pornography cases. According to the commenter, this violates the Fifth Amendment right against mandatory self-incrimination. The Department declines to adopt this comment, for two reasons. First, the comment is not directly related to the rule but rather is directed at the statute. Second, the amendment to section 2257(d) does not violate the Fifth Amendment since some sexually explicit materials are protected speech and not obscene. Hence, the reporting requirement is not directed at ''a highly selective group inherently suspect of criminal activities.'' *Albertson* v. *Subversive Activities Control* Bd., 382 U.S. 70, 79 (1965).

One commenter commented that the definition of producer is too broad, such that one depiction may have multiple primary producers, including, *e.g.,* the photographer and a different individual who digitizes the image. The commenter argued that the definition should be written so that each depiction has only one primary producer. The Department declines to adopt this comment. The Department does not believe that logic, practicability of record-keeping or inspections, or the statue dictates that there be one and only one primary producer for any individual sexually explicit depiction. Any of the persons defined as primary producers has easy access to the performers and their identification documents and should therefore each have responsibility individually and separately of maintaining the records of those documents.

Two commenters commented that the definition of producer in the proposed rule was too broad and would encompass a convenience store that sold sexually explicit magazines or a movie theater that screened R-rated movies. The Department declines to adopt this comment. As the rule makes clear, mere distributors of sexually explicit material are excluded from the definition of producers and under no plausible construction of the definition would a movie theater be covered merely by screening films produced by others.

One commenter commented that it was not clear in the proposed rule whether, in cases in which it is discovered that a performer is underage, the possessors of those images are required to destroy copies of images required in the records in order to comply with the child pornography laws. The Department declines to adopt this comment because existing statutes make clear that it is unlawful knowingly to produce, advertise, distribute, transport, receive, or possess child pornography. *See* 18 U.S.C. 2251, 2252, and 2252A. Producers, like all citizens, must comply with those statutes. Nothing in the rule changes or obscures these existing legal obligations. Furthermore, there is a good-faith defense to possession of child pornography for the destruction or reporting to law enforcement of its existence. *See* 18 U.S.C. 1466A(e).

Burdensomeness

Thirty-six commenters commented that even if the effective date were changed to July 3, 1995, the regulation would be overly burdensome on secondary producers because producers would be required to obtain records for thousands—even hundreds of thousands—of sexually explicit depictions dating back a number of years. These commenters claimed that secondary producers would likely be unable to locate many of those records from primary producers who may have moved, shut down, or otherwise disappeared. According to the commenters, those secondary producers who could not locate such records would be forced to remove the sexually explicit depictions, which would be a limit on constitutionally protected material.

The Department declines to adopt these comments. Producers were on notice that records had to be kept at least by primary producers for depictions manufactured after July 3, 1995. In addition, commenters were similarly on notice that the D.C. Circuit, in *American Library Ass'n* v. *Reno,* had upheld the requirement that secondary producers maintain records. The Department is not responsible if secondary producers chose to rely on the Tenth Circuit's holding in Sundance and not to maintain records while ignoring the D.C. Circuit's holding in *American Library Ass'n* v. *Reno.* A prudent secondary producer would have continued to secure copies of the records from primary producers after July 3, 1995. If those records, which are statutorily required, are not currently available, then the commenters are correct that they will be required to comply with the requirements of all applicable laws, including section 2257(f). They are incorrect, however, to claim that this would result in an impermissible burden on free speech. As the D.C. Circuit held, the government has a compelling state interest in protecting children from sexual exploitation. If the producers (primary and secondary) of sexually explicit depictions cannot document that children were not used for the production of the sexually explicit depictions, then they must take whatever appropriate actions are warranted to comply with the child exploitation, obscenity, and record-keeping statutes. The First Amendment is not offended by making it unlawful knowingly to fail or refuse to comply with the record-keeping or labeling provisions of this valid statute.

Two commenters commented that secondary producers should not be required to maintain records at all because they are not proximate enough to the production of the depictions to secure the requisite information, and their retention of records would not further the purpose of the statute. One commenter commented that secondary producers should only be required to

retain on file the contact information for the primary producers' custodians of records. The Department declines to adopt these comments. As publishers of sexually explicit material, secondary producers are equally responsible for protecting minors from exploitation as the primary producers who photograph sexually explicit acts. Most importantly, secondary producers are equally covered by the terms of section 2257. In addition, the D.C. Circuit in *American Library Ass'n* v. *Reno,* held that such a requirement was not unconstitutionally burdensome.

Thirty-five commenters commented that the indexing and cross-indexing requirements are unduly burdensome and argued that the records should be indexed only by the performer's legal name, the name used in the depiction, or the title of the depiction. The Department declines to adopt these comments. As the D.C. Circuit held in *American Library Ass'n* v. *Reno,* the indexing and cross-indexing requirements were not unduly burdensome. Word-processing, bookkeeping, and database software commonly in use by businesses and even for home computers can accomplish the indexing and cross-indexing required by the rule. The Department continues to believe that investigators must be able to access records through cross-indexing in order to ensure completeness and to enable investigation on the basis of less-than-full information.

Thirty-two commenters commented that the requirement that a copy of each depiction be maintained would be unduly burdensome, leading to vast stocks of magazines and videotapes, and even storage of computer images would be unmanageable and prohibitive for small businesses. Thirty-five commenters also commented that the requirement to keep copies of each image is impossible to comply with due to the vast amount of data involved in storing digital images, especially, *e.g.,* producers of live streaming video. The Department declines to adopt these comments. Maintaining one copy of each publication, production, or depiction is critical to making the inspection process meaningful. Commercial publishers and producers can reasonably be expected to comply. Furthermore, modern computer and disk storage capacities make digital archiving and back-up relatively inexpensive and space-efficient. Finally, reviewing identification records in a vacuum would be meaningless without being able to cross-reference the depictions, and having the depictions on hand is necessary to determine whether in fact age-verification files are being maintained for each performer in a given depiction. In addition, without the depictions, inspectors could not confirm that each book, magazine, periodical, film, videotape or other matter has affixed to it a statement describing the location of the records, as required by the existing regulations. Exceptions cannot be made for producers of digital depictions, and indeed, it is likely less onerous to store digital images than paper images. Children are just as easily exploited in live streaming video as in any other visual medium. Therefore, an exception cannot be made for producers of live streaming video.

Thirty-nine commenters commented that the requirement that records be available for inspection during specified normal business hours and any time business is conducted would be impossible for small businesses to meet, especially those run on a part-time basis or during non-traditional hours. These commenters pointed out that the prior regulations simply provided that the availability be reasonable. The Department adopts this comment. The Department can accept that the producers of the sexually explicit depictions subject to the statute do not necessarily maintain traditional 9 a.m. to 5 p.m. business hours. Accordingly, the rule will be adjusted to permit inspections during the producer's normal business hours. To the extent the producer does not maintain or post regular business hours, producers will be required to provide notice to the inspecting agency of the hours during which their records will be available for inspection, which must total no less than twenty (20) per week, in order to permit reasonable access for inspectors.

Thirty commenters commented that the proposed rule's requirement that the statement appear on the homepage of a Web site would lead to excessively lengthy statements that could deter viewers from downloading site content. The commenters suggested that web sites should be permitted to provide links that open windows to complex disclosure statements. In response to these comments, the Department has amended the proposed rule such that the final rule permits web sites to contain a hypertext link that states, ''18 U.S.C. 2257 Record-Keeping Requirements Compliance Statement,'' that will open in a separate window that contains the required statement.

Five commenters commented that the requirement that copies of each image be kept together with the records would interfere with the requirement that records be segregated. According to these commenters, hard copies of depictions cannot, by definition, be held together with electronic copies, and if computer records are kept, it is not possible for a producer to segregate records stored on a computer because they are all found on the same storage device. Further, claimed the commenters, the requirement under § 75.2(e) that records be segregated from other records, not contain other records, or be contained within other records is vague. They claimed that it is unclear whether copies of records may never be in any other company files, which would be an irrational requirement and would open inadvertent misfilings to criminal prosecution.

The Department declines to adopt this comment. The requirement that records maintained pursuant to section 2257 be segregated not only streamlines the inspection process but protects producers from unbridled fishing expeditions. Inspectors should not be faced with situations in which they have to sift through myriad filing cabinets to find the records they are seeking, and producers should not be faced with the risks that such exploration might create. Hard copies, electronic copies, or files consisting of both can be segregated in separate storage containers or hard drives (or even in separate directories or folders on a hard drive) in/on which no other records are held. Two commenters commented that the implicit requirement that records be kept at a place of business is unreasonable and argued that the regulation should permit third-party custody of records. The Department declines to adopt this comment. Permitting a third party to possess the records would unnecessarily complicate the compliance and inspection processes by removing the records from the physical location where they were initially collected, sorted, indexed, and compiled. For example, producers could provide false names and addresses to the third party as a means to avoid scrutiny by law enforcement. Historically, producers have used front corporations in order to evade both law enforcement and tax authorities. Permitting third-party custodianship would exacerbate this problem. Custodians could, for example, disclaim any responsibility for the condition or completeness of the records or be unable to provide additional information regarding the status of the records. Permitting such third-party custodians in the final rule would thus require additional regulations to ensure that the third-party custodian could guarantee the accuracy

of the records, would act as a legally liable agent of the producer, and would raise other administrative issues as well.

Furthermore, permitting a third party to maintain the records would, if anything, exacerbate the concerns of numerous commenters regarding the privacy of information on performers and businesses by placing that information in the hands of another party.

Three commenters commented that the record-shifting requirements under §§ 75.2(a) and (b) are impermissibly burdensome. According to the commenters, primary producers would resist turning over records that contain trade secrets, such as the identities of performers. The Department declines to adopt these comments. The D.C. Circuit Court clearly held in *American Library Ass'n* v. *Reno* that the record-keeping requirements were not unconstitutionally burdensome. Any primary producer who fails to release the records to a secondary producer is simply in violation of the regulations and may not use the excuse that the records contain alleged trade secrets to avoid compliance.

Three commenters commented that the requirement that the statement appear in font size equal in size to the names of the performers, director, producer, or owner, whichever is larger, and no smaller in size than the largest of those names, and in no case in less than 11-point type, in black on a white, untinted background amounts to forced speech, would ruin the aesthetic quality of web pages and other media, and is impractical. Another commenter commented that the requirement that the statement appear in a certain typeface cannot apply to web sites, whose appearance depends on the viewer's computer. In response to these comments, the Department has revised final rule to require that the statement appear in typeface that is no less than 12-point type or no smaller than the second-largest typeface on the website, and in a color that contrasts with the background color. Regarding the claim that such an administrative label constitutes forced speech, the Department notes that the federal government imposes a range of such requirements, such as nutritional labels on food products and safety warnings on a myriad of products.

Two commenters commented that the length of retention of records was too long and could multiply to include excessively long periods of time. The commenters also claimed that the periods of time in the proposed rule were contrary to the D.C. Circuit's opinion in *American Library Ass'n* v. *Reno.* The Department declines to adopt this comment. The regulation provides for retention of records for seven years from production or last amendment and five years from cessation of production by a business or dissolution of the company. The Department does not believe that these limits are unreasonable. The only way to satisfy the commenters' objection that the periods of time can multiply would be to impose a blanket short period of time no matter what changes to the records were made. Such a change would frustrate the ability to ensure that records were maintained up-to-date and prevent inspectors from examining older records to determine if a violation had been committed. In addition, the time periods, contrary to the claim of the commenters, do not violate *American Library Ass'n* v. *Reno.* In that case, the D.C. Circuit held that § 75 could not require records to be maintained for as long as the producer remained in business and allowed a five-year retention period ''[p]ending its replacement by a provision more rationally tailored to actual law enforcement needs.'' 33 F.3d at 91. The Department has determined that the seven-year period is reasonable, thus satisfying the court's directive. The production of child pornography statute of limitations was increased in the PROTECT Act from five years to the life of the child, and the increase contained in the regulation seeks to comport with that extended statute of limitations.

Finally, the Department wishes to clarify that the statute requires that each time a producer publishes a depiction, he must have records proving that the performers are adults. Thus, if a producer purges his or her records after the retention period but continues to use a picture for publication, the producer would be deemed in violation of the statute for not maintaining records that the person depicted was an adult. Records are required for every iteration of an image in every instance of publication.

One commenter objected to the proposed rule's lack of prior announcement of inspections. Advance notice, the commenter stated, would allow producers to put records in proper order and ensure that someone would be on the premises when investigators visited. The rule should specify what happens in cases in which no one is present when the investigator arrives. The Department declines to adopt this comment. Advanced notice would provide the opportunity to falsify records in order to pass inspection. Lack of specific case-by-case notice prior to inspection will promote compliance with the statute and encourage producers to maintain the records in proper order at all times, as is contemplated by the statute. The rule will specify that inspections are to occur during the producer's normal business hours. The inspection process clearly does not contemplate warrantless forced entry solely because no one is present when the investigator arrives.

One commenter commented that the proposed rule appeared to require hard copies of records and suggested that digital copies be permitted in order to simplify storage and indexing. The Department adopts this comment. Records may be maintained in either ''hard'' (paper) form or digital form, provided that they include scanned forms of identification and that there is a custodian of records who can authenticate each digital record. The regulation has been revised to clarify this point.

One commenter commented that the regulation should permit the statement to be located on main menu screen of a DVD, rather than requiring the statement to appear in the movie itself. The Department declines to adopt this comment. The statement cannot be severed from the actual depiction because that could lead to confusion on the part of the public as to the applicability of the statement in cases, for example, when there is more than one film on a DVD or when a movie on a DVD is also available in other contexts in which the statement must be appended (*e.g.*, posted on a Web site).

One commenter commented that the list of acceptable forms of performer identification in the proposed rule is unduly restrictive and argued that college and employer identification cards should be acceptable. The Department declines to adopt this comment. The regulation properly requires a government-issued identification document because other forms of identification are too susceptible to forgery to accomplish the purposes of the Part.

One commenter who supported the proposed rule stated that he created a system to help webmasters comply with the rules and protect the identity of individuals depicted in the images while allowing verification by law enforcement. The commenter stated that no webmasters took advantage of his system because, he said, they believe that there is an extremely remote possibility of being prosecuted for non-compliance and that the Sundance ruling protects them. The comment tends to demonstrate that the claim by industry groups that the rule is unconstitutionally burdensome is

exaggerated. Nonetheless, the Department does not endorse this commenter's particular system as it has no means to determine whether the system actually works.

One commenter commented that the provision for inspections every four months is too frequent and is an invitation for harassment. Some businesses are so small and static that the required records are unlikely to change over a particular four-month period. The Department declines to adopt this comment. The regulations necessarily are designed to provide an adequate inspection interval for the most prolific producers as well as the relatively small-scale producers. The Department has determined that limiting the frequency of inspections to every four months will allow inspectors to keep pace with major producers while at the same time avoid excessive inspections of smaller producers. Moreover, four months denotes the maximum frequency of inspections; inspectors may inspect less frequently at their discretion.

Privacy

Sixty-two commenters commented that revealing personal information of performers, for example, in the form of their addresses on drivers' licenses used as identification documents in compliance with this regulation, is an invasion of performers' privacy and could lead to identity theft or violent crimes. Forty commenters commented that including the names and addresses of businesses where the records at issue are located would similarly lead to crimes against those businesses. The Department declines to adopt these comments. While the Department is certainly concerned about possible crimes against performers and businesses that employ them, the necessity of maintaining these records to ensure that children are not exploited outweighs these concerns. Furthermore, specifically regarding personal information about performers required to be provided to primary producers, the Department notes that the information required is no different from that required by other forms of employee or business records, such as social security numbers and dates of birth required for tax reporting purposes, emergency contact numbers in case of health problems, or addresses used to transmit paychecks. Regarding information about producers, such as their physical location, that those producers must include in their statements, the Department notes that producers are already required, under the current Part 75 regulations, to include that information. Finally, regarding personal information about performers that must be transmitted to secondary producers, the Department again notes, first, that such information is already required by the current Part 75 regulations, and, second, that none of the commenters presented any evidence that a hypothetically possible crime, such as the stalking of a performer, was in any way tied to the dissemination of the information about a performer provided to a producer in compliance with Part 75.

Another commenter proposed that secondary producers be required to store sanitized (*i.e.*, without personal information such as home address) hard or digital copies of performers' identification documents along with a notarized affidavit from the primary producer stating the location of the complete records. The Department declines to adopt this comment. Although the Department understands the commenter's desire to protect private information about performers from being too widely disseminated, it believes that the suggested plan would be overly burdensome on primary producers and add an unnecessary layer of complexity to the record-keeping process. Primary producers would be required first to sanitize the identification documents and then to draft, sign, and pay for a notarized affidavit. It is simpler and less burdensome simply to have primary producers transfer a copy of the records to secondary producers.

One commenter also commented that the proposed rule may force foreign primary producers to violate foreign laws regarding protection of information. If primary producers in foreign countries decide to comply with their home privacy laws and not provide materials to U.S. entities, the regulation will chill the availability of materials and speech to U.S. citizens. The Department declines to adopt this comment. The rule is no different from other forms of labeling requirements imposed on foreign producers of, *e.g.*, alcohol, tobacco, or food items that are imported into the United States. In order to sell in the U.S. market, foreign producers must comply with U.S. laws. This rule applies equally to any sexually explicit material introduced into the stream of commerce in the United States no matter where it was produced. Foreign producers have the option of not complying with the rule, but then their access to the U.S. market is justly and lawfully prohibited.

Miscellaneous

Five commenters commented that the proposed rule would hurt U.S. businesses and remove money from the U.S. economy by driving the pornography industry to other countries. In addition, these commenters claimed, most sexually explicit web sites are, in any event, already located in other countries and the rule would be ineffective in regulating them. Similarly, one commenter commented that the proposed changes will be ineffective in addressing the problem of child pornography because most, if not all, of child pornography web sites are located outside the United States.

The Department disagrees with these comments. First, the purpose of the statute, and the rule to implement it, is not to drive the pornography industry out of the United States. Rather, the purpose is to protect children from sexual exploitation, and the rule is designed to do so while not burdening protected speech. The D.C. Circuit, in *American Library Ass'n* v. *Reno*, held that the current regulations are not unconstitutionally burdensome, and the final rule is merely a refinement and update of those regulations. Thus, the pornography industry should not in fact be driven overseas. Indeed, the commenters do not provide any evidence either for their proposition that most sexually explicit web sites are in fact based abroad or for their proposition that those web sites that are located in the United States will relocate. Second, the Department does not currently exercise jurisdiction over foreign web sites, but it must promulgate regulations within its legitimate jurisdiction in the United States in order to accomplish the purpose of the statute.

Two commenters suggested that rather than regulating sexually explicit Web sites, the Department should invest more resources into fighting child pornography through education of parents and children and through enhanced criminal investigation. In response, the Department points out that it currently invests significant resources in criminal investigation and prosecution of child pornography and in other activities to promote the protection of children. The final rule is part of this effort and is aimed at preventing any child pornography from being produced under the guise of constitutionally protected sexually explicit depictions and must necessarily require legitimate businesses to maintain the records at issue. One commenter supported the Department's

position, as the commenter stated, because of concern about exploitation of children.

One commenter commented that certain types of files—*e.g.*, .jpeg and .gif photos—cannot have a statement appended when uploaded. The Department declines to adopt this comment. The rule makes clear that whenever Internet depictions are involved, the statement must appear on the website's home page, not on the image itself.

One commenter commented that the term technologies is improperly used in § 75.1(a), which states that the proposed rule's definitions of terms ''are not meant to exclude technologies or uses of these terms as otherwise employed in practice or defined in other regulations or federal statutes * * *.'' The Department declines to amend the proposed rule in response to this comment. The Department believes the commenter may have misunderstood the sentence. As § 75.1(a) explains, the definitions in the rule are not used in their technical senses and do not, therefore, exclude any particular type of technology, or technologies, currently existing or invented in the future on the basis of the language used in the Part.

The same commenter objected to the proposed rule's use of the phrase ''myriad of'' in the definition of the term Internet in § 75.1(f). The Department declines to adopt this comment. According to Merriam-Webster's Collegiate Dictionary (11th ed., 2003), ''Recent criticism of the use of myriad as a noun, both in the plural form myriads and in the phrase myriad of, seems to reflect a mistaken belief that the word was originally and is still properly only an adjective * * *. The noun myriad has appeared in the works of such writers as Milton (plural myriads) and Thoreau (a myriad of), and it continues to occur frequently in reputable English. There is no reason to avoid it.'' Merriam-Webster's Collegiate Dictionary 821 (11th ed., 2003).

One commenter commented regarding a minor drafting error in which § 75.2(a)(1) of the proposed rule incorrectly referenced the definition of an identification document in 18 U.S.C. 1028. The Department has eliminated entirely the reference to 18 U.S.C. 1028, which is redundant in light of the final rule's defined term picture identification card.

One commenter suggested that the regulation state that no person convicted of pedophilia, endangerment of a minor, or any sexual misconduct involving a minor be eligible to produce sexually explicit material or act as custodian of records required by the regulation. The Department is unable to adopt this comment, because the suggestion goes beyond the Department's authority to implement the statute.

Two commenters suggested alternative means to implement the statute. One suggested that the Department establish a national ''sex ID'' system with which performers would register with the government in a national database. In the commenter's scheme, the model would receive an ID number that would be superimposed on images of the performer, enabling federal law enforcement officers to determine compliance with the rule by cross-referencing the ID numbers with the database. Another suggested that each producer store required identification records, indexed by URL, on a computer server in a password-protected folder made available to law enforcement. The Department declines to adopt these suggestions because it believes that they would be more burdensome on both the Department and producers to create, implement, and manage than the record-keeping system established by the rule. In addition, creation of such systems would likely require several years' work and delay implementation of the statute's record-keeping requirements.

Similarly, two commenters suggested specific additions to the record-keeping requirements in the proposed rule. One commented that two forms of identification should be required of performers. The Department declines to adopt this comment because it believes that one form of valid photo identification is sufficient to establish the identity and age of the performer and that requiring more would be overly burdensome on businesses and performers themselves.

One commenter commented that the exemption statement in the rule is unnecessary and redundant because if no statement is necessary, then the regulation does not apply and no statement of any kind can be required. The Department declines to adopt this comment for three reasons. First, the Department notes that the exemption-statement requirement was included in the previous version of the regulation. Second, the commenter is wrong to state that it is redundant. Since a primary or secondary producer could possess various sexually explicit depictions, some subject to the regulation and some not, it would be necessary for the producer to label both types, rather than only label those that are subject to the rules and give the impression both to the public and to government inspectors that the producer is not in compliance with the regulation. Third, the lack of an exemption statement could lead to a waste of resources by prompting inspections where none were needed because, unbeknownst to the inspector, the producer was exempt from the regulation.

One commenter commented that Internet Presence Providers (IPPs) should receive the same exemption from the rule as Internet Service Providers (ISPs). The Department understands that IPPs are similar to ISPs in that they both act as hosts for web pages that are created and owned by other persons. It appears, however, that IPPs can also take on other responsibilities, including managing the operations of web sites themselves. The Department has amended the proposed rule to exclude web-hosting services to the extent that their employees are not, and cannot reasonably be, engaged in managing the sexually explicit content of the site (for either technical or contractual reasons). The Department does not believe it is appropriate to provide a blanket exemption from the regulation for IPPs because it would enable owners of such web sites to disclaim responsibility for complying with the regulation by asserting that the IPPs are actually engaged in regulated activities while also exempting IPPs in toto, thus leading to a gap in coverage of producers.

One commenter commented that the regulation should specify that a record-keeper may refuse to speak to an investigator or may leave the premises during an investigation, so that no questions arise regarding whether the inspection rises to the level of custodial interrogation. The Department declines to adopt this comment. A record keeper's conduct during an inspection will not be regulated. To the extent that it becomes necessary in any given case, both the government and the individual will have available to them the full panoply of constitutional and legal protections and authorities to allow a court to determine, in the normal course of any prosecution that may arise and on a case-by-case basis, whether a custodial interrogation occurred at the time of inspection, and will bear the consequences of the court's determination.

One commenter commented that the proposed rule did not define how an inspector could copy physical or digital records during an inspection. The Department declines to adopt this comment. The inspectors will avail themselves of a portable photocopier or means to copy digital records (*e.g.*, computer disks) as needed, and the final

rule does not need to include details such as these.

One commenter commented that it is unclear whether a producer that provides content to a secondary producer must maintain a list of its URLs. According to the commenter, keeping such a list would be impossible, given the number of URLs and the fact that many URLs are generated dynamically, making the requirement technologically impossible. Further, claimed the commenter, if a URL is required to be indexed with an identification record, one URL (the site entrance) should be sufficient. In addition, the commenter commented, URLs outside the direct control of the content provider should not be covered under the regulations, and secondary producers should be permitted to simply list the producer's 2257 statement on the home page.

The Department declines to adopt this comment. The Department understands that it would not be possible to track or maintain records of dynamically generated URLs. The existing regulations require producers to maintain the names of the performers ''indexed by the title or identifying number of the book, magazine, film, videotape, or other matter.'' *See* 28 CFR 75.2(a)(2). The rule updates this requirement expressly to include Internet depictions by requiring that this indexing also include any static URLs associated with depictions of that performer and to maintain a copy of the depiction with the static URL associated with the depiction. Existing regulations require any producer to affix a statement describing the location of the records, and permit producers to provide the address of the primary producer, or, for secondary producers satisfying the requirements of § 75.2(b), the address of the secondary producer. *See* 28 CFR 75.6, 75.6(b); *see also* 28 CFR 75.2(b) (permitting secondary producers to maintain records by accepting copies of records from a primary producer). This rule merely updates this requirement to expressly cover Internet depictions.

Regulatory Procedures

Regulatory Flexibility Act

The Department of Justice has drafted this regulation in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The Department of Justice drafted this rule to minimize its impact on small businesses while meeting its intended objectives. Based upon the preliminary information available to the Department through past investigations and enforcement actions involving the affected industry, the Department is unable to state with certainty that this rule, if promulgated as a final rule, will not have any effect on small businesses of the type described in 5 U.S.C. § 601(3). Accordingly, the Department has prepared a final Regulatory Flexibility Act analysis in accordance with 5 U.S.C. 604, as follows:

A. Need for and Objectives of This Rule

Recent federal statutory enactments and judicial interpretations have highlighted the urgency of protecting children against sexual exploitation and, consequently, the need for more specific and clear regulations detailing the records and inspection process for sexually explicit materials to assure the accurate identity and age of performers.

The identity of every performer is critical to determining and assuring that no performer is a minor. The key Congressional concern, evidenced by the child exploitation statutory scheme, was that all such performers be verifiably not minors, *i.e.* not younger than 18. 18 U.S.C. 2256(1), 2257(b)(1). Minors—children—warrant a special concern by Congress for several reasons as discussed more specifically in relation to the inspection process. Children themselves are incapable of giving voluntary and knowing consent to perform or to enter into contracts to perform. In addition, children often are involuntarily forced to engage in sexually explicit conduct. For these reasons, visual depictions of sexually explicit conduct that involve persons under the age of 18 constitute unlawful child pornography.

This rule merely provides greater details for the record-keeping and inspection process in order to ensure that minors are not used as performers in sexually explicit depictions. The rule does not restrict in any way the content of the underlying depictions other than by clarifying the labeling on, and record-keeping requirements pertaining to, that underlying depiction. Cf., *e.g.*, 27 CFR 16.21 (alcoholic beverage health warning statement; mandatory label information). However, compliance with the record-keeping requirements of this part has no bearing on the legality or illegality of the underlying sexually explicit material.

Moreover, the growth of Internet facilities in the past five years, and the proliferation of pornography on Internet computer sites or services, requires that the regulations be updated. In the final rule, a number of definitions are revised to accomplish the application of the rule to the modern modes of communication.

B. Description and Estimates of the Number of Small Entities Affected by This Rule

A ''small business'' is defined by the Regulatory Flexibility Act (RFA) to be the same as a ''small business concern'' under the Small Business Act (SBA), 15 U.S.C. 632. Under the SBA, a ''small-business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. *See* 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632).

Based upon the information available to the Department through past investigations and enforcement actions involving the affected industry, there are likely to be a number of producers of sexually explicit depictions who hire or pay for performers and who, accordingly, would come under the ambit of the proposed rule. However, none of the changes made by this rule affect the number of producers that would be covered. The rule clarifies the meaning of an existing definition and how that definition covers electronic sexually explicit depictions, but does not expand that definition.

Pursuant to the RFA, in the proposed rule the Department encouraged all affected commercial entities to provide specific estimates, wherever possible, of the economic costs that this rule will impose on them and the benefits that it will bring to them and to the public. The Department asked affected small businesses to estimate what these regulations will cost as a percentage of their total revenues in order to enable the Department to ensure that small businesses are not unduly burdened. No specific estimates of the economic costs that the rule would impose were received.

The regulation has no effect on State or local governmental agencies.

C. Specific Requirements Imposed That Would Impact Private Companies

The final rule provides clearer requirements for private companies to maintain records of performers of sexually explicit depictions to ensure that minors are not used in such sexually explicit depictions. The final rule requires that these records be properly indexed and cross-referenced. In the proposed rule, the Department specifically sought information from affected producers on the costs of the record-keeping, indexing, and cross-referencing requirements. No commenters provided such information beyond qualitative assessments, which

are addressed in the Responses to Public Comments section of this Supplemental Information.

Nevertheless, the Department is aware from those qualitative statements that certain alternatives to the rule are possible. For example, two commenters commented that the regulation should permit third-party custody of records in order to reduce the burdens of storing material at a producer's place of business and of maintaining certain business hours in order to be available for inspection. The Department believes that allowing third-party custody, however, would be detrimental to the goals of the statute. It would unnecessarily complicate the compliance and inspection processes by removing the records from the physical location where they were initially collected, sorted, indexed, and compiled. Furthermore, permitting a third party to maintain the records would, if anything, exacerbate the concerns of numerous commenters regarding the privacy of information on performers and businesses by placing that information in the hands of another party.

Other alternatives suggested by commenters included the establishment of a national ''sex ID'' system with which performers would register with the government in a national database, and the creation of a password-protected database of identification records available to law enforcement. As explained above, the Department believes that they would be more burdensome on both the Department and producers to create, implement, and manage than the record-keeping system established by the rule. In addition, creation of such systems would likely require several years' work and delay implementation of the statute's record-keeping requirements.

The Department has, however, adopted numerous changes to the proposed rule in response to comments that it was too burdensome. For example, because commenters argued that the requirement that the statement appear on the homepage of any web site was too burdensome, the final rule permits web sites to contain a hypertext link that states, ''18 U.S.C. 2257 Record-Keeping Requirements Compliance Statement,'' that will open in a separate window that contains the required statement. Likewise, in response to public comments, the Department amended the proposed rule such that the final rule no longer requires businesses to be available for inspection from 8 a.m. to 6 p.m. every day, but rather permits inspections during the producer's normal business hours. Further, the Department modified the requirements regarding the size and typeface of the statement in response to public comments, as well as clarified that records may be maintained in either ''hard'' (paper) form or digital form.

At the same time, the Department also rejected potential changes that would extend the burdensomeness of the rule. For example, the Department did not adopt a comment that two forms of identification should be required of performers.

For these reasons, the Department believes that, although private companies will be affected by the rule, the costs are reasonable in light of the purpose of the statute and that it has imposed the regulation in the least burdensome manner possible.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, § 3(f). Accordingly this rule has been reviewed by the Office of Management and Budget.

The benefit of the regulation is that children will be better protected from exploitation in the production of sexually explicit depictions by ensuring that only those who are at least 18 years of age perform in such sexually explicit depictions. The costs to the industry include slightly higher record-keeping costs and the potential time spent assisting inspectors in the process of inspecting the required records. In the proposed rule, the Department expressly encouraged all affected commercial entities to provide specific estimates, wherever possible, of the economic costs that this rule will impose on them. Notwithstanding that request, not a single commenter provided any data on this aspect of the rule. Accordingly, the costs that this final rule will impose remain uncertain.

Executive Order 13132

This regulation 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. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This regulation meets the applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This rule modifies existing requirements to clarify the record-keeping requirements pursuant to Congressional enactments and the development of the Internet.

This rule contains a new information collection that satisfies the requirements of existing regulations to clarify the means of maintaining and organizing the required documents. This information collection, titled Inspection of Records Relating to Depiction of Sexually Explicit Performances, has been submitted to the Office of Management and Budget (OMB) for approval. Although comments were solicited from the public, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, in the proposed rule, no comments were received.

List of Subjects in 28 CFR Part 75

Crime, Infants and children, Reporting and recordkeeping requirements.

■ Accordingly, the Attorney General amends chapter I of title 28 of the Code of Federal Regulations as follows:

■ 1. Part 75 of title 28 CFR is revised to read as follows:

PART 75—CHILD PROTECTION RESTORATION AND PENALTIES ENHANCEMENT ACT OF 1990 AND PROTECT ACT; RECORD-KEEPING AND RECORD INSPECTION PROVISIONS

Sec.
75.1 Definitions.
75.2 Maintenance of records.
75.3 Categorization of records.
75.4 Location of records.
75.5 Inspection of records.
75.6 Statement describing location of books and records.
75.7 Exemption statement.
75.8 Location of the statement.

Authority: 18 U.S.C. 2257.

§ 75.1 Definitions.

(a) Terms used in this part shall have the meanings set forth in 18 U.S.C. 2257, and as provided in this section. The terms used and defined in these regulations are intended to provide common-language guidance and usage and are not meant to exclude technologies or uses of these terms as otherwise employed in practice or defined in other regulations or federal statutes (*i.e.*, 47 U.S.C. 230, 231).

(b) *Picture identification card* means a document issued by the United States, a State government or a political subdivision thereof, or a United States territory, that bears the photograph and the name of the individual identified, and provides sufficient specific information that it can be accessed from the issuing authority, such as a passport, Permanent Resident Card (commonly known as a ''Green Card''), or other employment authorization document issued by the United States, a driver's license issued by a State or the District of Columbia, or another form of identification issued by a State or the District of Columbia; or, a foreign government-issued equivalent of any of the documents listed above when both the person who is the subject of the picture identification card and the producer maintaining the required records are located outside the United States.

(c) *Producer* means any person, including any individual, corporation, or other organization, who is a primary producer or a secondary producer.

(1) A *primary producer* is any person who actually films, videotapes, photographs, or creates a digitally- or computer-manipulated image, a digital image, or picture of, or digitizes an image of, a visual depiction of an actual human being engaged in actual sexually explicit conduct.

(2) A *secondary producer* is any person who produces, assembles, manufactures, publishes, duplicates, reproduces, or reissues a book, magazine, periodical, film, videotape, digitally- or computer-manipulated image, picture, or other matter intended for commercial distribution that contains a visual depiction of an actual human being engaged in actual sexually explicit conduct, or who inserts on a computer site or service a digital image of, or otherwise manages the sexually explicit content of a computer site or service that contains a visual depiction of an actual human being engaged in actual sexually explicit conduct, including any person who enters into a contract, agreement, or conspiracy to do any of the foregoing.

(3) The same person may be both a primary and a secondary producer.

(4) Producer does not include persons whose activities relating to the visual depiction of actual sexually explicit conduct are limited to the following:

(i) Photo or film processing, including digitization of previously existing visual depictions, as part of a commercial enterprise, with no other commercial interest in the sexually explicit material, printing, and video duplicators;

(ii) Mere distribution;

(iii) Any activity, other than those activities identified in paragraphs (c) (1) and (2) of this section, that does not involve the hiring, contracting for, managing, or otherwise arranging for the participation of the depicted performers;

(iv) A provider of web-hosting services who does not, and reasonably cannot, manage the sexually explicit content of the computer site or service; or

(v) A provider of an electronic communication service or remote computing service who does not, and reasonably cannot, manage the sexually explicit content of the computer site or service.

(d) *Sell, distribute, redistribute, and re-release* refer to commercial distribution of a book, magazine, periodical, film, videotape, digitally- or computer-manipulated image, digital image, picture, or other matter that contains a visual depiction of an actual human being engaged in actual sexually explicit conduct, but does not refer to noncommercial or educational distribution of such matter, including transfers conducted by bona fide lending libraries, museums, schools, or educational organizations.

(e) *Copy,* when used:

(1) In reference to an identification document or a picture identification card, means a photocopy, photograph, or digitally scanned reproduction, and

(2) When used in reference to a sexually explicit depiction means the sexually explicit image itself (*e.g.,* a film, an image posted on a web page, an image taken by a webcam, a photo in a magazine, etc.).

(f) *Internet* means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which constitute the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(g) *Computer site or service* means a computer server-based file repository or file distribution service that is accessible over the Internet, World Wide Web, Usenet, or any other interactive computer service (as defined in 47 U.S.C. 230(f)(2)). Computer site or service includes without limitation, sites or services using hypertext markup language, hypertext transfer protocol, file transfer protocol, electronic mail transmission protocols, similar data transmission protocols, or any successor protocols, including but not limited to computer sites or services on the World Wide Web.

(h) *URL* means uniform resource locator.

(i) *Electronic communications service* has the meaning set forth in 18 U.S.C. 2510(15).

(j) *Remote computing service* has the meaning set forth in 18 U.S.C. 2711(2).

(k) *Manage content* means to make editorial or managerial decisions concerning the sexually explicit content of a computer site or service, but does not mean those who manage solely advertising, compliance with copyright law, or other forms of non-sexually explicit content.

(l) *Interactive computer service* has the meaning set forth in 47 U.S.C. 230(f)(2).

§ 75.2 Maintenance of records.

(a) Any producer of any book, magazine, periodical, film, videotape, digitally- or computer-manipulated image, digital image, picture, or other matter that contains a depiction of an actual human being engaged in actual sexually explicit conduct that is produced in whole or in part with materials that have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce and that contains one or more visual depictions of an actual human being engaged in actual sexually explicit conduct made after July 3, 1995 shall, for each performer portrayed in

such visual depiction, create and maintain records containing the following:

(1) The legal name and date of birth of each performer, obtained by the producer's examination of a picture identification card. For any performer portrayed in such a depiction made after July 3, 1995, the records shall also include a legible copy of the identification document examined and, if that document does not contain a recent and recognizable picture of the performer, a legible copy of a picture identification card. For any performer portrayed in such a depiction after June 23, 2005, the records shall include

(i) A copy of the depiction, and

(ii) Where the depiction is published on an Internet computer site or service, a copy of any URL associated with the depiction or, if no URL is associated with the depiction, another uniquely identifying reference associated with the location of the depiction on the Internet.

(2) Any name, other than each performer's legal name, ever used by the performer, including the performer's maiden name, alias, nickname, stage name, or professional name. For any performer portrayed in such a depiction made after July 3, 1995, such names shall be indexed by the title or identifying number of the book, magazine, film, videotape, digitally- or computer-manipulated image, digital image, picture, URL, or other matter. Producers may rely in good faith on representations by performers regarding accuracy of the names, other than legal names, used by performers.

(3) Records required to be created and maintained under this part shall be organized alphabetically, or numerically where appropriate, by the legal name of the performer (by last or family name, then first or given name), and shall be indexed or cross-referenced to each alias or other name used and to each title or identifying number of the book, magazine, film, videotape, digitally- or computer-manipulated image, digital image, picture, URL, or other matter.

(b) A producer who is a secondary producer as defined in § 75.1(c) may satisfy the requirements of this part to create and maintain records by accepting from the primary producer, as defined in § 75.1(c), copies of the records described in paragraph (a) of this section. Such a secondary producer shall also keep records of the name and address of the primary producer from whom he received copies of the records.

(c) The information contained in the records required to be created and maintained by this part need be current only as of the time the primary producer actually films, videotapes, or photographs, or creates a digitally or computer-manipulated image, digital image, or picture, of the visual depiction of an actual human being engaged in actual sexually explicit conduct. If the producer subsequently produces an additional book, magazine, film, videotape, digitally- or computer-manipulated image, digital image, or picture, or other matter (including but not limited to Internet computer site or services) that contains one or more visual depictions of an actual human being engaged in actual sexually explicit conduct made by a performer for whom he maintains records as required by this part, the producer may add the additional title or identifying number and the names of the performer to the existing records maintained pursuant to § 75.2(a)(2).

(d) For any record created or amended after June 23, 2005, all such records shall be organized alphabetically, or numerically where appropriate, by the legal name of the performer (by last or family name, then first or given name), and shall be indexed or cross-referenced to each alias or other name used and to each title or identifying number of the book, magazine, film, videotape, digitally- or computer-manipulated image, digital image, or picture, or other matter (including but not limited to Internet computer site or services). If the producer subsequently produces an additional book, magazine, film, videotape, digitally- or computer-manipulated image, digital image, or picture, or other matter (including but not limited to Internet computer site or services) that contains one or more visual depictions of an actual human being engaged in actual sexually explicit conduct made by a performer for whom he maintains records as required by this part, the producer shall add the additional title or identifying number and the names of the performer to the existing records and such records shall thereafter be maintained in accordance with this paragraph.

(e) Records required to be maintained under this part shall be segregated from all other records, shall not contain any other records, and shall not be contained within any other records.

(f) Records required to be maintained under this part may be kept either in hard copy or in digital form, provided that they include scanned copies of forms of identification and that there is a custodian of the records who can authenticate each digital record.

§ 75.3 Categorization of records.

Records required to be maintained under this part shall be categorized alphabetically, or numerically where appropriate, and retrievable to: All name(s) of each performer, including any alias, maiden name, nickname, stage name or professional name of the performer; and according to the title, number, or other similar identifier of each book, magazine, periodical, film, videotape, digitally- or computer-manipulated image, digital image, or picture, or other matter (including but not limited to Internet computer site or services). Only one copy of each picture of a performer's picture identification card and identification document must be kept as long as each copy is categorized and retrievable according to any name, real or assumed, used by such performer, and according to any title or other identifier of the matter.

§ 75.4 Location of records.

Any producer required by this part to maintain records shall make such records available at the producer's place of business. Each record shall be maintained for seven years from the date of creation or last amendment or addition. If the producer ceases to carry on the business, the records shall be maintained for five years thereafter. If the producer produces the book, magazine, periodical, film, videotape, digitally- or computer-manipulated image, digital image, or picture, or other matter (including but not limited to Internet computer site or services) as part of his control of or through his employment with an organization, records shall be made available at the organization's place of business. If the organization is dissolved, the individual who was responsible for maintaining the records on behalf of the organization, as described in § 75.6(b), shall continue to maintain the records for a period of five years after dissolution.

§ 75.5 Inspection of records.

(a) *Authority to inspect.* Investigators authorized by the Attorney General (hereinafter ''investigators'') are authorized to enter without delay and at reasonable times any establishment of a producer where records under § 75.2 are maintained to inspect during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, for the purpose of determining compliance with the record-keeping requirements of the Act and any other provision of the Act (hereinafter ''investigator'').

(b) *Advance notice of inspections.* Advance notice of record inspections shall not be given.

(c) *Conduct of inspections.*

(1) Inspections shall take place during the producer's normal business hours

and at such places as specified in § 75.4. For the purpose of this part, ''normal business hours'' are from 9 a.m. to 5 p.m., local time, Monday through Friday, or any other time during which the producer is actually conducting business relating to producing depiction of actual sexually explicit conduct. To the extent that the producer does not maintain at least 20 normal business hours per week, producers must provide notice to the inspecting agency of the hours during which records will be available for inspection, which in no case may be less than twenty (20) hours per week.

(2) Upon commencing an inspection, the investigator shall:

(i) Present his or her credentials to the owner, operator, or agent in charge of the establishment;

(ii) Explain the nature and purpose of the inspection, including the limited nature of the records inspection, and the records required to be kept by the Act and this part; and

(iii) Indicate the scope of the specific inspection and the records that he or she wishes to inspect.

(3) The inspections shall be conducted so as not to unreasonably disrupt the operations of the producer's establishment.

(4) At the conclusion of an inspection, the investigator may informally advise the producer of any apparent violations disclosed by the inspection. The producer may bring to the attention of the investigator any pertinent information regarding the records inspected or any other relevant matter.

(d) *Frequency of inspections.* A producer may be inspected once during any four-month period, unless there is a reasonable suspicion to believe that a violation of this part has occurred, in which case an additional inspection or inspections may be conducted before the four-month period has expired.

(e) *Copies of records.* An investigator may copy, at no expense to the producer, during the inspection, any record that is subject to inspection.

(f) *Other law enforcement authority.* These regulations do not restrict the otherwise lawful investigative prerogatives of an investigator while conducting an inspection.

(g) *Seizure of evidence.* Notwithstanding any provision of this part or any other regulation, a law enforcement officer may seize any evidence of the commission of any felony while conducting an inspection.

§ 75.6 Statement describing location of books and records.

(a) Any producer of any book, magazine, periodical, film, videotape, digitally- or computer-manipulated image, digital image, or picture, or other matter (including but not limited to Internet computer site or services) that contains one or more visual depictions of an actual human being engaged in actual sexually explicit conduct made after July 3, 1995, and produced, manufactured, published, duplicated, reproduced, or reissued on or after July 3, 1995, shall cause to be affixed to every copy of the matter a statement describing the location of the records required by this part. A producer may cause such statement to be affixed, for example, by instructing the manufacturer of the book, magazine, periodical, film, videotape, digitally- or computer-manipulated image, digital image, picture, or other matter to affix the statement.

(b) Every statement shall contain:

(1) The title of the book, magazine, periodical, film, or videotape, digitally- or computer-manipulated image, digital image, picture, or other matter (unless the title is prominently set out elsewhere in the book, magazine, periodical, film, or videotape, digitally- or computer-manipulated image, digital image, picture, or other matter) or, if there is no title, an identifying number or similar identifier that differentiates this matter from other matters which the producer has produced;

(2) The date of production, manufacture, publication, duplication, reproduction, or reissuance of the matter; and, (3) A street address at which the records required by this part may be made available. The street address may be an address specified by the primary producer or, if the secondary producer satisfies the requirements of § 75.2(b), the address of the secondary producer. A post office box address does not satisfy this requirement.

(c) If the producer is an organization, the statement shall also contain the name, title, and business address of the individual employed by such organization who is responsible for maintaining the records required by this part.

(d) The information contained in the statement must be accurate as of the date on which the book, magazine, periodical, film, videotape, digitally or computer-manipulated image, digital image, picture, or other matter is produced or reproduced.

(e) For the purposes of this section, the required statement shall be displayed in typeface that is no less than 12-point type or no smaller than the second-largest typeface on the material and in a color that clearly contrasts with the background color of the material. For any electronic or other display of the notice that is limited in time, the notice must be displayed for a sufficient duration and of a sufficient size to be capable of being read by the average viewer.

§ 75.7 Exemption statement.

(a) Any producer of any book, magazine, periodical, film, videotape, digitally- or computer-manipulated image, digital image, picture, or other matter may cause to be affixed to every copy of the matter a statement attesting that the matter is not covered by the record-keeping requirements of 18 U.S.C. 2257(a)–(c) and of this part if:

(1) The matter contains only visual depictions of actual sexually explicit conduct made before July 3, 1995, or is produced, manufactured, published, duplicated, reproduced, or reissued before July 3, 1995;

(2) The matter contains only visual depictions of simulated sexually explicit conduct; or,

(3) The matter contains only some combination of the visual depictions described in paragraphs (a)(1) and (a)(2) of this section.

(b) If the primary producer and the secondary producer are different entities, the primary producer may certify to the secondary producer that the visual depictions in the matter satisfy the standards under paragraphs (a)(1) through (a)(3) of this section. The secondary producer may then cause to be affixed to every copy of the matter a statement attesting that the matter is not covered by the record-keeping requirements of 18 U.S.C. 2257(a)–(c) and of this part.

§ 75.8 Location of the statement.

(a) All books, magazines, and periodicals shall contain the statement required in § 75.6 or suggested in § 75.7 either on the first page that appears after the front cover or on the page on which copyright information appears.

(b) In any film or videotape which contains end credits for the production, direction, distribution, or other activity in connection with the film or videotape, the statement referred to in § 75.6 or § 75.7 shall be presented at the end of the end titles or final credits and shall be displayed for a sufficient duration to be capable of being read by the average viewer.

(c) Any other film or videotape shall contain the required statement within one minute from the start of the film or videotape, and before the opening scene, and shall display the statement for a sufficient duration to be read by the average viewer.

(d) A computer site or service or Web address containing a digitally- or computer-manipulated image, digital image, or picture, shall contain the required statement on its homepage, any known major entry points, or principal URL (including the principal URL of a subdomain), or in a separate window that opens upon the viewer's clicking a hypertext link that states, ''18 U.S.C. 2257 Record-Keeping Requirements Compliance Statement.''

(e) For all other categories not otherwise mentioned in this section, the statement is to be prominently displayed consistent with the manner of display required for the aforementioned categories.

Dated: May 17, 2005.

Alberto R. Gonzales,

Attorney General.

[FR Doc. 05–10107 Filed 5–23–05; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–05–029]

Drawbridge Operating Regulations; Berwick Bay, (Atchafalaya River) Morgan City, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the BNSF Railway Company Vertical Lift Span Bridge across Berwick Bay, mile 0.4, (Atchafalaya River, mile 17.5) at Morgan City, St. Mary Parish, Louisiana.

DATES: This deviation is effective from 8 a.m. until 4 p.m. on Wednesday, June 8, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 500 Poydras Street, New Orleans, Louisiana, 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The BNSF Railway Company has requested a temporary deviation in order to replace the railroad signal circuits of the BNSF Railway Railroad Vertical Lift Span Bridge across Berwick Bay, mile 0.4 (Atchafalaya River, mile 17.5) at Morgan City, St. Mary Parish, Louisiana. Replacement of the signal circuits is necessary to turn the lining of signals across the bridge into a fully automatic operation so that the bridge will be in full compliance with requirements of the Federal Railroad Administration. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 8 a.m. until 4 p.m. on Wednesday, June 8, 2005. There may be times, during the closure period, when the draw will not be able to open for emergencies.

The bridge provides 4 feet of vertical clearance in the closed-to-navigation position. Thus, most vessels will not be able to transit through the bridge site when the bridge is closed. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft including sailboats and powerboats. Due to prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 13, 2005.

Marcus Redford,

Bridge Administrator.

[FR Doc. 05–10277 Filed 5–23–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–05–033]

Drawbridge Operation Regulations; Pascagoula River, Pascagoula, MS

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the CSX Transportation Railroad Bridge across the Pascagoula River, mile 1.5, at Pascagoula, Jackson County, Mississippi. This deviation allows the bridge to remain closed to navigation during the morning and afternoon time periods for four consecutive days. During the second day of the deviation, the bridge will remain closed to navigation continuously for ten hours. The deviation is necessary to repair the drive motor and associated hydraulic components of the draw span operating mechanism.

DATES: This deviation is effective from 8 a.m. on Monday June 13, 2005 until 6 p.m. on Thursday, June 16, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The CSX Transportation Company has requested a temporary deviation in order to repair the main drive motor and associated hydraulic components of the operating mechanism of the CSX Transportation Railroad Bascule Span Bridge across the Pascagoula River, mile 1.5, at Pascagoula, Jackson County, Mississippi. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 8 a.m. to noon and from 1 p.m. to 6 p.m. on Monday, June 13, 2005, Wednesday, June 15, 2005, and Thursday, June 16, 2005. On Tuesday, June 14, 2005, the bridge will remain closed to navigation continuously from 8 a.m. until 6 p.m. to facilitate installation of a shaft. A temporary deviation was previously approved to complete these repairs in March 2005; however, the required replacement parts were unavailable. The bridge owner has obtained all of the required parts and is now ready to complete the repairs. The repairs are necessary for continued safe operation of the draw span.

As the bridge has no vertical clearance in the closed-to-navigation position, vessels will not be able to transit through the bridge site when the bridge is closed. Navigation on the waterway consists of small cargo ships, tugs with tows, fishing vessels and

recreational craft including sailboats and powerboats. Due to prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 17, 2005.

Marcus Redford,

Bridge Administrator.

[FR Doc. 05–10276 Filed 5–23–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Jacksonville 05–050]

RIN 1625–AA00

Safety Zone; St. Johns River, Palatka, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the St. Johns River in Palatka, FL for the Blue Crab Festival. This rule is needed to protect participants, vendors, and spectators from the hazards associated with the launching of fireworks from a pier over water. Entry into or movement within this zone is prohibited without approval of the Captain of the Port Jacksonville.

DATES: This rule is effective from 8:45 p.m. to 9:45 p.m. on May 27, 2005.

ADDRESSES: Documents mentioned in this preamble as being available in the docket, are part of docket [COTP Jacksonville 05–050] and are available for inspection and copying at Coast Guard Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, Florida, 32211, between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jamie Bigbie at Coast Guard Marine Safety Office Jacksonville, FL, tel: (904) 232–2640, ext. 105.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NRPM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, and delaying the rule's effective date is contrary to public safety because immediate action is necessary to protect the public and waters of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and may place Coast Guard vessels in the vicinity of this zone to advise mariners of the restriction.

Background and Purpose

This rule is needed to protect spectator craft in the vicinity of the fireworks presentation from the hazards associated with transport, storage, and launching of fireworks. Anchoring, mooring, or transiting within this zone is prohibited, unless authorized by the Captain of the Port, Jacksonville, FL. The temporary safety zone encompasses all waters within a 500-yard radius around the pier from which fireworks will be launched, located at position 29°38.62′ N, 081°37.84′ W.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under section 5 U.S.C. 605 (b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulation will only be enforced for approximately one hour the day it is in effect and the impact on routine navigation are expected to be minimal because traffic may transit safely around the zone and traffic may enter upon permission of the Captain of the Port or his representative.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

Indian Tribal Governments

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T07–050 is added to read as follows:

§ 165.T07–050 Safety Zone St. Johns River, Palatka, FL

(a) *Regulated area.* The temporary safety zone encompasses all waters on the St. Johns River, Palatka, FL within a 500-yard radius around the pier from which fireworks will be launched, located at approximate position 29°38.62′ N, 081°37.84′ W.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Jacksonville, FL.

(c) *Dates.* This rule is effective from 8:45 p.m. to 9:45 p.m. on May 27, 2005.

Dated: May 9, 2005.

David L. Lersch,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 05–10274 Filed 5–23–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–05–025]

RIN 1625–AA87

Security Zone; New York Marine Inspection Zone and Captain of the Port Zone, New York Harbor

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones in portions of the waters around Stapleton Homeport Pier in Upper New York Bay, as well as the New York City Passenger Ship Terminal and Intrepid Museum in the Hudson River and around each participating Fleet Week vessel. This action is necessary to safeguard Naval vessels, Coast Guard vessels, and critical port infrastructure from sabotage, subversive act, or other threats. This rule does not apply to any vessel engaged in the enforcement of these security zones, other law enforcement, port security, or search and rescue activity. This rule prohibits entry into or movement within these security zones without authorization from the Captain of the Port of New York.

DATES: This rule is effective from 8 a.m. on May 25, 2005, until 8 p.m. on June 1, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD01–05–025] and are available for inspection or copying at Coast Guard Activities New York Waterways Management Division, 212 Coast Guard Drive, room 310, Staten Island, NY between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Scott White, Waterways Management Division, Coast Guard Activities New York at (718) 354–4228.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 20, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; New York Marine Inspection Zone and Captain of the Port Zone, New York Harbor'' in the **Federal Register** (70 FR 20493). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held. Under 5 U.S.C. 553(d)(3), the Coast Guard finds

that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This action is necessary due to the event occurring prior to the completion of the 30-day publication period.

Background and Purpose

Following the terrorist attacks in New York on September 11, 2001, the Ports of New York and New Jersey have been in a heightened state of threat awareness and port security readiness. Highly publicized events that occur in concentrated areas within the greater New York Metropolitan region have resulted in the elevation of Maritime Security (MARSEC) conditions and an increase in port security measures to abate credible and potential threats against the maritime community and public at large.

Fleet Week 2005 will bring a large composition of U.S. and foreign military vessels to the Port of New York for the purpose of promoting military and naval heritage. The event allows for public access to these vessels as they are moored at the port facilities of the New York City Passenger Ship Terminal, Intrepid Museum, and Stapleton Homeport Pier. Such a high profile event with large public throughput could present a potential target for terrorist or subversive actions.

The establishment of these security zones is necessary to protect participating vessels, regional infrastructure, and the public from waterborne attack and subversive activity.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking. Therefore, no changes have been made from the proposed rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This conclusion is based on the fact that the zones are temporary in nature; the zones implicate relatively small portions of the waterway; and vessels will be able to transit around the security zones at all times or after a limited wait while the parade passes their location.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Upper New York Bay and the Hudson River in which entry will be prohibited by these security zones.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: the zones are temporary in nature; the zones implicate relatively small portions of the waterways; and vessels will be able to transit around the security zones at all times or after waiting for a limited duration while the parade column passes their location.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Scott White, Waterways Management Division, Coast Guard Activities New York at (718) 354–4228. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 8 a.m., May 25, 2005, to 8 p.m. June 1, 2005, add temporary § 165.T01–053 to read as follows:

§ 165.T01–053 Security Zones; New York Marine Inspection Zone and Captain of the Port Zone.

(a) *Location.* The following waters within the New York Marine Inspection Zone and Captain of the Port Zone are security zones:

(1) *Stapleton Homeport Pier, Upper New York Bay, Staten Island, NY.* All waters of Upper New York Bay within approximately 400 yards of the Stapleton Homeport Pier bound by the following approximate positions: 40°38′00.6″ N, 074°04′22.3″ W, thence to 40°37′51.1″ N, 074°03′46.5″ W, thence to 40°37′27.5″ N, 074°03′54.5″ W, thence to 40°37′33.7″ N, 074°04′20.8″ W, (NAD 1983) thence along the shoreline to the point of origin.

(2) *New York City Passenger Ship Terminal and Intrepid Museum, Hudson River, Manhattan, NY.* All waters of the Hudson River within approximately 400 yards of Piers 86, 88, 90, and 92 bound by the following points: From the northeast corner of Pier 81 where it intersects the seawall, thence to approximate position 40°45′51.3″ N, 074°00′2″ W, thence to 40°46′27.7″ N, 074°00′04.9″ W, thence to the southeast corner of Pier 97 where it intersects the seawall.

(3) *2005 Fleet Week Parade of Ships and Navigational Periods, Port of New York/New Jersey.* All waters of the Port of New York/New Jersey within a 500-yard radius of each vessel participating in 2005 Fleet Week events while underway between Ambrose Light (LLNR 720) and the George Washington Bridge (river mile 11.0) on the Hudson River.

(b) *Enforcement period.* This section will be enforced from 8 a.m. on Wednesday, May 25, 2005, until 8 p.m. on Wednesday, June 1, 2005.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.33 apply.

(2) No vessel or person is allowed within 500 yards of a vessel protected by the security zone described in Paragraph (a)(3), unless authorized by the Captain of the Port or the designated on-scene-patrol personnel.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard, as well as all uniformed Federal, State, and local law enforcement personnel assisting with event patrol. Upon being hailed by a U.S. Coast Guard or other Federal, State, or local law enforcement vessel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

Dated: May 17, 2005.

Glenn A. Wiltshire,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 05–10361 Filed 5–23–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK01

Compensated Work Therapy/ Transitional Residences Program; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; technical amendment.

SUMMARY: The Department of Veterans Affairs (VA) is reinstating regulations that were inadvertently removed by a previous rulemaking. This final rule technical amendment corrects that error and restores the missing regulations.

DATES: *Effective Date:* This technical amendment is effective May 24, 2005.

Applicability Date: September 17, 2002.

FOR FURTHER INFORMATION CONTACT: Richard R. Robinson, Deputy Assistant General Counsel, Office of the General Counsel (023B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202.273.6334 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On January 31, 2002, VA published a final rule in the **Federal Register** (67 FR 4667) amending 38 CFR part 17 to establish provisions regarding housing under the Compensated Work Therapy/ Transitional Residences program (CWT). VA did this by redesignating the existing § 17.49 (Priorities for inpatient care) as § 17.48, and by adding a new § 17.49, Compensated Work Therapy/ Transitional Residences program. Subsequently, on September 17, 2002,

VA published an interim final rule in the **Federal Register** (67 FR 58528) to establish priorities for outpatient medical services and inpatient hospital care. In doing so, VA failed to consider the previous, January 31, 2002, amendment redesignating old § 17.49 as new § 17.48 and adding a new § 17.49. As a result, VA mistakenly instructed the CFR editor to revise § 17.49 instead of § 17.48. Consequently, the revision to § 17.49 erroneously removed the CWT rule and replaced it with the revised priority rule. In the CFR, the old priority rule (entitled ''Priorities for inpatient care'') is in § 17.48; the new priority rule (entitled ''Priorities for outpatient medical services and inpatient hospital care'') is in § 17.49; and the CWT rule was removed. To correct the inadvertent removal of the CWT rule, this final rule technical amendment revises 38 CFR 17.48 to reinstate the CWT rule originally published as a final rule in the **Federal Register** on January 31, 2002, at § 17.49.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: May 18, 2005.

Robert C. McFetridge,

Director, Regulations Management.

■ For the reasons set out above, 38 CFR part 17 is corrected as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

■ 2. Section 17.48 is revised to read as follows:

§ 17.48 Compensated Work Therapy/Transitional Residences program.

(a) This section sets forth requirements for persons residing in housing under the Compensated Work Therapy/Transitional Residences program.

(b) House managers shall be responsible for coordinating and supervising the day-to-day operations of the facilities. The local VA program coordinator shall select each house manager and may give preference to an individual who is a current or past resident of the facility or the program. A house manager must have the following qualifications:

(1) A stable, responsible and caring demeanor;

(2) Leadership qualities including the ability to motivate;

(3) Effective communication skills including the ability to interact;

(4) A willingness to accept feedback;

(5) A willingness to follow a chain of command.

(c) Each resident admitted to the Transitional Residence, except for a house manager, must also be in the Compensated Work Therapy program.

(d) Each resident, except for a house manager, must bi-weekly, in advance, pay a fee to VA for living in the housing. The local VA program coordinator will establish the fee for each resident in accordance with the provisions of paragraph (d)(1) of this section.

(1) The total amount of actual operating expenses of the residence (utilities, maintenance, furnishings, appliances, service equipment, all other operating costs) for the previous fiscal year plus 15 percent of that amount equals the total operating budget for the current fiscal year. The total operating budget is to be divided by the average number of beds occupied during the previous fiscal year and the resulting amount is the average yearly amount per bed. The bi-weekly fee shall equal 1/26th of the average yearly amount per bed, except that a resident shall not, on average, pay more than 30 percent of their gross CWT (Compensated Work Therapy) bi-weekly earnings. The VA program manager shall, bi-annually, conduct a review of the factors in this paragraph for determining resident payments. If he or she determines that the payments are too high or too low by more than 5 percent of the total operating budget, he or she shall recalculate resident payments under the criteria set forth in this paragraph, except that the calculations shall be based on the current fiscal year (actual amounts for the elapsed portion and projected amounts for the remainder).

(2) If the revenues of a residence do not meet the expenses of the residence resulting in an inability to pay actual operating expenses, the medical center of jurisdiction shall provide the funds necessary to return the residence to fiscal solvency in accordance with the provisions of this section.

(e) The length of stay in housing under the Compensated Work Therapy/Transitional Residences program is based on the individual needs of each resident, as determined by consensus of the resident and his/her VA Clinical Treatment team. However, the length of stay should not exceed 12 months.

Authority: 38 U.S.C. 1772.

[FR Doc. 05–10288 Filed 5–23–05; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL–7916–6]

Notice of Availability of Class Deviation; Alternative State Allotment formula For FY 2005 Clean Water Act Section 106 Increase

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This document provides notice of the availability of a Class Deviation from EPA's allotment formula for the awarding of Clean Water Act (CWA) Section 106 grants and also sets forth an alternative formula that will apply for the $9.92 million FY 2005 increase in EPA's appropriation for these grants. Currently, monies awarded under Section 106 of the Clean Water Act are allocated through allotment formulae for States, interstate agencies, and tribes. These formulae implement Section 106(b) of the CWA, which directs the EPA Administrator to make allotments for grants from sums appropriated by Congress in each fiscal year ''in accordance with regulations promulgated by him on the basis of the extent of the pollution problem in the respective states.'' Because the President's FY 2005 budget request specifically requested an increase in Section 106 funding for FY 2005 enhanced monitoring activities, EPA determined through a Class Deviation that if it applied the current State allotment formula to that increase only a small number of States would actually receive an increase while the majority of States would not receive a sufficient increase to strengthen their water quality monitoring activities. The Class Deviation and the new allotment formula apply only to the $9.92 million FY 2005 Section 106 increase and not to the remainder of the monies appropriated by Congress for these grants, which will be allocated in accordance with the allocation formulae EPA currently uses.

DATES: These procedures are effective upon May 24, 2005.

FOR FURTHER INFORMATION CONTACT: Lena Ferris, Office of Wastewater Management, Office of Water, 1200 Pennsylvania Avenue, NW., Mail Code 4201M, Washington, DC 20460. The telephone number is (202) 564–8831; facsimile number (202) 5501–2399; and e-mail address is *ferris.lena@epa.gov.* Copies of the Class Deviation and the allocation are available by contacting Lena Ferris as indicated above.

SUPPLEMENTARY INFORMATION: This action announces EPA's Class Deviation from EPA's allotment formula for the awarding of CWA Section 106 grants found at 40 CFR part 35, subpart A, § 35.162(b) and sets forth an alternative allotment formula for the FY 2005 increase in EPA's appropriation for these grants. The alternative allotment formula is designed to direct the increase in these funds toward new state monitoring activities, which is the basis for the President's FY 2005 budget request increase for these grants. This revised formula, which is set forth below and is consistent with Section 106(b) of the CWA, will ensure that States are provided a meaningful increase that is sufficient to begin strengthening their water quality monitoring activities.

Regulated Entities

States that are eligible to receive grants under Section 106 of the Clean Water Act.

Background

Section 106 of the CWA requires that funds appropriated under this section be allocated to States, tribes, and interstate agencies, ''on the basis of the extent of the pollution problem in the respective States,'' in accordance with promulgated regulations. EPA developed and promulgated the current Section 106 State and Interstate Allocation Formula based on six components selected by EPA and the States to serve as surrogate representatives for the extent of the pollution problem in the States. The Tribal formula is also consistent with this approach. Approximately $9.1 million of the increase will be allocated with each State receiving approximately $172,000, while each territory and the District of Columbia will receive an allocation of approximately $86,000. Of the increase, EPA will allot to both Interstate Agencies and Tribes in accordance with existing formulae.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before certain actions may take affect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act.

List of Subjects in 40 CFR Part 35

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: May 13, 2005.

Benjamin H. Grumbles,

Assistant Administrator, Office of Water.

EPA establishes the following State allocation formula for the $9.92 million increase in CWA Section 106 funding as follows:

Section 106 State Program (Deviation Requested From State Allocation Formula). The majority of the $9.92 million increase will be directed to support the State and territorial water quality programs. Approximately $9.1 million will be allocated with each State receiving a full-share allocation of $172,447, while each territory and the District of Columbia will receive a half-share allocation of approximately $86,223. Combining the increase with the States' base funding, the total section 106 State allocation will increase to approximately $179.5 million.

[FR Doc. 05–10342 Filed 5–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[FRL–7909–5]

Underground Storage Tank Program: Approved State Program for Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes EPA to grant approval to States to operate their underground storage tank programs in lieu of the Federal program. Title 40 of the Code of Federal Regulations (40 CFR) part 282 codifies EPA's decision to approve State programs and incorporates by reference those provisions of the State statutes and regulations that will be subject to EPA's inspection and enforcement authorities in accordance with sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions. This rule codifies in 40 CFR part 282 the prior approval of the State of Minnesota's underground storage tank program and incorporates by reference appropriate provisions of State statutes and regulations.

DATES: This regulation is effective July 25, 2005, unless EPA publishes a prior **Federal Register** notice withdrawing this immediate final rule. All comments on the codification of Minnesota's underground storage tank program must be received by the close of business June 23, 2005. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of July 25, 2005, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Send written comments to Andrew Tschampa, U.S. EPA Region 5, Mailcode DU–7J, 77 West Jackson Blvd., Chicago, IL 60604. Comments may also be submitted electronically through the Internet to: *tschampa.andrew@epa.gov* or by facsimile at (312) 353–3159. You can examine copies of the codification materials during normal business hours

at the following location: EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. Phone (312) 886–6136.

FOR FURTHER INFORMATION CONTACT: Andrew Tschampa, U.S. EPA Region 5, Mailcode DU–7J, 77 West Jackson Blvd., Chicago, IL 60604. Phone (312) 886–6136.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of RCRA, 42 U.S.C. 6991c, allows the EPA to approve a State underground storage tank program to operate in the State in lieu of the Federal underground storage tank program. EPA published a rule in the **Federal Register** granting approval to Minnesota on November 30, 2001, and approval was effective on December 31, 2001 (66 FR 59713).

EPA codifies its approval of a State program in 40 CFR part 282 and incorporates by reference therein the State's statutes and regulations that make up the approved program which is federally-enforceable in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of Minnesota's underground storage tank program. This codification reflects the State program in effect at the time EPA granted Minnesota's approval, in accordance with section 9004(a), 42 U.S.C. 6991c(a), for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the Minnesota program, and EPA is not now reopening that decision nor requesting comment on it.

To codify EPA's approval of Minnesota's underground storage tank program, EPA has added section 282.73 to title 40 of the CFR. 40 CFR 282.73(d)(1)(i) incorporates by reference the State's statutes and regulations that make up the approved program which is federally-enforceable. 40 CFR 282.73 also references the Attorney General's Statement, the Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which were evaluated as part of the approval process of the underground storage tank program, in accordance with Subtitle I of RCRA.

EPA retains the authority in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions, to undertake inspections and enforcement actions in approved States. With respect to such an enforcement action, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State analogues to these provisions. Therefore, Minnesota's inspection and enforcement authorities are not incorporated by reference, nor are they part of Minnesota's approved state program which operates in lieu of the Federal program. These authorities, however, are listed in 40 CFR 282.73(d)(1)(ii) for informational purposes, and also because EPA considered them in determining the adequacy of Minnesota's enforcement authority. Minnesota's authority to inspect and enforce the State's underground storage tank requirements continues to operate independently under State law.

Some provisions of the State's underground storage tank program are not part of the federally-approved State program. These non-approved provisions are not part of the RCRA Subtitle I program because they are ''broader in scope'' than Subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, State provisions which are ''broader in scope'' than the Federal program are not incorporated by reference for purposes of Federal enforcement in 40 CFR part 282. Section 282.73(d)(1)(iii) of the codification simply lists for reference and clarity the Minnesota statutory and regulatory provisions which are ''broader in scope'' than the Federal program and which are not, therefore, part of the approved program being codified today. ''Broader in scope'' provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

When the phrases, ''insofar'' and ''except insofar,'' are used in Appendix A (which provides an informational listing of the state requirements incorporated by reference in Part 282 of the Code of Federal Regulations), refer to the binders in the codification materials for specifics as to any words, phrases, sentences, paragraphs, or subsections that are ''crossed-out'' in the binders. These crossed-out materials are not incorporated by reference in Part 282 of the Code of Federal Regulations.

Statutory and Executive Order Reviews: This rule only codifies EPA-authorized underground storage tank program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law (see Supplementary Information). Therefore, this rule complies with applicable executive orders and statutory provisions as follows. 1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this rule from its review under Executive Order (EO) 12866. 2. Paperwork Reduction Act—This rule does not impose an information collection burden under the Paperwork Reduction Act. 3. Regulatory Flexibility Act—After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. 4. Unfunded Mandates Reform Act—Because this rule codifies pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act. 5. Executive Order 13132: Federalism—EO 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, 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). 6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments—EO 13175 does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes). 7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks—This rule is not subject to EO 13045 because it is not economically significant and it is not based on health or safety risks. 8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use—This rule is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866. 9. National Technology Transfer And Advancement Act—EPA has previously addressed the non-applicability of the National Technology Transfer and Advancement Act in its final approval of this state program. *See* 66 FR 59713. Section 12(d) of the National Technology Transfer and Advancement Act does not apply to this rule. 10. Congressional Review Act—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the

Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). Nevertheless, to allow time for public comment, this action will be effective on July 25, 2005.

List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: April 22, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ For the reasons set forth in the preamble, 40 CFR part 282 is amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Subpart B—Approved State Programs

■ 2. Subpart B is amended by adding § 282.73 to read as follows:

§ 282.73 Minnesota State-Administered Program.

(a) The State of Minnesota's underground storage tank program is approved in lieu of the Federal program in accordance with Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq*. The State's program, as administered by the Minnesota Pollution Control Agency, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the Minnesota underground storage tank program on November 30, 2001, and approval was effective on December 31, 2001.

(b) Minnesota has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) To retain program approval, Minnesota must revise its approved program to adopt new changes to the Federal Subtitle I program that make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Minnesota obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) Minnesota has final approval for the following elements submitted to EPA in the State's program application for final approval. On November 30, 2001, EPA published a rule approving the State's program in the **Federal Register**, 66 FR 59713. That approval became effective on December 31, 2001. Copies of Minnesota's program application may be obtained from the Minnesota Pollution Control Agency, UST/LUST Program, 520 Lafayette Road North, St. Paul, MN 55155–3898.

(1) *State statutes and regulations*. (i) The provisions cited in paragraph (d)(1)(i) of this section are incorporated by reference as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq*.

(A) Minnesota Statutory Requirements Applicable to the Underground Storage Tank Program, 2000.

(B) Minnesota Regulatory Requirements Applicable to the Underground Storage Tank Program, 2000.

(ii) EPA considered the following statutes and regulations in evaluating the State program, but did not incorporate them by reference.

(A) The statutory provisions include:

(1) *Minnesota Statutes, Chapter 13, Government Data Practices*

M. S. 13.08 Civil remedies
M. S. 13.09 Penalties

(2) *Minnesota Statutes, Chapter 115, Water Pollution Control; Sanitary Districts*

M. S. 115.04 Disposal Systems and Point Sources; subd. 1, 2, 3: Information; Examination of records; Access to premises
M. S. 115.071 Enforcement
M. S. 115.072 Recovery of Litigation Costs and Expenses

(3) *Minnesota Statutes, Chapter 115B, Environmental Response and Liability*

M. S. 115B.17 State response to releases; subd. 4: Access to information and property
M. S. 115B.175 Voluntary Response Actions; Liability Protection; Procedures
M. S. 115B.177 Owner of Real Property Affected by Off-Site Release
M. S. 115B.178 Association with Release; Commissioner's Determination
M. S. 115B.18 Failure to Take Requested Action; Civil Penalties; Action to Compel Performance; Injunctive Relief

(4) *Minnesota Statutes, Chapter 115C, Petroleum Tank Release Cleanup*

M. S. 115C.04 Liability for Response Costs
M. S. 115C.05 Civil Penalty
M. S. 115C.09 Reimbursement; subd. 5(b), 6: Return of reimbursement; Fraud
M. S. 115C.113 Orders
M. S. 115C.12 Appeal of reimbursement determination

(5) *Minnesota Statutes, Chapter 116, Pollution Control Agency*

M. S. 116.07 Powers and Duties; subd. 9(b): Orders; investigations
M. S. 116.072 Administrative Penalties
M. S. 116.073 Field Citations
M. S. 116.091 Systems and Facilities
M. S. 116.11 Emergency Powers

(6) *Minnesota Statutes, Chapter 116B, Environmental Rights*

M. S. 116B.03 Civil Actions
M. S. 116B.07 Relief

(B) The regulatory provisions include:

(1) *Minnesota Rules of Civil Procedure*

Rule 24.01 Intervention of Right
Rule 24.02 Permissive Intervention

(2) *Minnesota Rules, Chapter 2890, Petroleum Tank Releases*

2890.0100 Review and Determination
2890.0110 Right to Appeal
2890.0130 Action on Notice of Lien Filing

(3) *Minnesota Rules, Chapter 7000, Procedural Rule*

M. S. 7000.0300 Duty of Candor
M. S. 7000.0900 Informal Complaints
M. S. 7000.1200 Inspection of Public Records
M. S. 7000.1300 Confidential Information

(iii) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference. These provisions are not federally enforceable.

(A) The statutory provisions include:

(1) *Minnesota Statutes, Chapter 115C, Petroleum Tank Release Cleanup*

M. S. 115C.03 Response to releases [insofar as subd. 10 imposes recordkeeping requirements on contractors and consultants.]
M. S. 115C.045 Kickbacks [insofar as it applies to individuals other than UST system owners and operators.]
M. S. 115C.065 Consultants' or Contractors' duty to notify [insofar as it imposes notification requirements on contractors and consultants.]
M. S. 115C.08 Petroleum tank fund [insofar as subd. 3 imposes a petroleum tank release cleanup fee on petroleum distributors.]
M. S. 115C.11 Consultants and contractors; sanctions [insofar as it applies to individuals other than UST system owners and operators.]

M. S. 115C.111 Consultant and contractor sanctions; actions based on conduct occurring before March 14, 1996 [insofar as it applies to individuals other than UST system owners and operators.]
M. S. 115C.112 Consultant and contractor sanctions; actions based on conduct occurring on and after March 14, 1996 [insofar as it applies to individuals other than UST system owners and operators.]

(2) *Minnesota Statutes, Chapter 116, Pollution Control Agency*

M. S. 116.46 Definitions [insofar as subd. 8 includes vessels, enclosures, or structures—which are exempt from the federal program—in the definition of UST.]
M. S. 116.47 Exemptions [insofar as paragraph (2) does not exclude from regulation USTs of 1,100 gallon capacity or more used to store heating oil for consumptive use.]
M. S. 116.48 Notification requirements [insofar as subd. 1(b) requires that the owner of an AST must notify the MPCA of the tank's status.]
M. S. 116.48 Notification requirements [insofar as subd. 2 imposes requirements on owners who discover an abandoned AST.]
M. S. 116.48 Notification requirements [insofar as subd. 3 imposes notification requirements on owners of ASTs removing a tank from service or changing the tank's service.]
M. S. 116.48 Notification requirements [insofar as subd. 4 places notification requirements on persons transferring the title to regulated substances to be placed directly into an UST.]
M. S. 116.48 Notification requirements [insofar as subd. 5 imposes notification requirements on sellers of ASTs.]
M. S. 116.48 Notification requirements [insofar as subd. 6 imposes notification requirements on owners who plan to transfer ownership of property containing an AST.]
M. S. 116.491 Tank installers training and certification [insofar as it applies to individuals other than UST system owners and operators.]
M. S. 116.492 Basement storage tanks; removal [insofar as it applies to a class of tanks not regulated under the federal program.]

(B) The regulatory provisions include:

(1) *Minnesota Rules, Chapter 7105—Minnesota Pollution Control Agency, Water Quality Division, Underground Storage Tanks: Training* (In addition to the other specific reasons noted, the following sections of Chapter 7105 are broader in scope, insofar as they set forth training requirements for persons not regulated under the federal program.)

7105.0010 Definitions [insofar as subp. 25 includes vessels, enclosures, and structures—which are exempt from the federal program—in the definition of UST.]
7105.0030 General Provisions; Certification requirements and deadlines; Certificate availability [insofar as subp. 1 and 2 require training for individuals not regulated under the federal program.]
7105.0040 Exclusions [insofar as it does not exclude from regulation heating oil storage tanks with a capacity of greater than 1,100 gallons.]
7105.0050 Contractor Certification
7105.0060 Supervisor Certification
7105.0070 Standards of Performance
7105.0080 Storage Tank Service Provider Training Course Requirements
7105.0090 Examinations and Diplomas
7105.0100 Approval of Certification Training Courses
7105.0110 Sanctions
7105.0120 Fees
7105.0130 Incorporation by Reference

(2) *Minnesota Rules, Chapter 7150—Minnesota Pollution Control Agency, Water Quality Division, Underground Storage Tanks Program*

7150.0010 Applicability [insofar as subp. 2 does not exclude from regulation liquid traps or associated gathering lines directly related to oil and gas production and gathering operations.]
7150.0010 Applicability [insofar as subp. 2(H) does not exclude from regulation heating oil storage tanks with a storage capacity of greater than 1,100 gallons.]
7150.0010 Applicability [insofar as subp. 5 does not exclude owners and operators of heating oil storage tanks with a storage capacity of greater than 1,100 gallons from notification requirements.]
7150.0030 Definitions [insofar as subp. 51 includes vessels, enclosures, and structures—which are exempt from the federal program—in the definition of UST.]
7150.0300 General Requirements for All Underground Storage Tank Systems [insofar as subp. 3 imposes release detection schedule requirements on hazardous material tanks not regulated under the federal program.]

(3) *Minnesota Rules, Chapter 7510—Department of Public Safety, Fire Marshal Division, Fire Safety*

7510.3670 Liquefied Petroleum Gases; Section 8203: Installation of Containers [insofar as it regulates ASTs.]

(2) *Statement of legal authority.* (i) ''Attorney General's Statement,'' signed by the State Attorney General on September 12, 2000, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of Minnesota to EPA, September 12, 2000, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The ''Demonstration of Procedures for Adequate Enforcement'' submitted as part of the original application on May 11, 2000, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application on May 11, 2000, though not incorporated by reference, are referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 5 and the Minnesota Pollution Control Agency, signed by the EPA Regional Administrator on November 14, 2001, though not incorporated by reference, is referenced as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to Part 282 is amended by adding in alphabetical order ''Minnesota'' and its listing.

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Minnesota

(a) The statutory provisions include:

(1) *Minnesota Statutes, Chapter 13, Government Data Practices*

M. S. 13.01 Government Data
M. S. 13.02 Collection, security, and dissemination of records; definitions
M. S. 13.03 Access to government data
M. S. 13.04 Rights of subjects of data
M. S. 13.05 Duties of responsible authority
M. S. 13.06 Temporary classification
M. S. 13.07 Duties of the commissioner
M. S. 13.3806 Public health data coded elsewhere; subd. 1–3, 6, 10, 20: Scope; Certain epidemiologic studies; Public health studies; Health records; Health threat procedures; Hazardous substance exposure
M. S. 13.741 Pollution control; environmental quality data
M. S. 13.7411 Pollution control and environmental quality data coded elsewhere; subd. 1–3, 5–7: Scope; Environmental audits, performance schedules; Office of environmental assistance; Environmental response and liability; Petroleum tank release; Toxic pollution prevention plans

(2) *Minnesota Statutes, Chapter 115, Water Pollution Control; Sanitary Districts*

M. S. 115.01 Definitions
M. S. 115.061 Duty to notify and avoid water pollution

(3) *Minnesota Statutes, Chapter 115B, Environmental Response and Liability*

M. S. 115B.17 State Response to Releases; subd. 1–3, 12–14: Removal and remedial action; Other actions; Cleanup standards; Public notice of proposed response actions; Duty to provide information; Authorization of certain response actions; Priorities; rules; Requests for review, investigation, and oversight

(4) *Minnesota Statutes, Chapter 115C, Petroleum Tank Release Cleanup*

M. S. 115C.01 Citation
M. S. 115C.02 Definitions
M. S. 115C.021 Responsible person
M. S. 115C.03 Response to releases [except subd. 10 insofar as it applies to contractors and consultants, who are not regulated under the federal program.]
M. S. 115C.06 Effect on other law
M. S. 115C.07 Petroleum tank release compensation board
M. S. 115C.08 Petroleum tank fund [except subd. 3, which imposes a petroleum tank release cleanup fee on petroleum distributors]
M. S. 115C.09 Reimbursement [except subd. 5(b) and 6, which set forth enforcement authorities]
M. S. 115C.092 Tank Removals; Payment for pre-removal site assessment

(5) *Minnesota Statutes, Chapter 115E, Oil and Hazardous Substance Discharge Preparedness*

M. S. 115E.01 Definitions
M. S. 115E.02 Duty to prevent discharges

(6) *Minnesota Statutes, Chapter 116, Pollution Control Agency*

M. S. 116.06 Definitions
M. S. 116.46 Definitions [except subd. 8, insofar as it includes vessels, enclosures, or structures—which are exempt from the federal program—in the definition of UST.]
M. S. 116.47 Exemptions [except insofar as paragraph (2) does not exclude from regulation tanks of 1,100 gallon capacity or more used to store heating oil for consumptive purposes]
M. S. 116.48 Notification requirements [except subd. 1(b), insofar as it requires owners of aboveground storage tanks (ASTs) to notify the agency of the tank's status; subd. 2 and 6, insofar as they impose requirements on owners of ASTs; subd. 3, insofar as it imposes notification requirements on owners of ASTs removing a tank from service or changing the tank's service; subd. 4, insofar as it places notification requirements on persons transferring the title to regulated substances to be placed directly into an UST; and subd. 5, insofar as it imposes notification requirements on sellers of ASTs.]
M. S. 116.49 Environmental protection requirements

(7) *Minnesota Statutes, Chapter 299F, Fire Marshal*

M. S. 299F.011 Uniform Fire Code; adoption; subd. 1, 3, 4: Authority; Rules for code administration and enforcement; Applicability; local authority
M. S. 299F.19 Flammable liquids and explosives; subd. 1: Rules

(b) The regulatory provisions include:

(1) *Minnesota Rules, Chapter 2890, Petroleum Tank Releases*

2890.0010 Definitions
2890.0060 Reimbursement of Costs
2890.0065 Reduction of Reimbursement Amount
2890.0070 Eligible Costs
2890.0071 Ineligible Costs
2890.0072 Overview of Rules Governing Reasonableness of Costs for Consultant Services
2890.0073 Definitions Related to Consultant Services
2890.0074 Written Proposal and Invoice Required for Consultant Services
2890.0075 Reasonableness of Work Performed; Standard Tasks for Each Step of Consultant Services
2890.0076 Maximum Costs for Consultant Services
2890.0077 Competitive Bidding Requirements for Consultant Services Proposals
2890.0078 Deviations from Standard Tasks and Maximum Costs for Consultant Services
2890.0079 Reasonable, Necessary, and Actual Consultant Services Costs
2890.0080 Overview of Rules Governing Reasonableness of Costs for Contractor Services
2890.0081 Definitions Related to Contractor Services
2890.0082 Maximum Costs for Contractor Services
2890.0083 Competitive Bidding Requirements for Contractor Services
2890.0084 Deviations from Maximum Costs for Contractor Services
2890.0085 Reasonable, Necessary, and Actual Costs
2890.0086 Invoice
2890.0089 Exemptions from Competitive Bidding
2890.0090 Application Process
2890.0120 Funding of MPCA Actions

(2) *Minnesota Rules, Chapter 7045—Minnesota Pollution Control Agency, Hazardous Waste Division, Hazardous Waste*

7045.0275 Management of Hazardous Waste Spills

(3) *Minnesota Rules, Chapter 7060–Minnesota Pollution Control Agency, Water Quality Division, Underground Waters*

7060.0300 Definitions
7060.0500 Nondegradation Policy
7060.0600 Standards; subp. 2, 3, 4: Prohibition against discharge into unsaturated zone; Control measures; Toxic pollutants
7060.0800 Determination of Compliance

(4) *Minnesota Rules, Chapter 7105–Minnesota Pollution Control Agency, Water Quality Division, Underground Storage Tanks: Training*

7105.0010 Definitions [except subp. 25, insofar as it includes vessels, enclosures, and structures—which are exempt from the federal program—in the definition of UST.]
7105.0020 Purpose
7105.0030 General Provisions; subp. 3: Tank owner or operator requirements
7105.0040 Exclusions [except insofar as it does not exclude from regulation heating oil storage tanks with a storage capacity of greater than 1,100 gallons.]

(5) *Minnesota Rules, Chapter 7150—Minnesota Pollution Control Agency, Water Quality Division, Underground Storage Tanks Program*

7150.0010 Applicability [except subp. 2, insofar as it does not exclude from regulation liquid traps or associated gathering lines directly related to oil or gas production or gas production and gathering operations; subp. 2(H), insofar as it does not exclude from regulation tanks of 1,100 gallons or more used exclusively for storing heating oil for consumptive use; and subp. 5, insofar as it does not exclude owners and operators of heating oil storage tanks with a storage capacity of greater than 1,100 gallons from notification requirements.]
7150.0020 Interim Standards for Deferred Underground Storage Tank Systems
7150.0030 Definitions [except subp. 51, insofar as it includes vessels, enclosures, and structures—which are exempt from the federal program—in the definition of underground storage tanks]
7150.0100 Performance Standards for New Underground Storage Tank Systems
7150.0110 Upgrading of Existing Underground Storage Tank Systems
7150.0120 Notification Requirements
7150.0200 Spill and Overfill Control
7150.0210 Operation and Maintenance of Corrosion Protection
7150.0220 Compatibility
7150.0230 Repairs Allowed
7150.0240 Reporting and Recordkeeping
7150.0300 General Requirements for All Underground Storage Tank Systems [except subp. 3, insofar as it imposes release detection schedule requirements on hazardous material tanks not regulated under the federal program]
7150.0310 Requirements for Petroleum Underground Storage Tank Systems
7150.0320 Requirements for Hazardous Material Underground Storage Tank Systems
7150.0330 Methods of Release Detection for Tanks
7150.0340 Methods of Release Detection for Piping
7150.0350 Release Detection Recordkeeping
7150.0400 Temporary Closure
7150.0410 Permanent Closure and Changes-in-Service to Storage of Nonregulated Substances
7150.0420 Assessing the Site at Closure or Change in Service
7150.0430 Applicability to Previously Closed Underground Storage Tank Systems
7150.0440 Closure Records

(6) *Minnesota Rules, Chapter 7510—Department of Public Safety, Fire Marshal Division, Fire Safety*

7510.3670 Liquefied Petroleum Gases; Section 8203: Installation of containers [except insofar as it regulates ASTs]

[FR Doc. 05–10341 Filed 5–23–05; 8:45 am]

BILLING CODE 6350–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–D–7571]

Changes in Flood Elevation Determinations

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

ACTION: Interim rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Alabama: Jefferson	City of Homewood	March 21, 2005, March 28, 2005, *The Birmingham News*.	The Honorable Barry R. McCulley, Mayor of the City of Homewood, 1903 29th Avenue South, Homewood, Alabama 35209.	April 14, 2005	015006 E
Alabama: Colbert	City of Muscle Shoals	March 25, 2005, April 1, 2005, *Times Daily*.	The Honorable David H. Bradford, Mayor of the City of Muscle Shoals, P.O. Box 2624, Muslce Shoals, Alabama 35662.	April 18, 2005	010047 C
Florida: Duval	City of Jacksonville	April 6, 2005, April 13, 2005, *The Florida Times-Union*.	The Honorable John Peyton, Mayor of the City of Jacksonville, 4th Floor, City Hall at St. James, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	April 29, 2005	120077 E

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Florida: Duval	City of Jacksonville	March 24, 2005, March 31, 2005, *The Florida Times-Union*.	The Honorable John Peyton, Mayor of the City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	June 30, 2005	120077 E
Georgia: DeKalb	City of Decatur	March 24, 2005, March 31, 2005, *The Champion*.	The Honorable Bill Floyd, Mayor of the City of Decatur, P.O. Box 220, Decatur, Georgia 30031.	March 18, 2005	135159 H
Georgia: Harris	Unincorporated Areas	March 31, 2005, April 7, 2005, *Harris County Journal*.	Ms. Carol Silva, Harris County Manager, P.O. Box 365, Hamilton, Georgia 31811.	March 24, 2005	130338 A
Pennsylvania: Northampton.	City of Bethlehem	April 8 , 2005, April 15, 2005, *The Morning Call*.	The Honorable John B. Callahan, Mayor of the City of Bethlehem, 10 East Church Street, Bethlehem, Pennsylvania 18018.	July 15, 2005	420718 D
Pennsylvania: Bucks	Township of Wrightstown.	April 8, 2005, April 15, 2005, *The Morning Call*.	Mr. Chester S. Pogonowski, Chairman of the Township of Wrightstown Board of Supervisors, 738 Penns Park Road, Wrightstown, Pennsylvania 18940.	July 15, 2005	421045 F
Virginia: Fairfax	Unincorporated Areas	March 14, 2005, March 21, 2005, *The Washington Times*.	Mr. Anthony H. Griffin, Fairfax County Executive, 12000 Government Center Parkway, Suite 552, Fairfax, Virginia 22035–0050.	April 4, 2005	515525 D

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

Dated: May 16, 2005.

David I. Maurstad,

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

[FR Doc. 05–10301 Filed 5–23–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

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

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: *Effective Dates:* The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

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

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

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30,

1993, Regulatory Planning and Review, 58 FR 51735.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
KENTUCKY	
Magoffin County (FEMA Docket No. D–7590)	
Licking River:	
Approximately 0.5 mile downstream of State Route 30 ..	*848
Approximately 0.2 mile downstream of Combs Mountain Parkway	*860
City of Salyersville, Magoffin County (Unincorporated Areas)	
Burning Fork:	
At the confluence with Licking River	*853
Approximately 0.1 mile upstream of Lick Branch Road	*863
City of Salyersville, Magoffin County (Unincorporated Areas)	
State Road Fork:	
At the confluence with Licking River	*853
Approximately 1.7 miles upstream of State Route 2020	*886
City of Salyersville, Magoffin County (Unincorporated Areas)	
Route 7 Cut-Thru:	
At the confluence with Licking River	*850
At the divergence from Licking River	*857
City of Salyersville, Magoffin County (Unincorporated Areas)	
Route 30 Cut-Thru:	
At the upstream side of State Route 30	*848
At the divergence from Licking River	*849
Mash Fork:	
Approximately 0.36 mile upstream of the confluence with State Road Fork	*860
Approximately 0.56 mile upstream of the confluence with State Road Fork	*864
Magoffin County (Unincorporated Areas)	
Magoffin County (Unincorporated Areas)	
Maps available for inspection at Magoffin County Courthouse, Judge's Office, 457 Parkway Drive, Salyersville, Kentucky.	
City of Salyersville	
Maps available for inspection at the Salyersville City Hall, 315 East Maple Street, Salyersville, Kentucky.	
NEW JERSEY	
Bergen County (FEMA Docket No. D–7616)	
Musquapsink Brook:	
Approximately 2,600 feet upstream of confluence with Pascack Brook	*38
At Saddle River Road	*243
Boroughs of Emerson, Westwood, Hillsdale, Woodcliff Lake, Paramus, Township of Washington	
Pascack Brook:	
Approximately 0.71 mile downstream of Brookside Avenue	*26
Approximately 1,300 feet from the upstream side of Magnolia Avenue	*205
Boroughs of Emerson, River Vale, Hillsdale, Woodcliff Lake, Park Ridge, Montvale, Harrington Park	
Musquapsink Brook By-Pass:	
At the confluence of Musquapsink Brook	*60
Just downstream of Washington Lake Dam South	*68
Township of Washington	
Tandy Brook:	
At the confluence with Pascack Brook	*63
Approximately 375 feet downstream of Saddlewood Drive	*63
Borough of Hillsdale	
Westdale Brook:	
At the confluence with Pascack Brook	*59
Approximately 1,740 feet from upstream side of Harding Avenue	*59
Borough of Westwood	
Borough of Emerson	
Maps available for inspection at the Emerson Borough Hall, Municipal Place, Emerson, New Jersey.	
Borough of Harrington Park	
Maps available for inspection at the Harrington Park Municipal Center, 85 Harriot Avenue, Harrington Park, New Jersey.	
Borough of Hillsdale	
Maps available for inspection at the Hillsdale Borough Hall, 380 Hillsdale Avenue, Hillsdale, New Jersey.	
Borough of Montvale	
Maps available for inspection at the Montvale Borough Hall, 1 Memorial Drive, Montvale, New Jersey.	
Borough of Paramus	
Maps available for inspection at the Paramus Borough Hall, 1 Jockish Square, Paramus, New Jersey.	
Borough of Park Ridge	
Maps available for inspection at the Park Ridge Borough Hall, 55 Park Avenue, Park Ridge, New Jersey.	
Township of River Vale	
Maps available for inspection at the River Vale Township Office, 406 River Vale Road, River Vale, New Jersey.	
Township of Washington	
Maps available for inspection at the Washington Township Office, 350 Hudson Avenue, Washington, New Jersey.	
Borough of Westwood	
Maps available for inspection at the Westwood Borough Hall, 101 Washington Avenue, Westwood, New Jersey.	
Borough of Woodcliff Lake	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
Maps available for inspection at the Woodcliff Lake Municipal Building, 188 Pascack Road, Woodcliff Lake, New Jersey.	
NEW JERSEY	
Union County (FEMA Docket No. D–7598)	
Rahway River:	
At a point immediately upstream of Lawrence Street	*9
Approximately 400 feet downstream of Springfield Avenue	*91
City of Rahway, Townships of Clark, Cranford, Springfield, Union, Winfield, Borough of Kenilworth	
Black Brook:	
At the confluence with Rahway River	*75
Approximately 180 feet downstream of Springfield Road	*75
Borough of Kenilworth, Township of Union	
Branch 10–30–1:	
At the confluence with Drainage Ditch	*75
Approximately 350 feet upstream of Lafayette Place	*75
Borough of Kenilworth	
College Branch:	
At the confluence with Rahway River	*72
At a point immediately upstream of Springfield Avenue	*72
Township of Cranford	
Drainage Ditch:	
At the confluence with Rahway River	*73
At the confluence of Branch 10–30–1	*75
Borough of Kenilworth, Township of Springfield	
Gallows Hill Road Branch:	
At the confluence with Rahway River	*71
Approximately 350 feet upstream of Pittsfield Street	*71
Township of Cranford	
Garwood Brook:	
At the confluence with Rahway River	*70
Approximately 250 feet upstream of West Holly Street	*70
Township of Cranford	
Nomahegan Brook:	
At the confluence with Rahway River	*74
Approximately 580 feet downstream of Springfield Avenue	*74
Townships of Cranford and Springfield, Town of Westfield	
Robinsons Branch:	
At the confluence with Rahway River	*14
At the confluence of Robinsons Branch	*50
City of Rahway, Town of Westfield, Township of Clark	
South Branch:	
At the confluence with Rahway River	*9
Approximately 100 feet upstream of East Inman Avenue	*10
City of Rahway	
Stream 10–30:	
At the confluence with Drainage Ditch	*74
Approximately 100 feet downstream of Willshire Drive	*74
Borough of Kenilworth	
Vauxhall Branch:	
At the confluence with Rahway River	*91
At Liberty Avenue	*91
Township of Union	
Cedar Brook:	
At Terrill Road	*131
A point immediately upstream of Willow Avenue	*141
Borough of Fanwood	
Vauxhall Sub Branch:	
At the confluence with Vauxhall Branch	*91
At Interstate 78	*91
Township of Union	
West Branch:	
At the confluence with Elizabeth River	*42
Approximately 1,400 feet upstream of Garden State Parkway entrance ramp	*60
Township of Union	
Lightning Brook:	
At the confluence with Elizabeth River	*55
Approximately 950 feet downstream of Union Avenue	*55
Township of Union	
Elizabeth River:	
At Trotters Lane	*18
Approximately 1,050 feet upstream of Union Avenue	*68
Townships of Union and Hillside	
Trotters Lane Branch:	
At Morris Avenue	*27
Approximately 300 feet downstream of North Avenue	*28
City of Elizabeth	
Kings Creek:	
A point immediately upstream of Barnett Street	*10
Approximately 1,000 feet upstream of Lower Road to Rahway	*13
City of Rahway	
East Branch Rahway River:	
Approximately 450 feet upstream of the confluence with Rahway River	*91
Approximately 2,800 feet downstream of Vauxhall Road	*91
Townships of Union and Springfield	
Kings Creek:	
Approximately 715 feet downstream of U.S. Route 9	#1
Just downstream of U.S. Route 9	#1
City of Linden	
Township of Clark	
Maps available for inspection at the Clark Township Engineer's Office, Municipal Building, 430 Westfield Avenue, Clark, New Jersey.	
Township of Cranford	
Maps available for inspection at the Cranford Township Engineer's Office, Municipal Building, 8 Springfield Avenue, Cranford, New Jersey.	
City of Elizabeth	
Maps available for inspection at the Elizabeth City Engineer's Office, 50 Winfield Scott Plaza, Elizabeth, New Jersey.	
Borough of Fanwood	
Maps available for inspection at the Fanwood Borough Engineer's Office, 75 North Martine Avenue, Fanwood, New Jersey.	
Township of Hillside	
Maps available for inspection at the Hillside Township Engineer's Office, JFK Plaza, Hillside and Liberty Avenue, Hillside, New Jersey.	
Borough of Kenilworth	
Maps available for inspection at the Kenilworth Borough Engineer's Office, Municipal Building, 567 Boulevard, Kenilworth, New Jersey.	
City of Linden	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)
Maps available for inspection at the Linden City Engineer's Office, Municipal Building, 301 North Wood Avenue, Linden, New Jersey.	
City of Rahway	
Maps available for inspection at the Rahway City Engineer's Office, 1 City Hall Plaza, Rahway, New Jersey 07065.	
Township of Springfield	
Maps available for inspection at the Springfield Township Engineer's Office, Municipal Building, 100 Mountain Avenue, Springfield, New Jersey.	
Township of Union	
Maps available for inspection at the Union Township Engineer's Office, Municipal Building, 1976 Morris Avenue, Union, New Jersey.	
Town of Westfield	
Maps available for inspection at the Westfield Town Engineer's Office, Municipal Building, 425 East Broad Street, Westfield, New Jersey.	
Township of Winfield	
Maps available for inspection at the Winfield Township Municipal Building, 12 Gulfstream Avenue, New Jersey.	
WEST VIRGINIA	
Cabell County (FEMA Docket No. D–7612)	
Fudges Creek:	
Approximately 460 feet upstream of Interstate 64	•580
Approximately 1,200 feet north of the intersection of Howells Mill Road and U.S. Route 60	•580
Cabell County (Unincorporated Areas)	
Lee Creek:	
Approximately 50 feet downstream of Interstate 64	•606
Approximately 50 feet upstream of Interstate 64	•608
City of Milton	
Cabell County (Unincorporated Areas)	
Maps available for inspection at the Cabell County Office of Grants, Planning and Permits, Cabell County Courthouse, room 314, Hunting, West Virginia.	
City of Milton	
Maps available for inspection at the City of Milton Annex Building, 1595 U.S. Route 60 East, Milton, West Virginia.	

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

Dated: May 16, 2005.

David I. Maurstad,

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

[FR Doc. 05–10306 Filed 5–23–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

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

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: *Effective Dates:* The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

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

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

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD) *Elevation in feet (NAVD)
TENNESSEE	
McNairy County (Unincorporated Areas) (FEMA Docket No. D–7614)	
Crooked Creek:	
At a point approximately 0.9 mile downstream of High School Road	*445
At a point approximately 0.6 mile upstream of High School Road	*460
Maps available for inspection at the McNairy County Courthouse, 170 West Court Avenue, Room 201, Selmer, Tennessee.	

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

Dated: May 16, 2005.

David I. Maurstad,

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

[FR Doc. 05–10305 Filed 5–23–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

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

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

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

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

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR Part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

■ Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location of referenced elevation	♦ Elevation in feet (NAVD) modified	Communities affected
Osage River		FEMA Docket No. P7661, Osage County (Unincorporated Areas)
Approximately 28,150 feet downstream of U.S. Highway 50	♦ 543	
Approximately 131,850 feet upstream of U.S. Highway 50	♦ 557	
Maps are available for inspection at the Osage County Courthouse, 106 East Main Street, Linn, Missouri.		

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

Dated: May 16, 2005.

David I. Maurstad,

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

[FR Doc. 05–10304 Filed 5–23–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

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

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

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

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

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

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

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

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987. *Executive Order 12778, Civil Justice Reform.* This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

■ Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified
IN	Indianapolis (City) Marion County (FEMA Docket No. P7663).	Berkshire Creek	At its confluence with Devon Creek	*746
			Approximately 150 feet upstream of Marrison Place..	*780
		Buffalo Creek	Just upstream of West County Line Road	*707
			At East Stop 11 Road	*754
		Devon Creek	Approximately 740 feet downstream of Millersville Road.	*733
			Approximately 100 feet upstream of Laurel Falls Road.	*814
		Little Buck Creek	Approximately 300 feet downstream of South Tibbs Avenue.	*669
			Approximately 75 feet upstream of the furthest upstream crossing of East Edgewood Avenue.	*844
Maps are available for inspection at 2142 City-County Building, 200 East Washington Street, Indianapolis, Indiana.				
NE	Wakefield (City) Dixon and Wayne Counties (FEMA Docket No. P7663).	Logan Creek Dredge	Approximately 1.4 miles downstream of State Highway 35.	♦1,378
			Approximately 0.6 miles upstream of County Road 859.	♦1,389
		South Logan Creek	At confluence with Logan Creek Dredge	♦1,387
			Approximately 1.2 miles upstream of the confluence with Logan Creek Dredge.	♦1,390
		Ponding areas west of State Highway 35 and north of Abandoned Railroad (4).	Entire shoreline	♦1,382
		Ponding areas adjacent to State Highway 35 and north of Abandoned Railroad (4).	Entire shoreline	♦1,380
		Ponding area east of State Highway 35.	Entire shoreline	♦1,376
		Ponding area east of State Highway 35 and south of Abandoned Railroad.	Entire shoreline	♦1,378
Maps are available for inspection at 405 Main Street, Wakefield, Nebraska.				
WI	Manitowoc (City Manitowoc County (FEMA Docket No. P7663).	Manitowoc River	At South 10th Street	*585
			Approximately 2,550 feet downstream of Michigan Avenue.	*604
Maps are available for inspection at Manitowoc City Hall, 900 Quay Street Manitowoc, Wisconsin.				

(Catalog of Federal Domestic Assistance No. 83.100, ''Floor Insurance.'')

Dated: May 16, 2005.

David I. Maurstad,

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

[FR Doc. 05–10303 Filed 5–23–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

48 CFR Parts 207, 208, 216, 217, and 237

[DFARS Case 2002–D024]

Defense Federal Acquisition Regulation Supplement; Approval of Service Contracts and Task and Delivery Orders

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 801(b) of the National Defense Authorization Act for Fiscal Year 2002 and Section 854 of the National Defense Authorization Act for Fiscal Year 2005. Section 801(b) requires DoD to establish and implement a management structure for the procurement of services. Section 854 requires DoD agencies to comply with certain review and approval requirements before using a non-DoD contract to procure supplies or services in amounts exceeding the simplified acquisition threshold.

DATES: *Effective date:* May 24, 2005.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before July 25, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2002–D024, using any of the following methods:

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

○ Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.

○ E-mail: *dfars@osd.mil.* Include DFARS Case 2002–D024 in the subject line of the message.

○ Fax: (703) 602–0350.

○ Mail: Defense Acquisition Regulations Council, Attn: Ms. Robin Schulze, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 56563 on October 1, 2003, to implement Section 801(b) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107). The rule established requirements for DoD to obtain certain approvals before acquiring services through use of a DoD contract or task order that is not performance based, or through any contract or task order that is awarded by an agency other than DoD.

Section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375) placed additional restrictions on the use of contracts awarded by an agency other than DoD. Section 854 provides that a DoD agency may not procure goods or services through a contract entered into by a non-DoD agency for an amount exceeding the simplified acquisition threshold, unless the procurement is accomplished in accordance with review and approval procedures prescribed by the agency head.

Seventeen sources submitted comments on the interim rule published on October 1, 2003. This second interim rule contains changes resulting from public comments; changes implementing Section 854 of Public Law 108–375; and changes implementing the requirements of a DoD policy memorandum dated October 29, 2004, on the proper use of non-DoD contracts for the acquisition of supplies and services. A discussion of the comments received on the interim rule published on October 1, 2003, is provided below:

1. *Comment:* Several respondents requested clarification of the rule's applicability. Some were concerned that rule restricts the ability of DoD agencies to use the General Services Administration (GSA) Federal Supply Schedule program as well as other multi-agency contract programs, and that the rule will cause delays in acquiring necessary products and services. Some respondents requested revision of the rule to exclude orders placed by DoD agencies under these programs. One respondent recommended establishment of a blanket approval for certain non-DoD acquisition providers. Some respondents were concerned that the language specifying a ''Prohibition'' on the acquisition of services was overly restrictive.

DoD Response: The rule is not intended to prohibit DoD use of non-DoD contracts. DoD recognizes that, in many cases, use of non-DoD contracts is an effective way to accomplish acquisitions in support of DoD's mission. The intent of the rule is to require appropriate review and oversight of DoD acquisitions under non-DoD contracts to ensure that such acquisitions are in the best interest of DoD and comply with all applicable statutory and regulatory requirements. The rule has been revised to further clarify its applicability and review requirements. In addition, the text formerly at 237.170–2, Prohibition on acquisition of services, has been removed, as it was considered to be unnecessary and subject to misinterpretation.

2. *Comment:* Two respondents requested establishment of a minimum dollar threshold for application of the rule. One respondent believed it is in DoD's best interest to establish a contract value threshold of greater than $3 million. The respondent stated that the benefits are not believed to outweigh the costs of imposing performance-based requirements on all contracts and task orders. Another respondent suggested using the simplified acquisition threshold as a minimum dollar threshold for actions that require approvals if purchased outside of DoD and if the statement of work is not performance based.

DoD Response: The rule has been revised to specify the simplified acquisition threshold as the threshold above which review and approval is required for orders issued under non-DoD contracts, as required by Section 854 of Public Law 108–375. The thresholds for review and approval of service contracts that are not performance based, which were specified in the interim rule published on October 1, 2003, are still considered to be appropriate and are included in this second interim rule. The rule provides sufficient flexibility for DoD departments and agencies to establish review programs commensurate with management structures.

3. *Comment:* One respondent stated that additional approvals should not be required of a DoD agency when it is awarding performance-based task orders against Federal Supply Schedules and Governmentwide acquisition contracts; and that approval requirements should be the same when DoD awards a contract or task order for services that is not performance-based, whether placed against a DoD contract, a Federal Supply Schedule, or a Governmentwide acquisition contract. Another respondent asked whether approval must be obtained for a task order issued against other agency's contract when the statement of work is already contained within the contract and may not be performance based.

DoD Response: Approval in accordance with agency procedures, established within the requirements of the DFARS rule, is needed for any acquisition of services that is not performance based and for acquisitions under non-DoD contracts. Both approval requirements must be met.

4. *Comment:* One respondent recommended an exemption for healthcare personal services contracts awarded under the authority of 10 U.S.C. 1091 and DFARS 237.104, because use of performance-based contracting may not always be practical for these services.

DoD Response: Section 801(b) does not exempt any categories of services from its requirements. Although there may be certain categories of services that may not always be appropriate for performance-based contracting, DoD does not want to preclude the possibility of using such an approach in those situations where it is deemed appropriate.

5. *Comment:* Several respondents requested that the Economy Act be addressed. One respondent recommended that the Economy Act procedures be updated to include a requirement for a statement in the determination and findings to verify that the contract work statement is performance based.

DoD Response: Requirements for interagency acquisitions under the Economy Act are addressed in FAR Subpart 17.5 and DFARS Subpart 217.5. No changes to those requirements are needed for implementation of this rule.

6. *Comment:* One respondent requested that the interim rule be withdrawn and reissued as a proposed rule to allow for industry feedback. The respondent stated that the interim rule negatively impacts the DoD procurement process, undermines GSA ordering procedures, and adversely affects GSA vendors and DoD customers.

DoD Response: The first interim rule and this second interim rule implement statutory requirements. Therefore, to meet those statutory requirements, DoD considers immediate implementation to be necessary. However, as with any interim rule, the public is provided an opportunity to comment and DoD must consider all comments.

7. *Comment:* One respondent requested amendment of the rule to address use of the Intra-Governmental Transaction (IGT) portal to track, monitor, and report the types of services acquired by DoD. It was also suggested that DoD establish a Service Acquisition Agency Review Board that would negotiate Service Level Agreements with outside agencies and a Contract Vehicle Review Board that would evaluate outside contract vehicles and provide a list of approved vehicles for use by all DoD branches.

DoD Response: These comments are considered to be outside the scope of this case.

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

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule contains internal DoD approval requirements, intended to ensure that acquisitions of supplies and services are accomplished in accordance with existing statutes and regulations. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D024.

C. Paperwork Reduction Act

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

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375). Section 854 requires DoD agencies to comply with certain review and approval requirements before using a non-DoD contract to procure supplies or services in amounts exceeding the simplified acquisition threshold. Section 854 became effective on April 26, 2005. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 207, 208, 216, 217, and 237

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 207, 208, 216, 217, and 237 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 207, 208, 216, 217, and 237 continues to read as follows:

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

PART 207—ACQUISITION PLANNING

■ 2. Section 207.105 is amended by adding paragraph (b)(4) to read as follows:

207.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(4) *Acquisition considerations.* When supplies or services will be acquired by placing an order under a non-DoD contract (*e.g.*, a Federal Supply Schedule contract), regardless of whether the order is placed by DoD or by another agency on behalf of DoD, address the method of ensuring that the order will be consistent with DoD statutory and regulatory requirements applicable to the acquisition and the requirements for use of DoD appropriated funds.

* * * * *

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 3. Section 208.404 is amended by redesignating paragraph (a) as paragraph (a)(ii) and by adding paragraph (a)(i) to read as follows:

208.404 Using schedules.

(a)(i) Departments and agencies shall comply with the review and approval requirements established in accordance with Subpart 217.78 when placing orders for supplies or services in amounts exceeding the simplified acquisition threshold.

* * * * *

PART 216—TYPES OF CONTRACTS

■ 4. Section 216.505 is amended by designating the existing text as paragraph (2) and by adding paragraph (1) to read as follows:

216.505 General.

(1) Departments and agencies shall comply with the review and approval requirements established in accordance with Subpart 217.78 when placing orders under non-DoD contracts in amounts exceeding the simplified acquisition threshold.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

■ 5. Subpart 217.78 is added to read as follows:

Subpart 217.78—Contracts or Delivery Orders Issued by a Non-DoD Agency

Sec.
217.7800 Scope of subpart.
217.7801 Definitions.
217.7802 Policy.

217.7800 Scope of subpart.

This subpart—

(a) Implements Section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375); and

(b) Prescribes policy for the acquisition of supplies and services through the use of contracts or orders issued by non-DoD agencies.

217.7801 Definitions.

As used in this subpart—

Assisted acquisition means a contract awarded or a task or delivery order placed on behalf of DoD by a non-DoD agency.

Direct acquisition means a task or delivery order placed by a DoD official under a contract awarded by a non-DoD agency.

217.7802 Policy.

Departments and agencies shall establish and maintain procedures for reviewing and approving orders placed for supplies and services under non-DoD contracts, whether through direct acquisition or assisted acquisition, when the amount of the order exceeds the simplified acquisition threshold. These procedures shall include—

(a) Evaluating whether using a non-DoD contract for the acquisition is in the best interest of DoD. Factors to be considered include—

(1) Satisfying customer requirements;

(2) Schedule;

(3) Cost effectiveness (taking into account discounts and fees); and

(4) Contract administration (including oversight);

(b) Determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;

(c) Reviewing funding to ensure that it is used in accordance with appropriation limitations;

(d) Providing unique terms, conditions, and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives, and other requirements; and

(e) Collecting data on the use of assisted acquisition for analysis.

PART 237—SERVICE CONTRACTING

■ 6. Section 237.170–2 is revised to read as follows:

237.170–2 Approval requirements.

(a) *Acquisition of services through a contract or task order that is not performance based.*

(1) For acquisitions at or below $50,000,000, obtain the approval of the official designated by the department or agency.

(2) For acquisitions exceeding $50,000,000, obtain the approval of the senior procurement executive.

(b) *Acquisition of services through use of a contract or task order issued by a non-DoD agency.* Comply with the review and approval requirements established in accordance with Subpart 217.78 when acquiring services through use of a contract or task order issued by a non-DoD agency.

237.170–3 [Removed]

■ 7. Section 237.170–3 is removed.

[FR Doc. 05–10225 Filed 5–23–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 216

[DFARS Case 2005–D003]

Defense Federal Acquisition Regulation Supplement; Incentive Program for Purchase of Capital Assets Manufactured in the United States

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 822 of the National Defense Authorization Act for Fiscal Year 2004. Section 822 requires the Secretary of Defense to establish an incentive program for contractors to purchase capital assets manufactured in the United States, and to provide consideration for offerors with eligible capital assets in source selections for major defense acquisition programs.

DATES: *Effective Date:* May 24, 2005.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before July 25, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2005–D003, using any of the following methods:

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

○ *Defense Acquisition Regulations Web Site: http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2005–D003 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS 215.304 and 216.470 to implement Section 822 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). Section 822 added 10 U.S.C. 2436, which requires the Secretary of Defense to (1) establish an incentive program for contractors to purchase capital assets manufactured in the United States under contracts for major defense acquisition programs; and (2) provide consideration for offerors with eligible capital assets in source selections for major defense acquisition programs.

In addition, 10 U.S.C. 2436 authorizes the Secretary of Defense to use the Defense Industrial Capabilities Fund, established under Section 814 of the National Defense Authorization Act for Fiscal Year 2004, for incentive payments under the program. However, no funds have been appropriated for the Industrial Capabilities Fund.

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

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. The analysis is summarized as follows:

The objective of the rule is to increase the use of capital assets manufactured in the United States under DoD contracts for major defense acquisition programs. The rule implements 10 U.S.C. 2436, as added by Section 822 of the National Defense Authorization Act for Fiscal Year 2004. Most prime contractors for major defense acquisition programs are large business concerns. However, the rule is expected to have a positive impact on U.S. small business manufacturers of machine tools and other capital assets used in major defense acquisition programs, as their sales to DoD prime contractors should increase.

DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2005–D003.

C. Paperwork Reduction Act

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

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 822 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Section 822 requires DoD to establish an incentive program for contractors to purchase capital assets manufactured in the United States under contracts for major defense acquisition programs. In addition, Section 822 authorizes DoD to prescribe interim regulations as necessary to carry out the requirements of Section 822 and exempts DoD from compliance with the notice and comment requirements of 5 U.S.C. 553 for those regulations. Section 822 applies with respect to contracts entered into on or after May 24, 2005. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 215 and 216

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 215 and 216 are amended as follows:

■ 1. The authority citation for 48 CFR parts 215 and 216 continues to read as follows:

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

PART 215—CONTRACTING BY NEGOTIATION

■ 2. Section 215.304 is amended by adding paragraph (c)(iii) to read as follows:

215.304 Evaluation factors and significant subfactors.

(c) * * *

(iii) In accordance with 10 U.S.C. 2436, consider the purchase and use of capital assets (including machine tools) manufactured in the United States, in source selections for all major defense acquisition programs, as defined in 10 U.S.C. 2430, when it is pertinent to the best value determination.

PART 216—TYPES OF CONTRACTS

■ 3. Section 216.470 is amended as follows:

■ a. In the introductory text by removing the dash and adding a colon in its place;

■ b. By redesignating paragraphs (1) through (5) as paragraphs (a) through (e) respectively; and

■ c. By revising newly designated paragraph (a) to read as follows:

216.470 Other applications of award fees.

* * * * *

(a) The Government wishes to motivate and reward a contractor for—

(1) Purchase and use of capital assets (including machine tools) manufactured in the United States, on major defense acquisition programs; or

(2) Management performance in areas which cannot be measured objectively and where normal incentive provisions cannot be used. For example, logistics support, quality, timeliness, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation.

* * * * *

[FR Doc. 05–10233 Filed 5–23–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 219 and Appendix I to Chapter 2

[DFARS Case 2004–D028]

Defense Federal Acquisition Regulation Supplement; DoD Pilot Mentor-Protege Program

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 841 and 842 of the National Defense Authorization Act for Fiscal Year 2005. Section 841 extends the length of the DoD Pilot Mentor-Protege Program for 5 additional years. Section 842 expands the Program to permit service-disabled veteran-owned small business concerns and HUBZone small business concerns to participate in the Program as protege firms.

DATES: Effective Date: May 24, 2005.

Comment Date: Comments on the interim rule should be submitted to the address shown below on or before July 25, 2005 to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004–D028, using any of the following methods:

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

○ Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.

○ E-mail: *dfars@osd.mil.* Include DFARS Case 2004–D028 in the subject line of the message.

○ Fax: (703) 602–0350.

○ Mail: Defense Acquisition Regulations Council, Attn: Ms. Deborah Tronic, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Tronic, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Subpart 219.71 and Appendix I to implement Sections 841 and 842 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375). Section 841 extends, through September 30, 2010, the period during which companies may enter into agreements under the DoD Pilot Mentor-Protege Program; and extends, through September 30, 2013, the period during which mentor firms may incur costs that are eligible for reimbursement or credit under the Program. Section 842 expands the Program to permit service-disabled veteran-owned small business concerns and HUBZone small business concerns to participate in the Program as protege firms.

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

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. The analysis is summarized as follows:

This interim rule amends the DFARS to implement new statutory requirements pertaining to the DoD Pilot Mentor-Protege Program. The rule extends the length of the Program for 5 additional years, and expands the Program to permit service-disabled veteran-owned small business concerns and HUBZone small business concerns to participate in the Program as protege firms. The Program provides incentives for DoD contractors to assist protege firms in enhancing their capabilities and increasing their participation in Government and commercial contracts. Presently, there are 5,737 service-disabled veteran-owned small business concerns and 12,281 HUBZone small business concerns registered in the Central Contractor Registration database; and presently, there are 134 active mentor-protege agreements. Each protege firm must provide data to its mentor firm, annually for submission to the Government, regarding the progress of the protege firm in employment, revenues, and participation in DoD contracts. The rule does not duplicate, overlap, or conflict with any other Federal rules. The rule is expected to have a beneficial impact on service-disabled veteran-owned small business concerns and HUBZone small business concerns. There are no known significant alternatives to the rule. Participation in the DoD Pilot Mentor-Protege Program is voluntary.

DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be

submitted separately and should cite DFARS Case 2004–D028.

C. Paperwork Reduction Act

The information collection requirements of the DoD Pilot Mentor-Protege Program have been approved by the Office of Management and Budget under Control Number 0704–0332, for use through May 31, 2007.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Sections 841 and 842 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375). Section 841 extends the length of the DoD Pilot Mentor-Protege Program for 5 additional years. Section 842 expands the Program to permit service-disabled veteran-owned small business concerns and HUBZone small business concerns to participate in the Program as protege firms. Sections 841 and 842 became effective upon enactment on October 28, 2004. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 219

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 219 and Appendix I to chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR part 219 and Appendix I to subchapter I continues to read as follows:

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

PART 219—SMALL BUSINESS PROGRAMS

■ 2. Section 219.7102 is amended as follows:

■ a. In paragraph (b)(1)(iv) by removing ''or''; and

■ b. By adding paragraphs (b)(1)(vi) and (vii) to read as follows:

219.7102 General.

* * * * *

(b) * * *

(1) * * *

(vi) Service-disabled veteran-owned small business concerns; or

(vii) HUBZone small business concerns;

* * * * *

219.7104 [Amended]

■ 3. Section 219.7104 is amended in the last sentence of paragraph (b) and in paragraph (d) by removing ''2008'' and adding in its place ''2013''.

Appendix I—Policy and Procedures for the DoD Pilot Mentor-Protege Program

I–101.6 [Amended]

■ 4. Appendix I to chapter 2 is amended in the heading of section I–101.6 by removing ''(WOSB)''.

■ 5. Appendix I to chapter 2 is amended by adding sections I–101.7 and I–101.8 to read as follows:

I–101.7 HUBZone small business.

A qualified HUBZone small business concern as determined by the Small Business Administration in accordance with 13 CFR part 126.

I–101.8 Service-disabled veteran-owned small business.

A small business concern owned and controlled by service-disabled veterans as defined in Section 8(d)(3) of the Small Business Act (15 U.S.C. 637(d)(3)).

■ 6. Appendix I to chapter 2 is amended in section I–102 by revising paragraph (b)(1) to read as follows:

I–102 Participant eligibility.

* * * * *

(b) * * *

(1) An SDB, a women-owned small business, a HUBZone small business, a service-disabled veteran-owned small business, or an eligible entity employing the severely disabled;

* * * * *

■ 7. Appendix I to chapter 2 is amended in section I–103 by revising paragraph (a) and paragraph (b) introductory text to read as follows:

I–103 Program duration.

(a) New mentor-protege agreements may be submitted and approved through September 30, 2010.

(b) Mentors incurring costs prior to September 30, 2013, pursuant to an approved mentor-protege agreement may be eligible for—

* * * * *

■ 8. Appendix I to chapter 2 is amended in section I–104 by revising paragraph (a) to read as follows:

I–104 Selection of protege firms.

(a) Mentor firms will be solely responsible for selecting protege firms. Mentor firms are encouraged to identify and select concerns that are defined as emerging SDB, women-owned small business, HUBZone small business, service-disabled veteran-owned small business, or an eligible entity employing the severely disabled.

* * * * *

■ 9. Appendix I to chapter 2 is amended in section I–105 by revising the first sentence of paragraph (b)(7) to read as follows:

I–105 Mentor approval process.

* * * * *

(b) * * *

(7) The total dollar amount and percentage of subcontracts that the company awarded to all SDB, women-owned small business, HUBZone small business, and service-disabled veteran-owned small business firms under DoD contracts and other Federal agency contracts during the 2 preceding fiscal years. * * *

* * * * *

■ 10. Appendix I to chapter 2 is amended in section I–107 by revising paragraph (b) to read as follows:

I–107 Elements of a mentor-protege agreement.

* * * * *

(b) The NAICS code(s) that represent the contemplated supplies or services to be provided by the protege firm to the mentor firm and a statement that, at the time the agreement is submitted for approval, the protege firm, if an SDB, a women-owned small business, a HUBZone small business, or a service-disabled veteran-owned small business concern, does not exceed the size standard for the appropriate NAICS code;

* * * * *

[FR Doc. 05–10226 Filed 5–23–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 041110317–4364–02; I.D. 051805B]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring 8,206 lb (3,722 kg) of commercial summer flounder quota to the Commonwealth of Virginia from its 2005 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective May 19, 2005 through December 31, 2005, unless NMFS

publishes a superseding document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mike Ruccio, Fishery Management Specialist, (978) 281–9104, FAX (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the FMP that was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 8,206 lb (3,722 kg) of its 2005 commercial quota to Virginia to cover a landing of a North Carolina vessel granted safe harbor in Virginia following storm damage to the vessel's pilothouse. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2005, inclusive of previous adjustments published on March 9, 2005 (70 FR 11584) and April 5, 2005 (70 FR 21162), are: North Carolina, 4,680,519 lb (2,123,083 kg); and Virginia, 4,013,906 lb (1,820,708 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: May 18, 2005.

Stephen Meyers,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–10350 Filed 5–19–05; 4:01 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040628196–5130–02; I.D. 061704A]

RIN 0648–AQ92

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; American Samoa Longline Limited Entry Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 11 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Amendment 11), which establish a limited entry system for pelagic longline vessels fishing in waters of the U.S. exclusive economic zone (EEZ) around American Samoa. The action is necessary to effectively manage the pelagics fisheries around American Samoa. This final rule is intended to establish management measures that would stabilize effort in the fishery to avoid a ''boom and bust'' cycle of fishery development that could disrupt community participation and limit opportunity for substantial participation in the fishery by indigenous islanders.

DATES: Effective August 1, 2005, except §§ 660.21(c), 660.22(e),(f),and (g), which are effective December 1, 2005.

ADDRESSES: CD or paper copies of Amendment 11, including an Environmental Assessment (EA), regulatory impact review (RIR) and final regulatory flexibility analysis (FRFA) may be obtained from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop Street, Suite 1400, Honolulu, HI 96813. These documents are also available at the following website: *http://www.wpcouncil.org*. Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to William L. Robinson, Regional Administrator, Pacific Islands Region (PIR), NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, and David Rostker, OMB, by email at *David_Rostker@omb.eop.gov*, or facsimile (Fax) 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, NMFS PIR, at 808–973–2937.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the internet at the website of the Office of Federal Register: *http://www.access.gpo.gov/sudocs/aces/aces140.html*.

Background

On July 22, 2004, NMFS published a proposed rule (69 FR 43389) that would establish a limited access permit program for the pelagic longline fishery based in American Samoa under Amendment 11. Amendment 11 was approved by the Secretary of Commerce on September 23, 2004. The final rule is intended to: (1) Avoid a ''boom and bust'' cycle of fishery development that could disrupt community participation in the American Samoa small-scale pelagic fishery; (2) establish a framework to adjust regulations for the American Samoa-based longline fishery; (3) reduce the potential for fishing gear conflict in waters of the EEZ around American Samoa; (4) maintain local catch rates of albacore tuna at economically viable levels; and (5) provide an opportunity for substantial participation by indigenous islanders in the large vessel sector of the fishery. This final rule applies specifically to the permitted owners and operators of vessels that fish for pelagic management species under Hawaii limited access longline permits or western Pacific general longline permits within the EEZ, as well as the high seas, around American Samoa, and generally to permitted owners and operators of vessels fishing for pelagic management species in the western Pacific region (the Northern Mariana Islands; Guam; Hawaii; Midway, Johnston, and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands).

The following is a summary of key measures in this final rule implementing Amendment 11. Initial American Samoa longline limited access permits will be issued to qualifying individuals who owned vessels that were used to legally harvest Pacific pelagic management unit species with longline gear in the EEZ around American Samoa (with those fish landed in American Samoa) prior to March 22, 2002. An individual who had provided written notice to NMFS or the Council of intent to participate in the fishery prior to June 28, 2002, would also qualify for an initial limited access permit. NMFS will publish a notice in the **Federal Register** to solicit

participation in the program and establish a mailing list, as one of the means, to notify prospective applicants of the availability of permits. American Samoa limited access longline permits are established for four categories based on vessel length: (a) Class A—less than or equal to 40 ft (12.2 m); (b) Class B—over 40 ft (12.2 m) to 50 ft (15.2 m) inclusive; (c) Class C—over 50 ft (15.2 m) to 70 ft (21.3 m) inclusive; and (d) Class D—over 70 ft (21.3 m). The rule sets a schedule of 120 days for a permittee to register his or her vessel for use with a American Samoa longline limited access permit. The rule also allows for 26 ''upgrade permits'' to be made available, following the issuance of initial limited access permits, for the exclusive use of permit holders in the smallest vessel size class (less than or equal to 40 ft (12.2 m)), with priority based on documented historical participation in the fishery. Those receiving ''upgrade permits'' are not allowed to transfer their new permits for 3 years. All other permits are transferable to individuals who can document (regardless of date) that they worked on a vessel that caught Pacific pelagic management species on longline gear in the EEZ around American Samoa, with those fish landed in American Samoa. This rule also: prohibits any individual from owning more than 10 percent of the maximum permits allowed (in all vessel size classes combined), with any fractional interest in a permit counted as a whole permit; establishes an administrative fee for the issuance, renewal, or transfer of any permit; requires documented landings of at least 1,000 lb (455 kg) of Pacific pelagic management unit species during every 3 consecutive calendar years for vessels in the smaller vessel size classes (Class A and B), and at least 5,000 lb (2,273 kg) every 3 consecutive calendar years for vessels in the two larger vessel size classes (Class C and D) in order to renew permits; requires all vessels permitted under the limited access system that are 50 ft (15.2 m) in length or greater to carry active vessel monitoring systems (VMS), if requested by NMFS; requires vessels greater than 40 ft (12.2 m) in length to carry observers, if requested by NMFS; and requires operators of permitted vessels greater than 40 ft (12.2 m) in length to notify NMFS no less than 72 hours before embarking on a longline fishing trip.

Additional background information on this final rule may be found in the preamble to the proposed rule (69 FR 43389, July 22, 2004) and is not repeated here.

Comments and Responses

NMFS received two sets of comments on the proposed rule. NMFS responds to these comments as follows:

Comment 1: Local fishermen should be allowed to have most of the fish catch (but also that longline gear should be banned immediately), not ''profiteers coming with their big money, big boats'' from other areas.

Response: Two objectives of Amendment 11 relate to continued participation of American Samoan communities and opportunities for sustained future participation by indigenous American Samoans in the domestic longline fishery. Several provisions of the American Samoa limited access permit program help to achieve these objectives, including the eligibility requirements for initial permits (requiring historical participation in the fishery), restrictions on permit transferability, and permit upgrade provisions. The final regulations implementing Amendment 11 therefore ensure that local, indigenous fishermen and their communities are afforded opportunities to participate in the American Samoa pelagic longline fishery. No changes have been made to the rule as a result of this comment.

Comment 2: The control date for eligibility for initial limited access permits should have been in 2000, rather than 2002.

Response: In recommending control date(s) for initial permit eligibility, the Council attempted to balance the need to place effective limits on fishing effort and to minimize adverse impacts on current fishery participants. Although a control date in 2000 would have resulted in a smaller number of available permits, NMFS finds that the 2002 control dates (March 22 and June 28, 2002) will provide an adequately conservative limit. No changes have been made to the rule as a result of this comment.

Comment 3: No vessel upgrade permits should be provided.

Response: The purpose of providing permit upgrades is, in part, to help achieve the objectives of ensuring opportunities for substantial future participation by indigenous American Samoans, maintaining sustained community participation, and minimizing adverse impacts on communities. Although the permit upgrades will allow fishing effort of the longline limited access fleet to increase from its initial level, the magnitude of that increase will be restricted by the limits on the number of available upgrade permits (26) and the period within which they must be used. NMFS finds that the potential growth in the fleet's fishing effort is not excessive and that it is appropriate given economic, social, and cultural considerations. No changes have been made to the rule as a result of this comment.

Comment 4: No individual should own more than two percent of the boats.

Response: The rule would limit the number of permits held by any single permit holder to 10 percent of the total. NMFS finds that this limit is appropriate for the purpose of preventing excessive concentration of permit ownership. No changes have been made to the rule as a result of this comment.

Comment 5: The fee for a permit should be $500 initially, and possibly raised later.

Response: The fee amount for limited access permits under this rule is in accord with the Magnuson-Stevens Fishery Conservation Management Act (Magnuson-Stevens Act), which does not allow NMFS to collect permit-related fees in excess of the costs for administering the permits program. Permit application fees for fisheries in the western Pacific region are commensurate with the administrative costs of processing permit applications (which are currently estimated to be less than $100 per year). The fee amount for processing an American Samoa longline limited access permit will be determined in accordance with NOAA's Financial Handbook, as is the case for fees established for other western Pacific fishing permits. No changes have been made to the rule as a result of this comment.

Comment 6: In Amendment 11, ''economics should be downgraded in these deliberations and proposals and environmental considerations should be paramount.

Response: The Council and NMFS considered both environmental and economic factors in the development of Amendment 11 and its implementing regulations, as required by the Magnuson-Stevens Act, the Regulatory Flexibility Act, Executive Order 12866, and the National Environmental Policy Act. NMFS believes that the final rule is based on a thorough consideration of all relevant factors and that it would achieve both the environmental and economic objectives of Amendment 11. No changes have been made to the rule as a result of this comment.

Comment 7: It is time to start assessing heavy fines on those who violate Federal fishery regulations; and fees for violations should start at a minimum of $5,000.

Response: This rule does not establish fine levels. That said, NMFS recognizes the need to ensure compliance with fishery regulations established under the Magnuson-Stevens Act. Procedures for assessing civil penalties for those who violate federal fishery regulations, including those governing the pelagic longline fishery in American Samoa, are found in NOAA's Civil Procedure regulations (15 CFR part 904). Maximum civil penalty amounts are established by statute. The penalty in any particular case is assessed after consulting NOAA's civil administrative penalty schedule. Consideration is given to many factors including, but not limited to, a fisherman's ability to pay the fine, the severity of the violation based on its impact on the resource, and whether or not the fisherman has prior violations. While enforcement priorities exist, and may vary by region, NOAA is committed to a comprehensive program of enforcing all of the statutes it administers. Funding for enforcement of these statutes, and any of the implementing regulations, is by statutory appropriation. No changes have been made to the rule as a result of these comments.

Comment 8: Consistent with the Pew Foundation Report, overfishing should be stopped; fishing quotas are set too high and should be cut by 50 percent initially (and 10 percent each year thereafter); marine sanctuaries should be established ''where no fish can be touched by human hands.''

Response: NMFS is cognizant of the recommendations in the Pew Foundation Report in the context of the broad issues raised by the commenter, including overfishing. Overfishing of target management unit species is not occurring in the American Samoa-based pelagic longline fishery. NMFS is confident that Amendment 11 will help prevent overfishing in the fishery or the need for quotas.

Concerning marine sanctuaries, NOAA manages a National Marine Sanctuary in Fagatele Bay in American Samoa to protect and conserve marine resources, including fish. Establishment of marine sanctuaries by NOAA is undertaken pursuant to the National Marine Sanctuaries Act, not the Magnuson-Stevens Act under which these fishing regulations are implemented. No changes have been made to the rule as a result of these comments.

Changes to the Proposed Rule

In § 660.13, paragraphs (c)(1),(2) and (d) are revised to clarify certain requirements pertaining to permit application and change in application information, respectively. Paragraph (c)(1) is revised to clearly indicate that the Pacific Islands Regional Office is the source of Western Pacific permit application forms and the receiving office for permit applications. Paragraph (c)(2) is revised to clearly indicate that a ''deficiency'' in permit application, filed with NMFS, means an application that is incomplete, including an application that is improperly completed, resulting in NMFS notifying the permit applicant of the deficiency. Paragraph (d) specifies when all western Pacific fishing permit applicants and permit holders, must notify NMFS if there are any changes to the information in their permit application or vessel documentation previously provided to NMFS, and removes the previous deadline for American Samoa longline limited access permit applicants to notify NMFS within 30 days if there is a complete change in ownership. The 30 day deadline applies to changes of information after permits have been issued, not during the initial application process.

In § 660.21, paragraph (n)(1), clarification is provided on the criteria to be used in reviewing permit appeals concerning longline limited access permits, i.e., under subpart C of 50 CFR 660. The new language also claries that the Regional Administrator ''will'' review relevant portions of the Pelagics FMP (to the extent such review would elucidate the criteria established for permit qualifications and renewals) in rendering a decision.

In § 660.23, paragraph (c), the last sentence was revised to be consistent with the statutory and regulatory citations from the end of § 660.13(d).

In § 660.36, paragraph (b)(1), governing documented participation in the American Samoa longline limited access fishery, flexibility is provided in the kinds of documentation that may be accepted by NMFS in determining qualification for an American Samoa longline limited access permit. In paragraph (b)(1)(ii), a provision is inserted so that a permit applicant may request NMFS to obtain copies of official government records (e.g., creel survey record or logbook) from its files or from the appropriate agency of the Government of American Samoa demonstrating evidence of the applicant's work on a fishing trip. NMFS will undertake the requested action if the permit applicant does not possess copies of the government records. In paragraph (f), required documentation of vessel ownership and/or participation in the fishery, as part of a complete permit application, is clarified. Paragraphs (f)(3) and (g)(3) establish that the Assistant Regional Administrator for Sustainable Fisheries, rather than the Regional Administrator, shall decide the eligibility for initial and additional permit issuance inasmuch as the Regional Administrator serves as the appeals officer involving disputes and challenges determination of eligibility for issuance of American Samoa longline limited access permits. Paragraph (j)(2) is removed because the requirement for annual protected species workshop certification by vessel owners and operators is included in a separate regulatory amendment that would revise 50 CFR 660.34 (Protected species workshops) proposed by the Council on additional sea turtle mitigation measures under the Pelagics FMP for western Pacific pelagic fisheries, which include the American Samoa-based pelagic longline limited access fishery.

Classification

The Administrator, Pacific Islands Region, NMFS, determined that Amendment 11 is necessary for the conservation and management of the pelagic fisheries of the western Pacific region and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The potential economic impacts of this final rule on small entities were identified in an Initial Regulatory Flexibility Analysis (IRFA) and summarized in a **Federal Register** notice published July 22, 2004 (69 FR 43789). A FRFA was subsequently prepared. A description of the need for the rule and its objectives is contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. No public comment was made specifically on the IRFA, but two sets of comments about the economic effects of the rule were received. Those comments, NMFS' responses to those comments, and a statement of the changes made as a result of the comments are presented above. A summary of the remaining parts of the FRFA follows.

Entities to which the final rule will apply include all prospective participants in the pelagic longline fishery in the EEZ around American Samoa, which includes past, present, and additional prospective future participants. Based on fishing information and/or vessel ownership records available from the Government of American Samoa, NMFS anticipates that 138 entities that owned active longline vessels prior to the control date

of March 21, 2002, will be eligible for limited access permits. Of those 138 entities, NMFS believes that approximately 75 will actually apply for and receive initial permits. Of the 138 vessels associated with these entities prior to March 21, 2002, it is believed that 93 vessels were less than or equal to 40 ft (12.2 m) in length, 9 were greater than 40 ft (12.2 m) ranging up to 50 ft (15.2 m) in length inclusive, 15 were greater than 50 ft (15.2 m) ranging up to 70 ft (21.3 m) in length inclusive, and 21 were greater than 70 ft (21.3 m) in length. The current average capital investment in vessels less than 40 ft (12.2 m) is estimated to be between $25,000 and $125,000, with annual landings of approximately 50,000 lbs (22,680 kg) and annual ex-vessel revenues estimated to average $65,000. These are typically catamaran style vessels that average 50–100 one to two day fishing trips annually. These vessels are permanently based in American Samoa and may have been used to pelagic handline or troll in the past. Longline vessels greater than 40 ft (12.2 m) are typically monohull vessels with a current average capital investment of up to $400,000. These vessels take 17 to 28 fishing trips annually, with trips extending from 4 to 25 days. Annual landings for these vessels range from 200,000 lb to 600,000 lb (90,909.1 kg - 272,727.3 kg) per vessel, with an ex-vessel revenue of $220,000 to $660,000. These vessels are currently based in American Samoa, and have also been used in other Pacific pelagic longline or jig fisheries. Based on their ex-vessel revenues, all of these entities are considered to be small businesses with annual revenues of less than $3.5 million each.

This final rule requires that vessels greater than 40 feet (12.2 m) in length carry a NMFS-trained observer if directed by NMFS. Potential costs of this requirement include the reduced accommodations available for crew and, depending on the size of the vessel, the cost of reduced fishing efficiency as a result of a reduction in crew size and crowding on board the vessel.

Under the final rule, the prospective fishery participants will be required to submit applications to NMFS Pacific Islands Regional Office for permits to participate in the American Samoa-based limited access longline fishery. Documentation of vessel ownership and/or participation in the fishery will be required with permit applications for post-initial permits (i.e., permits applied for after the initial issuance of permits upon establishment of the limited access permit program), upgrade permits (i.e., the limited number of transfers to larger vessel size classes that will be available to permit holders starting in the smallest size class), and permit transfers. As such, this final rule contains several collection-of-information requirements subject to Paperwork Reduction Act (PRA). These requirements have been approved by OMB. The approved collection-of-information burden to fishermen is estimated at 60 hours annually or a total of 181 hours: 112 hours for initial permits, 20 hours for appeals, 49 hours for permit upgrades and transfers for a 3–year period during which longline limited access permits are valid (until 2007 or 2008). Clearance for collection-of-information concerning permit renewals will be addressed at a later date, prior to expiration of the current collection-of-information (OMB No. 0648–0490) on December 31, 2006.

Besides the collection-of-information requirement associated with the limited access permit program, this final rule requires operators of large (greater than 40 ft (12.2 m) in length) fishing vessels registered with American Samoa longline limited access permits to notify NMFS at least 72 hours prior to leaving port on a longline fishing trip targeting Pacific pelagic management unit species in the EEZ around American Samoa. Notification is necessary for NMFS to determine whether or not observers should be placed on these large vessels. It is estimated that the time required by a vessel operator to notify NMFS prior to each trip is 3 minutes per telephone call. The collection-of-information burden to fishermen is estimated at 68 hours annually, an addition to the currently approved collection under OMB No. 0648–0214.

This final rule requires vessels greater than 50 ft (15.2 m) in length and registered with American Samoa longline limited access permits to carry vessel monitoring system (VMS) units, if directed to do so by NMFS. While the vessel is at sea, NMFS will receive from the VMS unit information on the position of the vessel. NMFS uses the reports to monitor vessel location and activities while enforcing the established large-vessel pelagic fishing area closure around American Samoa. NMFS intends to pay for the installation and maintenance of the VMS units. It is estimated that the annual burden to fishermen of this new collection of information is 167 hours. This includes the time to observe the installation and maintenance of the VMS units. Since the VMS units transmit reports automatically, there is no requirement for the fishermen themselves to report to NMFS on the location of their vessels while at sea. This collection is approved under OMB No. 0648–0519.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS considered a range of alternatives to this final rule, some of which would have smaller economic impacts on small entities than the rule. Ten alternatives, including the preferred alternative, were considered. The alternatives included various combinations of measures that addressed: (1) how longline fishing effort in the EEZ around American Samoa would be limited (including no-action, establishing a limited access program, and establishing a per-trip landing limit of 5,000 lb (2,688 kg)); (2) whether operators of longline vessels in the EEZ around American Samoa would be required to land all captured pelagic management unit species (PMUS) in order to minimize bycatch; (3) whether longline vessels greater than 50 ft (15.2 m) in length would be required to carry and operate a transmitter as part of a vessel monitoring system (VMS); and (4) whether longline vessels greater than 40 ft (12.2 m) in length would be required to carry a vessel observer if directed by NMFS.

For those alternatives that would establish a limited access program, the combinations of measures further addressed: (a) What the limit on permits would be (ranging from 106 to 215 total permits, as well as one alternative in which the initial number of available permits would be equal to the number of individuals with historical experience in the fishery, but, after allowing the fleet size to decrease through attrition, the number of available permits would ultimately be limited to the number of permits predicted to result in an annual fishing effort level of no more than 7.15 million hooks in the nearshore area (within 50 nautical miles (nm) of shore) and 14.3 million hooks in the offshore area (beyond 50 nm from shore); (b) how the limited number of permits would be allocated among vessel size classes (with various allocations among four or five vessel size classes, with zero permits available for vessels greater than 100 ft (30.5 m)in length in all but two alternatives); (c) how the available permits would be initially allocated (including allowing initial entry only to individuals that held a longline permit and landed PMUS in American Samoa prior to March 21, 2002, allowing initial

entry only to individuals that owned a longline vessel on March 21, 2002, that was used to harvest PMUS from the EEZ around American Samoa and land them in American Samoa prior to March 21, 2002, and allowing entry only to individuals that owned a longline vessel on or before March 21, 2002, that was used to harvest PMUS from the EEZ around American Samoa and land them in American Samoa prior to March 21, 2002; (d) how many permits would be reserved for participants indigenous to American Samoa (ranging from zero to 100 percent of the permits for certain vessel size classes); (e) how many permits would be reserved for participants initially using vessels in the smallest size class (ranging from zero to 26 ''upgrade'' permits that could be used by holders of permits for the smallest size class to upgrade to permits for larger size classes); (f) how available permits would be allocated in the future (including giving priority according to the date of application, giving priority according to the amount of historical pelagic fishing based out of American Samoa, giving first priority to permit holders wanting to upgrade to a larger vessel size class then according to the amount of historical pelagic fishing based out of American Samoa, giving priority first according to the vessel size class (with smaller classes given higher priority) than according to the earliest date of a longline landing in American Samoa); (g) whether permits could be re-registered to replacement vessels (including allowing re-registrations to vessels of any size class provided that a permit in that size class is available and allowing re-registrations only to vessels in the same size class); (h) whether maintenance of a permit would be contingent on continued participation in the fishery that is, whether there would be a ''use-it-or-lose-it'' requirement (in all cases, yes, ranging from having to make a landing at least once every year to at least once every three years, with various minimum qualifying landing tonnages according to vessel size class); and (I) whether permits would be transferable among holders (including not allowing transfers, allowing transfers only by holders of permits for the smallest vessel size class and only to immediate family or community groups, allowing transfers only by indigenous holders of permits for smallest size class and only to immediate family or community groups, and in the case of ''upgrade'' permits, allowing transfers only after three years).

NMFS' reasons for rejecting the significant alternatives are as follows. The alternative with a per-trip landing limit of 5,000 lb (2,688 kg) was rejected because it would likely result in poorer economic performance than a limited access program and it would encourage high-grading and bycatch. The alternatives that would require that all captured PMUS be landed were rejected because they would be economically inefficient. The alternatives that would not have required that longline vessels greater than 50 ft (15.2 m) in length carry and operate VMS transmitters or not require that longline vessels greater than 40 ft (12.2 m) in length carry a vessel observer if directed by NMFS were rejected because they would not ensure an adequately high level of compliance with certain fishery regulations and not ensure that adequate information about fishing activities is gathered. The alternatives with larger permit limits than the preferred alternative (including the no-action alternative) were rejected because they would be unlikely to sufficiently reduce the potential for gear conflict and catch competition. The alternatives with smaller permit limits than the preferred alternative were rejected because they were determined to be unfair to some prospective participants and socially unacceptable. The alternatives with fewer permits allocated to the smallest vessel size class than the preferred alternative, as well as those without provisions for permit upgrades from the smallest to the larger vessel size classes, those with a one-year rather than three-year use-it-or-lose-it requirement, and those that would not have allowed permit transfers, were rejected because they would be unlikely to maintain sufficiently high levels of participation by American Samoa residents and individuals who have traditionally operated smaller vessels.

Copies of the FRFA are available from the Council (see **ADDRESSES**).

To the extent practicable, it has been determined that there are no Federal rules that may duplicate, overlap, or conflict with this rule.

A formal section 7 consultation under the Endangered Species Act was undertaken for Amendment 11. In a biological opinion issued by NMFS on February 23, 2004, it was determined that fishing activities conducted under Amendment 11 and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, and Reporting and recordkeeping requirements.

Dated: May 19, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF THE WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.12, the definitions of ''Fisheries Management Division (FMD)'', ''Longline general permit'', and ''Pacific Islands Area Office'' are removed, the definition for ''Special Agent-In-Charge (SAC)'' is revised, and new definitions for ''American Samoa longline limited access permit'', ''American Samoa pelagics mailing list'', ''Freeboard'', ''Hawaiian Archipelago'', ''Pacific Islands Regional Office (PIRO)'', ''Pacific Remote Island Areas (PRIA) pelagic troll and handline fishing permit'', ''Western Pacific Fishery Management Area'' and ''Western Pacific general longline permit'' are added in alphabetical order to read as follows:

§ 660.12 Definitions.

* * * * *

American Samoa longline limited access permit means the permit required by § 660.21 to use a vessel shoreward of the outer boundary of the EEZ around American Samoa to fish for Pacific pelagic management unit species using longline gear or to land or transship Pacific pelagic management unit species that were caught in the EEZ around American Samoa using longline gear.

American Samoa pelagics mailing list means the list maintained by the Pacific Islands Regional Office of names and mailing addresses of parties interested in receiving notices of availability for American Samoa longline limited access permits.

* * * * *

Freeboard means the straight-line vertical distance between a vessel's working deck and the sea surface. If the vessel does not have gunwale door or stern door that exposes the working deck, freeboard means the straight-line

vertical distance between the top of a vessel's railing and the sea surface.

* * * * *

Hawaiian Archipelago means the Main and Northwestern Hawaiian Islands, including Midway Atoll.

* * * * *

Pacific Islands Regional Office (PIRO) means the headquarters of the Pacific Islands Region, NMFS, located at 1601 Kapiolani Blvd., Suite 1110, Honolulu, Hawaii 96814; telephone number (808) 973–2937.

* * * * *

Pacific Remote Island Areas (PRIA) pelagic troll and handline fishing permit means the permit required by § 660.21 to use a vessel shoreward of the outer boundary of the EEZ around the PRIA to fish for Pacific pelagic management unit species using pelagic handline or troll fishing methods.

* * * * *

Special Agent-In-Charge (SAC) means the Special-Agent-In-Charge, NMFS, Pacific Islands Enforcement Division, or a designee of the SAC, located at 300 Ala Moana Blvd., Suite 7–118, Honolulu, Hawaii, 96850; telephone number (808) 541–2727.

* * * * *

Western Pacific Fishery Management Area means those waters shoreward of the outer boundary of the EEZ around American Samoa, Guam, Hawaii, the Northern Mariana Islands, Midway, Johnston and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands.

Western Pacific general longline permit means the permit authorized under § 660.21 to use a vessel shoreward of the outer boundary of the EEZ around Guam, the Northern Mariana Islands, Johnston or Palmyra Atolls, Kingman Reef, or Wake, Jarvis, Baker or Howland Islands to fish for Pacific pelagic management unit species using longline gear or to land or to transship Pacific pelagic management unit species that were caught using longline gear.

■ 3. In § 660.13, paragraphs (c), (d), and (e), and the first and last sentences of paragraph (f)(2) are revised to read as follows:

§ 660.13 Permits and fees.

* * * * *

(c) *Application.* (1) A Western Pacific Federal Fisheries Permit Application Form may be obtained from the NMFS PIRO to apply for a permit or permits to operate in any of the fisheries regulated under subparts C, D, E, F, and J of this part. The completed application must be submitted to PIRO. In no case shall PIRO accept an application that is not on the Western Pacific Federal Fisheries Application Form.

(2) A minimum of 15 days after the day PIRO receives a complete application should be allowed for processing a permit application for fisheries under subparts C, D, E, and F of this part. A minimum of 60 days after the day PIRO receives a complete application should be allowed for processing a permit application for fisheries under subpart J of this part. If an incomplete or improperly completed application is filed, the applicant will be sent a letter of notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of the letter of notification of deficiency, the application will be considered abandoned.

(d) *Change in application information.* Any change in the permit application information or vessel documentation, submitted under paragraph (c) of this section, must be reported to PIRO in writing within 15 days of the change to avoid a delay in processing the permit application. A minimum of 10 days from the day the information is received by PIRO should be given for PIRO to record any change in information from the permit application submitted under paragraph (c) of this section. Failure to report such changes may result in a delay in processing an application, permit holders failing to receive important notifications, or sanctions pursuant to the Magnuson-Stevens Act at 16 U.S.C. § 1858(g) or 15 CFR part 904, subpart D.

(e) *Issuance.* After receiving a complete application, the Regional Administrator will issue a permit to an applicant who is eligible under §§ 660.21, 660.36, 660.41, 660.61, 660.601, or 660.8, or 660.602 as appropriate.

(f) *Fees.** * *

(2) PIRO will charge a fee for each application for a Hawaii longline limited access permit, Mau Zone limited access permit, coral reef ecosystem special permit, or a American Samoa longline limited access permit (including permit transfers and renewals). * * * Failure to pay the fee will preclude the issuance, transfer or renewal of a Hawaii longline limited access permit, Mau Zone limited access permit, coral reef ecosystem special permit, or an American Samoa longline limited access permit.

■ 4. Section 660.21 is revised to read as follows:

§ 660.21 Permits.

(a) A vessel of the United States must be registered for use with a valid permit under the High Seas Fishing Compliance Act if that vessel is used to fish on the high seas, as required under § 300.15 of this title.

(b) A vessel of the United States must be registered for use under a valid Hawaii longline limited access permit if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around the Hawaiian Archipelago; or

(2) To land or transship, shoreward of the outer boundary of the EEZ around the Hawaiian Archipelago, Pacific pelagic management unit species that were harvested using longline gear.

(c) A vessel of the United States must be registered for use under a valid American Samoa longline limited access permit, in accordance with § 660.36, if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around American Samoa; or

(2) To land shoreward of the outer boundary of the EEZ around American Samoa Pacific pelagic management unit species that were harvested using longline gear in the EEZ around American Samoa; or

(3) To transship shoreward of the outer boundary of the EEZ around American Samoa Pacific pelagic management unit species that were harvested using longline gear in the EEZ around American Samoa or on the high seas.

(d) A vessel of the United States must be registered for use under a valid Western Pacific general longline permit, American Samoa longline limited access permit, or Hawaii longline limited access permit if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll); or

(2) To land or transship shoreward of the outer boundary of the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll), Pacific pelagic management unit species that were harvested using longline gear.

(e) A receiving vessel of the United States must be registered for use with a valid receiving vessel permit if that vessel is used to land or transship, within the Western Pacific Fishery Management Area, Pacific pelagic management unit species that were harvested using longline gear.

(f) A vessel of the United States must be registered for use with a valid PRIA pelagic troll and handline fishing permit if that vessel is used to fish for Pacific

pelagic management unit species using pelagic handline or trolling fishing methods in the EEZ around the PRIA.

(g) Any required permit must be valid and on board the vessel and available for inspection by an authorized agent, except that, if the permit was issued (or registered to the vessel) during the fishing trip in question, this requirement applies only after the start of any subsequent fishing trip.

(h) A permit is valid only for the vessel for which it is registered. A permit not registered for use with a particular vessel may not be used.

(i) An application for a permit required under this section will be submitted to PIRO as described in § 660.13.

(j) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, and sanctions for permits issued under this section, as applicable, are contained in § 660.13.

(k) A Hawaii longline limited access permit may be transferred as follows:

(1) The owner of a Hawaii longline limited access permit may apply to transfer the permit:

(i) To a different person for registration for use with the same or another vessel; or

(ii) For registration for use with another U.S. vessel under the same ownership.

(2) [Reserved]

(l) A Hawaii longline limited access permit will not be registered for use with a vessel that has a LOA greater than 101 ft (30.8 m).

(m) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a Hawaii longline limited access permit.

(n) *Permit appeals.* Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or any permit owner may appeal to the Regional Administrator the granting, denial, conditioning, suspension, or transfer of a permit or requested permit under this section. To be considered by the Regional Administrator, the appeal must be in writing, must state the action(s) appealed, and the reasons therefor, and must be submitted within 30 days of the action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(1) Upon receipt of an appeal authorized by this section, the Regional Administrator may request additional information. Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the criteria set out in this part for qualifying for, or renewing, limited access permits. In making such decision, the Administrator will review relevant portions of the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region, to the extent such review would clarify the criteria in this part. Such decision will be based upon information relative to the application on file at NMFS and the Council and any additional information available; the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (n)(3) of this section; and such other considerations as deemed appropriate. The Regional Administrator will notify the appellant of the decision and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(2) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose. Such a hearing normally shall be held no later than 30 days following receipt of the appeal, unless the hearing officer extends the time. The appellant and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend, in writing, a decision to the Regional Administrator.

(3) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify the appellant, and interested persons, if any, of the decision, and the reason(s) therefor, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action shall constitute final Agency action for purposes of the Administrative Procedure Act.

(4) In the case of a timely appeal from an American Samoa longline limited access permit initial permit decision, the Regional Administrator will issue the appellant a temporary American Samoa longline limited access permit. A temporary permit will expire 20 days after the Regional Administrator's final decision on the appeal. In no event will a temporary permit be effective for longer than 60 days.

(5) With the exception of temporary permits issued under paragraph (n)(4) of this section, any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Administrator for good cause, either upon his/her own motion or upon written request from the appellant stating the reason(s) therefor.

■ 5. Section 660.22 is revised to read as follows:

§ 660.22 Prohibitions.

In addition to the prohibitions specified in Part 600 § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to make and/or file all reports of Pacific pelagic management unit species landings, containing all data and in the exact manner, as required by applicable state law or regulation, as specified in § 660.3, provided that the person is required to do so by applicable state law or regulation.

(b) Use a vessel without a valid permit issued under the High Seas Fishing Compliance Act to fish for Pacific pelagic management unit species using longline gear, on the high seas, in violation of §§ 300.15 and 660.21(a)of this title.

(c) Use a vessel in the EEZ around the Hawaiian Archipelago without a valid Hawaii longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species using longline gear, in violation of § 660.21(b)(1).

(d) Use a vessel shoreward of the outer boundary of the EEZ around the Hawaiian Archipelago without a valid Hawaii longline limited access permit registered for use with that vessel, to land or transship Pacific pelagic management unit species that were harvested with longline gear, in violation of § 660.21(b)(2).

(e) Use a vessel in the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species using longline gear, in violation of § 660.21(c)(1).

(f) Use a vessel shoreward of the outer boundary of the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to land Pacific pelagic management unit species that were caught with longline gear within the EEZ around American Samoa, in violation of § 660.21(c)(2).

(g) Use a vessel within the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to transship Pacific pelagic management unit species that were

caught with longline gear, in violation of § 660.21(c)(3).

(h) Use a vessel in the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll) without either a valid Western Pacific general longline permit, American Samoa longline limited access permit or a Hawaii longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species using longline gear, in violation of § 660.21(d)(1).

(i) Use a vessel shoreward of the outer boundary of the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll) without either a valid Western Pacific general longline permit, American Samoa longline limited access permit or a Hawaii longline limited access permit registered for use with that vessel, to land or transship Pacific pelagic management unit species that were harvested using longline gear, in violation of § 660.21(d)(2).

(j) Use a vessel in the Western Pacific Fishery Management Area to land or transship Pacific pelagic management unit species caught by other vessels using longline gear, without a valid receiving vessel permit registered for use with that vessel, in violation of § 660.21(e).

(k) Use a vessel in the EEZ around the PRIA employing handline or trolling methods to fish for Pacific pelagic management unit species without a valid PRIA pelagic troll and handline fishing permit registered for use for that vessel, in violation of § 660.21(f).

(l) Fish in the fishery after failing to comply with the notification requirements in § 660.23.

(m) Fail to comply with notification requirements set forth in § 660.23 or in any EFP issued under § 660.17.

(n) Fail to comply with a term or condition governing the vessel monitoring system when using a vessel registered for use with a Hawaii longline limited access permit, or a vessel registered for use with a size Class C or D American Samoa longline limited access permit, in violation of § 660.25.

(o) Fish for, catch, or harvest Pacific pelagic management unit species with longline gear without a VMS unit on board the vessel after installation of the VMS unit by NMFS, in violation of § 660.25(d)(2).

(p) Possess on board a vessel without a VMS unit Pacific pelagic management unit species harvested with longline gear after NMFS has installed the VMS unit on the vessel, in violation of § 660.25(d)(2).

(q) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same; or to move or remove a VMS unit without the prior permission of the SAC in violation of § 660.25(d)(3).

(r) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit, in violation of § 660.25(d)(1).

(s) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit, in violation of § 660.25(d)(1).

(t) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer, in violation of § 660.28(f)(4).

(u) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC, in violation of § 660.25(e).

(v) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 660.17 or § 660.27, in violation of § 660.26.

(w) Fish for Pacific pelagic management unit species with longline gear within the protected species zone, in violation of § 660.26(b).

(x) Fail to comply with a term or condition governing the observer program established in § 660.28 if using a vessel registered for use with a Hawaii longline limited access permit, or a vessel registered for use with a size Class B, C or D American Samoa longline limited access permit, to fish for Pacific pelagic management unit species using longline gear.

(y) Fail to comply with other terms and conditions that the Regional Administrator imposes by written notice to either the permit holder or the designated agent of the permit holder to facilitate the details of observer placement.

(z) Enter the EEZ around the Hawaiian Archipelago with longline gear that is not stowed or secured in accordance with § 660.29, if operating a U.S. vessel without a valid Hawaii longline limited access permit registered for use with that vessel.

(aa) Enter the EEZ around Guam, the Northern Mariana Islands, or PRIA with longline gear that is not stowed or secured in accordance with § 660.29 if operating a U.S. vessel without a valid Western Pacific general longline permit, American Samoa longline limited access permit, or Hawaii longline limited access permit, registered for use with that vessel.

(bb) Enter the EEZ around American Samoa with longline gear that is not stowed or secured in accordance with § 660.29, if operating a U.S. vessel without a valid American Samoa longline limited access permit registered for use with that vessel.

(cc) Fail to carry, or fail to use, a line clipper, dip net, or dehooker on a vessel registered for use under a Hawaii longline limited access permit, in violation of § 660.32(a).

(dd) When operating a vessel registered for use under a American Samoa longline limited access permit or a Hawaii longline limited access permit, fail to comply with the sea turtle handling, resuscitation, and release requirements, in violation of § 660.32(b).

(ee) Engage in shallow-setting without a valid shallow-set certificate for each shallow set made, in violation of § 660.33(c).

(ff) Fail to attach a valid shallow-set certificate for each shallow-set to the original logbook form submitted to the Regional Administrator under § 660.14, in violation of § 660.33(c).

(gg) Possess float lines less than 20 meters in length on board a vessel registered for use under a Hawaii longline limited access permit at any time during a trip for which notification to NMFS under § 660.23(a) indicated that deep-setting would be done, in violation of § 660.33(d).

(hh) Possess light sticks on board a vessel registered for use under a Hawaii longline limited access permit at any time during a trip for which notification to NMFS under § 660.23(a) indicated that deep-setting would be done, in violation of § 660.33(d).

(ii) Transfer a shallow-set certificate to a person other than a holder of a Hawaii longline limited access permit, in violation of § 660.33(e).

(jj) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit north of the equator (0° lat.) with hooks other than offset circle hooks sized 18/0 or larger, with 10° offset, in violation of § 660.33(f).

(kk) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit north of the equator (0° lat.) with bait other than mackerel-type bait, in violation of § 660.33(g).

(ll) From a vessel registered for use under a Hawaii longline limited access permit, make any longline set not of the type (shallow-setting or deep-setting) indicated in the notification to the Regional Administrator pursuant to § 660.23(a), in violation of § 660.33(h).

(mm) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set component of the

longline fishery has been closed pursuant to § 660.33(b)(2)(I), in violation of § 660.33(I).

(nn) Land or possess more than 10 swordfish on board a vessel registered for use under a Hawaii longline limited access permit on a fishing trip for which the permit holder notified NMFS under § 660.23(a) that the vessel would conduct a deep-setting trip, in violation of § 660.33(j).

(oo) Own or operate a vessel that is registered for use under a Hawaii longline limited access permit and engaged in longline fishing for Pacific pelagic management unit species and fail to be certified for completion of a NMFS protected species workshop, in violation of § 660.34(a).

(pp) Operate a vessel registered for use under a Hawaii longline limited access permit while engaged in longline fishing without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof, in violation of § 660.34(d).

(qq) Fail to use a line setting machine or line shooter, with weighted branch lines, to set the main longline when operating a vessel that is registered for use under a Hawaii longline limited access permit and equipped with monofilament main longline, when making deep sets north of 23° N. lat., in violation of § 660.35(a)(1) or (a)(2).

(rr) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use under a Hawaii longline limited access north of 23° N. lat., in violation of § 660.35(a)(3).

(ss) Fail to maintain and use blue dye to prepare thawed bait when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 660.35(a)(4), (a)(5), or (a)(6).

(tt) Fail to retain, handle, and discharge fish, fish parts, and spent bait, strategically when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 660.35(a)(7), through (a)(9).

(uu) Fail to be begin the deployment of longline gear at least 1 hour after local sunset or fail to complete the setting process before local sunrise from a vessel registered for use under a Hawaii longline limited access permit while shallow-setting north of 23° N. lat., in violation of § 660.35(a)(1).

(vv) Fail to handle short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.35 (b).

(ww) Fail to handle seabirds other than short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.35(c).

(xx) Use a large vessel to fish for Pelagic management unit species within an American Samoa large vessel prohibited area except as allowed pursuant to an exemption issued under § 660.38.

(yy) Fish for Pacific pelagic management unit species using gear prohibited under § 660.30 or not permitted by an EFP issued under § 660.17.

■ 6. Section 660.23 is revised to read as follows:

§ 660.23 Notifications.

(a) The permit holder for any vessel registered for use under a Hawaii longline limited access permit or for any vessel greater than 40 ft (12.2 m) in length overall that is registered for use under an American Samoa longline limited access permit, or a designated agent, shall provide a notice to the Regional Administrator at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the EEZ around the Hawaiian Archipelago or American Samoa. For the purposes of this section, the vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder. The notice must be provided to the office or telephone number designated by the Regional Administrator. The notice must provide the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and the name and telephone number of the agent designated by the permit holder to be available between 8 a.m. and 5 p.m. (local time) on weekdays for NMFS to contact to arrange observer placement. Permit holders for vessels registered for use under Hawaii longline limited access permits must also provide notification of the trip type (either deep-setting or shallow-setting).

(b) The operator of any vessel subject to the requirements of this subpart who does not have on board a VMS unit while transiting the protected species zone as defined in § 660.12, must notify the NMFS Special-Agent-In-Charge immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of access or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

(c) The permit holder for any American Samoa longline limited access permit, or an agent designated by the permit holder, must notify the Regional Administrator in writing within 30 days of any change to the permit holder's contact information or any change to the vessel documentation associated with a permit registered to an American Samoa longline limited access permit. Complete changes in the ownership of the vessel registered to an American Samoa longline limited access permit must also be reported to PIRO in writing within 30 days of the change. Failure to report such changes may result in a delay in processing an application, permit holders failing to receive important notifications, or sanctions pursuant to the Magnuson-Stevens Act at 16 U.S.C. § 1858(g) or 15 CFR part 904, subpart D.

■ 7. In § 660.25, paragraph (b), the first sentence of paragraph (c), and the introductory text of paragraph (d) are revised to read as follows:

§ 660.25 Vessel monitoring systems.

* * * * *

(b) *Notification.* After a Hawaii longline limited access permit holder or size Class C or D American Samoa longline limited access permit holder has been notified by the SAC of a specific date for installation of a VMS unit on the permit holder's vessel, the vessel must carry the VMS unit after the date scheduled for installation.

(c) *Fees and charges.* During the experimental VMS program, a Hawaii longline limited access permit holder or size Class C or D American Samoa longline permit holder with a size Class D or D permit shall not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directed to requirements under this section. * * *

(d) *Permit holder duties.* The holder of a Hawaii longline limited access permit or a size Class C or D American Samoa longline permit and master of the vessel must: * * *

■ 8. Section 660.36 is added to read as follows:

§ 660.36 American Samoa longline limited entry program.

(a) *General.* Under § 660.21(c), certain U.S. vessels are required to be registered for use under a valid American Samoa longline limited access permit. With the exception of reductions in permits in vessel size Class A under paragraph (c)(1) of this section, the maximum

number of permits will be capped at the number of initial permits actually issued under paragraph (f)(1) of this section.

(b) *Terminology.* For purposes of this section, the following terms have these meanings:

(1) *Documented participation* means participation proved by, but not necessarily limited to, a properly submitted NMFS or American Samoa logbook, an American Samoa creel survey record, a delivery or payment record from an American Samoa-based cannery, retailer or wholesaler, an American Samoa tax record, an individual wage record, ownership title, vessel registration, or other official documents showing:

(i) Ownership of a vessel that was used to fish in the EEZ around American Samoa, or

(ii) Evidence of work on a fishing trip during which longline gear was used to harvest Pacific pelagic management unit species in the EEZ around American Samoa. If the applicant does not possess the necessary documentation of evidence of work on a fishing trip based on records available only from NMFS or the Government of American Samoa (e.g., creel survey record or logbook), the applicant may request PIRO to obtain such records from the appropriate agencies, if available. The applicant should provide sufficient information on the fishing trip to allow PIRO to retrieve the records.

(2) *Family* means those people related by blood, marriage, and formal or informal adoption.

(c) *Vessel size classes.* The Regional Administrator shall issue American Samoa longline limited access permits in the following size classes:

(1) Class A: Vessels less than or equal to 40 ft (12.2 m) length overall. The maximum number will be reduced as Class B–1, C–1, and D–1 permits are issued under paragraph (e) of this section.

(2) Class B: Vessels over 40 ft (12.2 m) to 50 ft (15.2 m) length overall.

(3) Class B–1: Maximum number of 14 permits for vessels over 40 ft (12.2 m) to 50 ft (15.2 m) length overall, to be made available according to the following schedule:

(i) Four permits in the first calendar year after the Regional Administrator has issued all initial permits in

Classes A, B, C, and D (initial issuance),

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus four additional permits,

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first eight, plus four additional permits, and

(iv) In the fourth calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first 12, plus two additional permits.

(4) Class C: Vessels over 50 ft (15.2 m) to 70 ft (21.3 m) length overall.

(5) Class C–1: Maximum number of six permits for vessels over 50 ft (15.2) to 70 ft (21.3 m) length overall, to be made available according to the following schedule:

(i) Two permits in the first calendar year after initial issuance,

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first two, plus two additional permits, and

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus two additional permits.

(6) Class D: Vessels over 70 ft (21.3 m) length overall.

(7) Class D–1: Maximum number of 6 permits for vessels over 70 ft (21.3 m) length overall, to be made available according to the following schedule:

(i) Two permits in the first calendar year after initial issuance,

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first two, plus two additional permits, and

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus two additional permits.

(d) A vessel subject to this section may only be registered with an American Samoa longline limited access permit of a size class equal to or larger than the vessel's length overall.

(e) *Initial permit qualification.* Any U.S. national or U.S. citizen or company, partnership, or corporation qualifies for an initial American Samoa longline limited access permit if the person, company, partnership, or corporation, on or prior to March 21, 2002, owned a vessel that was used during the time of their ownership to harvest Pacific pelagic management unit species with longline gear in the EEZ around American Samoa and that fish was landed in American Samoa:

(1) Prior to March 22, 2002, or

(2) Prior to June 28, 2002, provided that the person or business provided to NMFS or the Council, prior to March 22, 2002, a written notice of intent to participate in the pelagic longline fishery in the EEZ around American Samoa.

(f) *Initial permit issuance.* (1) Any application for issuance of an initial permit must be submitted to the Pacific Islands Regional Office no later than 120 days after the effective date of this final rule. The Regional Administrator shall publish a notice in the **Federal Register**, send notices to persons on the American Samoa pelagics mailing list, and use other means to notify prospective applicants of the availability of permits. Applications for initial permits must be made, and application fees paid, in accordance with §§ 660.13(c)(1), (d) and (f)(2). A complete application must include documented participation in the fishery in accordance with § 660.36(b)(1). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers.

(2) Only permits of Class A, B, C, and D will be made available for initial issuance. Permits of Class B–1, C–1, and D–1, will be made available in subsequent calendar years.

(3) Within 30 days of receipt of a completed application, the Assistant Regional Administrator for Sustainable Fisheries, PIRO, shall make a decision on whether the applicant qualifies for an initial permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel, of the equivalent size class or smaller to which the qualifying vessel would have belonged, to the permit within 120 days of the date of the letter of notification, and maintain this vessel registration to the permit for at least 120 days. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included. (4) An appeal of a denial of an application for an initial permit shall be processed in accordance with § 660.21(n) of this subpart.

(4) After all appeals on initial permits are concluded in any vessel size class, the maximum number of permits in that class shall be the number of permits issued during the initial issuance process (including appeals). The maximum number of permits will not change, except that the maximum number of Class A permits will be reduced if Class A permits are replaced by B–1, C–1, or D–1 permits under paragraph (h) of this section. Thereafter,

if any Class A, B, C, or D permit becomes available, the Regional Administrator shall re-issue that permit according to the process set forth in paragraph (g) of this section.

(g) *Additional permit issuance.* (1) If the number of permits issued in Class A, B, C, or D, falls below the maximum number of permits, the Regional Administrator shall publish a notice in the **Federal Register**, send notices to persons on the American Samoa pelagics mailing list, and use other means to notify prospective applicants of any available permit(s) in that class. Any application for issuance of an additional permit must be submitted to PIRO no later than 120 days after the date of publication of the notice on the availability of additional permits in the **Federal Register**. A complete application must include documented participation in the fishery in accordance with § 660.36(b)(1). The Regional Administrator shall issue permits to persons according the following priority standard:

(i) First priority accrues to the person with the earliest documented participation in the pelagic longline fishery in the EEZ around American Samoa on a Class A sized vessel.

(ii) The next priority accrues to the person with the earliest documented participation in the pelagic longline fishery in the EEZ around American Samoa on a Class B size, Class C size, or Class D size vessel, in that order.

(iii) In the event of a tie in the priority ranking between two or more applicants, then the applicant whose second documented participation in the pelagic longline fishery in the EEZ around American Samoa is first in time will be ranked first in priority. If there is still a tie between two or more applicants, the Regional Administrator will select the successful applicant by an impartial lottery.

(2) Applications must be made, and application fees paid, in accordance with §§ 660.13(c)(1), (d), and (f)(2). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers that comprise ownership of the vessel for which the permit application is prepared.

(3) Within 30 days of receipt of a completed application, the Assistant Regional Administrator for Sustainable Fisheries shall make a decision on whether the applicant qualifies for a permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel of the equivalent vessel size or smaller to the permit within 120 days of the date of the letter of notification. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included. If the successful applicant fails to register a vessel to the permit within 120 days of the date of the letter of notification, the Assistant Regional Administrator for Sustainable Fisheries shall issue a letter of notification to the next person on the priority list or, in the event that there are no more prospective applicants on the priority list, re-start the issuance process pursuant to paragraph (g)(1) of this section. Any person who fails to register the permit to a vessel under this paragraph within 120 days shall not be eligible to apply for a permit for 6 months from the date those 120 days expired.

(4) An appeal of a denial of an application for a permit shall be processed in accordance with § 660.21(n).

(h) *Class B–1, C–1, and D–1 Permits.* (1) Permits of Class B–1, C–1, and D–1 will be initially issued only to persons who hold a Class A permit and who, prior to March 22, 2002, participated in the pelagic longline fishery around American Samoa.

(2) The Regional Administrator shall issue permits to persons for Class B–1, C–1, and D–1 permits based on each person's earliest documented participation, with the highest priority given to that person with the earliest date of documented participation.

(3) A permit holder who receives a Class B–1, C–1, or D–1 permit must relinquish his or her Class A permit and that permit will no longer be valid. The maximum number of Class A permits will be reduced accordingly.

(4) Within 30 days of receipt of a completed application for a Class B–1, C–1, and D–1 permit, the Regional Administrator shall make a decision on whether the applicant qualifies for a permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel of the equivalent vessel size or smaller to the permit within 120 days of the date of the letter of notification. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included.

(5) An appeal of a denial of an application for a Class B–1, C–1, or D–1 permit shall be processed in accordance with § 660.21(n).

(6) If a Class B–1, C–1, or D–1 permit is relinquished, revoked, or not renewed pursuant to paragraph (j)(1) of this section, the Regional Administrator shall make that permit available according to the procedure described in paragraphs (g)(1) through (g)(4) of this section.

(i) *Permit transfer.* The holder of an American Samoa longline limited access permit may transfer the permit to another individual, partnership, corporation, or other entity as described in this section. Applications for permit transfers must be submitted to the Regional Administrator within 30 days of the transferral date. If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers. After such an application has been made, the permit is not valid for use by the new permit holder until the Regional Administrator has issued the permit in the new permit holder's name under § 660.13(c).

(1) *Permits of all size classes except Class A.* An American Samoa longline limited access permit of any size class except Class A may be transferred (by sale, gift, bequest, intestate succession, barter, or trade) to the following persons only:

(i) A Western Pacific community located in American Samoa that meets the criteria set forth in section 305(I)(2) of the Magnuson-Stevens Act, 16 U.S.C. 1855(I)(2), and its implementing regulations, or

(ii) Any person with documented participation in the pelagic longline fishery in the EEZ around American Samoa.

(2) *Class A Permits.* An American Samoa longline limited access permit of Class A may be transferred (by sale, gift, bequest, intestate succession, barter, or trade) to the following persons only:

(i) A family member of the permit holder,

(ii) A Western Pacific community located in American Samoa that meets the criteria set forth in section 305(I)(2)

of the Magnuson-Stevens Act, 16 U.S.C. 1855(I)(2), and its implementing regulations, or

(iii) Any person with documented participation in the pelagic longline fishery on a Class A size vessel in the EEZ around American Samoa prior to March 22, 2002.

(3) *Class B–1, C–1, and D–1 Permits.* Class B–1, C–1, and D–1 permits may not be transferred to a different owner for 3 years from the date of initial issuance, except by bequest or intestate succession if the permit holder dies during those 3 years. After the initial 3 years, Class B–1, C–1, and D–1 permits may be transferred only in accordance with the restrictions in paragraph (I)(1) of this section.

(j) *Permit renewal and registration of vessels*—(1) *Use requirements.* An American Samoa longline limited access permit will not be renewed following 3 consecutive calendar years (beginning with the year after the permit was issued in the name of the current permit holder) in which the vessel(s) to which it is registered landed less than:

(i) For permit size Classes A or B: a total of 1,000 lb (455 kg) of Pacific pelagic management unit species harvested in the EEZ around American Samoa using longline gear, or

(ii) For permit size Classes C or D: a total of 5,000 lb (2,273 kg) of Pacific pelagic management unit species harvested in the EEZ around American Samoa using longline gear.

(k) *Concentration of ownership of permits.* No more than 10 percent of the maximum number of permits, of all size classes combined, may be held by the same permit holder. Fractional interest will be counted as a full permit for the purpose of calculating whether the 10–percent standard has been reached.

(l) *Three year review.* Within 3 years of the effective date of this final rule the Council shall consider appropriate revisions to the American Samoa limited entry program after reviewing the effectiveness of the program with respect to its biological and socioeconomic objectives, concerning gear conflict, overfishing, enforceability, compliance, and other issues.

§§ 660.13, 660.21, 660.22, 660.27, 660.28, 660.38, 660.41, 660.42, 660.48, 660.49, 660.51, 660.61, 660.62, 660.63, 660.65, and 660.86 [Amended]

■ 10. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
660.13	Southwest Region FMD	Western Pacific Regional Administrator.
660.21	Longline general permit Pacific Area Office FMD	Western Pacific general longline permit PIRO Regional Administrator.
660.22	Longline general permit	Western Pacific general longline permit.
660.27	Pacific Area Office	PIRO.
660.28	Fisheries Observer Branch, Southwest Region Southwest Regional Administrator.	Observer Program, PIRO Regional Administrator.
660.38	Longline general permit	Western Pacific general longline permit.
660.41	Pacific Area Office Regional Director	PIRO.
660.42	Regional Director	Regional Administrator.
660.48	NMFS Law Enforcement Office	SAC.
660.49	Regional Director	Regional Administrator.
660.51	Regional Director	Regional Administrator.
660.61	PIAO	PIRO.
660.62	Regional Director	Regional Administrator.
660.63	Pacific Area Office	PIRO.
660.65	Pacific Area Office	PIRO.
660.86	Pacific Islands Area Office	PIRO.

[FR Doc. 05–10351 Filed 5–23–05; 8:45 am]

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Proposed Rules

Federal Register
Vol. 70, No. 99
Tuesday, May 24, 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 TREASURY

Community Development Financial Institutions Fund

12 CFR Chapter XVIII

New Markets Tax Credit Program

AGENCY: Community Development Financial Institutions Fund, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document provides advance notice of proposed rulemaking for the issuance of regulations relating to the New Markets Tax Credit (NMTC) Program as authorized by 26 U.S.C. 45D. This document invites comments from the public on certain issues regarding the designation of low-income communities for purposes of the NMTC Program. All materials submitted will be available for public inspection and copying.

DATES: All comments and submissions must be received by July 8, 2005.

ADDRESSES: Comments should be sent by mail to: NMTC Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; by e-mail to *cdfihelp@cdfi.treas.gov*; or by facsimile at (202) 622–7754. This is not a toll free number.

FOR FURTHER INFORMATION CONTACT: Matthew Josephs, (202) 622–9254. Information regarding the Community Development Financial Institutions (CDFI) Fund and its programs may be downloaded from the CDFI Fund's Web site at *http://www.cdfifund.gov*.

SUPPLEMENTARY INFORMATION: Section 121(a) of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554), enacted on December 21, 2000, amended the Internal Revenue Code (IRC) by adding IRC section 45D, New Markets Tax Credit. The New Markets Tax Credit (NMTC) is a credit against Federal income taxes provided to taxpayers that make qualified equity investments in qualified Community Development Entities (CDEs). The credit provided to the taxpayer totals 39 percent of the cost of the investment and is claimed over a seven-year credit period. Substantially all of the cash from the taxpayer's qualified equity investment must in turn be used by the CDE for making Qualified Low-Income Community Investments (QLICIs). IRC section 45D(d)(1) defines a QLICI as (A) any capital or equity investment in, or loan to, any Qualified Active Low-Income Community Business (QALICB); (B) the purchase from another CDE of any loan made by such entity which is a QLICI; (C) financial counseling and other services to businesses located in, and residents of, low-income communities; and (D) any equity investment in, or loan to, a CDE.

Under IRC section 45D(c)(1), a CDE is any domestic corporation or partnership if (A) the primary mission of the entity is serving, or providing investment capital for, low-income communities or low-income persons; (B) the entity maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity; and (C) the entity is certified by the CDFI Fund for purposes of IRC section 45D as being a CDE.

The term Low-Income Community, as defined under IRC section 45D(e)(1), means any population census tract in which (A) the poverty rate is at least 20 percent; or (B)(i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide (or possessionwide) median family income, or (B)(ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide (or possessionwide) median family income or the metropolitan area median family income.

Section 221(a) of the American Jobs Creation Act of 2004 (Act) (Pub. L. 108–357) amended IRC section 45D(e)(2) to provide that the Secretary shall prescribe regulations under which one or more Targeted Populations (within the meaning of section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20)) may be treated as Low-Income Communities. Such regulations are to include procedures for determining which entities are QALICBs with respect to such Targeted Populations. Under section 221(c)(1) of the Act, the amendment made by section 221(a) of the Act applies to designations made by the Secretary after October 22, 2004. Prior to amendment by the Act, IRC section 45D(e)(2) provided that the Secretary could designate any area within any census tract as a Low-Income Community if (A) the boundary of the area was continuous; (B) the area would have satisfied the requirements of IRC section 45D(e)(1) if it were a census tract; and (C) an inadequate access to investment capital existed in such area.

Section 221(b) of the Act added IRC section 45D(e)(4) which provides that a population census tract with a population of less than 2,000 shall be treated as a Low-Income Community for purposes of IRC section 45D if such tract (A) is within an empowerment zone, the designation of which is in effect under IRC section 1391; and (B) is contiguous to one or more Low-Income Communities (determined without regard to IRC section 45D(e)(4)). Under section 221(c)(2) of the Act, the amendment made by section 221(b) of the Act applies to investments made after October 22, 2004.

Section 223(a) of the Act added IRC section 45D(e)(5) which provides that, in the case of a population census tract located within a high migration rural county, the term Low-Income Community includes a tract not located within a metropolitan area if the median family income for such tract does not exceed 85 percent of the statewide median family income. For this purpose, the term ''high migration rural county'' means any county which, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period. Section 223(b) of the Act provides that the amendment made by section 223 is in effect as if included in the original authorizing legislation for the NMTC (section 121(a) of the Community Renewal Tax Relief Act of 2000).

The CDFI Fund will likely provide additional guidance on its Web site (at *http://www.cdfifund.gov*) indicating

where interested parties may access the data necessary to determine whether certain census tracts qualify under IRC sections 45D(e)(4) and (e)(5), but it is not anticipated that further regulations will be published with respect to these two provisions.

The CDFI Fund is publishing this advance notice of proposed rulemaking to seek comments from the public with respect to how Targeted Populations under IRC section 45D(e)(2) may be treated as eligible Low-Income Communities under the NMTC Program. The CDFI Fund specifically invites comments from the public on the following issues and any other issues related to IRC section 45D(e)(2) for which the public believes guidance is particularly needed.

1. *Definition of Targeted Population.* The term ''Targeted Population,'' as defined in 12 U.S.C. 4702(20), means individuals, or an identifiable group of individuals, including an Indian tribe, who (A) are low-income persons (Low-Income Targeted Population); or (B) otherwise lack adequate access to loans or equity investments (Other Targeted Populations). The term ''low-income,'' as defined in 12 U.S.C. 4702(17), means having an income, adjusted for family size, of not more than (A) for metropolitan areas, 80 percent of the area median income; and (B) for non-metropolitan areas, the greater of (i) 80 percent of the area median income; or (ii) 80 percent of the statewide nonmetropolitan area median income. Under the CDFI Program (see 12 CFR 1805.201(b)(3)(iii) and 69 FR 65250), the CDFI Fund has already determined, for purposes of 12 U.S.C. 4702(20), that there exists strong evidence that the following groups of individuals lack adequate access to loans and equity investments on a national level and automatically qualify as Other Targeted Populations: Blacks or African-Americans; Native Americans or American Indians; and Hispanics or Latinos. The CDFI Fund has also determined that there exists strong evidence that Alaska Natives residing in Alaska and Native Hawaiians or other Pacific Islanders, residing in Hawaii or other Pacific Islands, lack adequate access to loans and equity investments and automatically qualify as Other Targeted Populations.

(a) Should these same populations (*i.e.*, Blacks or African Americans; Native Americans or American Indians; Hispanics or Latinos; Alaska Natives residing in Alaska; and Native Hawaiians or other Pacific Islanders residing in Hawaii or other Pacific Islands) automatically qualify as Other Targeted Populations for the purposes of the NMTC Program? Should any of these identified populations be removed, or additional populations be added? If so, what evidence (*i.e.*, research, studies) exists to support your position?

(b) Is it appropriate for the CDFI Fund to designate certain populations to automatically qualify as Other Targeted Populations for the purposes of the NMTC Program without applying a further test to determine whether the person or persons specifically benefiting from a given NMTC transaction in fact lack adequate access to loans and equity investments?

(c) Assuming the CDFI Fund does designate certain populations to automatically qualify as Other Targeted Populations, should the CDFI Fund permit CDE applicants to request that the CDFI Fund designate additional populations as Other Targeted Populations? If so, what evidence should an applicant be required to provide to demonstrate the population lacks adequate access to loans and equity investments?

2. *CDE Certification.* The CDFI Fund's Guidance for Certification of Community Development Entities, New Markets Tax Credit Program (66 FR 65806), provides that an entity may be certified as a CDE under IRC section 45D(c)(1) only if, among other things, the entity designates a geographic service area and demonstrates that at least 20 percent of the membership of its governing board or advisory board is representative of the interests of the residents of Low-Income Communities in that service area. In general, the CDFI Fund's CDE certification guidance provides that the following persons are representative of the interests of Low-Income Community residents: residents of Low-Income Communities; certain small business owners located in Low-Income Communities; representatives or employees of community-based organizations operating in Low-Income Communities; religious leaders whose congregations are based in Low-Income Communities; and employees of governmental agencies or departments that principally serve Low-Income Communities.

(a) Should CDEs wishing to serve Targeted Populations be required to identify a geographic service area as part of their CDE certification and NMTC Program allocation application materials?

(b) Should CDEs wishing to serve Targeted Populations be required to demonstrate that members of the designated Targeted Population are directly represented on their Governing Board or Advisory Board? If the CDFI Fund should impose such a requirement, should the minimum threshold be 20 percent of the total number of board members, which is the percentage currently required in the CDFI Fund's CDE certification guidance?

(c) Assuming that a CDE is interested in serving both a geographic Low-Income Community and a Targeted Population, should it be sufficient for that CDE to simply demonstrate that 20 percent of its board membership is representative of *either* geographic Low-Income Communities or Targeted Populations—or should a CDE be required to separately demonstrate that at least 20 percent of its board is representative of residents of geographic Low-Income Communities *and* at least 20 percent of its board is representative of members of the Targeted Population?

(d) If a CDE has already been certified by the CDFI Fund but now wishes to serve Targeted Populations, how should the CDE be required to demonstrate that it is accountable to those Targeted Populations? Should the CDE be required to submit new certification materials to the Fund?

3. *QALICB Requirements.* Under IRC section 45D(d)(2)(A), a QALICB means, with respect to any taxable year, any corporation (including a nonprofit corporation) or partnership if for such year (i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any Low-Income Community; (ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any Low-Income Community; (iii) a substantial portion of the services performed for such entity by its employees are performed in any Low-Income Community; (iv) less than five percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in IRC section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business; and (v) less than five percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in IRC section 1397C(e)). Under IRC section 45D(d)(3), with certain exceptions, a qualified business is any trade or business. The rental to others of real property is a qualified business only if, among other requirements, the real property is located in a Low-Income Community.

(a) As indicated above, IRC section 45D(e)(2) requires that regulations be issued to provide procedures for

determining which entities are QALICBs with respect to Targeted Populations. Under what circumstances should an entity be determined to be a QALICB with respect to a Targeted Population? For example, should the determination be based on whether the owners, employees or customers of the entity (or some combination thereof) are members of a Targeted Population?

(b) How should the following requirements apply in determining whether an entity is a QALICB with respect to a Targeted Population: (1) The requirement of IRC section 45D(d)(2)(A)(i) under which at least 50 percent of the total gross income of a QALICB must be derived from the active conduct of a qualified business within a Low-Income Community; (2) the requirement of IRC section 45D(d)(2)(A)(ii) under which a substantial portion of the use of the tangible property of a QALICB (whether owned or leased) must be within a Low-Income Community; (3) the requirement of IRC section 45D(d)(2)(A)(iii) under which a substantial portion of the services performed for a QALICB by its employees must be performed in a Low-Income Community; and (4) the requirement of IRC section 45D(d)(3) under which the rental to others of real property is a qualified business only if the real property is located in a Low-Income Community?

Authority: American Jobs Creation Act of 2004, Pub. L. 108–357, Consolidated Appropriations Act of 2001, Pub. L. 106–554.

Dated: May 17, 2005.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. 05–10223 Filed 5–23–05; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738 and 742

[Docket No. 011019257–5107–02]

RIN 0694–AC48

Proposed Rule: Imposition of License Requirement for Exports and Reexports of Missile Technology-Controlled Items Destined to Canada

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule with request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) is proposing to amend the Export Administration Regulations (EAR) by imposing a license requirement for exports and reexports of items controlled for missile technology (MT) reasons to Canada. To date, the EAR have required a license for MT-controlled items to all destinations except Canada, and generally no license exceptions are available for MT-controlled items.

This rule is consistent with a recommendation made by the General Accounting Office (GAO (renamed the Government Accountability Office)) in a 2001 report that BIS either impose a license requirement for exports and reexports of MT-controlled items to Canada, based on section 6(l) of the Export Administration Act of 1979, as amended, or seek a statutory change. The effect of this rule is that all exports and reexports of MT-controlled items to any destination require a license, and generally no license exceptions are available, so that all exports and reexports of MT-controlled items subject to the EAR are subject to prior review.

DATES: Comments must be received on or before June 23, 2005.

ADDRESSES: You may submit comments, identified by RIN 0694–AC48, to BIS by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* (Follow the instructions for submitting comments.)
- E-mail: *mblaskov@bis.doc.gov.* Include ''RIN 0694–AC48'' in the subject line of the message.
- Fax: (202) 482–3355.
- Mail or Hand Delivery/Courier: U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AC48.

Send comments regarding the collection of information to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

Comments received on this rulemaking will be available at: *http://www.bis.doc.gov/foia.*

FOR FURTHER INFORMATION CONTACT: Steven Goldman, Director, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–3825.

SUPPLEMENTARY INFORMATION:

Background

Consistent with a recommendation contained in a report of the General Accounting Office (GAO), the Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations (EAR) to impose a licensing requirement on exports to Canada of dual-use items listed on the Missile Technology Control Regime (MTCR) Annex.

The Export Administration Act (EAA) of 1979 was amended in 1991 to require a license for the export of dual-use MTCR controlled goods or technology to any country. However, when the Commerce Control List was revised and renumbered in August 1991 (56 FR 42824), the Canadian exemption from license requirements for MT-controlled items was not changed. The continuation of the exemption from the licensing requirements for exports to Canada was consistent with U.S. policy that had, since 1941, permitted the export without license of nearly all dual-use goods and technologies intended for consumption or use in Canada.

On May 31, 2001, the United States General Accounting Office (GAO (since renamed the Government Accountability Office)) issued a report entitled: ''Export Controls: Regulatory Change Needed to Comply with Missile Technology Licensing Requirements'' (GAO–01–530). That report recommended that BIS either amend the EAR to require a license for exports of dual-use MTCR items to Canada or seek a statutory change from Congress.

In the course of commenting on GAO's report, the Department of Commerce informed GAO that legislation that would replace the Export Administration Act of 1979 (EAA) was pending in the Congress and that the legislation did not contain a provision that would mandate licensing requirements for the export of MT-controlled items to Canada. At various times in the years 2000 to 2002, S. 149 and H.R. 2581, proposed legislation that would have reauthorized the EAA, were under consideration by the Congress. While S. 149 was approved by the Senate, the legislation to replace the Export Administration Act was not enacted. The Department of Commerce also noted in its comments that it had notified Congress of the Canadian exemption for MT-controlled items every year since 1991.

In light of GAO's recommendation, BIS published an ''Advance notice of proposed rulemaking'' on December 20, 2001 (66 FR 65666), soliciting public comments on the removal of the licensing exemption for export of MT items to Canada. BIS received seventeen comments in response, from Canadian and U.S.-based trade associations, Canadian and U.S.-based companies, a foreign airline, and the Government of Canada. All of the substantive

comments voiced opposition to the licensing requirement.

Summary of Comments

Trade association commenters stated that the license requirement is expected to force Canadian companies to seek business relationships and equipment sources outside of the United States, cause interruptions and delays in binational defense supply lines, negatively impact the intent and spirit of many of the bilateral agreement on defense issues, and negatively impact the integration and interoperability of Canadian and U.S. security forces. One trade association commenter noted that six of the ten largest aerospace companies operating in Canada are subsidiaries of U.S. firms, and stated that imposing a license requirement on MT-controlled items to Canada could lead to loss of significant market share by the aerospace industries of both countries. This Canadian commenter also recommended that the license requirement not be imposed until the Missile Technology Control List Regime (MTCR) control list is completely reviewed. A U.S. industry association commented that the requirement that all MT-controlled items be licensed to Canada would cause considerable dislocation without yielding any corresponding benefit in terms of control or security, and urged that, absent an enactment by Congress that expressly extends the MT license requirement to Canada, the existing rules not be altered.

Canadian and U.S.-based companies commented that trade between the United States and Canada in MT-controlled items will be adversely affected, and that companies will incur added expenses and delays in obtaining licenses for software and technology exports as well as for equipment exports. One company commented that the added expenses incurred by companies to comply with a licensing requirement will trickle down to the flying public.

Finally, the Government of Canada's comments agreed with those of the trade associations and companies on the adverse effect a license requirement will have on U.S.-Canada trade in MT-controlled items and, because of the close relationship between the Canadian and U.S. industries, on the provision of key equipment to U.S. industry and government, including the military. The Government of Canada also commented that several U.S. trade partners maintain provisions to exempt from individual licensing the export of MT-controlled items to other MTCR member countries, and cited the European Union, Japan, Switzerland, and a Canadian exemption for exports to the United States.

Comments may be viewed at: *http://efoia.bis.doc.gov/pubcomm/MTCR-Canada/MTCR-Canada.pdf*.

Response to Comments and Request for Further Comments

Although the comments received in response to the Advance Notice of Proposed Rulemaking generally were opposed to the license requirement for several reasons, in this proposed rule, BIS requests more specific comments as to the effect that the rule will have in terms of numbers of license applications that the industry and/or individual companies would expect to submit under such a requirement, and, if possible, estimated additional costs of complying with a license requirement. Comments addressing these specific issues will enable BIS to evaluate better the impact that a license requirement will have in measurable terms on industry sectors and individual companies.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 6, 2004, 3 CFR, 69 FR 48763 (August 10, 2004), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This proposed rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This proposed rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. This proposed rule is expected to result in an increase in the number of license applications submitted to BIS. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This proposed rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring a notice of proposed rulemaking and the opportunity for public comment are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, in view of the importance of this proposed rule, BIS is seeking public comments before these revisions take effect. The period for submission of comments will close June 23, 2005. BIS will consider all comments received before the close of the comment period in developing a final rule. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them in the development of the final rule. All public comments on this proposed rule must be in writing (including fax or e-mail) and will be a matter of public record, available for public inspection and copying. The Bureau of Industry and Security displays these public comments on its Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia*. BIS does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–0500 for assistance.

List of Subjects

15 CFR Part 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 742

Exports, Foreign trade.

Accordingly, parts 738 and 742 of the Export Administration Regulations (15 CFR parts 730–799) are amended, as follows:

PART 738—[AMENDED]

1. The authority citation for part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

2. Supplement No. 1 to part 738 is amended by adding an ''X'' under ''MT 1'' in the ''Missile Tech'' column for ''Canada.''

PART 742—[AMENDED]

3. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

§ 742.5 [Amended]

4. Section 742.5 is amended by revising the phrase ''to all destinations, except Canada, as indicated by MT Column 1 of the Country Chart'' to read ''to all destinations, as indicated by MT Column 1 of the Country Chart'' in the third sentence of paragraph (a)(1).

Dated: May 19, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–10356 Filed 5–23–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–134030–04 and REG–133791–02]

RIN 1545–BD60 and RIN 1545–BA88

Credit for Increasing Research Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations; notice of public hearing; and withdrawal of previously proposed regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the computation and allocation of the credit for increasing research activities for members of a controlled group of corporations, including consolidated groups, or a group of trades or businesses under common control. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations and withdraws the proposed regulations published in the **Federal Register** on July 29, 2003 (68 FR 44499).

DATES: Written or electronic comments must be received by September 28, 2005. Requests to speak and outlines of the topics to be discussed at the public hearing scheduled for October 19, 2005, at 10 a.m. must be received by September 28, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–134030–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–134030–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–134030–04). The public hearing will be held in the Auditorium, 7th Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Nicole R. Cimino at (202) 622–3120; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Robin R. Jones at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document withdraws the notice of proposed rulemaking (REG–133791–02) published on July 29, 2003 and amends the Income Tax Regulations (26 CFR 1) relating to section 41. The temporary regulations set forth the rules relating to the computation and allocation of the credit for increasing research activities for members of a controlled group of corporations, including consolidated groups, or a group of trades or businesses under common control under section 41(f) for taxable years ending on or after December 31, 2004. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 19, 2005, beginning at 10 a.m. in the Auditorium, 7th Floor, of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In

addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 28, 2005. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Nicole R. Cimino, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–133791–02) published in the **Federal Register** on July 29, 2003, (68 FR 44499) is withdrawn.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.41–6 also issued under 26 U.S.C. 41(f).* * *

Par. 2. In § 1.41–0, the table of contents is amended as follows:

§ 1.41–0 Table of contents.

[The text of proposed § 1.41–0 is the same as the text of § 1.41–0 published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.41–6 is revised to read as follows:

§ 1.41–6 Aggregation of expenditures.

[The text of proposed § 1.41–6 is the same as the text of § 1.41–6T published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.41–8 is revised to read as follows:

§ 1.41–8. Special rules for taxable years ending on or after January 3, 2001.

[The text of proposed § 1.41–8 is the same as the text of § 1.41–8T published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–10236 Filed 5–23–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100420–03]

RIN 1545–BB90

Safe Harbor for Valuation Under Section 475

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document sets forth an elective safe harbor for dealers in securities, dealers in commodities, and traders in securities and commodities that permits these taxpayers to make an election pursuant to which the values of positions reported on certain financial statements are the fair market values of those positions for purposes of section 475 of the Internal Revenue Code. This safe harbor attempts to reduce the compliance burden upon taxpayers and to improve the administrability of the valuation aspect of section 475 for the Internal Revenue Service. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by August 22, 2005. Outlines of topics to be discussed at the public hearing scheduled for September 15, 2005 at 10 a.m. must be received by August, 23, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–100420–03), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–100420–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–100420–03).

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622–7180; concerning the proposals, Marsha A. Sabin or John W. Rogers III (202) 622–3950 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer of the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 25, 2005. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of the information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in § 1.475(a)–4(f)(1)and § 1.475(a)–4(k). This

information is required by the IRS to avoid any uncertainty about whether a taxpayer has made an election and to verify compliance with section 475 and the safe harbor method of accounting described in § 1.475(a)–4(d). This information will be used to facilitate audits and to determine whether the amount of tax has been calculated correctly. The collection of the information is required to properly determine the amount of income or deduction to be taken into account. The respondents are sophisticated dealers or traders in securities or commodities.

Estimated total annual recordkeeping burden: 49,232 hours.

Estimated average annual burden per recordkeeper: 4 to 6 hours.

Estimated number of recordkeepers: 12,308.

Estimated frequency of recordkeeping: Annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may be material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR part 1 under section 475 of the Internal Revenue Code (Code). Section 475 was added to the Code by section 13223(a) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 312). Section 475(a) generally provides that the securities held by dealers in securities shall be valued as of the last business day of the year at fair market value. Section 475(g) provides that the Secretary shall prescribe regulations as may be necessary or appropriate to carry out the purposes of section 475. The legislative history of section 475 indicates that, under this authority, the Secretary may issue regulations to permit the use of valuation methodologies that reduce the administrative burden of compliance on the taxpayer but clearly reflect income for federal income tax purposes. On May 5, 2003, the Treasury Department and the IRS published in the **Federal Register** an Advance Notice of Proposed Rulemaking (Safe Harbor for Satisfying Certain Statutory Requirements for Valuation under Section 475 for Certain Securities and Commodities)(REG–100420–03)[68 FR 23632](the ANPRM); Announcement 2003–35, 2003–1 C.B. 956 (see § 601.601(d)(2)). The ANPRM solicited comments on whether a safe harbor approach using values reported on an applicable financial statement for certain securities may be used for purposes of section 475. The ANPRM set forth a possible safe harbor for valuing these securities and asked for comments on various aspects of such a safe harbor.

Explanation of Provisions

Overview

Section 475(a) requires dealers in securities to mark their securities to market. Sections 475(e) and (f) allow dealers in commodities and traders in securities or commodities to elect similar treatment for their securities or commodities. If the security or commodity is inventory, it must be included in inventory at its fair market value, and if it is not inventory and is held at the end of the taxable year, gain or loss is recognized as if the security or commodity had been sold for its fair market value on the last business day of the taxable year.

Although the term ''fair market value'' has a long-standing and well-established meaning within the tax law, it is sometimes difficult to determine the fair market value of certain securities and commodities, particularly those that have no comparable sales. This has impeded the efficient administration of the mark-to-market system under section 475. Consequently, with a view to improving the administrability of the valuation requirements of section 475, the Treasury Department and the IRS issued the ANPRM, which set forth some principles upon which a safe harbor for valuation could be constructed. Using these principles, and incorporating a number of comments received from the public, these proposed regulations set forth a safe harbor for valuing securities and commodities under section 475.

Safe Harbor

The safe harbor generally permits eligible taxpayers to elect to have the values that are reported for eligible positions on certain financial statements treated as the fair market values reported for those eligible positions for purposes of section 475, if certain conditions are met. The safe harbor is based upon the principle that if the mark-to-market method used for financial reporting is sufficiently consistent with the mark-to-market method required by section 475, then the values used for financial reporting should be acceptable values for purposes of section 475, even if those values are not fair market values under general tax principles. To ensure minimal divergence from fair market value under tax principles, these proposed regulations impose certain restrictions on the financial accounting methods and financial statements that are eligible for the safe harbor and also require certain adjustments to the values of the eligible positions on those financial statements that may be used under the safe harbor.

The safe harbor requires that financial statement values be adjusted to comply with the requirements of section 482 or section 482 principles when applicable. For example, section 482 principles may require the revision of estimates of future cash flows used in valuing certain financial instruments to reflect the appropriate arm's length pricing of inter-branch transactions as of their origination date. In addition, these proposed regulations do not alter the treatment of interest expense. See sections 861 and 882 and regulations thereunder.

Eligible Taxpayers and Eligible Positions

The safe harbor is available to any taxpayer subject to the mark-to-mark regime under section 475, whether the taxpayer is a dealer in securities under section 475(a), a dealer in commodities under section 475(e), or a trader in either securities or commodities under section 475(f). The Commissioner will issue a revenue procedure that lists the types of securities and commodities that are subject to the safe harbor. It is anticipated that the revenue procedure will apply to every security position and every commodity position subject to mark-to-market under section 475. Comments are requested as to whether any types of securities or commodities should be excluded from the safe harbor.

It is important to note, however, that the valuation methodology under the safe harbor applies only for positions that are properly marked under section 475. The safe harbor only addresses valuation and does not expand or contract the scope of application of section 475. For example, if a security is not marked under section 475 because it has been identified as held for investment, then under the safe harbor it may not be marked for Federal income tax purposes even though it is properly marked on the financial statement in accordance with U.S. Generally Accepted Accounting Principles (U.S. GAAP). Similarly, if a security is not marked on the applicable financial

statement because it is a hedge but section 475(a) applies because the security was not identified as a hedge, then the security must still be marked under section 475.

Eligible Method

To qualify for the safe harbor, a financial accounting method must satisfy certain basic requirements. First, it must mark eligible positions to market through valuations made as of the last business day of each taxable year. Second, it must recognize into income on the income statement any gain or loss from marking eligible positions to market. Third, it must recognize into income on the income statement any gain or loss on disposition of an eligible position as if a year-end mark occurred immediately before the disposition. Fourth, it must arrive at fair value in accordance with U.S. GAAP.

In addition to the basic requirements, the safe harbor also imposes certain limitations that ensure minimal divergence from fair market value. Under the first limitation, which applies only to securities and commodities dealers, except for eligible positions that are traded on a qualified board or exchange (as defined in section 1256(g)(7)), the financial accounting method must not result in values at or near the bid or ask values, even if the use of bid or ask values is permissible in accordance with U.S. GAAP. This limitation is based upon the business model for derivative contracts held by dealers in those derivatives, the model underlying most of the public comments received in response to the ANPRM.

According to the comments, dealers seek to capture and profit from bid-ask spreads by entering into positions that, in the aggregate, offset each other. The bid-ask spread contains the dealer's profit and compensates the dealer for all risks and expenses. The origination of such a balanced portfolio may, therefore, be seen as creating a synthetic annuity, with a value that is largely immune from market-related changes in the values of the component securities. For these eligible positions, such as interest rate swap contracts, use of bid or ask values approximates realization accounting and, therefore, fails to cause recognition of the present value of the synthetic annuity in the taxable year that the annuity is created. Consequently, the valuation method described in § 1.471–4(a)(1) generally fails to satisfy the limitation set forth in paragraph (d)(3)(i) of these proposed regulations.

The Treasury Department and the IRS request comments on whether dealers in commodities and traders in either securities or commodities operate under different business models and on how the rules set forth in these proposed regulations should be modified, if at all, to accommodate those business models.

Under the second limitation, if the method of valuation consists of determining the present value of projected cash flows from an eligible position or positions, then the method must not take into account any cash flows of income or expense that are attributable to a period or time before the valuation date. This limitation ensures that items of income or expense will not be accounted for twice, first through current realization and then again in the mark.

Under the third limitation, no cost or risk is accounted for more than once, either directly or indirectly. For example, a financial accounting method that allows a special adjustment for credit risk generally satisfies this limitation. It would not satisfy this limitation, however, if it computed the present value of projected cash flows using a discount rate that takes into account any amount of credit risk that is also taken into account by the special adjustment. Thus, if a dealer in securities enters into an interest rate swap contract with a counterparty with a AA/aa rating, taking credit enhancement and netting agreements into account, then the dealer cannot take a special adjustment to the value of the contract for all of the risk between a counterparty with a risk-free rating and the actual counterparty if the dealer determines the present value of projected cash flows from the contract using a mid-market swap curve based upon the LIBOR AA rate. The Treasury Department and the IRS understand, however, that there may be degrees of credit quality within an established rating level, such as AA/aa, and that valuation methodologies used currently may reflect these nuances in credit quality. Accordingly, a credit adjustment reflecting these nuances may satisfy this limitation.

Election and Revocation

The election to use the safe harbor is made by filing a statement with the taxpayer's timely filed Federal income tax return for the taxable year for which the election is first effective. The statement must declare that the taxpayer makes the safe harbor election for all of its eligible positions. In addition to any other information that the Commissioner may require, the statement must describe the taxpayer's applicable financial statement for the first taxable year for which the election is effective and must state that the taxpayer agrees to timely provide upon the request of the Commissioner all information, records, and schedules required by the safe harbor. The election continues to be in effect for all subsequent taxable years unless it is revoked.

A taxpayer cannot revoke the election without the consent of the Commissioner. The Commissioner, however, can revoke the election if the taxpayer fails to comply with any of the recordkeeping and production requirements and cannot show reasonable cause for the failure, the taxpayer ceases to use an eligible method, the taxpayer ceases to have an applicable financial statement, as described below, or the taxpayer holds a de minimis quantity of eligible positions that are subject to the safe harbor. No revocation is necessary if the taxpayer ceases to qualify as an eligible taxpayer, or section 475 does not otherwise apply, because the safe harbor may only be used to determine values and cannot be used unless section 475 applies. Once revoked by either the Commissioner or the taxpayer, neither the taxpayer nor any of its successors may make the election for any taxable year that begins before the date that is six years after the first day of the earliest taxable year affected by the revocation without the consent of the Commissioner.

Applicable Financial Statements

Not all financial statements qualify under the safe harbor. Consequently, these proposed regulations set forth a system that enables a taxpayer to determine which one of its financial statements, if any, may be used when applying the safe harbor.

Three categories of financial statements qualify under the safe harbor and are set forth in order of priority, from highest to lowest. In the first and highest category are those financial statements that must be filed with the Securities and Exchange Commission (SEC), such as the 10–K and the Annual Statement to Shareholders. In the second category are those financial statements that must be provided to the Federal government or any of its agencies other than the IRS. In this category are statements filed by foreign-controlled financial institutions engaged in trade or business within the United States who report their mark-to-market results to the Federal Reserve or the Office of the Comptroller of the Currency. In the third category are certified audited financial statements that are provided to creditors to make lending decisions, that are provided to equity holders to evaluate their

investment, or that are provided for other substantial non-tax purposes and are reasonably anticipated to be directly relied on for the purposes for which the statements were created. For a financial statement described in any of the three categories above to qualify as an applicable financial statement, it must be prepared in accordance with U.S. GAAP. If a taxpayer has two statements in the same category, each of which would qualify under the safe harbor, then the statement that results in the highest aggregate valuation of eligible positions is the only financial statement that may qualify for the safe harbor.

Statements filed with the SEC provide a high degree of confidence that the values used on those statements reflect reasonable approximations of fair value. Consequently, there are no additional business use requirements for those statements. For the second category (statements filed with other agencies of the Federal government) and the third category of statements (the other certified audited financial statements), this degree of confidence is ensured by requiring some substantial non-tax use in the taxpayer's business. This determination of use must take into account whether the taxpayer's reliance on the values exposes the taxpayer to material adverse consequences if the values are incorrect. Accordingly, the safe harbor requires that the values for eligible positions contained in these financial statements be used by the taxpayer in most of the significant management functions of all or substantially all of its business. This use includes activities such as senior management review of business-unit profitability, market risk measurement or management, credit risk measurement or management, internal allocation of capital, and compensation of personnel but does not include either tax accounting or reporting the results of operations to other persons. Significance of use is tested by examining all the facts and circumstances in light of the stated purpose of the business use requirement.

The IRS and Treasury understand that some dealers maintain internal books of account, not prepared in accordance with U.S. GAAP, for separate segments of their business and that these internal books of account may include a charge to each operating segment of an internal ''cost of carry'' calculated in the manner of interest (and the derivatives dealer book may be treated as a separate business segment for that purpose). The purpose of this cost-of-carry charge is to assess profitability or to reflect the cost of capital in maintaining the positions held in that business segment. The amounts so charged do not reduce the fair value of eligible positions on a balance sheet prepared in accordance with U.S. GAAP. The maintenance of these segmented accounts, which may apply an accounting approach that does not qualify as an eligible accounting method, does not prevent some other financial statement prepared in accordance with U.S. GAAP from qualifying as the taxpayer's applicable financial statement.

Record Retention and Production; Use of Different Values

The safe harbor can be administrable only if the IRS can readily verify that the values used on financial statements are also appropriately used on the Federal income tax return. Consequently, recordkeeping and record production are critical to the safe harbor. These proposed regulations provide specific requirements for the types of records that must be maintained and provided to enable ready verification. In general, electing taxpayers must clearly show: (1) That the same value used for financial reporting was used on the Federal income tax return; (2) that no eligible position subject to section 475 is excluded from the application of the safe harbor; and (3) that only eligible positions subject to section 475 are carried over to the Federal income tax return under the safe harbor. These proposed regulations outline what records must be retained and produced, including certain forms and schedules filed with the Federal income tax return, such as the Schedule M–1, ''Net Income(Loss) Reconciliation for Corporations With Total Assets of $10 Million or More,'' Schedule M–3, ''Net Income(Loss) Reconciliation for Corporations With Total Assets of $10 Million or More,'' and Form 1120F, ''U.S. Income Tax Return of a Foreign Corporation.'' These proposed regulations also provide that the Commissioner may enter into an advance agreement with a taxpayer on how records are to be maintained and how long the records are to be retained. All of the necessary records must be retained as long as their contents may become material in the administration of any internal revenue law.

To encourage rapid examinations of the Federal income tax returns of electing taxpayers, these proposed regulations require that all necessary records be produced within 30 days after the Commissioner requests them. If the required records are not provided as required, the regulations permit the Commissioner to use his discretion to: (1) Extend the 30-day period; (2) excuse minor or inadvertent failures to provide the requested records; (3) require use of values that clearly reflect income but which are different from those used on the applicable financial statement; or (4) revoke the election (as described under ''Election and Revocation'' above) if a taxpayer does not demonstrate reasonable cause for the failure to maintain and produce the required records.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that it is anticipated that the safe harbor will be used primarily by dealers in securities that are financial institutions with a sophisticated understanding of the capital markets. Because section 475 is elective for traders in securities or commodities or dealers in commodities, some small businesses could qualify for the safe harbor if they make two voluntary elections: (1) An election to mark to market securities or commodities under section 475 and (2) an election to apply the safe harbor. Because both elections are voluntary, it is unlikely any small business taxpayer who thinks the reporting and recordkeeping requirements are too burdensome will make these elections. Furthermore, the total average estimated burden per taxpayer is small, as reported earlier in the preamble. This is because most of the recordkeeping requirements do not require taxpayers to generate new records, but instead require records used for financial reporting purposes to be kept for tax reporting purposes. For all of these reasons, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department

specifically request comments on the clarity of these proposed regulations and how they may be made easier to understand. All comments will be available for inspection and copying.

A public hearing has been scheduled for September 15, 2005 beginning at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restriction, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Drafting Information

The principal authors of these proposed regulations are Marsha A. Sabin and John W. Rogers III, Office of the Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.475(a)–4 also issued under 26 U.S.C. 475(g). * * *

Par. 2. Section 1.475–0 is amended by:

1. Revising the introductory text.
2. Adding entries to the table for § 1.475(a)–4.

The revision and addition reads as follows:

§ 1.475–0 Table of contents.

This section lists the major captions in §§ 1.475(a)–3, 1.475(a)–4, 1.475(b)–1, 1.475(b)–2, 1.475(b)–4, 1.475(c)–1, 1.475(c)–2, 1.475(d)–1 and 1.475(e)–1.

* * * * *

§ 1.475(a)–4 Safe harbor for valuation under section 475.

(a) Overview.
(1) Purpose.
(2) Summary of paragraphs.
(b) Safe harbor.
(1) General rule.
(2) Scope of the safe harbor.
(c) Eligible taxpayer.
(d) Eligible method.
(1) Sufficient consistency.
(2) General requirements.
(i) Frequency.
(ii) Recognition at the mark.
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(iv) Fair value standard.
(3) Limitations.
(i) Bid-ask method.
(ii) Valuations based on present values of projected cash flows.
(iii) Accounting for costs and risks.
(4) Examples.
(e) Compliance with other rules.
(f) Election.
(1) Making the election.
(2) Duration of the election.
(3) Revocation.
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(1) Definition.
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(ii) Statement filed with a Federal agency other than the IRS.
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(i) [Reserved]
(j) Significant business use.
(1) In general.
(2) Financial statement value.
(3) Management of a business as a dealer or trader.
(4) Significant use.
(k) Retention and production of records.
(1) In general.
(2) Specific requirements.
(i) Reconciliation.
(A) In general.
(B) Values on books and records with supporting schedules.
(C) Consolidation schedules.
(ii) Instructions provided by the Commissioner.
(3) Time for producing records.
(4) Retention period for records.
(5) Agreements with the Commissioner.
(l) [Reserved]
(m) Use of different values.

* * * * *

Par. 3. Section 1.475(a)–4 is added to read as follows:

§ 1.475(a)–4 Safe harbor for valuation under section 475.

(a) *Overview*—(1) *Purpose.* This section sets forth a safe harbor that under certain circumstances permits taxpayers to make an election pursuant to which the values of positions reported on certain financial statements are the fair market values of those positions for purposes of section 475. This safe harbor is based on the principle that, if a mark-to-market method used for financial reporting is sufficiently consistent with the requirements of section 475 and if the financial statement employing that method has certain indicia of reliability, then the values used on that financial statement should be appropriate values for purposes of section 475. If other provisions of the Code or regulations require adjustments to fair market value, use of the safe harbor does not obviate the need for those adjustments. See paragraph (e) of this section.

(2) *Summary of paragraphs.* Paragraph (b) of this section sets forth the safe harbor. To determine who may use the safe harbor, paragraph (c) of this section defines the term ''eligible taxpayer'' for purposes of the safe harbor. Paragraph (d) of this section sets forth the basic requirements for determining whether the method used for financial reporting is sufficiently consistent with the requirements of section 475. Paragraph (e) of this section describes adjustments to the financial statement values that may be required for purposes of applying section 475. Paragraph (f) of this section describes how to make the safe harbor election and the conditions under which the election may be revoked. Paragraph (g) of this section provides that the Commissioner will issue a revenue procedure that lists the types of securities and commodities that may qualify as ''eligible positions'' for purposes of the safe harbor. Using rules for determining priorities among financial statements, paragraph (h) of this section defines the term ''applicable financial statement'' and so describes the financial statement, if any, whose values may be used in the safe harbor. In some cases, as required by paragraph (j) of this section, the safe harbor is available only if the taxpayer's operations make significant business use of financial statement values. Paragraph (k) of this section sets forth requirements for record retention and record production. Paragraph (m) of this section provides that the Commissioner may use fair market values that clearly reflect income, but which differ from values used on the applicable financial statement, if a taxpayer fails to comply with the recordkeeping and record production requirements of paragraph (k) of this section.

(b) *Safe harbor*—(1) *General rule.* Subject to any adjustment required by paragraph (e) of this section, if an eligible taxpayer uses an eligible

method for the valuation of an eligible position on its applicable financial statement and the eligible taxpayer is subject to the election described in paragraph (f) of this section, the value that the eligible taxpayer assigns to that eligible position in its applicable financial statement is the fair market value of the eligible position for purposes of section 475, even if that value is not the fair market value of the position for any other purpose of the internal revenue laws. Notwithstanding the rule set forth in this paragraph, the Commissioner may, in certain circumstances, use fair market values that clearly reflect income but which are different than the values used on the applicable financial statement. See paragraph (m) of this section.

(2) *Scope of the safe harbor*. The safe harbor may be used only to determine values for eligible positions that are properly marked to market under section 475. It does not determine whether any positions may or may not be subject to mark-to-market accounting under section 475.

(c) *Eligible taxpayer*. An eligible taxpayer is a dealer in securities as defined in section 475(c)(1) and § 1.475(c)–1, a dealer in commodities as defined in section 475(e), or a trader in securities or commodities as defined in section 475(f).

(d) *Eligible Method*—(1) *Sufficient consistency*. An eligible method is a mark-to-market method that is sufficiently consistent with the requirements of a mark-to-market method under section 475. To be sufficiently consistent, the eligible method must satisfy all of the requirements of paragraph (d)(2) and paragraph (d)(3) of this section.

(2) *General requirements*. The method—

(i) *Frequency*. Must require a valuation of the eligible position no less frequently than annually, including a valuation as of the last business day of the taxable year;

(ii) *Recognition at the mark*. Must recognize into income on the income statement for each taxable year mark-to-market gain or loss based upon the valuation or valuations described in paragraph (d)(2)(i) of this section;

(iii) *Recognition on disposition*. Must require, on disposition of the eligible position, recognition into income (on the income statement for the taxable year of disposition) as if a year-end mark occurred immediately before such disposition; and

(iv) *Fair value standard*. Must require use of a valuation standard that arrives at fair value in accordance with U.S. Generally Accepted Accounting Principles (U.S. GAAP) as established by the Financial Accounting Standards Board.

(3) *Limitations*—(i) *Bid-ask method*. Except for eligible positions that are traded on a qualified board or exchange, as defined in section 1256(g)(7), the valuation standard used for the applicable financial statement of an eligible taxpayer must not permit values at or near the bid or ask value. Consequently, the valuation method described in § 1.471–4(a)(1) generally fails to satisfy this paragraph (d)(3)(i). The restriction in this paragraph (d)(3)(i) is satisfied if a resulting value is closer to the mid-market value than it is to the bid or ask value.

(ii) *Valuations based on present values of projected cash flows*. If the method of valuation consists of projecting cash flows from an eligible position or positions and determining the present value of those cash flows, the method must not take into account any cash flows (income or expense) attributable to a period or time prior to the valuation date. In addition, adjustment of the gain or loss recognized on the mark may be required with respect to payments on notional principal contracts that will occur after the valuation date to the extent that portions of the payments have been recognized for tax purposes prior to the valuation date and appropriate adjustment has not been made for purposes of determining financial statement value.

(iii) *Accounting for costs and risks*—(A) *General rule*. In a determination of fair value, appropriate costs and risks may be taken into account, but no cost or risk may be accounted for more than once, either directly or indirectly. If appropriate, the costs and risks that may be accounted for, include, but are not limited to, credit risk (appropriately adjusted for any credit enhancement), future administrative costs, and model risk. In the case of credit risk, an adjustment is implicit in computing the present value of cash flows using a discount rate greater than a risk-free rate. Accordingly, a determination of whether any further downward adjustment to value for credit risk is warranted, or whether an upward adjustment is required, must take that implicit adjustment into consideration.

(4) *Examples*. The following examples illustrate this paragraph (d).

Example 1. (i) A, a calendar year taxpayer, is a dealer in securities within the meaning of section 475(c)(1). A generally maintains a balanced portfolio of interest rate swaps and other interest rate derivatives, capturing bid-ask spreads and keeping its market exposure within desired limits (using, if necessary, additional derivatives for this purpose). A uses a mark-to-market method on a statement that it is required to file with the United States Securities and Exchange Commission (Securities and Exchange Commission or SEC) and that satisfies paragraph (d)(2) of this section with respect to both the contracts with customers and the additional derivatives. None of the derivatives is traded on a qualified board or exchange, as defined in section 1256(g)(7). When determining the amount of any gain or loss realized on a sale, exchange, or termination of a position, A makes a proper adjustment for amounts taken into account respecting payments or receipts. All of A's counterparties on the derivatives have credit quality ratings of AA/aa, according to standard credit ratings obtained from private credit rating agencies.

(ii) Under A's valuation method, as of each valuation date A determines a mid-market probability distribution of future cash flows under the derivatives and computes the present values of these cash flows. In computing these present values, A uses an industry standard yield curve that is appropriate for obligations by persons with credit quality ratings of AA/aa. In addition, based on information including its own knowledge about the counterparties, A adjusts some of these present values either upward or downward to reflect A's reasonable judgment about the extent to which the true credit status of each counterparty's obligation, taking credit enhancements into account, differs from AA/aa.

(iii) A's methodology does not violate the requirement in paragraph (d)(3)(iii) of this section that the same cost or risk not be taken into account, directly or indirectly, more than once.

Example 2. (i) The facts are the same as in *Example 1*, except that A uses risk-free rates to discount the payments to be received under the derivatives. Based on information, including its own knowledge about the counterparties, A adjusts these present values to reflect A's reasonable judgment about the extent to which the true credit status of each counterparty's obligation, taking credit enhancements into account, differs from a risk-free obligation.

(ii) A's methodology does not violate the requirement in paragraph (d)(3)(iii) of this section that the same cost or risk not be taken into account, directly or indirectly, more than once.

Example 3. (i) The facts are the same as in Example 1, except that, after computing present values using the discount rates that are appropriate for obligors with credit quality ratings of AA/aa, A, based on information including its own knowledge about the counterparties, adjusts some of these present values either upward or downward to reflect A's reasonable judgment about the extent to which the true credit status of each counterparty's obligation, taking credit enhancements into account, differs from AAA/aaa.

(ii) A's methodology violates the requirement in paragraph (d)(3)(iii) of this section that the same cost or risk not be taken into account, directly or indirectly, more than once. By using a AA/aa discount rate,

A's method takes into account the difference between risk-free obligations and AA/aa obligations. This difference includes the difference between a rating of AAA/aaa and one of AA/aa. By adjusting values for the difference between a rating of AAA/aaa and one of AA/aa, A takes into account risks that it had already accounted for through the discount rates that it used. The same result would occur if A judged some of its counterparties' obligations to be of AAA/aaa quality but A failed to adjust the values of those obligations to reflect the difference between a rating of AAA/aaa and one of AA/aa.

Example 4. (i) The facts are the same as in *Example 1*, except that A determines the mid-market value for each derivative and then subtracts the corresponding part of the bid-ask spread.

(ii) A's methodology violates the rule in paragraph (d)(3)(i) of this section that forbids valuing the derivatives at or near the bid or ask value.

Example 5. (i) The facts are the same as in *Example 1*, and, in addition, A's adjustments for all risks and costs, including credit risk, future administrative costs, and model risk, consistently cause the adjusted value to be at or near the bid value or ask value.

(ii) A's methodology violates the rule in paragraph (d)(3)(i) of this section that forbids valuing the derivatives at or near the bid or ask value.

(e) *Compliance with other rules.* Notwithstanding any other provisions of this section, the fair market values for purposes of the safe harbor must be consistent with section 482 or rules that adopt section 482 principles, when applicable. Thus applicable financial statement values must be adjusted as necessary for purposes of the safe harbor. For example, if a notional principal contract is subject to section 482 or section 482 principles, the values of future cash flows taken into account in determining the value of the contract for purposes of section 475 must be consistent with section 482.

(f) *Election*—(1) *Making the election.* Unless the Commissioner prescribes otherwise, an eligible taxpayer elects under this section by filing with the Commissioner a statement declaring that the taxpayer makes the safe harbor election in this section for all its eligible positions. In addition to any other information that the Commissioner may require, the statement must describe the taxpayer's applicable financial statement for the first taxable year for which the election is effective and must state that the taxpayer agrees to timely provide upon the request of the Commissioner all information, records, and schedules required by paragraph (k) of this section. The statement must be attached to a timely filed Federal income tax return (including extensions) for the taxable year for which the election is first effective.

(2) *Duration of the election.* Once made, the election continues in effect for all subsequent taxable years unless revoked.

(3) *Revocation*—(i) *By the taxpayer.* An eligible taxpayer that is subject to an election under this section may revoke it only with the consent of the Commissioner.

(ii) *By the Commissioner.* The Commissioner, after consideration of all relevant facts and circumstances, may revoke an election under this section, effective beginning with the first open year for which the election is effective or with any subsequent year, if—

(A) The taxpayer fails to comply with paragraph (k) of this section (concerning record retention and production) and the taxpayer does not show reasonable cause for this failure;

(B) The taxpayer ceases to have an applicable financial statement or ceases to use an eligible method; or

(C) For any other reason, no more than a *de minimis* number of eligible positions, or no more than a *de minimis* fraction of the taxpayer's eligible positions, are covered by the safe harbor in paragraph (b) of this section.

(4) *Re-election.* If an election is revoked, either by the Commissioner or by the taxpayer, the taxpayer (or any successor of the taxpayer) may not make the election for any taxable year that begins before the date that is six years after the first day of the earliest taxable year affected by the revocation without the consent of the Commissioner.

(g) *Eligible positions.* Eligible positions mean those types or classes of securities or commodities that are marked to market under section 475 and are described by the Commissioner as eligible positions for purposes of this safe harbor in a revenue procedure or other published guidance.

(h) *Applicable financial statement*—(1) *Definition.* An eligible taxpayer's applicable financial statement for a taxable year is the taxpayer's primary financial statement for that year if the statement is described in paragraph (h)(2)(i) of this section (concerning statements required to be filed with the SEC) or if the statement is both described in either paragraph (h)(2)(ii) or (iii) of this section and also meets the requirements of paragraph (j) of this section (concerning significant business use). Otherwise, or if the taxpayer does not have a primary financial statement for the taxable year, the taxpayer does not have an applicable financial statement for the taxable year.

(2) *Primary financial statement.* For any taxable year, an eligible taxpayer's primary financial statement is the financial statement, if any, described in one or more of paragraphs (h)(2)(i) through (iii) of this section. If more than one financial statement of the taxpayer for the year is so described, the primary financial statement is the one first described in paragraphs (h)(2)(i) through (iii) of this section. A taxpayer has only one primary financial statement for any year.

(i) *Statement required to be filed with the Securities and Exchange Commission.* A financial statement that is prepared in accordance with U.S. GAAP and that is required to be filed with the SEC, such as the 10–K or the Annual Statement to Shareholders.

(ii) *Statement filed with a Federal agency other than the IRS.* A financial statement that is prepared in accordance with U.S. GAAP and that is required to be provided to the Federal government or any of its agencies other than the IRS.

(iii) *Certified audited financial statement.* A certified audited financial statement that is prepared in accordance with U.S. GAAP; that is given to creditors for purposes of making lending decisions, given to equity holders for purposes of evaluating their investment in the eligible taxpayer, or provided for other substantial non-tax purposes; and that the taxpayer reasonably anticipates will be directly relied on for the purposes for which it was created.

(3) Example. A prepares a financial statement, FS1, that is required to be filed with a Federal government agency other than the SEC or the IRS, and is thus described in paragraph (h)(2)(ii) of this section. A also prepares a second financial statement, FS2, that is a certified audited financial statement that is given to creditors and that A reasonably anticipates will be relied on for purposes of making lending decisions, and that is thus described in paragraph (h)(2)(iii) of this section. Because FS1, which is described in paragraph (h)(2)(ii) of this section, is described before FS2, which is described in paragraph (h)(2)(iii) of this section, FS1 is A's primary financial statement.

(4) *Financial statements of equal priority.* If two or more financial statements are of equal priority, after applying the rules of paragraph (h)(2) of this section, then the statement that results in the highest aggregate valuation of eligible positions being marked to market under section 475 is the primary financial statement.

(5) *Consolidated groups.* If the taxpayer is a member of an affiliated group that files a consolidated return, the primary financial statement of the taxpayer is the primary financial statement of the common parent (within the meaning of section 1504(a)(1)) of the consolidated group.

(6) *Supplement or amendment to a financial statement.* For purposes of

paragraph (b)(1) of this section and this paragraph (h), a financial statement includes any supplement or amendment to the financial statement.

(7) *Certified audited financial statement.* For purposes of this paragraph (h), a financial statement is a certified audited financial statement if it is certified by an independent certified public accountant from a Registered Public Accounting firm, as defined in section 2(a)(12) of the Sarbanes-Oxley Act of 2002, Public Law 107–204, 116 Stat. 746 (July 30, 2002), 15 U.S.C. 7201(a)(12), and rules promulgated under that Act, and is—

(i) Certified to be fairly presented (a ''clean'' opinion);

(ii) Certified to be fairly presented subject to a concern about a contingency, other than a contingency relating to the value of eligible positions (a qualified ''subject to'' opinion); or

(iii) Certified to be fairly presented except for a method of accounting with which the Certified Public Accountant disagrees and which is not a method used to determine the value of an eligible position held by an eligible taxpayer (a qualified ''except for'' opinion).

(i) [Reserved].

(j) *Significant business use*—(1) *In general.* A financial statement is described in this paragraph (j) if—

(i) The financial statement contains values for eligible positions;

(ii) The eligible taxpayer makes significant use of financial statement values in most of the significant management functions of its business; and

(iii) That use is related to the management of all or substantially all of the eligible taxpayer's business.

(2) *Financial statement value.* For purposes of this paragraph (j), the term *financial statement value* means—

(i) A value that is taken from the financial statement; or

(ii) A value that is produced by a process that is in all respects identical to the process that produces the values that appear on the financial statement but that is not taken from the statement because either—

(A) The value was determined as of a date for which the financial statement does not value eligible positions; or

(B) The value is used in the management of the business before the financial statement has been prepared.

(3) *Management of a business as a dealer or trader.* For purposes of this paragraph (j), the term *management of a business as a dealer or trader* refers to the financial and commercial oversight of the business. Oversight includes, but is not limited to, senior management review of business-unit profitability, market risk measurement or management, credit risk measurement or management, internal allocation of capital, and compensation of personnel. Management of a business as a dealer or trader does not include either tax accounting or reporting the results of operations to other persons.

(4) *Significant use.* If an eligible taxpayer uses financial statement values for some significant management functions and uses values that are not financial statement values for other significant management functions, then the determination of whether the taxpayer has made significant use of the financial statement values is made on the basis of all the facts and circumstances. This determination must particularly take into account whether the taxpayer's reliance on the financial statement values exposes the taxpayer to material adverse economic consequences if the values are incorrect.

(k) *Retention and production of records*—(1) *In general.* In addition to all records that section 6001 otherwise requires to be retained, an eligible taxpayer subject to the election provided by this section must keep, and timely provide to the Commissioner upon request, records and books of account that are sufficient to establish that the values used for eligible positions for purposes of section 475 are the values used in the applicable financial statement. This obligation extends to all books and records that are required to be maintained for any period for financial or regulatory reporting purposes, even if these books or records may not otherwise be specifically covered by section 6001. All records described in this paragraph (k) must be maintained for the period described in paragraph (k)(4) of this section, even if a lesser period of retention applies for financial statement or regulatory purposes.

(2) *Specific requirements*—(i) *Reconciliation.* Unless the Commissioner otherwise provides—

(A) *In general.* An eligible taxpayer must provide reconciliation schedules between the applicable financial statement for the taxable year and Federal income tax return for that year. The required reconciliation schedules include all supporting schedules, exhibits, computer programs and any other information used in producing the values and schedules, documentation of rules and procedures governing determination of the values. The required schedules also include a detailed explanation of any adjustments necessitated by imperfect overlap between the eligible positions that the taxpayer marks to market under section 475 and the eligible positions for which the applicable financial statement uses an eligible method. A corporate taxpayer subject to this paragraph (k) must reconcile the net income amount reported on its applicable financial statement to the amount reported on the applicable forms and schedules on its Federal income tax return (such as the Schedule M–1, ''Net Income(Loss) Reconciliation for Corporations With Total Assets of $10 Million or More''; Schedule M–3, ''Net Income(Loss) Reconciliation for Corporations With Total Assets of $10 Million or More''; and Form 1120F, ''U.S. Income Tax Return of a Foreign Corporation'') in the time and manner provided by the Commissioner. Eligible taxpayers that are not otherwise required to file a Schedule M–1 or Schedule M–3 must reconcile net income using substitute schedules similar to Schedule M–1 and Schedule M–3, and these substitute schedules must be attached to the return.

(B) *Values on books and records with supporting schedules.* The books and records must state the value used for each eligible position separately from the value used for any other eligible position. However, an eligible taxpayer may make adjustments to values on a pooled basis, if the taxpayer demonstrates that it can compute gain or loss attributable to the sale or other disposition of an individual eligible position.

(C) *Consolidation schedules.* The taxpayer must provide a schedule showing consolidation and de-consolidation that is used in preparing the applicable financial statement, along with exhibits and subordinate schedules. This schedule must provide information that addresses the differences for consolidation between the applicable financial statement and the Federal income tax return.

(ii) *Instructions provided by the Commissioner.* The Commissioner may provide an alternative time or manner in which an eligible taxpayer subject to this paragraph (k) must establish that the same values used for eligible positions on the applicable financial statement are also the values used for purposes of section 475 on the Federal income tax return.

(3) *Time for producing records.* All documents described in this paragraph (k) must be produced within 30 days of a request by the Commissioner, unless the Commissioner grants a written extension. Generally, the Commissioner will exercise his discretion to excuse a minor or inadvertent failure to provide requested documents if the taxpayer

shows reasonable cause for the failure, has made a good faith effort to comply with the requirement to produce records, and promptly remedies the failure. For failures to maintain, or timely produce, records, see paragraph (m) of this section (allowing the Commissioner, but not the taxpayer, to use fair market values which clearly reflect income, but which are different from those values used on the applicable financial statement, for eligible positions that otherwise might be subject to the safe harbor) and paragraph (f)(3)(ii) of this section (allowing the Commissioner to revoke the election).

(4) *Retention period for records.* All materials required by this paragraph (k) and section 6001 must be retained as long as their contents may become material in the administration of any internal revenue law.

(5) *Agreements with the Commissioner.* The Commissioner and an eligible taxpayer may enter into a written agreement that establishes, for purposes of this paragraph (k), which records must be maintained, how they must be maintained, and for how long they must be maintained.

(l) [Reserved].

(m) *Use of different values.* If the taxpayer fails to satisfy paragraph (k) of this section (concerning record retention and record production) with respect to the records that relate to certain eligible positions for a taxable year, the Commissioner may, for those eligible positions for that year, use fair market values under section 475 that are different from those values reported for those positions on the applicable financial statement and are values the Commissioner determines to be appropriate to clearly reflect income. See paragraph (f)(3)(ii) of this section concerning revocation of the election by the Commissioner, when a taxpayer does not produce required records and fails to demonstrate reasonable cause for such failure.

Par. 4. Section 1.475(e)–1 is amended by redesignating paragraphs (d) through (j) as paragraphs (e) through (k), respectively and adding a new paragraph (d) to read as follows:

§ 1.475(e)–1 Effective dates.

* * * * *

(d) *Effective date.* Section 1.475(a)–4 (concerning a safe harbor to use applicable financial statement values for purposes of section 475) applies to taxable years ending on or after the date on which the Treasury decision promulgating these regulations is published in the **Federal Register**.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–10167 Filed 5–20–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–168892–03]

RIN 1545–BD00

Attained Age of the Insured Under Section 7702

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations explaining how to determine the attained age of an insured for purposes of testing whether a contract qualifies as a life insurance contract for Federal income tax purposes. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by August 24, 2005. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Wednesday, September 14, 2005, must be received by August 24, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–168892–03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Comments may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–168892–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or submitted to the IRS Web site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–168892–03). All comments will be available for public inspection and copying. Requests to speak, with outlines of topics to be discussed, at the hearing scheduled for September 14, 2005, at 10 a.m., must be received by August 24, 2005. The public hearing will be held in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Ann H. Logan, (202) 622–3970. Concerning submission of comments, the hearing, or to be placed on the building access list to attend the hearing, Lanita Van Dyke of the Publication and Regulations Branch, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 7702(a) of the Internal Revenue Code (Code) provides that, for a contract to qualify as a life insurance contract for Federal income tax purposes, the contract must be a life insurance contract under the applicable law and must either (1) satisfy the cash value accumulation test of section 7702(b), or (2) both meet the guideline premium requirements of section 7702(c) and fall within the cash value corridor of section 7702(d). To determine whether a contract satisfies the cash value accumulation test, or meets the guideline premium requirements and falls within the cash value corridor, it is necessary to determine the attained age of the insured.

A contract meets the cash value accumulation test of section 7702(b) if, by the terms of the contract, the cash surrender value of the contract may not at any time exceed the net single premium that would have to be paid at that time to fund future benefits under the contract. Under section 7702(e)(1)(B), the maturity date of the contract is deemed to be no earlier than the day on which the insured attains age 95, and no later than the day on which the insured attains age 100, for purposes of applying the cash value accumulation test.

A contract meets the guideline premium requirements of section 7702(c) if the sum of the premiums paid under the contract does not at any time exceed the greater of the guideline single premium or the sum of the guideline level premiums as of such time. The guideline single premium is the premium that is needed at the time the policy is issued to fund the future benefits under the contract based on the following three elements enumerated in section 7702(c)(3)(B):

(i) Reasonable mortality charges that meet the requirements (if any) prescribed in regulations and that (except as provided in regulations) do not exceed the mortality charges specified in the prevailing commissioners' standard tables (as defined in section 807(d)(5)) as of the time the contract is issued;

(ii) Any reasonable charges (other than mortality charges) that (on the basis of the company's experience, if any, with respect to similar contracts) are reasonably expected to be actually paid; and

(iii) Interest at the greater of an annual effective rate of six percent or the rate or rates guaranteed on issuance of the contract.

The guideline level premium is the level annual amount, payable over a period not ending before the insured attains age 95, computed on the same basis but using a minimum interest rate of four percent, rather than six percent. Like the cash value accumulation test, the guideline premium requirements are applied by deeming the maturity date of the contract to be no earlier than the day on which the insured attains age 95, and no later than the day on which the insured attains age 100. The deemed maturity date generally is the determination date set forth in the contract or the end of the mortality table (which, when section 7702 was enacted in 1984, was age 100).

A contract falls within the cash value corridor if the death benefit of the contract at any time is not less than the applicable percentage of the cash surrender value. The applicable percentage is determined based on the attained age of the insured as of the beginning of the contract year, as follows:

APPLICABLE PERCENTAGE

In the case of an insured with an attained age as of the the beginning of the contract year of:		The applicable percentage shall decrease by a ratable portion for each full year:	
More than:	But not more than:	From:	To:
0	40	250	250
40	45	250	215
45	50	215	185
50	55	185	150
55	60	150	130
60	65	130	120
65	70	120	115
70	75	115	105
75	90	105	105
90	95	105	100

The Code does not define the attained age of the insured for purposes of applying the cash value corridor, the guideline premium limitations, and the computational rules of section 7702(e). The Senate Finance Committee explanation of the Deficit Reduction Act of 1984, Public Law 98–369 (98 Stat. 494), however, states that the attained age of the insured means the insured's age determined by reference to contract anniversaries (rather than the individual's actual birthdays), so long as the age assumed under the contract is within 12 months of the actual age. See S. Prt. No. 98–169, Vol. 1, at 576 (1984).

Section 7702A defines a modified endowment contract as a contract that meets the requirements of section 7702 (that is, a contract that is a life insurance contract), but that fails to meet the 7-pay test set forth in section 7702A(b). A contract fails to meet the 7-pay test if the accumulated amount paid under the contract at any time during the first 7 contract years exceeds the sum of the net level premiums that would have been paid on or before that time if the contract provided for paid-up future benefits after the payment of 7 level annual premiums. Section 7702A(c)(1)(B) provides that, for purposes of this test, the computational rules of section 7702(e) generally apply, including the contract's deemed maturity no earlier than the day on which the insured attains age 95, and no later than the day on which the insured attains age 100.

In sum, the attained age of an insured under a contract that is a life insurance contract under the applicable law must be determined to test whether the contract complies with the guideline premium requirements of section 7702(c), the cash value corridor of section 7702(d), and (by reason of the computational rules of section 7702(e)) the cash value accumulation test of section 7702(b) and the 7-pay test of section 7702A(b), as applicable.

Discussion

Although most life insurance contracts insure the life of one person, some life insurance contracts insure multiple lives. For example, a last-to-die life insurance contract (sometimes referred to as a survivorship or second-to-die life insurance contract) insures two or more lives and pays death benefits when the last insured dies. Such contracts are sometimes used in connection with business continuation or estate tax planning; the contracts typically involve lower premiums than do contracts insuring a single life.

A first-to-die life insurance contract (sometimes referred to as a joint life insurance contract) also insures two or more lives, but pays death benefits and terminates upon the death of the first insured. These contracts typically involve higher risks and thus higher premiums than do contracts insuring a single life. First-to-die life insurance contracts represent a small percentage of the multiple-life insurance contracts that are issued.

Section 7702A, which defines the term *modified endowment contract* (MEC), incorporates the computational rules of section 7702, both in its initial determination of whether a contract is a life insurance contract, and in its 7-pay test calculations. Further, section 7702A(c)(6) provides a specific computational rule that applies to multiple life insurance contracts if the death benefit under the contract is reduced.

Neither section 7702, section 7702A, nor the legislative history of either provision, addresses how an insured's attained age is determined for purposes of testing a life insurance contract insuring multiple lives under the cash value accumulation test of section 7702(b), the guideline premium requirements of section 7702(c), or the computational rules of section 7702(e).

Explanation of Provision

This document contains proposed amendments to 26 CFR part 1 under section 7702. The proposed regulations provide guidance on how to determine the attained age of an insured individual under a contract that is a life insurance contract under the applicable law, for purposes of testing whether the contract

qualifies as a life insurance contract under section 7702 and is a MEC under section 7702A. Under the proposed regulations, the attained age of the insured under a contract insuring the life of a single individual is either (i) the insured's age determined by reference to the individual's actual birthday as of the date of determination (actual age) or (ii) the insured's age determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the age assumed under the contract (contract age) is within 12 months of the actual age. The attained age of the insured under a contract insuring multiple lives on a last-to-die basis is the attained age of the youngest insured. The attained age of the insured under a contract insuring multiple lives on a first-to-die basis is the attained age of the oldest insured. The Treasury Department and the IRS understand that the approach of the proposed regulations is consistent with the existing practice of many (but not all) issuers of both contracts insuring a single life and contracts insuring multiple lives. In addition, by mandating the use of a single, predictable age, the proposed regulations provide rules that are straightforward for both issuers and the IRS to administer.

The proposed regulations generally would be applicable for contracts issued on or after the date that is one year after the regulations are published as final regulations in the **Federal Register**. This applicability date recognizes that some issuers will need time to conform their compliance system to the proposed standard for the issuance of new contracts, to file policy forms with State authorities, or both. Taxpayers also would be permitted to apply the regulations retroactively for contracts issued before the date that is one year after the regulations are published as final regulations, provided they do not later determine qualification of those contracts under section 7702 in a manner inconsistent with the regulations.

The proposed regulations defining the attained age for purposes of these provisions are not intended to specify which multiple-life actuarial methodologies are appropriate to determine reasonable mortality charges under sections 7702 and 7702A, or how any such methodology should be applied.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. In addition to comments on the proposed regulations more generally, the IRS and Treasury Department specifically request comments on (i) the clarity of the proposed regulations and how they can be made easier to understand, (ii) the industry's existing practice for determining the attained age to use under both last-to-die and first-to-die life insurance contracts, (iii) the need for special rules for determining the attained age of one or more insureds to calculate mortality charges under section 7702(c)(3)(B)(i), and (iv) the effective date of the proposed regulations. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 14, 2005, at 10 a.m., in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must present a photo identification to enter the building. Because of access restrictions, visitors must use the Constitution Avenue entrance and will not be admitted beyond the Internal Revenue Building lobby more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by August 24, 2005, and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by that same date.

A period of 10 minutes will be allotted to each person(s) for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Ann H. Logan, Office of the Associate Chief Counsel (Financial Institutions and Products), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.7702–2 also issued under 26 U.S.C. 7702(k). * * *

Par. 2. Section 1.7702–0, proposed to be added at 56 FR 30720 and published on July 5, 1991, and further proposed to be amended at 57 FR 59321 and published December 15, 1992, is further proposed to be revised to read as follows:

§ 1.7702–0 Table of contents.

This section lists the captions that appear in §§ 1.7702–1, 1.7702–2, and 1.7702–3:

§ 1.7702–1 Mortality charges.

(a) General rule.
(b) Reasonable mortality charges.
(1) Actually expected to be imposed.
(2) Limit on charges.
(c) Safe harbors.
(1) 1980 C.S.O. Basic Mortality Tables.
(2) Unisex tables and smoker/nonsmoker tables.
(3) Certain contracts based on 1958 C.S.O. table.
(d) Definitions.
(1) Prevailing commissioners' standard tables.
(2) Substandard risk.
(3) Nonparticipating contract.
(4) Charge reduction mechanism.
(5) Plan of insurance.
(e) Effective date.

§ 1.7702–2 Definitions.

(a) In general.
(b) Cash value.

(1) In general.
(2) Amounts excluded from cash value.
(c) Death benefit.
(1) In general.
(2) Qualified accelerated death benefit treated as death benefit.
(d) Qualified accelerated death benefit.
(1) In general.
(2) Determination of present value of the reduction in death benefit.
(3) Examples.
(e) Terminally ill defined.
(f) Certain other additional benefits.
(1) In general.
(2) Examples.
(g) Adjustments under section 7702(f)(7)
(h) Cash surrender value.
(1) In general.
(2) For purposes of section 7702(f)(7)
(i) Net surrender value.
(j) Effective date and special rules.
(1) In general.
(2) Provision of certain benefits before July 1, 1993.
(i) Not treated as cash value.
(ii) No effect on date of issuance.
(iii) Special rule for addition of benefit or loan provision after December 15, 1992.
(3) Addition of qualified accelerated death benefit.
(4) Addition of other additional benefits.

§ 1.7702–3 Attained age of the insured under a life insurance contract.

(a) In general.
(b) Contract insuring a single life.
(c) Contract insuring multiple lives on a last-to-die basis.
(d) Contract insuring multiple lives on a first-to-die basis.
(e) Examples.
(f) Effective dates.
(1) In general.
(2) Contracts issued before the general effective date.

Par. 3. Section 1.7702–3 is added to read as follows:

§ 1.7702–3 Attained age of the insured under a life insurance contract.

(a) *In general.* This section provides guidance on determining the attained age of an insured under a contract that is a life insurance contract under the applicable law, for purposes of testing whether the contract complies with the guideline premium requirements of section 7702(c), the cash value corridor of section 7702(d), and the computational rules of section 7702(e), as applicable.

(b) *Contract insuring a single life.* (1) If a contract insures the life of a single individual, either of the following two ages may be treated as the attained age of the insured with respect to that contract—

(i) The insured's age determined by reference to the individual's actual birthday as of the date of determination (actual age); or

(ii) The insured's age determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the age assumed under the contract (contract age) is within 12 months of the actual age.

(2) Whichever attained age is used with respect to a contract must be used consistently from year to year and consistently for purposes of sections 7702(c), 7702(d), and 7702(e), as applicable.

(c) *Contract insuring multiple lives on a last-to-die basis.* If a contract insures the lives of more than one individual on a last-to-die basis, the attained age of the insured is determined by applying paragraph (b) of this section as if the youngest individual were the only insured under the contract.

(d) *Contract insuring multiple lives on a first-to-die basis.* If a contract insures the lives of more than one individual on a first-to-die basis, the attained age of the insured is determined by applying paragraph (b) of this section as if the oldest individual were the only insured under the contract.

(e) *Examples.* The following examples illustrate the determination of the attained age of the insured for purposes of testing whether the contract complies with the guideline premium requirements of section 7702(c), the cash value corridor of section 7702(d), and the computational rules of section 7702(e), as applicable. The examples are as follows:

Example 1. (i) X was born on May 1, 1947. On January 1, 2008, X purchases from IC a contract insuring X's life. January 1 is the contract anniversary date for all future years. Under the contract, X's premiums are determined on an age-last-birthday basis. X became 60 years old on May 1, 2007. Based on the method used under the contract to determine age, X has an attained age of 60 for the first contract year, 61 for the second contract year, and so on.

(ii) Section 1.7702–3(b) provides that, if a contract insures the life of a single individual, the insured's age may be determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the contract age is within 12 months of the actual age. For each contract year, X's contract age, determined on an age-last-birthday basis, is within 12 months of X's actual age. Accordingly, provided it does so consistently from year to year, IC may compute X's attained age on an age-last-birthday basis for purposes of testing whether a contract complies with the guideline premium requirements of section 7702(c), the cash value corridor of section 7702(d), and the computational rules of section 7702(e), as applicable.

Example 2. (i) The facts are the same as in *Example 1* except that, under the contract, X's premiums are determined on an age-nearest-birthday basis. X's nearest birthday to January 1, 2008, is May 1, 2008, when X will become 61 years old. Based on the method used under the contract to determine age, X has an attained age of 61 for the first contract year, 62 for the second contract year, and so on.

(ii) Section 1.7702–3(b) provides that, if a life insurance contract insures the life of a single individual, the insured's age may be determined by reference to contract anniversary (rather than the individual's actual birthday), so long as the contract age is within 12 months of the actual age. For each contract year, X's contract age, determined on an age-nearest-birthday basis, is within 12 months of X's actual age. Accordingly, provided it does so consistently from year to year, IC may compute X's attained age on an age-nearest-birthday basis for purposes of testing whether the contract complies with the guideline premium requirements of section 7702(c), the cash value corridor of section 7702(d), and the computational rules of section 7702(e), as applicable.

Example 3. (i) The facts are the same as in *Example 1* except that in addition to X, the insurance contract also insures the life of Y. Y was born on September 1, 1942. The death benefit will be paid when the last of the two insureds dies.

(ii) Section 1.7702–3(c) provides that if a life insurance contract insures the lives of more than one individual on a last-to-die basis, the attained age of the insured is determined by applying § 1.7702–3(b) as if the youngest individual were the only insured under the contract. Because X is younger than Y, the attained age of X must be used for purposes of testing whether the contract complies with the guideline premium requirements of section 7702(c), the cash value corridor of section 7702(d), and the computational rules of section 7702(e), as applicable. The attained ages of X and Y are determined as set forth in *Example 1.*

Example 4. (i) The facts are the same as *Example 1* except that in addition to X, the insurance contract also insures the life of Y. Y was born on September 1, 1952. The death benefit will be paid when the first of the two insureds dies.

(ii) Section 1.7702–3(d) provides that if a life insurance contract insures the lives of more than one individual on a first-to-die basis, the attained age of the insured is determined by applying § 1.7702–3(b) as if the oldest individual were the only insured under the contract. Because X is older than Y, the attained age of X must be used for purposes of testing whether the contract complies with the guideline premium requirements of section 7702(c), the cash value corridor of section 7702(d), and the computational rules of section 7702(e), as applicable. The attained ages of X and Y are determined as set forth in *Example 1.*

(f) *Effective dates*—(1) *In general.* Except as provided in paragraph (f)(2), these regulations apply to contracts issued on or after the date that is one year after the regulations are published as final regulations in the **Federal Register**.

(2) *Retroactive application.* Pursuant to section 7805(b)(7), a taxpayer may

elect to apply these regulations retroactively for contracts issued before the date that is one year after the regulations are published as final regulations in the **Federal Register**, provided that the taxpayer does not later determine qualification of those contracts in a manner that is inconsistent with these regulations.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–10166 Filed 5–20–05; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105346–03]

RIN 1545–BB92

Partnership Equity for Services

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking, notice of proposed rulemaking, and notice of public hearing.

SUMMARY: This document withdraws the remaining portion of the notice of proposed rulemaking published in the **Federal Register** on June 3, 1971 (36 FR 10787) and contains proposed regulations relating to the tax treatment of certain transfers of partnership equity in connection with the performance of services. The proposed regulations provide that the transfer of a partnership interest in connection with the performance of services is subject to section 83 of the Internal Revenue Code (Code) and provide rules for coordinating section 83 with partnership taxation principles. The proposed regulations also provide that no gain or loss is recognized by a partnership on the transfer or vesting of an interest in the transferring partnership in connection with the performance of services for the transferring partnership. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by August 22, 2005. Outlines of topics to be discussed at the public hearing scheduled for October 5, 2005, at 10 a.m. must be received by September 14, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–105346–03), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–105346–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–105346–03).

FOR FURTHER INFORMATION CONTACT: Concerning the section 83 regulations, Stephen Tackney at (202) 622–6030; concerning the subchapter K regulations, Audrey Ellis or Demetri Yatrakis at (202) 622–3060; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Robin Jones, (202) 622–7180 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 25, 2005. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (*see* below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The following collections of information in this proposed regulation are in § 1.83–3(l):

(1) Requirement that electing partnerships submit an election with the partnership tax return.

(2) Requirement that certain partners submit a document to the partnership;

(3) Requirement that such documents be retained; and

(4) Requirement that partnerships submit a termination document with the partnership tax return as one method of terminating the election.

These collections of information are required by the IRS to determine whether the amount of tax has been calculated correctly. The respondents are partnerships and partners or other service providers.

The estimated total annual reporting and/or recordkeeping burden is 112,500 hours.

The estimated annual burden per respondent/recordkeeper varies from .10 hours to 10 hours, depending on individual circumstances, with an estimated average of 1 hour for partnerships and .25 hour for a partner or service provider. The estimated number of respondents and/or recordkeepers is 100,000 partnerships and 50,000 partners or other service providers.

The estimated annual frequency of responses (used for reporting requirements only) is on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103.

Background

Partnerships issue a variety of instruments in connection with the performance of services. These instruments include interests in partnership capital, interests in partnership profits, and options to acquire such interests (collectively, partnership equity). On June 5, 2000, the Treasury Department and the IRS issued Notice 2000–29 (2000–1 C.B. 1241), inviting public comment on the Federal income tax treatment of the exercise of an option to acquire a partnership interest, the exchange of convertible debt for a partnership interest, and the exchange of a preferred

interest in a partnership for a common interest in that partnership. On January 22, 2003, the Treasury Department and the IRS published in the **Federal Register** (REG–103580–02) (68 FR 2930), proposed regulations regarding the Federal income tax consequences of noncompensatory partnership options, convertible equity, and convertible debt. In the preamble to those proposed regulations, the Treasury Department and the IRS requested comments on the proposed amendment to § 1.721–1(b)(1) that was published in the **Federal Register** on June 3, 1971 (36 FR 10787), and on the Federal income tax consequences of the issuance of partnership capital interests in connection with the performance of services and options to acquire such interests. In response to the comments received, the Treasury Department and the IRS are withdrawing the proposed amendment to § 1.721–1(b)(1) and issuing these proposed regulations, which prescribe rules on the application of section 83 to partnership interests and the Federal income tax consequences associated with the transfer, vesting, and forfeiture of partnership interests transferred in connection with the performance of services.

Explanation of Provisions

1. Application of Section 83 to Partnership Interests

Section 83 generally applies to a transfer of property by one person to another in connection with the performance of services. The courts have held that a partnership capital interest is property for this purpose. See *Schulman* v. *Commissioner*, 93 T.C. 623 (1989) (section 83 governs the issuance of an option to acquire a partnership interest as compensation for services provided as an employee); *Kenroy, Inc.* v. *Commissioner*, T.C. Memo 1984–232. Therefore, the proposed regulations provide that a partnership interest is property within the meaning of section 83, and that the transfer of a partnership interest in connection with the performance of services is subject to section 83.

The proposed regulations apply section 83 to all partnership interests, without distinguishing between partnership capital interests and partnership profits interests. Although the application of section 83 to partnership profits interests has been the subject of controversy, see, *e.g.*, *Campbell* v. *Commissioner*, T.C. Memo 1990–162, aff'd in part and rev'd in part, 943 F.2d 815 (8th Cir. 1991), n. 7; *St. John* v. *U.S.*, 84–1 USTC 9158 (C.D. Ill. 1983), the Treasury Department and the IRS do not believe that there is a substantial basis for distinguishing among partnership interests for purposes of section 83. All partnership interests constitute personal property under state law and give the holder the right to share in future earnings from partnership capital and labor. Moreover, some commentators have suggested that the same tax rules should apply to both partnership profits interests and partnership capital interests. These commentators have suggested that taxpayers may exploit any differences in the tax treatment of partnership profits interests and partnership capital interests. The Treasury Department and the IRS agree with these comments. Therefore, all of the rules in these proposed regulations and the accompanying proposed revenue procedure (described below) apply equally to partnership capital interests and partnership profits interests. However, a right to receive allocations and distributions from a partnership that is described in section 707(a)(2)(A) is not a partnership interest. In section 707(a)(2)(A), Congress directed that such an arrangement should be characterized according to its substance, that is, as a disguised payment of compensation to the service provider. See S. Rep. No. 98–169, 98 Cong. 2d Sess., at 226 (1984).

Section 83(b) allows a person who receives substantially nonvested property in connection with the performance of services to elect to include in gross income the difference between: (A) The fair market value of the property at the time of transfer (determined without regard to a restriction other than a restriction which by its terms will never lapse); and (B) the amount paid for such property. Under section 83(b)(2), the election under section 83(b) must be made within 30 days of the date of the transfer of the property to the service provider.

Consistent with the principles of section 83, the proposed regulations provide that, if a partnership interest is transferred in connection with the performance of services, and if an election under section 83(b) is not made, then the holder of the partnership interest is not treated as a partner until the interest becomes substantially vested. If a section 83(b) election is made with respect to such an interest, the service provider will be treated as a partner for purposes of Subtitle A of the Code. These rules are similar to the current rules pertaining to substantially nonvested stock in a subchapter S corporation. See § 1.1361–1(b)(3) (upon an election under section 83(b), the service provider becomes a shareholder for purposes of subchapter S).

These principles differ from Rev. Proc. 2001–43. Under that revenue procedure, if a partnership profits interest is transferred in connection with the performance of services, then the holder of the partnership interest may be treated as a partner even if no section 83(b) election is made, provided that certain conditions are met.

Certain changes to the regulations under both subchapter K and section 83 are needed to coordinate the principles of subchapter K with the principles of section 83. Among the changes that are proposed in these regulations are: (1) Conforming the subchapter K rules to the section 83 timing rules; (2) revising the section 704(b) regulations to take into account the fact that allocations with respect to an unvested interest may be forfeited; and (3) providing that a partnership generally recognizes no gain or loss on the transfer of an interest in the partnership in connection with the performance of services for that partnership. In addition, Rev. Procs. 93–27 (1993–2 C.B. 343), and 2001–43 (2001–2 C.B. 191), which generally provide for nonrecognition by both the partnership and the service provider on the transfer of a profits interest in the partnership for services performed for that partnership, must be modified to be consistent with these proposed regulations. Accordingly, in conjunction with these proposed regulations, the IRS is issuing Notice 2005–43 (2005–24 I.R.B.). That Notice contains a proposed revenue procedure that, when finalized, will obsolete Rev. Procs. 93–27 and 2001–43. The Treasury Department and the IRS intend for these proposed regulations and the proposed revenue procedure to become effective at the same time. The proposed amendments to the regulations under section 83 and subchapter K, as well as the Notice, are described in further detail below.

The proposed revenue procedure and certain parts of the proposed regulations (as described below) only apply to a transfer by a partnership of an interest in that partnership in connection with the performance of services for that partnership (compensatory partnership interests). The Treasury Department and the IRS request comments on the income tax consequences of transactions involving related persons, such as, for example, the transfer of an interest in a lower-tier partnership in exchange for services provided to the upper-tier partnership.

2. Timing of Partnership's Deduction

Except as otherwise provided in § 1.83–6(a)(3), if property is transferred

in connection with the performance of services, then the service recipient's deduction, if any, is allowed only for the taxable year of that person in which or with which ends the taxable year of the service provider in which the amount is included as compensation. See section 83(h). In contrast, under section 706(a) and § 1.707–1(c), guaranteed payments described in section 707(c) are included in the partner's income in the partner's taxable year within or with which ends the partnership's taxable year in which the partnership deducted the payments. Under § 1.721–1(b)(2) of the current regulations, an interest in partnership capital issued by the partnership as compensation for services rendered to the partnership is treated as a guaranteed payment under section 707(c). Some commentators suggested that the proposed regulations should resolve the potential conflict between the timing rules of section 83 and the timing rules of section 707(c).

Under the proposed regulations, partnership interests issued to partners for services rendered to the partnership are treated as guaranteed payments. Also, the proposed regulations provide that the section 83 timing rules override the timing rules of section 706(a) and § 1.707–1(c) to the extent they are inconsistent. Accordingly, if a partnership transfers property to a partner in connection with the performance of services, the timing and the amount of the related income inclusion and deduction is determined by section 83 and the regulations thereunder.

In drafting these regulations, the Treasury Department and the IRS considered alternative approaches for resolving the timing inconsistency between section 83 and section 707(c). One alternative approach considered was to provide that the transfer of property in connection with the performance of services is not treated as a guaranteed payment within the meaning of section 707(c). This approach was not adopted in the proposed regulations due to, among other things, concern that such a characterization of these transfers could have unintended consequences on the application of provisions of the Code outside of subchapter K that refer to guaranteed payments. The Treasury Department and the IRS request comments on alternative approaches for resolving the timing inconsistency between section 83 and section 707(c).

3. Allocation of Partnership's Deduction

The proposed regulations provide guidance regarding the allocation of the partnership's deduction for the transfer of property in connection with the performance of services. Some commentators suggested that the proposed regulations require that the partnership's deduction be allocated among the partners in accordance with their interests in the partnership prior to the transfer.

Section 706(d)(1) provides generally that, if, during any taxable year of a partnership, there is a change in any partner's interest in the partnership, each partner's distributive share of any item of income, gain, loss, deduction, or credit of the partnership for such taxable year shall be determined by the use of any method prescribed by regulations which takes into account the varying interests of the partners in the partnership during the taxable year. Regulations have not yet been issued describing the rules for taking into account the varying interests of the partners in the partnership during a taxable year. Section 1.706–1(c)(2)(ii) provides that, in the case of a sale, exchange, or liquidation of a partner's entire interest in a partnership, the partner's share of partnership items for the taxable year may be determined by either: (1) Closing the partnership's books as of the date of the transfer (closing of the books method); or (2) allocating to the departing partner that partner's pro rata part of partnership items that the partner would have included in the partner's taxable income had the partner remained a partner until the end of the partnership taxable year (proration method). The Treasury Department and the IRS believe that section 706(d)(1) adequately ensures that partnership deductions that are attributable to the portion of the partnership's taxable year prior to a new partner's entry into the partnership are allocated to the historic partners.

Section 706(d)(2), however, places additional limits on how partnerships may allocate these deductions. Under section 706(d)(2)(B), payments for services by a partnership using the cash receipts and disbursements method of accounting are allocable cash basis items. Under section 706(d)(2)(A), if during any taxable year of a partnership there is a change in any partner's interest in the partnership, then (except to the extent provided in regulations) each partner's distributive share of any allocable cash basis item must be determined under the proration method. To allow partnerships to allocate deductions with respect to property transferred in connection with the performance of services under a closing of the books method, the proposed regulations provide that section 706(d)(2)(A) does not apply to such a transfer.

4. Accounting for Compensatory Partnership Interests

A. Transfer of Compensatory Partnership Interest

Under the proposed regulations, the service provider's capital account is increased by the amount the service provider takes into income under section 83 as a result of receiving the interest, plus any amounts paid for the interest. Some commentators suggested that the amount included in the service provider's income under section 83, plus the amount paid for the interest, may differ from the amount of capital that the partnership has agreed to assign to the service provider. These commentators contend that the substantial economic effect safe harbor in the section 704(b) regulations should be amended to allow partnerships to reallocate capital between the historic partners and the service provider to accord with the economic agreement of the parties.

The reallocation of partnership capital in these circumstances is not consistent with the policies underlying the substantial economic effect safe harbor and the capital account maintenance rules. The purpose of the substantial economic effect safe harbor is to ensure that, to the extent that there is an economic benefit or burden associated with a partnership allocation, the partner to whom the allocation is made receives the economic benefit or bears the economic burden. Under section 83, the economic benefit of receiving a partnership interest in connection with the performance of services is the amount that is included in the compensation income of the service provider, plus the amount paid for the interest. This is the amount by which the service partner's capital account should be increased.

As explained in section 6 below, a proposed revenue procedure issued concurrently with these proposed regulations would allow a partnership, its partners, and the service provider to elect to treat the fair market value of a partnership interest as equal to the liquidation value of that interest. If such an election is made, the capital account of a service provider receiving a partnership interest in connection with the performance of services is increased by the liquidation value of the partnership interest received.

B. Forfeiture of Certain Compensatory Partnership Interests

If an election under section 83(b) has been made with respect to a substantially nonvested interest, the holder of the nonvested interest may be allocated partnership items that may later be forfeited. For this reason, allocations of partnership items while the interest is substantially nonvested cannot have economic effect. Under the proposed regulations, such allocations will be treated as being in accordance with the partners' interests in the partnership if: (a) The partnership agreement requires that the partnership make forfeiture allocations if the interest for which the section 83(b) election is made is later forfeited; and (b) all material allocations and capital account adjustments under the partnership agreement not pertaining to substantially nonvested partnership interests for which a section 83(b) election has been made are recognized under section 704(b). This safe harbor does not apply if, at the time of the section 83(b) election, there is a plan that a substantially nonvested interest will be forfeited. All of the facts and circumstances (including the tax status of the holder of the substantially nonvested interest) will be considered in determining whether there is a plan that the interest will be forfeited. In such a case, the partners' distributive shares of partnership items shall be determined in accordance with the partners' interests in the partnership under § 1.704–1(b)(3).

Generally, forfeiture allocations are allocations to the service provider of partnership gross income and gain or gross deduction and loss (to the extent such items are available) that offset prior distributions and allocations of partnership items with respect to the forfeited partnership interest. These rules are designed to ensure that any partnership income (or loss) that was allocated to the service provider prior to the forfeiture is offset by allocations on the forfeiture of the interest. Also, to carry out the prohibition under section 83(b)(1) on deductions with respect to amounts included in income under section 83(b), these rules generally cause a forfeiting partner to be allocated partnership income to offset any distributions to the partner that reduced the partner's basis in the partnership below the amount included in income under section 83(b).

Forfeiture allocations may be made out of the partnership's items for the entire taxable year. In determining the gross income of the partnership in the taxable year of the forfeiture, the rules of § 1.83–6(c) apply. As a result, the partnership generally will have gross income in the taxable year of the forfeiture equal to the amount of the allowable deduction to the service recipient partnership upon the transfer of the interest as a result of the making of the section 83(b) election, regardless of the fair market value of the partnership's assets at the time of forfeiture.

In certain circumstances, the partnership will not have enough income and gain to fully offset prior allocations of loss to the forfeiting service provider. The proposed revenue procedure includes a rule that requires the recapture of losses taken by the service provider prior to the forfeiture of the interest to the extent that those losses are not recaptured through forfeiture allocations of income and gain to the service provider. This rule does not provide the other partners in the partnership with the opportunity to increase their shares of partnership loss (or reduce their shares of partnership income) for the year of the forfeiture by the amount of loss that was previously allocated to the forfeiting service provider.

In other circumstances, the partnership will not have enough deductions and loss to fully offset prior allocations of income to the forfeiting service provider. It appears that, in such a case, section 83(b)(1) may prohibit the service provider from claiming a loss with respect to partnership income that was previously allocated to the service provider. However, a forfeiting partner is entitled to a loss for any basis in a partnership that is attributable to contributions of money or property to the partnership (including amounts paid for the interest) remaining after the forfeiture allocations have been made. See § 1.83–2(a).

Comments are requested as to whether the regulations should require or allow partnerships to create notional tax items to make forfeiture allocations where the partnership does not have enough actual tax items to make such allocations. Comments are also requested as to whether section 83(b)(1) should be read to allow a forfeiting service provider to claim a loss with respect to partnership income that was previously allocated to the service provider and not offset by forfeiture allocations of loss and deduction and, if so, whether it is appropriate to require the other partners in the partnership to recognize income in the year of the forfeiture equal to the amount of the loss claimed by the service provider. In particular, comments are requested as to whether section 83 or another section of the Code provides authority for such a rule.

5. Valuation of Compensatory Partnership Interests

Commentators requested guidance regarding the valuation of partnership interests transferred in connection with the performance of services. Section 83 generally provides that the recipient of property transferred in connection with the performance of services recognizes income equal to the fair market value of the property, disregarding lapse restrictions. See *Schulman* v. *Commissioner*, 93 T.C. 623 (1989). However, some authorities have concluded that, under the particular facts and circumstances of the case, a partnership profits interest had only a speculative value or that the fair market value of a partnership interest should be determined by reference to the liquidation value of that interest. See § 1.704–1(e)(1)(v); *Campbell* v. *Commissioner*, 943 F.2d 815 (8th Cir. 1991); *St. John* v. *U.S.,* 1984–1 USTC 9158 (C.D. Ill. 1983). But see *Diamond* v. *Commissioner*, 492 F.2d 286 (7th Cir. 1974) (holding under pre-section 83 law that the receipt of a profits interest with a determinable value at the time of receipt resulted in immediate taxation); *Campbell* v. *Commissioner*, T.C. Memo 1990–162, aff'd in part and rev'd in part, 943 F.2d 815 (8th Cir. 1991).

The Treasury Department and the IRS have determined that, provided certain requirements are satisfied, it is appropriate to allow partnerships and service providers to value partnership interests based on liquidation value. This approach ensures consistency in the treatment of partnership profits interests and partnership capital interests, and accords with other regulations issued under subchapter K, such as the regulations under section 704(b).

In accordance with these proposed regulations, the revenue procedure proposed in Notice 2005–43 (2005–24 I.R.B.) will, when finalized, provide additional rules that partnerships, partners, and persons providing services to the partnership in exchange for interests in that partnership would be required to follow when electing under § 1.83–3(l) of these proposed regulations to treat the fair market value of those interests as being equal to the liquidation value of those interests. For this purpose, the liquidation value of a partnership interest is the amount of cash that the holder of that interest would receive with respect to the interest if, immediately after the transfer of the interest, the partnership sold all of its assets (including goodwill, going

concern value, and any other intangibles associated with the partnership's operations) for cash equal to the fair market value of those assets, and then liquidated.

6. Application of Section 721 to Partnership on Transfer

There is a dispute among commentators as to whether a partnership should recognize gain or loss on the transfer of a compensatory partnership interest. Some commentators believe that, on the transfer of such an interest, the partnership should be treated as satisfying its compensation obligation with a fractional interest in each asset of the partnership. Under this deemed sale of assets theory, the partnership would recognize gain or loss equal to the excess of the fair market value of each partial asset deemed transferred to the service provider over the partnership's adjusted basis in that partial asset. Other commentators believe that a partnership should not recognize gain or loss on the transfer of a compensatory partnership interest. They argue, among other things, that the transfer of such an interest is not properly treated as a realization event for the partnership because no property owned by the partnership has changed hands. They also argue that taxing a partnership on the transfer of such an interest would result in inappropriate gain acceleration, would be difficult to administer, and would cause economically similar transactions to be taxed differently.

Generally, when appreciated property is used to pay an obligation, gain on the property is recognized. The Treasury Department and the IRS are still analyzing whether an exception to this general rule is appropriate on the transfer of an interest in the capital or profits of a partnership to satisfy certain partnership obligations (such as the obligations to pay interest or rent). However, the Treasury Department and the IRS believe that partnerships should not be required to recognize gain on the transfer of a compensatory partnership interest. Such a rule is more consistent with the policies underlying section 721—to defer recognition of gain and loss when persons join together to conduct a business—than would be a rule requiring the partnership to recognize gain on the transfer of these types of interests. Therefore, the proposed regulations provide that partnerships are not taxed on the transfer or substantial vesting of a compensatory partnership interest. Under § 1.704–1(b)(4)(i) (reverse section 704(c) principles), the historic partners generally will be required to recognize any income or loss attributable to the partnership's assets as those assets are sold, depreciated, or amortized.

The rule providing for nonrecognition of gain or loss does not apply to the transfer or substantial vesting of an interest in an eligible entity, as defined in § 301.7701–3(a) of the Procedure and Administration Regulations, that becomes a partnership under § 301.7701–3(f)(2) as a result of the transfer or substantial vesting of the interest. See *McDougal* v. *Commissioner*, 62 T.C. 720 (1974) (holding that the service recipient recognized gain on the transfer of a one-half interest in appreciated property to the service provider, immediately prior to the contribution by the service recipient and the service provider of their respective interests in the property to a newly formed partnership).

7. Revaluations of Partnership Property

The proposed regulations concerning noncompensatory partnership options published on January 22, 2003, contained special rules regarding the revaluations of partnership property while noncompensatory partnership options were outstanding. Specifically, the regulations proposed modifications to § 1.704–1(b)(2)(iv)(*f*) and (*h*) to provide that any revaluation during the period in which there are outstanding noncompensatory options generally must take into account the fair market value, if any, of outstanding options. These proposed regulations do not contain similar provisions, because under recently proposed modifications to the regulations under § 1.704–1(b)(2)(iv), the obligation to issue a partnership interest in satisfaction of an option agreement is a liability that is taken into account in determining the fair market value of partnership assets as a result of a revaluation. See REG–106736–00, 68 FR 37434 (June 24, 2003) (relating to the assumption of certain obligations by partnerships from partners).

8. Characterization Rule

The proposed regulations concerning noncompensatory partnership options published on January 22, 2003 contained a rule (§ 1.761–3) providing that the holder of a noncompensatory option is treated as a partner under certain circumstances. However, the Treasury Department and the IRS have concluded that these proposed regulations should not contain a similar rule for partnership options transferred in connection with the performance of services because of the possibility that constructive transfers of property, subject to section 83, may occur under circumstances other than those described in the proposed rules for treating the holder of a noncompensatory option as a partner. The Treasury Department and the IRS request comments on whether anti-abuse rules are necessary to prevent taxpayers from using the rules in these proposed regulations or the rules in Notice 2005–43 to inappropriately shift items of partnership income or loss between the service provider and the other partners.

9. Retroactive Allocations

Section 761(c) generally allows a partnership to modify its agreement at any time on or prior to the due date for the partnership's return for the taxable year (without regard to extensions). Thus, for example, a partnership could, at the end of its taxable year, amend its partnership agreement to provide that a service provider was entitled to a substantially vested or nonvested interest in partnership profits and losses from the beginning of the partnership's taxable year. It is expected that, if a substantially vested compensatory partnership interest is transferred to an employee or independent contractor (or an election under section 83(b) is made with respect to the transfer of a substantially nonvested compensatory partnership interest to an employee or independent contractor), the partnership will report the transfer on Form W–2, ''Wage and Tax Statement,'' or Form 1099–MISC, ''Miscellaneous Income,'' as appropriate. The Form W–2 or Form 1099-MISC would be issued to the service provider by the partnership by January 31 of the year following the calendar year in which the partnership interest is transferred, and the partnership would file such forms with the Social Security Administration or IRS, respectively, by February 28 (March 31 if filed electronically) of the year following the calendar year in which the partnership interest is transferred. The service provider would be required to report any income recognized on the transfer of the partnership interest on the service provider's return for the taxable year (of the service provider) in which the transfer occurs.

It is unclear whether the retroactive commencement date of such an interest should be treated as the date of the transfer of the interest for purposes of section 83 and other provisions of the Code outside of subchapter K. If the retroactive effective date of the interest is treated as the transfer date for all purposes, a number of administrative concerns arise. For example, the

partnership may not, by the January 31 deadline, have the information necessary to issue Form W–2 or Form 1099–MISC to the service provider. Also, the service provider may not, by the due date for filing the section 83(b) election, have the information necessary to file the election. The Treasury Department and the IRS request comments on the timing for section 83 purposes of retroactive transfers of partnership interests and on any actions that may be appropriate to address the associated administrative concerns.

10. Information Reporting to Partners

As explained above, the proposed regulations treat the transfer of a partnership interest to a partner in connection with the performance of services as a guaranteed payment. To ensure that the service provider partner has the information necessary to include the transfer in income for the taxable year in which the transfer occurs (rather than the taxable year in which or with which ends the partnership taxable year in which the transfer occurs), the Treasury Department and the IRS are considering the possibility of amending the section 6041 regulations to provide that this type of guaranteed payment must be reported by the partnership on Form 1099–MISC, which is required to be issued to the service provider on or before January 31 of the year following the calendar year of such transfer. The Treasury Department and the IRS request comments on whether such a requirement is appropriate and administrable.

Proposed Effective Date

These regulations are proposed to apply to transfers of property on or after the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the reporting burden, as discussed earlier in this preamble, is not expected to be significant. Partnerships with partnership agreements that contain the binding provisions referred to in § 1.83–3(l) only will be required to submit a single election form in order to rely on the safe harbor described in that paragraph. Partnerships that desire to elect to use the safe harbor described in § 1.83–3(l), but which do not have partnership agreements containing these provisions, are required to obtain partner-level consents to the election. However, these partnerships are expected to be rare. Moreover, in most cases the partners in such partnerships are not expected to be small businesses. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

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

A public hearing has been scheduled for October 5, 2005, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by September 14, 2005. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Audrey Ellis and Demetri Yatrakis of the Office of Associate Chief Counsel (Passthroughs and Special Industries), and Stephen Tackney of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, § 1.721–1(b) of the notice of proposed rulemaking that was published in the **Federal Register** on June 3, 1971 (36 FR 10787) is withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record keeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.83–3 is amended as follows:

1. Paragraph (e) is amended by adding two new sentences after the first sentence.

2. Paragraph (l) is added.

The revision and addition read as follows:

§ 1.83–3 Meaning and use of certain terms.

* * * * *

(e) *Property.* * * * Accordingly, property includes a partnership interest. The previous sentence is effective for transfers on or after the date final regulations are published in the **Federal Register**. * * *

* * * * *

(l) *Special rules for the transfer of a partnership interest.* (1) Subject to such additional conditions, rules, and procedures that the Commissioner may prescribe in regulations, revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii)(*b*) of this chapter), a partnership and all of its partners may elect a safe harbor under which the fair market value of a partnership interest that is transferred in connection with the performance of services is treated as being equal to the

liquidation value of that interest for transfers on or after the date final regulations are published in the **Federal Register** if the following conditions are satisfied:

(i) The partnership must prepare a document, executed by a partner who has responsibility for Federal income tax reporting by the partnership, stating that the partnership is electing, on behalf of the partnership and each of its partners, to have the safe harbor apply irrevocably as of the stated effective date with respect to all partnership interests transferred in connection with the performance of services while the safe harbor election remains in effect and attach the document to the tax return for the partnership for the taxable year that includes the effective date of the election.

(ii) Except as provided in paragraph (l)(1)(iii) of this section, the partnership agreement must contain provisions that are legally binding on all of the partners stating that—

(A) The partnership is authorized and directed to elect the safe harbor; and

(B) The partnership and each of its partners (including any person to whom a partnership interest is transferred in connection with the performance of services) agrees to comply with all requirements of the safe harbor with respect to all partnership interests transferred in connection with the performance of services while the election remains effective.

(iii) If the partnership agreement does not contain the provisions described in paragraph (l)(1)(ii) of this section, or the provisions are not legally binding on all of the partners of the partnership, then each partner in a partnership that transfers a partnership interest in connection with the performance of services must execute a document containing provisions that are legally binding on that partner stating that—

(A) The partnership is authorized and directed to elect the safe harbor; and

(B) The partner agrees to comply with all requirements of the safe harbor with respect to all partnership interests transferred in connection with the performance of services while the election remains effective.

(2) The specified effective date of the safe harbor election may not be prior to the date that the safe harbor election is executed. The partnership must retain such records as may be necessary to indicate that an effective election has been made and remains in effect, including a copy of the partnership's election statement under this paragraph (l), and, if applicable, the original of each document submitted to the partnership by a partner under this paragraph (l). If the partnership is unable to produce a record of a particular document, the election will be treated as not made, generally resulting in termination of the election. The safe harbor election also may be terminated by the partnership preparing a document, executed by a partner who has responsibility for Federal income tax reporting by the partnership, which states that the partnership, on behalf of the partnership and each of its partners, is revoking the safe harbor election on the stated effective date, and attaching the document to the tax return for the partnership for the taxable year that includes the effective date of the revocation.

Par. 3. Section 1.83–6 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 1.83–6 Deduction by employer.

* * * * *

(b) *Recognition of gain or loss.* Except as provided in section 721 and section 1032, at the time of a transfer of property in connection with the performance of services the transferor recognizes gain to the extent that the transferor receives an amount that exceeds the transferor's basis in the property. * * *

* * * * *

Par. 4. Section 1.704–1 is amended as follows:

1. In paragraph (b)(0), an entry is added to the table for § 1.704–1(b)(4)(xii).

2. In paragraph (b)(1)(ii)(*a*), a sentence is added at the end of the paragraph.

3. Paragraph (b)(2)(iv)(*b*)(*1*) is revised.

4. Paragraph (b)(2)(iv)(*f*)(*5*)(*iii*) is revised.

5. Paragraph (b)(4)(xii) is added.

6. Paragraph (b)(5) *Example 29* is added.

The additions and revisions read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * * (0) * * *

* * * * *

Substantially nonvested interests—1.704–1(b)(4)(xii)

* * * * *

(1) * * *

(ii) * * * (*a*) * * * In addition, paragraph (b)(4)(xii) and paragraph (b)(5) *Example 29* of this section apply to compensatory partnership interests (as defined in § 1.721–1(b)(3)) that are transferred on or after the date final regulations are published in the **Federal Register**.

* * * * *

(2) * * *

(iv) * * *

(*b*) * * *

(*1*) the amount of money contributed by that partner to the partnership and, in the case of a compensatory partnership interest (as defined in § 1.721–1(b)(3)) that is transferred on or after the date final regulations are published in the **Federal Register,** the amount included on or after that date in the partner's compensation income under section 83(a), (b), or (d)(2).

* * * * *

(*f*) * * *

(*5*) * * *

(*iii*) In connection with the transfer or vesting of a compensatory partnership interest (as defined in § 1.721–1(b)(3)) that is transferred on or after the date final regulations are published in the **Federal Register,** but only if the transfer or vesting results in the service provider recognizing income under section 83 (or would result in such recognition if the interest had a fair market value other than zero).

* * * * *

(4) * * *

(xii) *Substantially nonvested interests—(a) In general.* If a section 83(b) election has been made with respect to a substantially nonvested interest, the holder of the nonvested interest may be allocated partnership income, gain, loss, deduction, or credit (or items thereof) that will later be forfeited. For this reason, allocations of partnership items while the interest is substantially nonvested cannot have economic effect.

(*b*) *Deemed Compliance with Partners' Interests in the Partnership.* If a section 83(b) election has been made with respect to a substantially nonvested interest, allocations of partnership items while the interest is substantially nonvested will be deemed to be in accordance with the partners' interests in the partnership if—

(*1*) The partnership agreement requires that the partnership make forfeiture allocations if the interest for which the section 83(b) election is made is later forfeited; and

(*2*) All material allocations and capital account adjustments under the partnership agreement not pertaining to substantially nonvested partnership interests for which a section 83(b) election has been made are recognized under section 704(b).

(*c*) *Forfeiture allocations.* Forfeiture allocations are allocations to the service provider (consisting of a pro rata portion of each item) of gross income and gain or gross deduction and loss (to the extent such items are available) for the taxable year of the forfeiture in a positive or negative amount equal to—

(*1*) The excess (not less than zero) of the—

(*i*) Amount of distributions (including deemed distributions under section 752(b) and the adjusted tax basis of any property so distributed) to the partner with respect to the forfeited partnership interest (to the extent such distributions are not taxable under section 731); over

(*ii*) Amounts paid for the interest and the adjusted tax basis of property contributed by the partner (including deemed contributions under section 752(a)) to the partnership with respect to the forfeited partnership interest; minus

(*2*) The cumulative net income (or loss) allocated to the partner with respect to the forfeited partnership interest.

(*d*) *Positive and negative amounts.* For purposes of paragraph (b)(4)(xii)(*c*) of this section, items of income and gain are reflected as positive amounts, and items of deduction and loss are reflected as negative amounts.

(e) *Exception.* Paragraph (b)(4)(xii)(*b*) of this section shall not apply to allocations of partnership items made with respect to a substantially nonvested interest for which the holder has made a section 83(b) election if, at the time of the section 83(b) election, there is a plan that the interest will be forfeited. In such a case, the partners' distributive shares of partnership items shall be determined in accordance with the partners' interests in the partnership under paragraph (b)(3) of this section. In determining whether there is a plan that the interest will be forfeited, the Commissioner will consider all of the facts and circumstances (including the tax status of the holder of the forfeitable compensatory partnership interest).

(*f*) *Cross references.* Forfeiture allocations may be made out of the partnership's items for the entire taxable year of the forfeiture. *See* § 1.706–3(b) and paragraph (b)(5) *Example 29* of this section.

* * * * *

(5) * * *

Example 29. (i) In Year 1, A and B each contribute cash to LLC, a newly formed limited liability company classified as a partnership for Federal tax purposes, in exchange for equal units in LLC. Under LLC's operating agreement, each unit is entitled to participate equally in the profits and losses of LLC. The operating agreement also provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, that liquidation proceeds will be distributed in accordance with the partners' positive capital account balances, and that any partner with a deficit balance in that partner's capital account following the liquidation of the partner's interest must restore that deficit to the partnership. At the beginning of Year 3, SP agrees to perform services for LLC. In connection with the performance of SP's services and a payment of $10 by SP to LLC, LLC transfers a 10% interest in LLC to SP. SP's interest in LLC is substantially nonvested (within the meaning of § 1.83–3(b)). At the time of the transfer of the LLC interest to SP, LLC's operating agreement is amended to provide that, if SP's interest is forfeited, then SP is entitled to a return of SP's $10 initial contribution, and SP's distributive share of all partnership items (other than forfeiture allocations under § 1.704–1(b)(4)(xii)) will be zero with respect to that interest for the taxable year of the partnership in which the interest was forfeited. The operating agreement is also amended to require that LLC make forfeiture allocations if SP's interest is forfeited. Additionally, the operating agreement is amended to provide that no part of LLC's compensation deduction is allocated to the service provider to whom the interest is transferred. SP makes an election under section 83(b) with respect to SP's interest in LLC. Upon receipt, the fair market value of SP's interest in LLC is $100. In each of Years 3, 4, 5, and 6, LLC has operating income of $100 (consisting of $200 of gross receipts and $100 of deductible expenses), and makes no distributions. SP forfeits SP's interest in LLC at the beginning of Year 6. At the time of the transfer of the interest to SP, there is no plan that SP will forfeit the interest in LLC.

(ii) Because a section 83(b) election is made, SP recognizes compensation income in the year of the transfer of the LLC interest. Therefore, SP recognizes $90 of compensation income in the year of the transfer of the LLC interest (the excess of the fair market value of SP's interest in LLC, $100, over the amount SP paid for the interest, $10). Under paragraph (b)(2)(iv)(*b*)(*1*) of this section, in Year 3, SP's capital account is initially credited with $100, the amount paid for the interest ($10) plus the amount included in SP's compensation income upon the transfer under section 83(b) ($90). Under §§ 1.83–6(b) and 1.721–1(b)(2), LLC does not recognize gain on the transfer of the interest to SP. LLC is entitled to a compensation deduction of $90 under section 83(h). Under the terms of the operating agreement, the deduction is allocated equally to A and B.

(iii) As a result of SP's election under section 83(b), SP is treated as a partner starting from the date of the transfer of the LLC interest to SP in Year 3. Section 1.761–1(b). In each of years 3, 4 and 5, SP's distributive share of partnership income is $10 (10% of $100), A's distributive share of partnership income is $45 (45% of $100), and B's distributive share of partnership income is $45 (45% of $100). In accordance with the operating agreement, SP's capital account is increased (to $130) by the end of Year 5 by the amounts allocated to SP, and A's and B's capital accounts are increased by the amounts allocated to A and B. Because LLC satisfies the requirements of paragraph (b)(4)(xii) of this section, LLC's allocations in years 3, 4 and 5 are deemed to be in accordance with the partners' interests in the partnership.

(iv) As a result of the forfeiture of the LLC interest by SP in year 6, LLC is required to recognize income ($90) equal to the amount of the allowable deduction on the transfer of the LLC interest to SP under § 1.83–6(c). LLC repays SP's $10 capital contribution to SP, reducing SP's capital account to $120. Under the terms of the operating agreement, because SP forfeited SP's interest, SP's distributive share of all partnership items (other than forfeiture allocations) is zero for Year 6. To reverse SP's prior allocations of LLC income, LLC makes forfeiture allocations of $30 of deductions ($0 (the difference between the $10 distributed to SP and the $10 contributed to LLC by SP) minus $30 (the cumulative net LLC income allocated to SP) to SP in Year 6. Notwithstanding section 706(c) and (d), these allocations may be made out of LLC's partnership items for the entire taxable year of the forfeiture. Thus, in Year 6, $30 of deductions are allocated to SP, and the remaining $220 of net operating income ($200 of gross receipts and $90 of income under § 1.83–6(c) less $70 of remaining deductions) are allocated to A and B equally for tax purposes. In accordance with section 83(b)(1) (last sentence), SP does not receive a deduction or capital loss for the amount ($90) that was included in SP's compensation income. Because LLC satisfies the requirements of paragraph (b)(4)(xii) of this section, LLC's allocations in year 6 are deemed to be in accordance with the partners' interests in the partnership.

* * * * *

Par. 5. Section 1.706–3 is added to read as follows.

§ 1.706–3 Property transferred in connection with the performance of services.

(a) *Allocations of certain deductions under section 83(h).* The transfer of property subject to section 83 in connection with the performance of services is not an allocable cash basis item within the meaning of section 706(d)(2)(B).

(b) *Forfeiture allocations.* If an election under section 83(b) is made with respect to a partnership interest that is substantially nonvested (within the meaning of § 1.83–3(b)), and that interest is later forfeited, the partnership must make forfeiture allocations to reverse prior allocations made with respect to the forfeited interest. See § 1.704–1(b)(4)(xii). Although the person forfeiting the interest may not have been a partner for the entire taxable year, forfeiture allocations may be made out of the partnership's items for the entire taxable year.

(c) *Effective date.* This section applies to transfers of property on or after the date final regulations are published in the **Federal Register**.

Par. 6. In § 1.707–1, paragraph (c) is amended by revising the second sentence to read as follows:

§ 1.707–1 Transactions between partner and partnership.

* * * * *

(c) *Guaranteed payments.* * * * However, except as otherwise provided in section 83 and the regulations thereunder, a partner must include such payments as ordinary income for that partner's taxable year within or with which ends the partnership taxable year in which the partnership deducted such payments as paid or accrued under its method of accounting. * * *

* * * * *

Par. 7. In § 1.721–1, paragraph (b) is revised to read as follows.

§ 1.721–1 Nonrecognition of gain or loss on contribution.

* * * * *

(b)(1) Except as otherwise provided in this section or § 1.721–2, section 721 does not apply to the transfer of a partnership interest in connection with the performance of services or in satisfaction of an obligation. The transfer of a partnership interest to a person in connection with the performance of services constitutes a transfer of property to which section 83 and the regulations thereunder apply. To the extent that a partnership interest transferred in connection with the performance of services rendered by a decedent prior to the decedent's death is transferred after the decedent's death to the decedent's successor in interest, the fair market value of such interest is an item of income in respect of a decedent under section 691.

(2) Except as provided in section 83(h) and 1.83–6(c), no gain or loss shall be recognized by a partnership upon—

(i) The transfer or substantial vesting of a compensatory partnership interest; or

(ii) The forfeiture of a compensatory partnership interest. See § 1.704–1(b)(4)(xii) for rules regarding forfeiture allocations of partnership items that may be required in the taxable year of a forfeiture.

(3) For purposes of this section, a compensatory partnership interest is an interest in the transferring partnership that is transferred in connection with the performance of services for that partnership (either before or after the formation of the partnership), including an interest that is transferred on the exercise of a compensatory partnership option. A compensatory partnership option is an option to acquire an interest in the issuing partnership that is granted in connection with the performance of services for that partnership (either before or after the formation of the partnership).

(4) To the extent that a partnership interest is—

(i) Transferred to a partner in connection with the performance of services rendered to the partnership, it is a guaranteed payment for services under section 707(c);

(ii) Transferred in connection with the performance of services rendered to a partner, it is not deductible by the partnership, but is deductible only by such partner to the extent allowable under Chapter 1 of the Code.

(5) This paragraph (b) applies to interests that are transferred on or after the date final regulations are published in the **Federal Register.**

* * * * *

Par. 8. Section 1.761–1(b) is amended by adding two sentences to the end of the paragraph to read as follows.

§ 1.761–1 Terms defined.

* * * * *

(b) * * * If a partnership interest is transferred in connection with the performance of services, and that partnership interest is substantially nonvested (within the meaning of § 1.83–3(b)), then the holder of the partnership interest is not treated as a partner solely by reason of holding the interest, unless the holder makes an election with respect to the interest under section 83(b). The previous sentence applies to partnership interests that are transferred on or after the date final regulations are published in the **Federal Register.**

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–10164 Filed 5–20–05; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7620]

Proposed Flood Elevation Determinations

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

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood elevations and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because

proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
CALIFORNIA Santa Barbara County				
Arroyo Burro Creek	Approximately 1,320 feet downstream of Cliff Drive	*7	*6	Santa Barbara County (Unincorporated Areas), City of Santa Barbara.
	Approximately 1,550 feet upstream of Foothill Road	None	*366	
Overland Flow at Casiano Drive.	At the intersection of Casiano Drive and Portofino Way	None	*126	City of Santa Barbara.
	At downstream side of U.S. Highway 101	None	*162	
Overland Flow at Palermo Way.	At the intersection of Palermo Way Drive and Barcelona Way.	*109	*112	City of Santa Barbara.
	At downstream side of U.S. Highway 101	*165	*160	
Arroyo Paredon	At confluence with Pacific Ocean	None	*8	Santa Barbara County (Unincorporated Areas).
	Approximately 2,750 feet upstream of Foothill Road	None	*219	
Tributary	At confluence with Arroyo Paredon	None	*33	Santa Barbara County (Unincorporated Areas).
	Approximately 130 feet upstream of Foothill Road	None	*82	
Devereaux Creek	At confluence with Pacific Ocean	None	*7	Santa Barbara County (Unincorporated Areas), City of Goleta.
	Approximately 50 feet upstream of Southern Pacific Railroad.	None	*97	
Devereaux Creek	At confluence with Devereaux Creek	None	*23	Santa Barbara County (Unincorporated Areas), City of Goleta.
Tributary 1	Approximately 50 feet upstream of Southern Pacific Railroad.	None	*95	
Tributary 2	At confluence with Devereaux Creek	None	*15	Santa Barbara County (Unincorporated Areas), City of Goleta.
	Approximately 150 feet upstream of Southern Pacific Railroad.	None	*60	
Tributary 3	At confluence with Devereaux Creek	None	*14	Santa Barbara County (Unincorporated Areas), City of Goleta.
	Approximately 2,050 feet upstream of confluence with Devereaux Creek.	None	*16	
East Branch Toro Creek	At confluence with Toro Creek	None	*249	Santa Barbara County (Unincorporated Areas).
	Approximately 60 feet upstream of State Highway 192	None	*498	
Fremont Creek	At confluence with San Jose Creek (East Valley Road)	None	*85	Santa Barbara County (Unincorporated Areas).
	Approximately 910 feet upstream of Patterson Avenue	None	*153	
Garrapata Creek	At confluence with Pacific Ocean	None	*8	Santa Barbara County (Unincorporated Areas).
	Approximately 430 feet upstream of Toro Canyon Road (Third Crossing).	None	*456	
Las Positas Creek	At confluence with Arroyo Burro	None	*58	Santa Barbara County (Unincorporated Areas), City of Santa Barbara.

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 300 feet upstream of Modoc Road	None	*120	
Northridge Creek	At confluence with Arroyo Burro	None	*295	City of Santa Barbara.
	Approximately 2,425 feet upstream of Foothill Road	None	*408	
San Jose Creek	Approximately 50 feet upstream of Calle Real	*56	*55	Santa Barbara County (Unincorporated Areas), City of Goleta.
	Approximately 810 feet upstream of Patterson Avenue	None	*107	
San Roque Creek	At confluence with Arroyo Burro	*169	*174	City of Santa Barbara.
	Approximately 7,800 feet upstream of Ontare Road	None	*484	
Toro Creek	At confluence with Pacific Rim	None	*10	Santa Barbara County (Unincorporated Areas).
	At State Highway 192 (East Valley Road)	None	*494	

City of Goleta

Maps available for inspection at the Goleta City Hall, 130 Cremona Drive, Suite B, Goleta, California.

Send comments to The Honorable Jean Blois, Mayor of the City of Goleta, 130 Cremona Drive, Suite B, Goleta, California 93117.

City of Santa Barbara

Maps available for inspection at the Santa Barbara City Administrator's Office, 735 Anacapa Street, Santa Barbara, California.

Send comments to Mr. James L. Armstrong, Santa Barbara City Administrator, P.O. Box 1990, Santa Barbara, California 93102–1990.

Santa Barbara County (Unincorporated Areas)

Maps available for inspection at the Santa Barbara County Department of Public Works, Water Resources Division, Flood Control and Water Conservation District, 123 East Anapamu Street, Santa Barbara, California.

Send comments to Mr. Michael F. Brown, Santa Barbara County Administrator, Santa Barbara County Department of Public Works, Water Resources Division, Flood Control and Water Conservation District, 123 East Anapamu Street, Santa Barbara, California 93101.

COLORADO
Douglas County

Sterling Gulch	Approximately 200 feet upstream of the confluence with Plum Creek.	•5,524	•5,525	Douglas County (Unincorporated Areas)
	Approximately 1.7 miles upstream of the confluence with Plum Creek.	None	•5,651	
Plum Creek	At Highland Canal	•5,518	•5,519	Douglas County (Unincorporated Areas).
	At the confluence with East Plum Creek	•5,773	•5,772	
East Willow Creek	At the confluence with Willow Creek	None	•5,502	Douglas County (Unincorporated Areas).
	Approximately 2.0 miles upstream of Rampart Rouge Road.	None	•5,727	
Willow Creek	Approximately 200 feet upstream of the confluence with South Platte River.	None	•5,475	Douglas County (Unincorporated Areas).
	Approximately 3.7 miles upstream of Rampart Rouge Road.	None	•6,044	
Little Willow Creek	At Waterloo Road	None	•5,552	Douglas County (Unincorporated Areas).
	Approximately 700 feet upstream of Roxborough Park Road.	None	•5,897	
Big Dry Creek	At Douglas/Arapahoe County boundary	None	•5,685	Douglas County (Unincorporated Areas).
	At Valley Road	None	•6,079	
Tributary C	At the confluence with Big Dry Creek	None	•5,845	Douglas County (Unincorporated Areas).
	Approximately 1.0 mile upstream of MacArthur Ranch Road.	None	•6,091	
Cherry Creek	Approximately 160 feet upstream of Douglas County boundary.	•5,713	•5,714	Douglas County (Unincorporated Areas), Town of Parker.
	Approximately 0.8 mile upstream of the confluence with McMardo Gulch.	•6,020	•6,021	
Drainageway 6604–01	At the confluence with Louviers Gulch	None	•5,685	Douglas County (Unincorporated Areas).
	Approximately 200 feet upstream of Moore Road	None	•5,764	
Highlands Gulch	At the confluence with Plum Creek	•5,579	•5,583	Douglas County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Highway 85	None	•5,729	
Oxide Draw	At the confluence with Plum Creek	•5,601	•5,597	Douglas County (Unincorporated Areas) .
	Approximately 1,200 feet upstream of Highway 85	None	•5,690	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Louviers Gulch	At the confluence with Plum Creek	•5,592	•5,593	Douglas County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Field Road	None	•5,768	
Lehigh Gulch	At the confluence with Indian Creek	None	•5,778	Douglas County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Horseshoe Trail Road.	None	•5,965	
Drainageway 6605–01	At the confluence with Indian Creek	None	•5,652	Douglas County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Indian Creek.	None	•5,761	
Drainageway 6600–02	At the confluence with Plum Creek	•5,619	•5,616	Douglas County (Unincorporated Areas).
	Approximately 500 feet upstream of Highway 85	None	•5,691	
Daniels Park Drain	At the confluence with Plum Creek	None	•5,642	Douglas County (Unincorporated Areas) .
	Approximately 1.0 mile upstream of Highway 85	None	•5,814	
Jarre Creek	At the confluence with Plum Creek	•5,772	•5,769	Douglas County (Unincorporated Areas).
	Approximately 2.3 miles upstream of Highway 67	None	•6,040	
East Plum Creek	At the confluence with Plum Creek	•5,773	•5,772	Douglas County (Unincorporated Areas).
	Approximately 0.6 mile upstream of railroad	•5,925	•5,926	
West Plum Creek	At the confluence with Plum Creek	•5,770	•5,772	Douglas County (Unincorporated Areas).
	Approximately 2.9 miles upstream of the confluence with Plum Creek.	None	•5,842	
Rainbow Creek	At the confluence with Indian Creek	None	•5,935	Douglas County (Unincorporated Areas).
	Approximately 1.5 miles upstream of the confluence with Indian Creek.	None	•6,090	
Indian Creek	At the confluence with Plum Creek	•5,640	•5,636	Douglas County (Unincorporated Areas).
	Approximately 0.3 mile upstream of West Apache Way	None	•6,104	
Hangmans Gulch	At the confluence with East Plum Creek	•6,103	•6,100	Douglas County (Unincorporated Areas), Town of Castle Rock.
	Approximately 0.5 mile upstream of Weedlands Drive	•6,431	•6,473	
Plum Creek Diversion Channel.	Approximately 500 feet upstream of the confluence with Plum Creek.	None	•5,695	Douglas County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Plum Creek.	•5,716	•5,711	
South Platte River	Approximately 1,700 feet downstream of County Road 97.	None	•6,090	Douglas County (Unincorporated Areas).
	Approximately 1.6 miles upstream of County Road 97	None	•6,440	
Fourmile Creek	Approximately 90 feet upstream of the confluence with South Platte River.	None	•6,444	Douglas County (Unincorporated Areas).
	Approximately 7.8 miles upstream of the confluence with South Platte River.	None	•8,357	
Horse Creek	At the confluence with South Platte River	•6,604	•6,408	Douglas County (Unincorporated Areas).
	Approximately 600 feet upstream of State Highway 67	None	•6,629	
Trout Creek	At the confluence with Horse Creek	None	•6,629	Douglas County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Lodge Drive	None	•6,743	
West Creek	At the confluence with Horse Creek	None	•6,629	Douglas County (Unincorporated Areas).
	At Douglas/Teller County boundary	None	•7,578	Douglas County (Unincorporated Areas).
Bayou Gulch	At the confluence with Cherry Creek	•6,000	•6,002	Douglas County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Cherry Creek.	•6,023	•6,022	
Platte Canyon Reservoir	Approximately 600 feet upstream of the confluence with South Platte River.	None	•5,539	Douglas County (Unincorporated Areas).
	At Waterloo Road	None	•5,539	
Sterling Gulch	Shallow Flooding—various locations	None	#2	Douglas County (Unincorporated Areas).

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Big Dry Creek, Tributary C	Shallow Flooding—various locations	None	#2–#3	Douglas County locations (Unincorporated Areas).
Big Dry Creek	Shallow Flooding—various locations	None	#1–#3	Douglas County (Unincorporated Areas).
Little Willow Creek	Shallow Flooding—various locations	None	#1	Douglas County (Unincorporated Areas).
Willow Creek	Shallow Flooding—various locations	None	#1	Douglas County (Unincorporated Areas).
Louviers Gulch	Shallow Flooding	None	#2	Douglas County (Unincorporated Areas).
Drainageway 6604–01	Shallow Flooding—various locations	None	#2	Douglas County (Unincorporated Areas).
Plum Creek	Shallow Flooding—various locations	None	#2	Douglas County (Unincorporated Areas).
Highlands Gulch and Oxide Draw.	Shallow flooding between railroad and U.S. 85 and between Highlands Gulch and Oxide Draw.	None	#2	Douglas County (Unincorporated Areas).
Indian Creek	Shallow Flooding	None	#2	Douglas County (Unincorporated Areas).

Town of Castle Rock

Maps available for inspection at the Town of Castle Rock Utilities Department, 175 Kellogg Court, Castle Rock, Colorado.

Send comments to The Honorable Millie Bennett, Mayor of the Town of Castle Rock, Castle Rock Town Hall, 100 North Wilcox Street, Castle Rock, Colorado 80104.

Douglas County (Unincorporated Areas).

Maps available for inspection at the Douglas County Public Works, Engineering Division, 100 Third Street, Castle Rock, Colorado.

Send comments to Douglas County Commissioners, 100 Third Street, Castle Rock, Colorado 80104.

Town of Parker

Maps available for inspection at the Town of Park Stormwater Utility, Public Works Department, 20120 East Mainstreet, Parker, Colorado.

Send comments to The Honorable Gary Lasater, Mayor of the Town of Parker, 20120 East Mainstreet, Parker, Colorado 80138.

NORTH CAROLINA
Duplin County

Angola Creek	At the confluence with Cypress Creek	None	•49	Duplin County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Lightwood Bridge Road.	None	•51	
Back Swamp	At the confluence with Cypress Creek	None	•52	Duplin County (Unincorporated Areas).
	At the Duplin/Onslow County boundary	None	•58	
Tributary 2	At the confluence with Back Swamp	None	•59	Duplin County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Fountaintown Road.	None	•72	
Tributary 4	At the confluence with Back Swamp Tributary 3	None	•67	Duplin County (Unincorporated Areas).
	Approximately 0.7 mile upstream of State Route 111	None	•87	
Tributary 5	At the confluence with Back Swamp Tributary 4	None	•69	Duplin County (Unincorporated Areas).
	Approximately 0.7 mile upstream of State Route 111	None	•87	
Bear Marsh Branch	At the confluence with Goshen Swamp	None	•94	Duplin County (Unincorporated Areas).
	Approximately 1.8 miles upstream of Beautancus Road	None	•137	
Bear Swamp	At the confluence with Goshen Swamp	None	•93	Duplin County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Warren Road	None	•131	
Tributary	At the confluence with Bear Swamp	None	•108	Duplin County (Unincorporated Areas).
	Approximately 500 feet downstream of Warren Road	None	•164	
Beaverdam Branch (near Kenansville).	At the confluence of Maple Branch	None	•86	Duplin County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Doctor Williams Road.	None	•93	
Beaverdam Branch (near Scotts Store).	At the confluence with Northeast Cape Fear River	None	•80	Duplin County (Unincorporated Areas).
	Approximately 100 feet downstream of White Flash Road.	None	•100	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Beaverdam Branch (near Gracys Crossroads).	At the confluence with Great Branch	None	•95	Duplin County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Richard Rouse Road.	None	•108	
Big Beaverdam Branch	At the confluence with Maxwell Creek	None	•65	Duplin County (Unincorporated Areas).
	Approximately 0.8 mile upstream of railroad	None	•98	
Big Beaverdam Creek	At the confluence with Rockfish Creek	None	•69	Duplin County (Unincorporated Areas).
	Approximately 1.7 miles upstream of Old Camp Road	None	•97	
Big Branch	At the confluence with Bear Swamp	None	•111	Duplin County (Unincorporated Areas).
	Approximately 1.8 miles upstream of the confluence with Bear Swamp.	None	•129	
Buck Marsh Branch	At the confluence with Northeast Cape Fear River	None	•83	Duplin County (Unincorporated Areas).
	At the Duplin/Wayne County boundary	None	•93	
Buckhall Creek	At the confluence of Stewarts Creek (near Carroll)	None	•92	Duplin County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Buck Hall Creek Road.	None	•103	
Bulltail Creek	At the confluence with Doctors Creek	None	•58	Duplin County (Unincorporated Areas).
	At the Duplin/Sampson County boundary	None	•63	
Burn Coat Creek	At the confluence with Northeast Cape Fear River	None	•63	Duplin County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Maxwell Mill Road	None	•93	
Cabin Creek	At the confluence with Limestone Creek	None	•55	Duplin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of State Route 111	None	•83	
Camp Branch	At the confluence with Northeast Cape Fear River	None	•70	Duplin County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Woodland Church Road.	None	•91	
Cow Hole Branch	At the confluence with Goshen Swamp	None	•96	Duplin County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence with Goshen Swamp.	None	•106	
	At the confluence with Burn Coat Creek	None	•94	Duplin County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Jimmy Lee Road	None	•114	
Cypress Creek:	At the confluence with Northeast Cape Fear River	None	•33	Duplin County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Cypress Creek Road.	None	•51	
Tributary 1	At the confluence with Cypress Creek	None	•38	Duplin County (Unincorporated Areas).
	Approximately 1.6 miles upstream of Maready Road	None	•73	
Tributary 2	At the confluence with Cypress Creek Tributary 1	None	•44	Duplin County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence with Cypress Creek Tributary 1.	None	•53	
Dark Branch	At the confluence with Northeast Cape Fear River	None	•53	Duplin County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Dark Branch Road.	None	•86	
Doctors Creek	At the confluence with Rockfish Creek	None	•39	Duplin County (Unincorporated Areas).
	At the Duplin/Sampson County boundary	None	•86	
Dufis Creek	At the confluence with Rockfish Creek	None	•46	Duplin County (Unincorporated Areas).
	Approximately 250 feet upstream of Wellstown Road	None	•62	
Elder Branch	At the confluence with Maxwell Creek	None	•61	Duplin County (Unincorporated Areas).
	Approximately 0.2 mile upstream of Hamilton Road	None	•81	
Fussell Mill Branch	At the confluence with Rockfish Creek	None	•45	Duplin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Cornwallis Road	None	•64	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Goshen Swamp	At the confluence with Northeast Cape Fear River	None	•59	Duplin County (Unincorporated Areas), Town of Calypso.
	At the Duplin/Sampson County boundary	None	•117	
Great Branch	At the confluence with Northeast Cape Fear River	None	•77	Duplin County (Unincorporated Areas).
	Approximately 1.8 miles upstream of State Route 903	None	•95	
Grove Branch	At the confluence with Northeast Cape Fear River	None	•52	Duplin County (Unincorporated Areas), Town of Kenansville.
	Approximately 2.7 miles upstream of Abner Phillips Road.	None	•106	
Herring Marsh Run	At the confluence with Goshen Swamp	None	•71	Duplin County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Kinsey Mill Road	None	•110	
Island Creek	At the confluence with Northeast Cape Fear River	None	•30	Duplin County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Rosemary Road	None	•52	
Island Creek Tributary	At the confluence with Island Creek	None	•31	Duplin County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Hanchey Road	None	•35	
Juniper Branch	At the confluence with Matthews Creek	None	•91	Duplin County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Matthews Creek	None	•103	
King Branch	At the confluence with Nahunga Creek	None	•93	Duplin County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Veachs Mill Road	None	•119	
Ladds Branch	At the confluence with Polly Run Creek	None	•113	Duplin County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Oak Ridge Avenue.	None	•125	
Limestone Creek	At the confluence with Northeast Cape Fear River	None	•46	Duplin County (Unincorporated Areas).
	Approximately 1.8 miles upstream of State Route 24	None	•85	
Little Beaverdam Creek	At the confluence with Big Beaverdam Creek	None	•75	Duplin County (Unincorporated Areas).
	Approximately 0.1 mile upstream of Halls Pond Road	None	•75	
Little Limestone Creek	At the confluence with Limestone Creek	None	•65	Duplin County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Church Road	None	•97	
Little Rockfish Creek	At the confluence with Rockfish Creek	None	•28	Duplin County (Unincorporated Areas), Town of Wallace.
	Approximately 0.7 mile upstream of State Route 41	None	•45	
Maple Branch	At the confluence with Goshen Swamp	None	•73	Duplin County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Summerlins Crossroad Road.	None	•85	
Maple Creek	At the confluence with Limestone Creek	None	•46	Duplin County (Unincorporated Areas).
	Approximately 1.9 miles upstream of Limestone Creek	None	•63	
Marsh Branch	At the confluence with Grove Creek	None	•78	Duplin County (Unincorporated Areas).
	Approximately 1.8 miles upstream of State Route 24/50.	None	•94	
Matthews Creek	At the confluence with Northeast Cape Fear River	None	•73	Duplin County (Unincorporated Areas).
	Approximately 3.2 miles upstream of State Route 111/903.	None	•106	
Maxwell Creek	At the confluence with Stockinghead Creek	None	•47	Duplin County (Unincorporated Areas), Town of Magnolia.
	Approximately 0.6 mile upstream of I–40	None	•101	
Mill Branch (near Kornegan).	At the confluence with Burn Coat Creek	None	•93	Duplin County (Unincorporated Areas).
	Approximately 0.1 mile downstream of State Route 11	None	•105	
Mill Branch (near Teachey)	At the confluence with Little Rockfish Creek	None	•45	Duplin County (Unincorporated Areas), Town of Wallace.

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 250 feet downstream with Stallings Road.	None	•52	
Mill Creek	At the confluence with Doctors Creek	None	•51	Duplin County (Unincorporated Areas).
	At the Duplin/Sampson County boundary	None	•55	
Miller's Creek	At the confluence with Stewarts Creek (near Carroll)	None	•83	Duplin County (Unincorporated Areas), Town of Magnolia
	Approximately 1.4 miles upstream of Beasley Torrans Road.	None	•102	
Mire Branch	At the confluence with Northeast Cape Fear River	None	•83	Duplin County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Garner Chapel Road.	None	•108	
Muddy Creek	At the confluence with Northeast Cape Fear River	None	•36	Duplin County (Unincorporated Areas), Town of Beulaville.
	Approximately 0.7 mile upstream of Lyman Road	None	•64	
Tributary	At the confluence with Muddy Creek	None	•47	Duplin County (Unincorporated Areas).
	Approximately 3.2 miles upstream of State Route 111	None	•82	
Murpheys Creek	At the confluence with Rockfish Creek	None	•72	Duplin County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Waycross Road	None	•95	
Tributary	At the confluence with Murpheys Creek	None	•81	Duplin County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Bonham Road	None	•91	
Nahunga Creek	At the confluence with Goshen Swamp	None	•78	Duplin County (Unincorporated Areas).
	Approximately 100 feet downstream of Revelle Road	None	•116	
Northeast Cape Fear River	At the Duplin/Pender County boundary	None	•26	Duplin County (Unincorporated Areas).
	At the Town of Mount Olive Extraterritorial Jurisdiction limits.	None	•126	
Oakie Branch	At the confluence with Northeast Cape Fear River	None	•30	Duplin County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Jack Dale Road	None	•50	
Paget Branch	At the confluence with Rockfish Creek	None	•45	Duplin County (Unincorporated Areas), Town of Wallace.
	Approximately 0.3 mile upstream of High School Road	None	•67	
Panther Branch (near Faison).	At the confluence with Goshen Swamp	None	•107	Duplin County (Unincorporated Areas), Town of Faison.
	Approximately 0.3 mile upstream of NC 117	None	•130	
Panther Creek	At the confluence with Northeast Cape Fear River	None	•60	Duplin County (Unincorporated Areas).
	Approximately 2.8 miles upstream of Kitty Noecker Road.	None	•101	
Persimmon Branch	At the confluence with Northeast Cape Fear River	None	•47	Duplin County (Unincorporated Areas).
	Approximately 2.2 miles upstream of South Dobson Chapel Road.	None	•76	
Pharisee Creek	At the confluence with Bulltail Creek	None	•58	Duplin County (Unincorporated Areas).
	At the Duplin/Sampson County boundary	None	•58	
Poley Branch	At the confluence with Buck Marsh Branch	None	•86	Duplin County (Unincorporated Areas).
	Approximately 1.9 miles upstream of Buck Marsh Branch.	None	•105	
Polly Run Creek	At the confluence with Northeast Cape Fear River	None	•107	Duplin County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Garner Chapel Road.	None	•113	
Pudding Branch	At the confluence with Maple Branch	None	•108	Duplin County (Unincorporated Areas).
	Approximately 0.2 mile downstream of State Route 403.	None	•122	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Reedy Branch (near Blizzards Crossroads).	At the confluence with Mire Branch	None	•107	Duplin County (Unincorporated Areas).
	Approximately 0.3 mile upstream of the confluence with Mire Branch.	None	•113	
Reedy Branch (near Faison).	At the confluence with Goshen Swamp	None	•105	Duplin County (Unincorporated Areas), Town of Faison.
	Approximately 1.3 miles upstream of Bill Clifton Road	None	•134	
Rockfish Creek	At the confluence with Northeast Cape Fear River	None	•26	Duplin County (Unincorporated Areas), Town of Wallace.
	Approximately 0.9 mile upstream of Blue Newkirk Road.	None	•93	
Sawyer Branch	At the confluence with Matthews Creek	None	•100	Duplin County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Guy Sanderson Road.	None	•121	
Stewarts Creek (near Carroll).	At the Duplin/Sampson County boundary	None	•83	Duplin County (Unincorporated Areas), Town of Warsaw.
	Approximately 1.7 miles upstream of Route 117	None	•123	
Stewarts Creek (near Friendship).	At the confluence of Nahunga Creek	None	•84	Duplin County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Sammy Godwin Lane.	None	•100	
Stocking Head Creek	At the confluence with Northeast Cape Fear River	None	•38	Duplin County (Unincorporated Areas).
	Approximately 700 feet upstream of South Dobson Chapel Road.	None	•65	
Taylor Creek	At the confluence with Dufis Creek	None	•51	Duplin County (Unincorporated Areas), Town of Rose Hill.
	Approximately 2.2 miles upstream of Brices Store Road.	None	•87	
Turkey Creek	At the Duplin/Sampson County boundary	None	•117	Duplin County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Blackmore Road	None	•133	
Welch Branch	At the confluence with Dark Branch	None	•56	Duplin County (Unincorporated Areas).
	Approximately 2.8 miles upstream of the confluence with Dark Branch.	None	•86	
White Oak Branch	At the confluence with Panther Creek	None	•66	Duplin County (Unincorporated Areas).
	Approximately 1.6 miles upstream of the confluence of Panther Creek.	None	•89	
Whiteoak Branch	At the confluence with Goshen Swamp	None	•98	Duplin County (Unincorporated Areas), Town of Calypso.
	At the Towns of Calypso and Mount Olive Extraterritorial Jurisdiction limits.	None	•153	
Wolfscape Branch	At the confluence with Polly Run Creek	None	•113	Duplin County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Bethel Church Road.	None	•129	

Town of Beulaville

Maps available for inspection at the Duplin County Planning Department, 224 Seminary Street, Kenansville, North Carolina.
Send comments to The Honorable Wilbur Hussey, Mayor of the Town of Beulaville, P.O. Box 175, North Carolina 28518–0130.

Town of Calypso

Maps available for inspection at the Duplin County Planning Department, 224 Seminary Street, Kenansville, North Carolina.
Send comments to The Honorable Tom Reaves, Mayor of the Town of Calypso, P.O. Box 327, Calypso, North Carolina 28325.

Duplin County (Unincorporated Areas)

Maps available for inspection at the Duplin County Planning Department, 224 Seminary Street, Kenansville, North Carolina.
Send comments to Mr. Fred Eldridge, Duplin County Manager, P.O. Box 910, Kenansville, North Carolina 28349.

Town of Kenansville

Maps available for inspection at the Duplin County Planning Department, 224 Seminary Street, Kenansville, North Carolina.
Send comments to The Honorable Betty Long, Mayor of the Town of Kenansville, P.O. Box 370, Kenansville, North Carolina 28349.

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Town of Faison				
Maps available for inspection at the Faison Town Hall, 110 East Center Street, Faison, North Carolina. Send comments to The Honorable William J. Igoe, Mayor of the Town of Faison, P.O. Box 365, Faison, North Carolina 28341–0365.				
Town of Magnolia				
Maps available for inspection at the Duplin County Planning Department, 224 Seminary Street, Kenansville, North Carolina. Send comments to The Honorable Corbett Quinn, Mayor of the Town of Magnolia, P.O. Box 459, Magnolia, North Carolina 28453–0459.				
Town of Rose Hill				
Maps available for inspection at the Rose Hill Town Hall, 103 South Railroad Street, Rose Hill, North Carolina. Send comments to Mr. Thomas Drum, Rose Hill Town Administrator, P.O. Box 8, Rose Hill, North Carolina 28458.				
Town of Wallace				
Maps available for inspection at the Wallace Town Hall, 311 East Murphey Street, Wallace, North Carolina. Send comments to The Honorable Charles Farrior, Jr., Mayor of the Town of Wallace, 311 East Murphey Street, Wallace, North Carolina 28466.				
Town of Warsaw				
Maps available for inspection at the Warsaw Town Hall, 128 West Bay Street, Warsaw, North Carolina. Send comments to The Honorable Winn Batten, Mayor of the Town of Warsaw, 128 West Bay Street, Warsaw, North Carolina 28398.				

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

Dated: May 16, 2005.

David I. Maurstad,

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

[FR Doc. 05–10302 Filed 5–23–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7689]

Proposed Flood Elevation Determinations

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

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

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

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority o § 67.4 are proposed to be amended as follows:

Source of flooding and location of referenced elevation	♦Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
Little Red River:			
Approximately 53.48 miles upstream of the confluence with the White River	None	♦248	Cleburne County (Unincorporated Areas).
Approximately 79.10 miles upstream of the confluence with the White River	None	♦299	
Sulphur Creek:			
Approximately 120 feet downstream of Libby Road	None	♦281	City of Heber Springs, Cleburne County (Unincorporated Areas).
Approximately 1,900 feet upstream of Libby Road	None	♦289	

Cleburne County (Unincorporated Areas)

Maps are available for inspection at 301 West Main Street, Heber Springs, Arkansas.

Send comments to The Honorable Claude Dill, County Judge, Cleburne County, 301 West Main Street, Heber Springs, Arkansas 72543.

City of Heber Springs

Maps are available for inspection at 1001 West Main Street, Heber Springs, Arkansas.

Send comments to The Honorable Paul Muse, Mayor, City of Heber Springs, 1001 West Main Street, Heber Springs, Arkansas 72543.

Gold Creek (South):			
Approximately 1050 feet downstream of Sturges Road	♦272	♦273	City of Conway.
Approximately 2,700 feet upstream of Wasson Road	None	♦323	
Middle Fork Cypress Bayou:			
At confluence with Cypress Bayou	None	♦288	City of Vilonia, Faulkner County (Unincorporated Areas).
Approximately 440 feet upstream of Marshall Road	None	♦319	
North Fork Cypress Bayou:			
At confluence with Cypress Bayou	None	♦288	City of Vilonia Faulkner County (Unincorporated Areas).
Approximately 730 feet upstream of North Marshall Road	None	♦329	
Palarm Creek:			
At State Highway 286	None	♦276	Faulkner County (Unincorporated Areas).
Approximately 4,180 feet upstream of State Highway 36	None	♦318	
South Fork Cypress Bayou:			
At confluence with Cypress Bayou	None	♦288	City of Vilonia Faulkner County (Unincorporated Areas).
Approximately 115 feet upstream of Church Street	None	♦320	
Warren Creek:			
At confluence with Palarm Creek	None	♦276	Faulkner County (Unincorporated Areas).
Approximately 530 feet upstream of Lower Ridge Road	None	♦312	

City of Conway, Faulkner County, Arkansas

Maps are available for inspection at the City of Conway, 100 East Robins, Conway, Arkansas.

Send comments to The Honorable Tab Towsell, Mayor, City of Conway, 1201 Oak Street, Conway, Arkansas 72032.

Faulkner County (Unincorporated Areas), Arkansas

Maps are available for inspection at Faulkner County Emergency Management, 801 Locust Street, Conway, Arkansas.

Send comments to The Honorable Wayne Carter, Faulkner County Judge, 801 Locust Street, Conway, Arkansas 72034.

City of Vilonia, Faulkner County, Arkansas

Maps are available for inspection at Vilonia City Hall, 1113 Main Street, Vilonia, Arkansas.

Send comments to The Honorable Alan Lee, Mayor, City of Vilonia, 1013 Main Street, Vilonia, Arkansas 72173.

Ohio River:			
Approximately 3.5 miles upstream of the confluence of Little Yellow Creek	♦687	♦688	City of East Liverpool, Columbiana County.
Approximately 6.3 miles upstream of the confluence of Little Yellow Creek	♦689	♦690	

Maps are available for inspection at the Planning Department, 126 West Sixth Street, East Liverpool, Ohio.

Send comments to The Honorable Dolores Satow, Mayor, City of East Liverpool, 126 West Sixth Street, East Liverpool, Ohio 43920.

Source of flooding and location of referenced elevation	♦Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
Duck Creek:			
Mouth at Ohio River	♦615	♦616	City of Marietta, Washington County (Unincorporated Areas).
Approximately 4,400 feet upstream of State Highway 26	♦615	♦616	
Muskingum River:			
Mouth at the Ohio River	♦614	♦615	City of Marietta, Washington County (Unincorporated Areas).
Approximately 16,400 feet upstream of mouth	♦614	♦615	
Ohio River:			
Approximately 0.4 mile downstream of U.S. Highway 50	♦608	♦609	City of Belpre, City of Marietta, Washington County (Unincorporated Areas).
Approximately 7.25 miles upstream of Willow Island Lock and Dam	♦616	♦617	

Washington County (Unincorporated Areas), Ohio

Maps are available for inspection at the Building Department, 217 Putnam Street, Marietta, Ohio.

Send comments to Ms. Connie J. Hoblitzell, Floodplain Manager, 217 Putnam Street, Marietta, Ohio 45750.

City of Belpre, Washington County, Ohio

Maps are available for inspection at City Hall, 715 Park Drive, Belpre, Ohio.

Send comments to Robert G. Boersma, Safety Service Director, 715 Park Drive, Belpre, Ohio 45714.

City of Marietta, Washington County, Ohio.

Maps are available for inspection at City Hall, 301 Putnam Street, Marietta, Ohio.

Send comments to Wayne Rinehart, Floodplain Manager, 301 Putnam Street, Marietta, Ohio 45750.

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

Dated: May 18, 2005.

David I. Maurstad,

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

[FR Doc. 05–10300 Filed 5–23–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7687]

Proposed Flood Elevation Determinations

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

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

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

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community

eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground Elevation in feet ((NAVD)	
				Existing	Modified
Iowa	West Des Moines (City) Polk and Dallas Counties.	Jordan Creek	Approximately 3,210 feet downstream of 68th Street.	None	924.
			Approximately 1,950 feet upstream of E.P. True Parkway.	None	970.
		Raccoon River	Approximately 75 feet downstream of South First Street.	814	816.
			Approximately 1.7 miles upstream of U.S. Interstate 35.	832	833.

Maps are available for inspection at City Hall, 4200 Mills Civic Parkway, West Des Moines, Iowa.
Send comments to The Honorable Eugene Meyer, Mayor, City of West Des Moines, 4200 Mills Civic Parkway, West Des Moines, Iowa 50265.

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

Dated: May 18, 2005.

David I. Maurstad,

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

[FR Doc. 05–10299 Filed 5–23–05; 8:45 am]

BILLING CODE 9110–12–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Financial Eligibility

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Legal Services Corporation (''LSC'' or ''Corporation'') is republishing for additional comment previously proposed amendments (with certain additional revisions) to its regulations relating to financial eligibility for LSC-funded legal services. The proposed revisions are intended to reorganize the regulation to make it easier to read and follow; simplify and streamline the requirements of the rule to ease administrative burdens faced by LSC recipients in implementing the regulation and to aid LSC in enforcement of the regulation; and to clarify the focus of the regulation on the financial eligibility of applicants for LSC-funded legal services.

DATES: Comments must be submitted on or before June 23, 2005.

ADDRESSES: Comments must be submitted in writing and may be sent by regular mail, or may be transmitted by fax or email to: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K. St., NW., Washington, DC 20007–3522; (202) 337–6519 (fax); *mcondray@lsc.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K. St., NW., Washington, DC 20007–3522; (202) 295–1624 (phone); (202) 337–6519 (fax); *mcondray@lsc.gov* (e-mail).

SUPPLEMENTARY INFORMATION: Section 1007(a) of the Legal Services Corporation Act requires LSC to establish guidelines, including setting maximum income levels, for the determination of applicants' financial eligibility for LSC-funded legal assistance. Part 1611 implements this provision, setting forth the requirements relating to determination and documentation of client financial eligibility.

Procedural Background

On June 30, 2001, LSC initiated a Negotiated Rulemaking and appointed a Working Group comprised of representatives of LSC (including the Office of Inspector General), the National Legal Aid and Defenders Association, the Center for Law and Social Policy, the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants and a number of individual LSC recipient programs. The Negotiated Rulemaking Working Group met three times throughout 2002 and developed a Draft Notice of Proposed Rulemaking (NPRM) which was the basis for the NPRM published by LSC on November 22, 2002 proposing significant revisions to to Part 1611 (67 FR 70376). LSC received 15 comments on that NPRM. Except as specifically noted in the Section-by-Section analysis below, the comments LSC received either affirmatively supported or raised no objection to the proposals in the November 2002 NPRM.[1]

Upon receipt of the comments, LSC staff prepared a Draft Final Rule discussing the comments and making permanent the proposed revisions.

[1] For additional discussion of the Negotiated Rulemaking Working Group, see 67 FR 70376 (November 22, 2002).

However, on the eve of the January 31–February 1, 2003 Board of Directors meeting at which the Draft Final Rule was scheduled to be considered, LSC received a request from Representative James Sensenbrenner, Chairman of the U.S. House of Representatives Judiciary Committee, to suspend action on the rulemaking pending the confirmation of new LSC Board of Directors members appointed by President Bush. The then-LSC Operations and Regulations Committee deferred to Chairman Sensenbrenner's request. After the confirmation of the nine newly appointed Board members, the reconsititued Operations and Regulations Committee further deferred action on the rulemaking pending the appointment of a new LSC President. After the arrival of the new LSC President in January 2004, the reconstituted Operations and Regulations Committee resumed consideration of the Part 1611 rulemaking.

At its meetings of May 1, 2004, June 5, 2004 and September 11, 2004, the Operations and Regulations Committee discussed and provided policy direction to staff on the two aspects of the proposed changes to the regulations about which LSC and the field had failed to achieve consensus during the Working Group meetings—retainer agreements and group representation. The Committee reviewed these proposals and the remainder of the proposed revisions to Part 1611 at its meeting of April 1, 2005. At the meeting of the full Board of Directors on April 30, 2005, upon the recommendation of the Committee, the Board determined that because two years has passed since the publication of the November 2002 NPRM, rather than adopting a final rule amending Part 1611, the most prudent course of action would be to republish a revised NPRM for public comment. Accordingly, except for the retainer agreement and group eligibility sections, LSC is proposing the same revisions (with only a few, non-substantive differences) as LSC proposed in November 2002 and requests public comment thereon.

Proposed Revisions to Part 1611

While specific proposed revisions are discussed in greater detail in the Section-by-Section analysis below, it should be noted that the proposed revisions reflect several overall goals of the Working Group: reorganization of the regulation to make it easier to read and follow; simplification and streamlining of the requirements of the rule to ease administrative burdens faced by LSC recipients in implementing the regulation, facilitate compliance and aid LSC in enforcement of the regulation; and clarification of the focus of the regulation on the financial eligibility of applicants for LSC-funded legal services as an issue separate from decisions on whether to accept a particular client for service. In particular, LSC is proposing to significantly reorganize and simplify the sections of the rule which set forth the various requirements relating to establishment of recipient annual income and asset ceilings, authorized exceptions and determinations of eligibility. These changes are intended to clarify the regulation and include substantive changes to make intake simpler and less burdensome and render basic financial eligibility determinations easier for recipients to make. LSC is also proposing to move the existing provisions on group representation, with some amendment, to a separate section of the regulation. Finally, LSC is proposing simplification and clarification of the retainer agreement requirement.

One other general issue merits discussion. Section 509(h) of the FY 1996 LSC appropriations act, Public Law 104–134, provides that, among other records, eligibility records ''shall be made available to any auditor or monitor of the recipient * * * except for such records subject to the attorney-client privilege.'' This provision has been retained in each subsequent appropriations measure and continues to be in force. During the prior stages of this rulemaking, there had been some discussion and consideration of having this language expressly incorporated into Part 1611. LSC continues to believe that, as 509(h) covers significantly more than eligibility records, having a full discussion of the meaning of 509(h) in the context of 1611, which addresses only financial eligibility issues, is not appropriate. Accordingly, LSC does not propose to include regulatory language implementing 509(h) with respect to records covered by this Part. For a fuller discussion of this issue, see the preamble to the November 22, 2002 NPRM, 67 FR 70376.

Title of Part 1611

LSC proposes to change the title of Part 1611 from ''Eligibility'' to ''Financial Eligibility.'' This proposed change is intended, first, to make clear that with respect to individuals seeking LSC-funded legal assistance, the standards of this part deal only with the financial eligibility of such persons. LSC believes this change will help clarify that a finding of financial eligibility under Part 1611 does not create an entitlement to service. Rather, financial eligibility is merely a threshold question and the issue of whether any otherwise eligible applicant will be provided with legal assistance is a matter for the recipient to determine with reference to its priorities and resources. In addition, this part does not address eligibility based on citizenship or alienage status; those eligibility requirements are set forth in Part 1626 of LSC's regulations, Restrictions on Legal Assistance to Aliens.

Section-by-Section Analysis

Section 1611.1—Purpose

LSC is proposing to revise this section to make clear that the standards of this part concern only the financial eligibility of persons seeking LSC-funded legal assistance and that a finding of financial eligibility under Part 1611 does not create an entitlement to service. In addition, LSC proposes to remove the language in the current regulation referring to giving preferences to ''those least able to obtain legal assistance.'' Although the original LSC Act contained language indicating that recipients should provide preferences in service to the poorest among applicants, that language was deleted when the Act was reauthorized in 1977 and has remained out of the legislation ever since. Moreover, section 504(a)(9) of the FY 1996 appropriations act, Public Law 104–134 (incorporated by reference in the current appropriations act and implemented by regulation at 45 CFR part 1620) provides that recipients are to make service determinations in accordance with written priorities, which take into account factors other than the relative poverty among applicants. Thus, as there is no statutory basis for a preference for those least able to afford assistance and because LSC believes that the regulation should focus on financial eligibility determinations without reference to issues relating to determinations by a recipient to provide services to a particular applicant, such language should be removed from the regulation. LSC also proposes to add language specifying that this Part also sets forth financial standards for groups seeking legal assistance supported by LSC funds. Finally, LSC proposes to include a reference to the retainer agreement requirement in the purpose section to provide a notice at the beginning of the regulation that this subject is included in Part 1611.

Section 1611.2—Definitions

LSC proposes to add definitions for several terms and to amend the

definitions for each of the existing terms currently defined in the regulation. LSC believes that the new definitions and the amended definitions will help to make the regulation more easily comprehensible.

Section 1611.2(a)—Advice and Counsel

LSC proposes to add a definition of the term ''advice and counsel'' as that term appears in proposed section 1611.9, Retainer Agreements. Under the proposed definition, ''advice and counsel'' would be defined as limited legal assistance that involves the review of information relevant to the client's legal problem(s) and counseling the client on the relevant law or action(s) to take to address the legal problem(s). LSC anticipates that advice and counsel would generally be characterized by a one-time or very short term relationship between the attorney and the client. Advice and counsel does not encompass drafting of documents or making third-party contacts on behalf of the client. Thus, for example, advising a client of what notice a landlord is required to provide to a tenant before evicting the tenant would fall under ''advice and counsel,'' but making a phone call to a landlord to prevent the landlord from evicting a tenant would not be considered ''advice and counsel.''

Section 1611.2(b)—Applicable Rules of Professional Responsibility

LSC proposes to add a definition of the term ''applicable rules of professional responsibility'' as that term appears in proposed sections 1611.8, Change in Financial Eligibility Status and 1611.9, Retainer Agreements. This definition is intended to make clear that the references in the regulation refer to the rules of ethics and professional responsibility applicable to attorneys in the jursidiction where the recipient either provides legal services or maintains its records.

Section 1611.2(c)—Applicant

Consistent with the intention throughout to keep the focus of the regulation on the standards and criteria for determining the financial eligibility of persons seeking legal assistance supported with LSC funds, LSC proposes to use the term ''applicant'' throughout the regulation to emphasize the distinction between applicants, clients, and persons seeking or receiving assistance supported by other than LSC funds. Accordingly, LSC proposes to add a definition of applicant providing that an applicant is an individual seeking legal assistance supported with LSC funds. Groups, corporations and associations would be specifically excluded from this definition, as the eligibility of groups would be addressed wholly within proposed section 1611.6.

Recipients currently may provide legal assistance without regard to a person's financial eligibility under Part 1611 when the assistance is supported wholly by non-LSC funds. LSC does not propose to change this (in fact, LSC proposes to restate this principle in proposed section 1611.4(a)) and believes that the use of the term applicant as proposed herein will help to clarify the application of the rule.

Section 1611.2(d)—Assets

LSC proposes to add a definition of the term assets to the regulation. The proposed definition, ''cash or other resources that are readily convertible to cash, which are currently and actually available to the applicant,'' is intended to provide some guidance to recipients as to what is meant by the term assets, yet provide considerable latitude to recipients in developing a description of assets that addresses local concerns and conditions. The key concepts intended in this definition are (1) ready convertibility to cash; and (2) availability of the resource to the applicant.

Although the term is not defined in the regulation, current section 1611.6(c) states that ''assets considered shall include all liquid and non-liquid assets. * * *'' The intent of this requirement is that recipients are supposed to consider all assets upon which the applicant could draw in obtaining private legal assistance. While there was no intent to change the underlying requirement, in discussing the issues of assets and asset ceilings in the Working Group it became apparent that the terms ''liquid'' and ''non-liquid'' were obscuring understanding of the regulation. To some, the term ''non-liquid'' implied something not readily convertible to cash, while to others the term implied an asset that was simply something other than cash, without regard to the ease of converting the asset to cash. Thus, the Working Group decided that the terms ''liquid'' and ''non-liquid'' should be eliminated and that the regulation should focus instead on the ready convertibility of the asset to cash.

The other key concept in the definition of asset is the availability of the resource to the applicant. Although the current regulation notes that the recipient's asset guidelines ''shall take into account impediments to an individual's access to assets of the family unit or household,'' the Working Group was of the opinion that this principle could be more clearly articulated. LSC believes that the proposed language accomplishes that purpose.

Section 1611.2(e)—Brief Services

LSC proposes to add a definition of the term ''brief services'' as it is used in proposed section 1611.9, Retainer Agreements. LSC notes that brief services is legal assistance characterized primarily by being distinguishable from both extended service and advice and counsel. Under the proposed defintion, brief service is the performance of a discrete task (or tasks) which are not incident to continuous representation in a case but which involve more than the mere provision of advice and counsel. Examples of brief services would include activities such as the drafting of documents or personalized assistance with the completion of pleadings being prepared and filed by pro se litigants, and making limited third-party contacts on behalf of a client in a short time period.

Section 1611.2(f)—Extended Service

LSC proposes to add a definition of the term ''extended service'' as that term is used in proposed section 1611.9, Retainer Agreements. As defined, extended service would mean legal assistance characterized by the performance of multiple tasks incident to continuous representation in which the recipient undertakes responsibility for protecting or advancing the client's interests beyond advice and counsel or brief services. Examples of extended service would include representation of a client in litigation, administrative adjudicative proceeding, alternate dispute resolution proceeding, or extended negotiations with a third party.

Section 1611.2(f)—Governmental Program for Low Income Individuals or Families

LSC proposes to change the term that is used in the regulation from ''governmental program for the poor'' to ''governmental program for low income individuals and families.'' This change is not intended to create any substantive change in the current definition, but merely reflect preferred nomenclature.

Section 1611.2(g)—Governmental Program for Persons With Disabilities

LSC is proposing to add a definition of the term ''governmental program for persons with disabilities.'' LSC proposes to include in the authorized exceptions to the annual income ceilings an exception relating to applicants seeking to obtain or maintain govermental benefits for persons with disabilities. Accordingly, it is appropriate to include

a proposed definition for this term. The proposed definition, ''any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability,'' is intended to be similar in structure and application to the definition of the term ''governmental program for low income individuals and families.''

Section 1611.2(h)—Income

LSC proposes to revise the current definition of income to refer to the total cash receipts of a ''household,'' instead of a ''family unit'' and to make clear that recipients have the discretion to define the term household in any reasonable manner. Currently, the definition of income refers to ''family unit,'' while the phrase ''household or family unit'' appears in the section on asset ceilings. It appears that there is no difference intended by the use of different terms in these sections and LSC believes that it is appropriate to simplify the regulation to use the same single term in each provision, without creating a substantive change in the meaning of either term. LSC proposes to use ''household'' instead of ''family unit'' because it is a simpler, more understandable term.

As noted above, LSC does not intend the use of the term ''household'' to have a different meaning from the current term ''family unit.'' Under current guidance from the LSC Office of Legal Affairs, recipients have considerable latitude in defining the term ''family unit.'' Specifically, OLA External Opinion No. EX–2000–1011 states:

> Neither the LSC Act nor the LSC regulations define ''family unit'' for client eligibility purposes. The Corporation will defer to recipient determinations on this issue, within reason. Recipients may consider living arrangements, familial relationships, legal responsibility, financial responsibility or family unit definitions used by government benefits agencies, amongst other factors, in making such decisions.

LSC intends that this standard would also apply to definitions of ''household'' and the proposed definition would make this clear.

Field representatives on the Working Group and several comments on the November 2002 NPRM also suggested deleting the words ''before taxes'' from the definition of income. Such a change is desirable, they contend, because automatically deducted taxes are not available for an applicant's use and the failure to take current taxes into account in determining income has an adverse impact on the working poor. While it is undoubtedly true that automatically deducted taxes are not available to an applicant, LSC does not believe that the definition of income is the appropriate place in the regulation to deal with this issue.

Taking the phrase ''before taxes'' out of the definition of income would effectively change the meaning of income from gross income to net income. The term income has meant gross income since the original adoption of the financial eligibility regulation in 1976. See 41 FR 51604, at 51606, November 23, 1976. The maximum income guidelines are based on the Department of Health and Human Services (DHHS) Federal Poverty Guidelines amounts. DHHS' Federal Poverty Guidelines are, by law, based on the Census Bureau's Federal Poverty Thresholds, which are calculated using gross income before taxes. 42 U.S.C. 9902(2); Office of Management and Budget Directive No. 14 (May 1978). Changing the definition of income effectively from gross to net would introduce two different uses of the term income into the regulations (one use in the income guidelines published annually by LSC in Appendix A to Part 1611 and another use in the text of the regulation). This would have significant repercussions in the application of the regulation. LSC believes that this action would cause greater confusion. None of the comments previously received supporting removal of ''before taxes'' from the definition of income address this issue. Moreover, LSC believes that the practical problem (that taxes, indeed, are funds unavailable to the applicant), is better addressed by considering taxes as a separate factor which can be considered by the recipient in making financial eligibility determinations. LSC invites comment on this issue. This matter is presented in greater detail in the discussion of proposed section 1611.5, below.

In addition, LSC proposes to move the information on what is encompassed by the term ''total cash receipts'' into the definition of income. LSC believes that having this information in the definition of income, rather than in a separate definition will make the regulation easier to understand, particularly as the term ''total cash receipts'' is used only in the definition of income. In incorporating the language on ''total cash receipts,'' LSC proposes to take the current definition of the term without any substantive amendment, but reorganized to make it easier to understand. Specifically, LSC proposes to separate the definition into two sentences, one of which sets forth those things which are included in total cash receipts and one which sets forth those things which are specifically excluded from the definition of total cash receipts. It is worth noting that the list of items included is not intended to be exhaustive, while the list of items to be excluded is intended to be exhaustive.

Finally, LSC wishes to restate in this preamble guidance on the treatment of Indian trust fund monies in making income determinations. Several provisions of Federal law regulate whether or not income or interests in Indian trusts are taxable or should be considered as resources or income for Federal benefits. *See* 25 U.S.C. 1407–1408; 25 U.S.C. 117a–117c. Under the terms of those laws, LSC has determined that recipients may disregard up to $2000 per year of funds received by individual Native Americans that are derived from income or interests in Indian trusts from being considered income for the purpose of determining financial eligibility of Native American applicants for service, and that such funds or interests of individual Native Americans in trust or restricted lands should not be considered as a resource for the purpose of LSC financial eligibility. *See* LSC Office of Legal Affairs External Opinion 99–17, August 27, 1999.

As noted in External Opinion 99–17, the exclusion applies only to funds and other interests held *in trust* by the Federal government and investment income accrued therefrom. The following have been found to qualify for the exclusion from income in determining eligibility for various government benefits: income from the sale of timber from land held in trust; income derived from farming and ranching operations on reservation land held in trust by the Federal government; income derived from rentals, royalties, and sales proceeds from natural resources of land held in trust; sales proceeds from crops grown on land held in trust; and use of land held in trust for grazing purposes. On the other hand, per capita distributions of revenues from gaming activity on tribal trust property are not protected because such funds are not held in trust by the Federal government. Thus, such distributions are considered to be income for purposes of determining LSC financial eligibility.

Total Cash Receipts

LSC proposes to delete the definition of ''total cash reciepts,'' currently at section 1611.2(h), as a separately defined term in the regulation. Rather, LSC proposes to reorganize the information contained in the definition and move it directly into the definition of ''income.'' As noted above, the only place the term ''total cash reciepts'' is

used is in the defintion of ''income'' and LSC believes that having a separate definition for ''total cash reciepts'' is cumbersome and unnecessary.

Section 1611.3—Financial Eligibility Policies

LSC proposes to create a new section 1611.3, Financial Eligibility Policies, based on requirements currently found in sections 1611.5(a), 1611.3(a)–(c) and 1611.6. The new section 1611.3 would address in one section recipients' responsibilities for adopting and implementing financial eligibility policies. Under the proposed new section, the current requirement that recipients' governing bodies have to adopt policies for determining financial eligibility would be retained. LSC proposes, however, to change the current requirement for an annual review of these policies and instead require recipients' governing bodies to conduct triennial reviews of policies. The Working Group agreed that an annual review was unnecessary and has tended to result in rather *pro forma* reviews of policies. In contrast, a triennial review requirement would be sufficient to ensure that financial eligibility policies remain relevant and would encourage a more thorough and thoughtful review when such review is undertaken. The section would also add an express requirement that recipients adopt implementing procedures. While this is already implicit in the current regulation, LSC believes it would be better for this requirement to be expressly stated. Such implementing procedures could be adopted either by a recipient's governing body or by the recipient's management.

Proposed section 1611.3 would also contain certain minimum requirements for the content of recipient's financial eligibility policies. Specifically, LSC proposes that the recipient's financial eligibility policy must:

- Specify that only applicants for service determined to be financially eligible under the policy may be further considered for LSC-funded service;
- Establish annual income ceilings of no more than 125% of the current DHHS Federal Poverty Guidelines amounts;
- Establish asset ceilings; and
- Specify that, notwithstanding any other provisions of the regulation or the recipient's financial eligibility policies, in assessing the financial eligibility of an individual known to be a victim of domestic violence, the recipient shall consider only the income and assets of the individual applicant and shall not consider any assets jointly held with the abuser.

In establishing income and asset ceilings, the recipient would have to consider the cost of living in the locality; the number of clients who can be served by the resources of the recipient; the potentially eligible population at various ceilings; and the availability of other sources of legal assistance. With respect to assets of domestic violence victims jointly held with their abusers, this requirement applies when the applicant has made the recipient aware that he or she is a victim of domestic violence.

In addition, LSC proposes to permit recipients to adopt financial eligibility policies which provide for authorized exceptions to the annual income ceiling pursuant to proposed section 1611.5 and for waiver of the asset ceiling for an applicant in a particular case under unusual circumstances and when approved by the Executive Director or his/her designee. Finally, LSC proposes to permit recipients to adopt financial eligibility policies which permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with proposed section 1611.4(b).

These proposed provisions are, with two exceptions, based directly on current requirements with a few substantive changes. First among the changes, recipients would no longer be required to routinely submit their asset ceilings to LSC. This requirement appears to serve little or no purpose, as compliance with this requirement has been spotty and LSC has taken no action to obtain the information from recipients which have not automatically submitted it. Moreover, the information collected is not being put to any routine use. In addition, LSC has not had a parallel requirement for the submission of income ceilings. The Working Group determined that this requirement could be eliminated without any adverse effect on program compliance with or Corporation enforcement of the regulation.

Another substantive change is that recipients would be permitted to provide in their financial eligibility policies for the exclusion of (in addition to a primary residence, as provided for in the existing regulation) vehicles, assets used in producing income (such as a farmer's tractor or a carpenter's tools) and other assets excluded from attachment under State or Federal law from the calculation of assets. In identifying other assets excluded from attachment under State or Federal law, LSC has in mind assets that are excluded from bankruptcy proceedings or other assets that may not be attached for the satisfaction of a debt, etc.

There was discussion within the Working Group about the appropriate scope of this provision. Field representatives suggested that the list of exclusions should be illustrative, and not exhaustive, allowing recipients greater discretion in developing asset ceilings. Four of the comments LSC received on the November 2002 NPRM agreed with the suggestion that the list should be illustrative rather than exhaustive. LSC, however, prefers to retain the approach in the current regulation in which the list of excludable assets is set forth in *toto.* LSC believes that this approach emphasizes the policy that most assets are to be considered and maintains a basic level of consistency nationally with respect to this issue. However, LSC does agree that the regulation could afford recipients some additional flexibility in developing asset ceilings, consistent with the policy articulated above. The Working Group believes that the proposed language meets those objectives, particularly in light of the proposed amendment to the asset ceiling waiver standard discussed below. LSC invites comment on whether the list should be illustrative or exhaustive. LSC also invites comment on whether additional specific assets should be included in the list of excludable assets and, if so, what items might be appropriate.

LSC is also proposing to change the asset ceiling waiver standard slightly. The current regulation permits waiver in ''unusual or extremely meritorious situations;'' the proposed rule would permit waiver in ''unusual circumstances.'' The Working Group determined that the current language is unnecessarily stringent and that it is unclear what the difference is intended to be between ''unusual'' and ''extremely meritorious.'' It was suggested in the Working Group that the standard should be ''where appropriate.'' LSC, however, felt that the regulation should continue to reflect the policy that waivers of the asset ceilings should only be granted sparingly and not as a matter of course. The Working Group agreed that the revised language accomplishes this goal, while providing some additional appropriate discretion to recipients. In addition, where the current rule requires all waiver decisions to be made by the Executive Director, LSC proposes to permit those decisions to be made by the Executive Director or his/her designee. LSC believes it is important that a person in significant authority be involved in making asset ceiling waiver decisions,

but recognizes that, especially as more recipients have consolidated and now serve larger areas, it is important for recipients to have the discretion to delegate certain authority to regional or branch office managers or directors to increase administrative efficiency.

The first totally new element is the proposed language regarding victims of domestic violence. This proposal implements LSC's FY 1998 appropriations law. Specifically, section 506 of that act provides:

> In establishing the income or assets of an individual who is a victim of domestic violence, under section 1007(a)(2) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)), to determine if the individual is eligible for legal assistance, a recipient described in such section shall consider only the assets and income of the individual and shall not include any jointly held assets.

Although this law has been in effect since 1997, it has never been formally incorporated into Part 1611. This provision of law applies regardless of whether it appears in the regulation. However, incorporating this language into the regulation is appropriate, particularly in light of the goal of this rulemaking to clarify the requirements relating to financial eligibility determinations.

Finally, the proposal to permit recipients to adopt financial eligibility policies which permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with proposed section 1611.4(b) is also new. This proposal is discussed in greater detail below.

Section 1611.4—Financial Eligibility for Legal Assistance

This proposed section would set forth the basic requirement that recipients may provide legal assistance supported with LSC funds only to those individuals whom the recipient has determined are financially eligible for such assistance pursuant to their policies, consistent with this Part. This section also contains a proposed statement that nothing in Part 1611 prohibits a recipient from providing legal assistance to an individual without regard to that individual's income and assets if the legal assistance is supported wholly by funds from a source other than LSC (regardless of whether LSC funds were used as a match to obtain such other funds, as is the case with Title III or VOCA grant funds) and the assistance is otherwise permissible under applicable law and regulation. This proposed section would further provide that a recipient may find an applicant to be financially eligible if the applicant's assets are at or below the recipient's applicable asset ceiling level (or the ceiling has been properly waived) and the applicant's income is at or below the recipient's applicable income ceiling, or if one or more of the authorized exceptions to the ceiling applies. These provisions are based on existing provisions found in sections 1611.3, 1611.4 and 1611.6. As revised, the new provisions do not represent a substantive change, but LSC believes having the basic statements as to who may be found to be financially eligible for assistance in one section makes the regulation much clearer. In addition, where the existing regulation uses a construction that speaks to when a recipient may provide legal assistance, the proposed new language emphasizes the point that the requirements speak only to determinations of financial eligibility and not to decisions regarding whether or not to actually provide legal assistance.

LSC also proposes to incorporate into this section a significant substantive change to the regulation. Consistent with proposed section 1611.3 as discussed above, if adopted, the regulation would permit recipients to determine an applicant to be financially eligible because the applicant's income is derived solely from a governmental program for low-income individuals or families, provided that the recipient's governing body has determined that the income standards of the governmental program are at or below 125% of the Federal Poverty Guidelines amounts. For many recipients, a significant proportion of applicants rely on governmental benefits for low-income individuals and families as their sole source of income. In order to qualify for these benefits, such persons have already been screened by the agency providing the benefits (using an eligibility determination process that is stricter than the one required under LSC regulations) and determined to be financially eligible for those benefits. In Working Group discussions, many representatives of the field noted that if they could rely on the determinations made by these agencies without having to otherwise make an independent inquiry into financial eligibility, it would substantially ease the administrative burden involved in making financial eligibility determinations.

The Working Group also noted that current LSC practice permits recipients to determine that an applicant's assets are within the recipient's asset ceiling level without additional review if the applicant is receiving governmental benefits for low-income individuals and families, eligibility for which includes an asset test. Key to this practice is that the recipient's governing body has to take some identifiable action to recognize the asset test of the governmental benefit program being relied upon. This ensures that the eligibility standards of the govermental program have been carefully considered and are incorporated into the overall financial eligibility policies adopted and regularly reviewed by the recipient's governing body. As this practice has proved efficient and effective, it was determined that a parallel process could also be adopted for income screening and that these practices should be expressly included in the regulations. It is important to note that this provision would only apply to applicants whose sole source of income is derived from such benefits. Applicants who also have income derived from other sources would be subject to an independent inquiry and assessment of financial eligibility.

Finally, in the November 2002 NPRM, LSC proposed to include in this section a provision requiring recipients to make reasonable inquiry into an applicant's financial status in making financial eligibility determinations. Upon reflection, LSC believes that this requirement is better included in proposed section 1611.7, Manner of Determining Financial Eligibility and has moved this proposal to that section. For a detailed discussion of this issue, see the discussion of proposed section 1611.7, below.

Section 1611.5—Authorized Exceptions to the Annual Income Ceiling

This proposed section provides for authorized exceptions to the annual income ceiling. The proposed language, like the current language of sections 1611.4 and 1611.5, on which it is based, is permissive. A recipient would be at liberty to include some, none, or all of the authorized exceptions discussed below in its financial eligibility policies. Thus, to the extent a recipient would choose to avail itself of the authority provided in this proposed section, a recipient would be permitted to determine an applicant to be financially eligible for assistance, notwithstanding that the applicant's income is in excess of the recipient's applicable income ceiling. In making such determinations, however, the recipient would have to detemine that the applicant's assets were at or below the recipient's applicable asset ceiling (or the ceiling would have had to have been waived). This requirement is consistent with the

current regulation, but would be affirmatively stated for greater clarity.

Under the proposed section, there would be two situations in which an applicant's income could exceed the recipient's income ceiling without an absolute upper limit: (1) Where the applicant is seeking to maintain governmental benefits for low-income individuals and families; and (2) where the executive director (or his/her designee) determines, on the basis of documentation received by the recipient, that the applicant's income is primarily committed to medical or nursing home expenses and, in considering only that portion of the applicant's income which is not so committed, the applicant would otherwise be financially eligible.

The first instance would be a new addition to the regulation. Currently, an applicant seeking to *obtain* governmental benefits for low income persons may be deemed financially eligible if the applicant's income does not exceed 150% of the LSC national eligibility level. The existing regulation, however, does not specifically address applicants seeking to *maintain* such benefits. Thus, under the current regulation, an applicant whose income is over the income ceiling but under 150% of the LSC national eligibility level may be deemed financially eligible for assistance in obtaining benefits, but not for assistance in maintaining them. Thus, the applicant seeking assistance to maintain benefits would have to be turned down, but that same applicant could then be found financially eligible for assistance to re-obtain such benefits once the benefits were lost. Accordingly, LSC proposes to address this problem in the regulation. However, unlike the situation in obtaining the benefits, in seeking to maintain benefits LSC considers an upper limit on income unnecessary since in such cases the applicant's income will necessarily be rather limited (for the applicant to have been eligible in the first place for the benefits he or she is seeking to maintain).

The second instance is taken from section 1611.5(b)(1)(B) of the current regulation addressing instances in which the applicant's income is primarily devoted to medical or nursing home expenses and does not represent a substantive change in the current regulation. LSC does propose to specify in the regulation, however, that in such cases the recipient is still required to make a determination of financial eligibility with regard to the applicant's remaining income. The existing regulation could be read to permit an applicant with an income of $300,000 to be deemed financially eligible if $250,000 of the income is devoted to nursing home expenses, notwithstanding that the applicant's remaining income is $50,000—substantially in excess of the income ceiling. This situation is not intended, and, indeed, LSC has no reason to believe recipients are serving such persons. However, consistent with the overall goal of clarifying the regulation, LSC believes that a requirement that an applicant must be otherwise financially eligible considering only that portion of the applicant's income which is not devoted to medical or nursing home expenses should be clearly set forth in the regulation.

LSC received two comments on the November 2002 NPRM regarding this proposed revision. Both comments asked LSC to remove the requirement that the determination that the applicant's income is primarily committed to medical or nursing home expenses be made by the Executive Director or his/her designee. These commenters argued that removing this requirement would afford recipients greater administrative flexibility in making financial eligibility determinations. One comment also argued that such a change is justified because other sections of the rule do not require determinations made by the Executive Director (or designee). The existing rule, however, does require that the Executive Director make determinations regarding whether an applicant's income is primarily committed to medical or nursing home expenses. LSC believes it is important to continue this requirement in this instance because a recipient is making a determination of financial eligibility for an applicant whose income exceeds the otherwise absolute upper limit of the income ceiling, that such a determination be made by a person in significant authority.[2] This is similar to the LSC view regarding decisions to waive the asset ceiling. LSC does understand, however, that it is important for recipients to have the discretion to delegate certain authority to regional or branch office managers or directors to increase administrative efficiency. This is why LSC proposes broadening the existing rule to permit the Executive Director to designate a responsible individual to make such determinations. LSC believes that this approach provides additional administrative flexibility to recipients, yet is consistent with the underlying policy.

LSC also proposes to permit exceptions for certain situations in which the applicant's income is in excess of the recipient's applicable income ceiling, but does not exceed 200% of the applicable Federal Poverty Guidelines amount. At the outset, LSC notes that this section also proposes to change the current upper income limit of 150% of the LSC national income guidelines amount, which is 150% of 125% of the Federal Poverty Guidelines amounts, or 187.5% of the Federal Poverty Guidelines amounts. Under the proposed new regulation, the upper limit would increase to 200% of the Federal Poverty Guidelines amounts. This change is being proposed to further simplify the language of the regulation and to recognize the changing demographic of the legal services client base, which now increasingly includes the working poor. The Working Group discussed the fact that this action would slightly increase the pool of potential applicants for service but was of the opinion that this would not have a negative impact on the quantity or quality of services delivered.

Turning to the exceptions, LSC proposes to retain the current exception for individuals seeking to obtain governmental benefits for low-income individuals and families. Second, LSC proposes to add an exception for individuals seeking to obtain or maintain governmental benefits for persons with mental and/or physical disabilities. Many disability benefit programs provide only subsistence support and those individuals should be treated the same way as those seeking to obtain benefits available on the basis of financial need. However, many persons with disabilities who are eligible for disability benefits may not be particularly economically disadvantaged and should not be eligible for legal assistance simply by virtue of eligibility for such disability benefits. Therefore, those applicants must have incomes below 200% of the applicable poverty level in order to be considered financially eligible for LSC-funded services.

Finally, the proposed regulation maintains the current authorized exceptions found in the factors listed in current section 1611.5. Specifically, the recipient would be permitted to determine an applicant whose income is below 200% of the applicable Federal

[2] This situation is distinguishable from the other exception to the absolute income limit relating to applicants seeking to maintain governmental benefits for low income persons. As noted above, in those instances, the applicant's income will already be rather limited, even if exceeding the absolute income ceiling. In the medical/nursing home expenses situation, this may not be the case and the applicant's income may be considerably in excess of the ceiling.

Poverty Guidelines amount to be financially eligible for legal assistance supported with LSC funds based on one or more enumerated factors that affect the applicant's ability to afford legal assistance. As in the current regulation, recipients would not be required to apply these factors in a ''spend down'' fashion. That is, although recipients would be permitted to do so, they would not be required to determine that, after deducting the allowable expenses, the applicant's income is below the applicable income ceiling before determining the applicant to be financially eligible. The regulation would also be amended to clarify that the factors apply to the applicant and members of the applicant's household. The factors proposed are identical to the ones in the current regulation, with the following exceptions:

- The factor relating to medical expenses would be restated to make clear that it refers only to unreimbused medical expenses, but that medical insurance premiums are included;
- The factor relating to employment expenses would be reorganized for clarity and would expressly include expenses related to job training or educational activities in preparation for employment;
- The factor relating to expenses associated with age or disability would no longer refer to resident members of the family as a reference to the applicant or members of the applicant's household is proposed to be incorporated elsewhere in this section of the regulation;
- The factor relating to fixed debts and obligations would be amended to read only ''fixed debts and obligations;''
- A new factor, ''current taxes'' would be added to the list.

With regard to ''fixed debts and obligations,'' the current regulation provides little guidance as to what is meant by this term, except to specifically include unpaid taxes from prior years. LSC proposes to simply use the term ''fixed debts and obligations,'' while providing guidance in the preamble as to what is encompassed by the term. LSC believes that this approach will provide recipients with flexibility in applying the rule, while providing more guidance than could easily be contained in regulatory text.

Prior guidance from the LSC Office of Legal Affairs has stated that, ''in the absence of any regulatory definition or guidance as to the meaning of ''fixed debts and obligations,'' the common meaning of the term applies'' and that it encompasses debts fixed as to both time and amount. See Letter of November 1, 1993 from J. Kelly Martin, LSC Assistant General Counsel, to Stephen St. Hilaire, Executive Director, Camden Regional Legal Services, Inc. Examples of such ''fixed debts and obligations'' would include mortgage payments, child support, alimony, and business equipment loan payments. LSC intends that this term should also include rent in addition to mortgage payments. Previous OLA opinions have addressed mortgage payments but not rent and rent has, heretofore, not been considered a fixed debt. LSC now sees no rational distinction between the two for the purposes of this regulation and therefore proposes to treat these expenses in a similar manner.

The term ''fixed debts and obligations,'' however, is not without limit. It is not intended to include expenses, such as food costs, utilities, credit card debt, etc. These types of debts are usually not fixed as to time and amount. The Working Group considered whether there were additional factors which should be enumerated in this section and several members of the Working Group proposed adding other factors, such as utilities, to the list. Three of the comments LSC received on the November 2002 NPRM proposed adding utilities to the overall list of factors. Although, as the commenters note, applicants must pay for some measure of utilities, the same can be said for clothing and food, which are also certainly basic necessary expenses. However, these sorts of costs have never been covered by the types of expenses which recipients are generally permitted to consider in determining the ability of an applicant to afford legal assistance. With the exception of housing expenses (which fall under the heading of fixed debts and obligations, a category which does not generally include utilities because utility bills are not typically fixed as to time and amount), the other factors represent expenses for items which may not be particularly extraordinary, but which are for things other than the most basic necessities. Although LSC is not proposing adding any additional factors, LSC specifically invites comment on this matter.

Another issue which was raised in the Working Group in the context of consideration of the scope of the term ''fixed debts and obligations'' was the inclusion of current taxes. Prior to 1983, Part 1611 included current taxes along with past due unpaid taxes as a fixed debt. When the regulation was changed in 1983, the reference to taxes was amended to refer only to unpaid prior year taxes. This change was justified on the basis that the 1611.5 factors were intended to account only for ''special circumstances'' affecting the ability to afford legal assistance. See 48 FR 54201 at 54203 (November 30, 1983). However, given that other types of expenses included in the list do not seem to be particularly ''special'' (*e.g.*, mortgage payments; child care expenses), LSC no longer finds this explanation pursuasive. Rather, LSC believes that the exclusion of current taxes, but not prior unpaid taxes, from the list of factors which recipients' may consider under exceptions to the income ceiling has the effect of punishing those persons who are in compliance with the law in favor of persons who are delinquent in their legal responsibility to pay taxes. Moreover, as noted above, applicants for legal services are increasingly the working poor. Excluding current taxes has a disproportionate effect on applicants who work versus applicants who do not work. Consequently, in the November 2002 NPRM, LSC proposed including current taxes within scope of the term ''fixed debts and obligations'' (as they had been prior to 1983).

When the Operations and Regulations Committee once again addressed this issue, field representatives reiterated their recommendation that the term income should be defined as income after taxes. LSC continues to believe, as noted above, that effectively defining income as net income, while the LSC income guidelines (and the underlying DHHS Federal Poverty Guidelines amounts on which the LSC guidelines are based) are calculated on the basis of gross income would make the regulation internally inconsistent. Rather, LSC believes that considering taxes a factor which can be considered by the recipient in making financial eligibility determinations addresses the practical problem raised by the commenters. However, the Committee considered current taxes as fundamentally a different kind of expense than the other expenses falling within the scope of ''fixed debts or obligations.'' Instead, the Committee recommended, and the Board agreed, that current taxes should be a separate category of authorized exception to the annual income ceiling. Accordingly, LSC proposes to add a new subsection (iv) to section 1611.5(a)(4). LSC invites comment on the proposed addition of the authorized exception for current taxes and on the appropriate scope and specific terminology which LSC should use to describe and define this proposed exception.

Section 1611.6—Representation of Groups

The eligibility of groups for legal assistance supported with LSC funds

was a subject of extensive discussion among both the members of the Working Group and at the 2004 and 2005 meetings of the current Operations and Regulations Committee. Prior to 1983, the regulation permitted representation of groups that were either primarily composed of eligible persons, or which had as their primary purpose the furtherance of the interests of persons in the community unable to afford legal assistance. In 1983, the regulation was amended to preclude the use of LSC funds for the representation of groups unless they were composed primarily of individuals financially eligible for service and to add a requirement that any group seeking representation demonstrate that it lacks the funds or the means to obtain the funds to retain private counsel.

During the Working Group meetings, representatives from the field proposed that LSC revise the regulation to once again permit the representation of groups which, although not primarily composed of eligible persons, have as a primary function the delivery of services to, or furtherance of the interests of, persons in the community unable to afford legal assistance. Examples of such a group might be a food bank or a rural community development corporation working to develop affordable housing in an isolated community. Field representatives noted that in such cases, there may not be local counsel willing to provide pro bono representation and that the group might not otherwise be able to afford private counsel. Further, the field representatives noted that restricting recipients to representing with LSC funds only those groups primarily composed of eligible individuals prevents them from providing legal assistance in the most efficient manner possible as other groups may be better able to accomplish results benefitting more members of the eligible community than would representation of eligible individuals or groups composed primarily of such individuals. Field representatives also noted that the rule requires that the group would have to provide information showing that it lacks and has no means of obtaining the funds to retain private counsel, so that the rule would not permit representation of well funded groups.

The LSC representatives were concerned that allowing the use of LSC funds to support the representation of groups not composed primarily of eligible clients would be problematic. In the examples given, the ''primary function'' of the group is easily discernable. It may be, however, that there is or can be a wide variety of opinion on what the ''primary function'' of any group is and on what is ''in the interests'' of the eligible client community. The LSC representatives were concerned that the risk and effort related to articulating and enforcing a necessarily subjective standard would be inappropriate. Rather, LSC representatives were of the opinion that already scarce legal services resources would be better devoted to providing assistance to eligible individuals or groups of eligible individuals. In the end, the Working Group did not achieve consensus on this issue and the Draft NPRM did not propose to permit the representation of groups other than those primarily composed of eligible individuals.

In its deliberations on the Draft NPRM, the Operations and Regulations Committee acknowledged the legitimacy of the concerns of the LSC representatives, but determined that the value of permitting the representation of groups having a primary function of providing services to, or furthering the interests of, those who would be financially eligible outweighed any risks attendant upon such representation. In approving the recommendation of the Committee, the Board directed that the Draft NPRM be amended to propose permitting such representation (including any conforming amendments necessary) prior to publication of the NPRM for comment. The NPRM published in November 2002 reflected this direction.

When the new Operations and Regulations Committee considered this issue, field representatives once again supported changing the regulation to permit the representation of groups having as their primary function the provision of services to, or furthering the interests of, those who would be financially eligible (providing the group could demonstrate its inability to afford to retain private counsel), while LSC Management initially once again supported permitting only the representation of groups primarily composed of eligible individuals. However, upon further reflection and consideration of the arguments made by the field and the comments made by members of the Operations and Regulation Committee, LSC Management ultimately recommended that the regulation could be broadened to permit the representation, in addition to groups primarly composed of eligible individuals, groups which have as a primary activity the delivery of services to persons who would be eligible. Management continued to recommend that the regulation not permit the representation of groups whose primary activity is the ''furtherance of the interests of'' persons who would be eligible.

The Board agreed that permitting LSC recipients to use LSC funds for the representation of groups which provide services to low income persons is consistent with the LSC mission and could be an efficient use of LSC resources, provided that the legal assistance is related to the services the group provides. The Board also agreed that extending the permissible use of LSC funds for the representation of groups whose primary activity is the ''furtherance of the interests of'' low income persons would not be appropriate because of the necessarily subjective nature of determining what is in the ''furtherance of the interests of'' low income persons.

Accordingly, the proposed rule would permit a recipient to provide legal assistance supported with LSC funds to a group, corporation, association or other entity if the recipient has determined that the group, corporation, association or other entity lacks and has no practical means of obtaining private counsel in the matter for which representation is sought and either:

(1) The group, or for a non-membership group, the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for legal assistance under the Act; or

(2) The group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity.

The first instance, relating to the eligibility and representation of groups composed primarily of eligible individuals, represents the current practice permitted by current section 1611.5(c). The proposed rule is intended to have the same interpretation of ''primarily composed'' that has developed and been adopted in practice over the years since 1983. In the case of membership groups, at least 51% of the members would have to be individuals who would be financially eligible; in the case of non-membership groups, at least 51% of members of the governing body would have to be individuals who would be financially eligible. The latter instance represents a variation on one of the situations permitted by the pre-1983 rule, although the language would be revised to focus on ''principal activity'' rather than ''primary purpose'' and the rule would only permit the representation of groups which have as

a principal activity the delivery of services to low income persons.

Limiting permissible represention to groups who have as a ''principal activity'' the provision of services to low income persons and the exclusion of ''furtherance of the interest of the poor'' groups are intended to make the analysis required in determining the permissibility of the representation more objective. In addition, LSC proposes that the regulation specify that the legal assistance must be related to the services delivered by the group. These limitations are intended to avoid creating a potential situation whereby recipients might feel free to undertake broad based, systemic social change activities. Rather, LSC believes that these limitations will help ensure that LSC funds will be used to provide financially eligible groups with the day-to-day legal services which are the hallmark of LSC-funded legal assistance.

The Office of Inspector General (OIG) has expressed concerns with the proposed provisions permitting the representation of groups. First, the OIG has raised a question as to whether permitting the representation of groups not comprised of eligible clients is problematic because, in its view, neither the LSC Act itself nor the legislative history endorse the premise that LSC may permit the representation of groups that are not composed of eligible clients. Although LSC appreciates the OIG's comments, LSC believes that the proposed regulatory requirements are consistent with the applicable laws. The LSC Act, on its face, does not prohibit the representation of groups other than those composed of otherwise eligible individuals. The Act only speaks to ''eligible clients'' and there is nothing in the text of the Act which suggests that a group which has as its primary activity the provision of services to persons who would be eligible for LSC-funded legal assistance is necessarily excluded from the scope of the term ''eligible clients.'' In addition, LSC believes that the legislative history of the Act and the 1977 LSC Act amendments is not dispositive on the issue of whether the statute was intended to prohibit the representation of groups other than thos comprised of eligible individuals. Rather, support for the notion that Congress contemplated the provision of legal assistance to groups providing services to eligible clients can be seen in the comments Senator Riegle made in discussing an amendment relating to the prohibition by recipients on organizing:

A similar clarification is made in section 9(c)[of the Senate Reauthorization Bill] regarding the prohibition on organizing activities. Legal Services should not directly organize groups. *However,* it should provide full representation, education and outreach to those organized groups who are made up of *or which represent* eligible clients.

Congressional Record of October 10, 1977, p. S 16804. (emphasis added).

LSC proposes to add a provision to the regulation specifying the manner of determining the eligibility of groups. Although the practice has been that recipients must collect information that reasonably demonstrates that the group meets the eligibility requirements set forth in the regulation, standards for determining and documenting the eligibility of groups has not previously been specifically addressed in the regulation. LSC Management does not believe that recipients are representing ineligible groups, but the Working Group was nevertheless in agreement that it is important and appropriate for the regulation to expressly state the Corporation's expectations in this area.

The November 2002 NPRM would have required a recipient to collect information reasonably demonstrating that the group meets the eligibility requirements set forth in the regulation. In written comments filed in response to the November 2002 NPRM, and again in the course of the new Operations and Regulation Committee's 2004 and 2005 deliberations, the OIG expressed concern that the proposed rule should provide eligibility criteria sufficient to ensure that groups seeking LSC-funded legal assistance qualify for such legal assistance and should require grantees to retain adequate documentation of such group eligibility. Although LSC believes that the November 2002 proposed financial eligibility standards for groups effectuated the principal criterion in the Act that those seeking LSC-funded legal assistance must be financially unable to afford legal assistance and were in no way inconsistent with the LSC Act, LSC does agree with the OIG that the standards for determining the eligibility of groups can and should be more specific than those set forth in the November 2002 NPRM.

Accordingly, in assessing the eligibility of a group, LSC proposes to require recipients to consider the resources available to the group, such as the group's income and income prospects, assets and obligations. For a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance under the Act, would also have to consider whether the characteristics of the persons primarily comprising the group are consistent with financial eligibility under the Act. For a group having as a primary activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance under the Act, the recipient would have also to consider whether the characteristics of the persons served by the group are consistent with financial eligibility under the Act and whether the legal assistance sought relates to the the primary activity of the group. Finally, LSC proposes to require a recipeint to document group eligibility determinations by collecting information that reasonably demonstrates that the group meets the eligibility criteria set forth herein.

LSC notes that the proposed rule would, essentially, codify the current practice relating to both making financial eligibility determinations and documentation of financial eligibility determinatons related to groups primarily composed of eligible individuals. In LSC's experience, the practical standards which LSC proposes to memorialize has not proven to be problematic. Morevover, LSC does not see why they would prove any more problematic for demonstrating or documenting the financial eligibility of groups which have as a primary activity the delivery of services to those who would be financially eligible for legal assistance.

In addition, the proposed rule would retain and restate the current provision of the rule that these requirements apply only to a recipient providing legal assistance supported by LSC funds, provided that regardless of the source of funds used, any legal assistance provided to a group must be otherwise permissible under applicable law and regulation.

LSC notes that, as with other aspects of this rule, proposed section 1611.6 does not speak to eligibility of groups for legal assistance under other applicable law and regulation. For example, the eligibility of a group under proposed section 1611.8 does not address issues related to the eligibility of the group under Part 1626 of LSC's regulations, concerning citizenship and alien status eligibility. Similarly, the fact that a recipient may determine a group to be eligible for legal assistance under this Part, does not address other questions relating to permissibility of the representation (*i.e.*, this Part does not confer authority for the representation of a group on restricted matters, such as class action lawsuits or redistricting matters, *etc.*)

Finally, LSC notes that in the November 2002 NPRM, this proposed section was numbered 1611.8 and placed at the end of the proposed

regulation. LSC is now proposing to place this section before the sections on Manner of Determining Financial Eligibility and Change in Financial Eligibility Status as both of those sections are applicable to both groups and individual applicants and clients.

Section 1611.7—Manner of Determining Financial Eligibility

LSC proposes several revisions to this section. First, LSC proposes to include a requirement that, in making financial eligibility determinations, a recipient shall make reasonable inquiry regarding sources of the applicant's income, income prospects and assets and shall record income and asset information in the manner specified for determining financial eligibility in proposed section 1611.6. This requirement would replace the process currently required by section 1611.5, whereby a recipient is effectively required to conduct a lengthy and often cumbersome inquiry as to the applicant's income, assets and income prospects, including inquiry into a detailed list of factors relating to an applicant's specific financial situation and ability to afford private counsel. The Working Group discussed this issue at length and representatives of the field noted that conducting such a detailed inquiry in most cases is a task which is often difficult to accomplish efficiently at the point of intake, especially as much of intake is performed by volunteers, interns or receptionists. Rather, many recipients, in practice, conduct a somewhat abbreviated version of the otherwise required process, inquiring into current income, assets, income prospects and probing for additional information based on the responses provided, the requirements of the regulation and their knowledge of local circumstances. This approach, the field representatives noted, is less prone to error and assists in fostering an appropriate attorney-client relationship with individuals accepted as clients. As LSC is not finding widespread instances of service being provided to financially ineligible persons, it was agreed that that the process required by the existing regulation is unduly complicated and that the simplified requirement proposed would be adequate to ensure that recipients are making sufficient inquiry into applicants' financial situations to determine financial eligibility status under the regulation while being less adminstratively burdensome for recipients and more conducive to the development of the attorney-client relationship. LSC also believes that adoption of the proposed streamlined financial eligibility determination process will aid the Corporation in conducting compliance reviews.

As noted above, LSC originally proposed in the November 2002 NPRM, to include this provision in proposed section 1611.4, Financial Eligibility for Legal Assistance. Upon reflection, LSC believes that as this requirement is really a requirement as to how financial eligibility determinations are to be made, it is better included in this proposed section on the manner of determining financial eligibility. LSC believes that this will improve the organization and clarity of the regulation.

Second, LSC proposes to delete the requirement in existing paragraph (a) of this section that LSC eligibililty forms and procedures must be approved by the Corporation. It has been LSC's experience that receiving the forms has not enhanced its ability to conduct oversight of recipients. These documents are readily available to LSC from recipients when needed. This requirement appears only to create unnecessary work for recipients and LSC staff without serving any policy purpose.

LSC also proposes to add a provision to the regulation making clear that a recipient agreeing to extend legal assistance to a client referred from another recipient may rely upon the referring recipient's determination of financial eligibility, provided that the referring recipient provides and the receiving recipient retains a copy of the eligibility form documenting the financial eligibility of the client. This is the currently accepted practice, but is addressed nowhere in the existing regulation.

Section 1611.8—Change in Financial Eligibility Status

LSC proposes to add language to this section to provide that if a recipient later learns of information which indicates that a client never was, in fact, financially eligible, the recipient must discontinue the representation consistent with the applicable rules of professional responsibility. This addition is being proposed because sometimes, after an applicant has been accepted as a client, the recipient discovers or the client discloses information that indicates that the client was not, in fact, financially eligible for service. This situation is not covered by the existing regulation because the client may not have experienced a change in circumstance but rather, the recipient has discovered new pertinent information about the client. LSC notes that the proposed language, like the current regulation, is not intended to require a recipient to make affirmative inquiry after accepting an applicant as a client for information that would indicate a change in circumstance or the presence of additional information regarding the client's financial eligibility.

The proposed regulation would require that when a client is found to be no longer financially eligible on the basis of later discovered information, the recipient shall discontinue representation supported with LSC funds, if discontinuing the representation is not inconsistent with applicable rules of professional responsibility. This proposed language is parallel to the current requirement regarding discontinuation of representation upon a change in circumstance. LSC wishes to note that, to the extent that discontinuation of representation is not possible because of professional responsibility reasons, a recipient may continue to provide representation supported by LSC funds. This is currently the case and LSC intends to make no change in the regulation on this point.

In addition, LSC proposes to change the name of this section from ''change in circumstances'' to ''change in financial eligibility status'' to reflect the addition of the later discovered information provision.

Section 1611.9—Retainer Agreements

The retainer agreement requirement, found at section 1611.8 of the existing regulation, was the subject of significant discussion in the Working Group. Representatives of the field agreed with the LSC representatives that a retainer agreement may be appropriate under certain circumstances, but argued that this regulatory requirement is not required by statute, is not justified under applicable rules of professional responsibility, may be unnecessarily burdensome in some instances and is not related to financial eligibility determinations. They contended that, barring a statutory mandate, decisions about the use of retainer agreements, like those involving many other matters relating to the best manner of providing high quality legal assistance, should be determined by a recipient's Board, management and staff, with guidance from LSC. They urged LSC to delete this requirement. The LSC representatives, however, were of the opinion that the existing provision in the regulations requiring the execution of retainer agreements is professionally desirable, authorized in accordance with LSC's mandate under Section 1007(a)(1) of the Act to assure the maintenance of the highest quality of service and

professional standards, and appropriate to assure that there are no misunderstandings as to what services are to be rendered to a particular client. Retainer agreements protect the attorney and recipient in cases of an unfounded malpractice claim and protect the client if the attorney and the recipient should fail to provide legal assistance measuring up to professional standards. In the end, the Working Group was unable to reach consensus on this issue and the Draft NPRM retained a provision generally requiring the execution of retainer agreements, along with proposing requirements for client service notices and PAI referral notices in lieu of retainer agreements under certain circumstances.

After deliberations on the Draft NPRM, the Board determined to propose elimination of the retainer agreement requirement altogether and the November 2002 NPRM published by LSC reflected this determination. With the exception of the comments of the LSC OIG, all of the comments LSC received supported the elimination of the retainer agreement requirement.

With the appointment of the new members of the Board of Directors and the new LSC President, LSC had the opportunity to reconsider this proposal. Field representatives reiterated their support for elimination of the retainer agreement requirement from the regulation, while LSC Management reiterated its support for retention of a retainer agreement requirement for extended service in the regulation, with certain amendments intended to clarify and streamline the requirement. The Board agrees with Management. LSC is committed to keeping a retainer agreement requirement in the regulations. LSC considers the practice of providing retainer agreements to be professionally desirable and in accordance with its mandate under Section 1007(a)(1) of the Act to assure the maintenance of the highest quality of service and professional standards and to assure that there are no misunderstandings as to what services are to be rendered to a particular client. Retainer agreements protect the attorney and recipient in cases of an unfounded malpractice claim and protect the client if the attorney and the recipient should fail to provide legal assistance measuring up to professional standards.

LSC agrees, however, that that there are changes that can be made in the retainer agreement requirement to clarify the application of the requirement and to lessen the burden on recipients, without interfering with the underlying goals of the requirements. First, LSC believes that it is not necessary for LSC to approve retainer agreements and proposes to remove the requirement at current section 1611.8(a) that retainer agreements be in a form approved by LSC. Instead, LSC proposes to require the retainer agreements must be in a form consistent with the local rules of professional responsibility and must contain statements identifying the legal problem for which representation is being provided and the nature of the legal services to be provided. LSC believes that this simplification will eliminate possible sources of confusion for recipients in drafting retainer agreements, yet will continue to foster the essential communication between the recipient and the client.

Second, LSC proposes to clarify the circumstances in which retainer agreements are required. Under current section 1611.8(b) a recipient is not required to execute a retainer agreement ''when the only service to be provided is brief advice and consultation.'' Although the plain language of this provision would seem to encompass situations in which the attorney is providing only some information and guidance on a suggested course of action to the client, it has over the years, come to include brief services such as drafting simple documents or making limited contacts (by phone or in writing) with third parties, such as a landlord, an employer or a government benefits agency, on behalf of the client. The discrepancy between the plain language and the practical meaning of the exception should be corrected.

During the public deliberations on this matter in the 2004 and 2005 Operations and Regulations Committee meetings, LSC considered different approaches to resolving the discrepancy between the regulation as written and the prevailing practice. Field representatives suggested in the event that a retainer agreement requirement remains in the rule (although still preferring the elimination of any such requirement) that the language of the exception should reflect the current practice by expressly including brief service type activities along with advice and counsel. They asserted that the proposed rule should add no new administrative or regulatory burdens on recipients. While recognizing the value of retainer agreements in some circumstances, the field representatives also argued that the rules of professional responsibility in most jurisdictions do not require that a retainer agreement be executed or that any other form of notice be provided in the brief service context. Although LSC Management expressed the belief that while some form of written communication between the attorney and the client in brief services cases about the nature of the relationship and a clear understanding as to what services are to be rendered is important to achieving the highest quality of legal service and professional standards, it ultimately recommended against requiring grantees to provide specific written communications to clients when only brief services are being provided. After considering all of the various arguments on this matter in LSC has determined that, on balance, written communications in brief services cases represents a ''best practice'' and, for the purposes of a regulatory requirement, the current practice by which retainer agreements are only required when the recipient is providing extended service to the client is appropriate.

Accordingly, LSC proposes to require that recipients must execute retainer agreements when providing extended services to clients. Extended service is characterized by the performance of multiple tasks incident to continuous representation in a case. Examples of extended service would include representation of a client in litigation, an administrative adjudicative proceeding, alternative dispute resolution proceeding, and more than brief representation of a client in negotiations with a third party. In addition, LSC proposes to retain the provision in the current regulation that the retainer agreement must be executed when representation commences or as soon thereafter as is practicable.

To further clarify the regulation, LSC proposes to include express langauge specifying that recipients are not required to execute retainer agreements if the only services being provided are advice and counsel or brief service. Advice and counsel is characterized by a limited relationship between the attorney and the client in which the attorney does no more than review information and provide information and guidance to the client. Advice and counsel does not encompass drafting of documents or making third-party contacts on behalf of the client. LSC notes also that it proposes to use the term ''advice and counsel'' instead of ''advice and consultation'' because the term ''advice and counsel'' is a widely understood case reporting term throughout the legal services community and LSC believe that use of the standard term will be simpler and clearer. Brief service is the performance of a discrete task (or tasks) which are not incident to continuous representation in a case but which involve more than the mere provision of advice and counsel. Examples of brief

service would include activities, such as the drafting of documents such as a contract or a will for a client or the making of one or a few third-party contacts on behalf of a client in a narrow time period. In advice and counsel and brief service cases, the interaction between the recipient and the client is generally limited in nature and duration so that executing a retainer agreement is administratively burdensome. In these situations it may take more time and effort for the recipient to prepare the retainer and ensure that the client has signed and returned an executed copy of the retainer agreement to the recipient than it takes for the recipient to provide the service to the client. At that point, the benefit of having the executed retainer agreement is outweighed by the effort required to comply with the requirement.

Another issue raised in the Working Group discussions was the application of the retainer agreement requirement to the cases handled by private attorneys pursuant to a recipient's private attorney involvement (PAI) program under 45 CFR part 1614. LSC has consistently interpreted the retainer agreement requirement as applying to cases handled by private attorneys pursuant to a recipient's PAI program and OLA has advised recipients that the best course of action is to have the client execute retainer agreements with both the recipient and with the private attorney (OLA Opinion 99–03, August 9, 1999). Recipients have reported that entering into retainer agreements with clients with whom it does not have on-going direct relationships does not further the goal of the retainer agreement requirement and that ensuring that retainer agreements be executed between clients and private attorneys is unduly administratively burdensome. LSC agrees.

The application of the retainer agreement requirement comes from the current structure of the text of the regulation. Under the current regulation, a recipient is required to execute a retainer agreement (unless otherwise excepted) ''with each client who receives legal services from the recipient.'' Cases referred to private attorneys pursuant to a recipient's PAI program remain cases of the recipient and the clients in those cases remain clients of the recipient and the client is considered to be receiving some legal services from the recipient. However, by amending the language of the text of the regulation to say that the recipient is only required to execute a retainer agreement ''when the recipient is providing extended service to the client'' the necessity of applying the requirement to PAI cases is removed. In cases handled by PAI attorneys, although the client can be said to be receiving some legal services from the recipient, the recipient is not providing *extended* services. Although this change to the language alone could arguably be sufficient to remove the necessity of applying the retainer agreement requirement to cases being handled by PAI attorneys, LSC believes the text of the regulation should be further clarified to explicitly so state. Accordingly, LSC proposes to add a statement to the regulation providing that no written retainer agreement would be required for legal services provided to the client by a private attorney pursuant to 45 CFR part 1614.

List of Subjects in 45 CFR Part 1611

Legal services.

For reasons set forth in the preamble, LSC proposes to revise 45 CFR part 1611 to read as follows:

PART 1611—FINANCIAL ELIGIBILITY

Sec.
1611.1 Purpose.
1611.2 Definitions.
1611.3 Financial eligibility policies.
1611.4 Financial eligibility for legal assistance.
1611.5 Authorized exceptions to the recipient's annual income ceiling.
1611.6 Representation of groups.
1611.7 Manner of determining financial eligibility.
1611.8 Changes in financial eligibility status.
1611.9 Retainer agreements.

Authority: 42 U.S.C. 2996e(b)(1), 2996e(b)(3), 2996f(a)(1), 2996f(a)(2); Section 509(h) of Pub. L. 104–134, 110 Stat. 1321 (1996); Pub. L. 105–119, 111 Stat. 2512 (1998).

§ 1611.1 Purpose.

This Part sets forth requirements relating to the financial eligibility of individual applicants for legal assistance supported with LSC funds and recipients' responsibilities in making financial eligibility determinations. This Part is not intended to and does not create any entitlement to service for persons deemed financially eligible. This Part also seeks to ensure that financial eligibility is determined in a manner conducive to development of an effective attorney-client relationship. In addition, this Part sets forth standards relating to the eligibility of groups for legal assistance supported with LSC funds. Finally, this Part sets forth requirements relating to recipients' responsibilities in executing retainer agreements with clients.

§ 1611.2 Definitions.

(a) ''Advice and counsel'' means legal assistance that is limited to the review of information relevant to the client's legal problem(s) and counseling the client on the relevant law and/or suggested course of action. Advice and counsel does not encompass drafting of documents or making third-party contacts on behalf of the client.

(b) ''Applicable rules of professional responsibility'' means the rules of ethics and professional responsibility generally applicable to attorneys in the jurisdiction where the recipient provides legal services.

(c) ''Applicant'' means an individual who is seeking legal assistance supported with LSC funds from a recipient. The term does not include a group, corporation or association.

(d) ''Assets'' means cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash, which are currently and actually available to the applicant.

(e) ''Brief services'' means legal assistance in which the recipient undertakes to provide a discrete and time-limited service to a client beyond advice and consultation, including but not limited to activities, such as the drafting of documents or making limited third party contacts on behalf of a client.

(f) ''Extended service'' means legal assistance characterized by the performance of multiple tasks incident to continuous representation. Examples of extended service would include representation of a client in litigation, an administrative adjudicative proceeding, alternative dispute resolution proceeding, extended negotiations with a third party, or other legal representation in which the recipient undertakes responsibility for protecting or advancing a client's interest beyond advice and counsel or brief services.

(g) ''Governmental program for low income individuals or families'' means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

(h) ''Governmental program for persons with disabilities'' means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability.

(i) ''Income'' means actual current annual total cash receipts before taxes of all persons who are resident members and contribute to the support of an applicant's household, as that term is defined by the recipient. Total cash

receipts include, but are not limited to, money, wages and salaries before any deduction; income from self-employment after deductions for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; social security payments; unemployment and worker's compensation payments; strike benefits from union funds; veterans benefits; training stipends; alimony; child support payments; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant. Total cash receipts do not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one-time insurance payments for injuries sustained; non-cash benefits; and up to $2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

§ 1611.3 Financial eligibility policies.

(a) The governing body of a recipient shall adopt policies consistent with this part for determining the financial eligibility of applicants and groups. The governing body shall review its financial eligibility policies at least once every three years and make adjustments as necessary. The recipient shall implement procedures consistent with its policies.

(b) As part of its financial eligibility policies, every recipient shall specify that only individuals and groups determined to be financially eligible under the recipient's financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds.

(c)(1) As part of its financial eligibility policies, every recipient shall establish annual income ceilings for individuals and households, which may not exceed one hundred and twenty five percent (125%) of the current official Federal Poverty Guidelines amounts. The Corporation shall annually calculate 125% of the Federal Poverty Guidelines amounts and publish such calculations in the **Federal Register** as a revision to Appendix A to this part.

(2) As part of its financial eligibility policies, a recipient may adopt authorized exceptions to its annual income ceilings consistent with § 1611.5.

(d)(1) As part of its financial eligibility policies, every recipient shall establish reasonable asset ceilings for individuals and households. In establishing asset ceilings, the recipient may exclude consideration of a household's principal residence, vehicles required for work, assets used in producing income, and other assets which are exempt from attachment under State or Federal law.

(2) The recipient's policies may provide authority for waiver of its asset ceilings for specific applicants under unusual circumstances and when approved by the recipient's Executive Director, or his/her designee. When the asset ceiling is waived, the recipient shall record the reasons for such waiver and shall keep such records as are necessary to inform the Corporation of the reasons for such waiver.

(e) Notwithstanding any other provision of this Part or the recipient's financial eligibility policies, as part of its financial eligibility policies, every recipient shall specify that in assessing the income or assets of an individual applicant who is a victim of domestic violence, the recipient shall consider only the assets and income of the individual applicant and shall not include any assets jointly held with the perpetrator of the domestic violence.

(f) As part of its financial eligibility policies, a recipient may adopt policies that permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with § 1611.4(c).

(g) Before establishing its financial eligibility policies, a recipient shall consider the cost of living in the service area or locality and other relevant factors, including but not limited to:

(1) the number of clients who can be served by the resources of the recipient;

(2) the population that would be eligible at and below alternative income and asset ceilings; and

(3) the availability and cost of legal services provided by the private bar and other free or low cost legal services providers in the area.

§ 1611.4 Financial eligibility for legal assistance.

(a) A recipient may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. Nothing in this Part, however, prohibits a recipient from providing legal assistance to an individual without regard to that individual's income and assets if the legal assistance is wholly supported by funds from a source other than LSC, and is otherwise permissible under applicable law and regulation.

(b) Consistent with the recipient's financial eligibility policies and this Part, the recipient may determine an applicant to be financially eligible for legal assistance if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to § 1611.3(d)(1), or the applicable asset ceiling has been waived pursuant § 1611.3(d)(2), and:

(1) The applicant's income is at or below the recipient's applicable annual income ceiling; or

(2) The applicant's income exceeds the recipient's applicable annual income ceiling but one or more of the authorized exceptions to the annual income ceilings, as provided in § 1611.5, applies.

(c) Consistent with the recipient's policies, a recipient may determine an applicant to be financially eligible without making an independent determination of income or assets, if the applicant's income is derived solely from a governmental program for low-income individuals or families, provided that the recipient's governing body has determined that the income standards of the governmental program are at or below 125% of the Federal Poverty Guidelines amounts and that the governmental program has eligibility standards which include an assets test.

§ 1611.5 Authorized Exceptions to the Annual Income Ceiling

(a) Consistent with the recipient's policies and this Part, a recipient may determine an applicant whose income exceeds the recipient's applicable annual income ceiling to be financially eligible if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to § 1611.3(d), or the asset ceiling has been waived pursuant to § 1611.3(d)(2), and:

(1) The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families; or

(2) The Executive Director of the recipient, or his/her designee, has determined on the basis of documentation received by the recipient, that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service; or

(3) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and:

(i) The applicant is seeking legal assistance to obtain governmental benefits for low income individuals and families; or

(ii) The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities; or

(4) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and the recipient has determined that the applicant should be considered financially eligible based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household:

(i) Current income prospects, taking into account seasonal variations in income;

(ii) Unreimbursed medical expenses and medical insurance premiums;

(iii) Fixed debts and obligations;

(iv) Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;

(v) Non-medical expenses associated with age or disability;

(vi) Current taxes; or

(vii) Other significant factors that the recipient has determined affect the applicant's ability to afford legal assistance.

(b) In the event that a recipient determines that an applicant is financially eligible pursuant to this section and is provided legal assistance, the recipient shall document the basis for the financial eligibility determination. The recipient shall keep such records as may be necessary to inform the Corporation of the specific facts and factors relied on to make such determination.

§ 1611.6 Representation of groups.

(a) A recipient may provide legal assistance to a group, corporation, association or other entity if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel and either:

(1) The group, or for a non-membership group, the organizing or operating body of the group, is primarily composed of individuals, who would be financially eligible for legal assistance under the Act; or

(2) The group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity.

(b)(1) In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by paragraph (a) of this section, a recipient shall consider the resources available to the group, such as the group's income and income prospects, assets and obligations and either:

(i) For a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance under the Act, whether the characteristics of the persons comprising the group are consistent with financial eligibility under the Act; or

(ii) For a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance under the Act whether the characteristics of the persons served by the group are consistent with financial eligibility under the Act and whether the legal assistance sought relates to such activity of the group.

(2) A recipient shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria set forth herein.

(c) The eligibility requirements set forth herein apply only to legal assistance supported by funds from LSC, provided that any legal assistance provided by a recipient, regardless of the source of funds supporting the assistance, must be otherwise permissible under applicable law and regulation.

§ 1611.7 Manner of determining financial eligibility.

(a)(1) In making financial eligibility determinations regarding individual applicants, a recipient shall make reasonable inquiry regarding sources of the applicant's income, income prospects and assets. The recipient shall record income and asset information in the manner specified in this section.

(2) In making financial eligibility determinations regarding groups seeking LSC-supported legal assistance, a recipient shall follow the requirements set forth in § 1611.6(b) of this Part.

(b) A recipient shall adopt simple intake forms and procedures to obtain information from applicants and groups to determine financial eligibility in a manner that promotes the development of trust between attorney and client. The forms shall be preserved by the recipient.

(c) If there is substantial reason to doubt the accuracy of the financial eligibility information provided by an applicant or group, a recipient shall make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship.

(d) When one recipient has determined that a client is financially eligible for service in a particular case or matter, that recipient may request another recipient to extend legal assistance or undertake representation on behalf of that client in the same case or matter in reliance upon the initial financial eligibility determination. In such cases, the receiving recipient is not required to review or redetermine the client's financial eligibility unless there is a change in financial eligibility status as described in § 1611.8 or there is substantial reason to doubt the validity of the original determination, provided that the referring recipient provides and the receiving recipient retains a copy of the intake form documenting the financial eligibility of the client.

§ 1611.8 Change in financial eligibility status.

(a) If, after making a determination of financial eligibility and accepting a client for service, the recipient becomes aware that a client has become financially ineligible through a change in circumstances, a recipient shall discontinue representation supported with LSC funds if the change in circumstances is sufficient, and is likely to continue, to enable the client to afford private legal assistance, and discontinuation is not inconsistent with applicable rules of professional responsibility.

(b) If, after making a determination of financial eligibility and accepting a client for service, the recipient later determines that the client is financially ineligible on the basis of later discovered or disclosed information, a recipient shall discontinue representation supported with LSC funds if the discontinuation is not inconsistent with applicable rules of professional responsibility.

§ 1611.9 Retainer agreements.

(a) When a recipient provides extended service to a client, the recipient shall execute a written retainer agreement with the client. The retainer agreement shall be executed when representation commences or as soon thereafter as is practicable. Such retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal services to be provided.

(b) No written retainer agreement is required for advice and counsel or brief service provided by the recipient to the client or for legal services provided to the client by a private attorney pursuant to 45 CFR part 1614.

(c) The recipient shall maintain copies of all retainer agreements generated in accordance with this section.

Appendix A—Legal Services Corporation Poverty Guidelines

Note: Appendix A: The Corporation is not requesting comments on the current Appendix. The Appendix is revised annually, after the Department of Health and Human Services issues the new Federal Poverty Guidelines for that year.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

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BILLING CODE 7050–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 246

[DFARS Case 2003–D027]

Defense Federal Acquisition Regulation Supplement; Quality Assurance

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to Government contract quality assurance requirements. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 25, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D027, using any of the following methods:

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

○ Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.

○ E-mail: *dfars@osd.mil.* Include DFARS Case 2003–D027 in the subject line of the message.

○ Fax: (703) 602–0350.

○ Mail: Defense Acquisition Regulations Council, Attn: Ms. Deborah Tronic, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Tronic, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

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

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

○ Update and clarify requirements for Government contract quality assurance and use of warranties;

○ Delete unnecessary definitions and unnecessary text on technical requirements matters, responsibilities of contract administration offices, and material inspection and receiving reports; and

○ Delete text on preparation of quality assurance instructions, use of quality inspection approval stamps, and information on types of quality evaluation data. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi.*

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

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D027.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 246

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 246 as follows:

1. The authority citation for 48 CFR part 246 continues to read as follows:

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

PART 246—QUALITY ASSURANCE

246.101 [Removed]

2. Section 246.101 is removed.

3. Section 246.102 is amended by revising paragraph (1) to read as follows:

246.102 Policy.

* * * * *

(1) Develop and manage a systematic, cost-effective Government contract quality assurance program to ensure that contract performance conforms to specified requirements. Apply Government quality assurance to all contracts for services and products designed, developed, purchased, produced, stored, distributed, operated, maintained, or disposed of by contractors.

* * * * *

4. Section 246.103 is revised to read as follows:

246.103 Contracting office responsibilities.

(1) The contracting office must coordinate with the quality assurance activity before changing any quality requirement.

(2) The activity responsible for technical requirements may prepare instructions covering the type and extent of Government inspections for

acquisitions that are complex, have critical applications, or have unusual requirements. Follow the procedures at PGI 246.103(2) for preparation of instructions.

246.104 and 246.203 [Removed]

5. Sections 246.104 and 246.203 are removed.

6. Section 246.406 is amended by revising paragraph (2) to read as follows:

246.406 Foreign governments.

* * * * *

(2) *International military sales (non-NATO).* Departments and agencies shall—

(i) Perform quality assurance services on international military sales contracts or in accordance with existing agreements;

(ii) Inform host or U.S. Government personnel and contractors on the use of quality assurance publications; and

(iii) Delegate quality assurance to the host government when satisfactory services are available.

* * * * *

7. Section 246.408–71 is amended by revising paragraph (c) to read as follows:

246.408–71 Aircraft.

* * * * *

(c) The CAO shall ensure that the contractor possesses any required FAA certificates prior to acceptance.

246.408–72 [Removed]

8. Section 246.408–72 is removed.

9. Sections 246.470–1 and 246.470–2 are revised to read as follows:

246.470–1 Assessment of additional costs.

(a) Under the clause at FAR 52.246–2, Inspection of Supplies—Fixed-Price, after considering the factors in paragraph (c) of this subsection, the quality assurance representative (QAR) may believe that the assessment of additional costs is warranted. If so, the representative shall recommend that the contracting officer take the necessary action and provide a recommendation as to the amount of additional costs. Costs are based on the applicable Federal agency, foreign military sale, or public rate in effect at the time of the delay, reinspection, or retest.

(b) If the contracting officer agrees with the QAR, the contracting officer shall—

(1) Notify the contractor, in writing, of the determination to exercise the Government's right under the clause at FAR 52.246–2, Inspection of Supplies—Fixed-Price; and

(2) Demand payment of the costs in accordance with the collection procedures contained in FAR Subpart 32.6.

(c) In making a determination to assess additional costs, the contracting officer shall consider—

(1) The frequency of delays, reinspection, or retest under both current and prior contracts;

(2) The cause of such delay, reinspection, or retest; and

(3) The expense of recovering the additional costs.

246.470–2 Quality evaluation data.

The contract administration office shall establish a system for the collection, evaluation, and use of the types of quality evaluation data specified in PGI 246.470–2.

246.470–3 through 246.470–5 [Removed]

10. Sections 246.470–3 through 246.470–5 are removed.

11. Section 246.472 is revised to read as follows:

246.472 Inspection stamping.

(a) DoD quality inspection approval marking designs (stamps) may be used for both prime contracts and subcontracts. Follow the procedures at PGI 246.472(a) for use of DoD inspection stamps.

(b) Policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) quality status stamps are contained in NASA publications. When requested by NASA centers, the DoD inspector shall use NASA quality status stamps in accordance with current NASA requirements.

12. Section 246.601 is added to read as follows:

246.601 General.

See Appendix F, Material Inspection and Receiving Report, for procedures and instructions for the use, preparation, and distribution of—

(1) The Material Inspection and Receiving Report (DD Form 250 series); and

(2) Supplier's commercial shipping/packing lists used to evidence Government contract quality assurance.

246.670 and 246.671 [Removed]

13. Sections 246.670 and 246.671 are removed.

246.702 and 246.703 [Removed]

14. Sections 246.702 and 246.703 are removed.

15. Sections 246.704 through 246.706 are revised to read as follows:

246.704 Authority for use of warranties.

(1) The chief of the contracting office must approve use of a warranty, except in acquisitions for—

(i) Commercial items (see FAR 46.709);

(ii) Technical data, unless the warranty provides for extended liability (see 246.708);

(iii) Supplies and services in fixed-price type contracts containing quality assurance provisions that reference higher-level contract quality requirements (see 246.202–4); or

(iv) Supplies and services in construction contracts when using the warranties that are contained in Federal, military, or construction guide specifications.

(2) The chief of the contracting office shall approve the use of a warranty only when the benefits are expected to outweigh the cost.

246.705 Limitations.

(a) In addition to the exceptions provided in FAR 46.705(a), warranties in the clause at 252.246–7001, Warranty of Data, may be used in cost-reimbursement contracts.

246.706 Warranty terms and conditions.

(b)(5) *Markings.* For non-commercial items, use MIL–STD–129, Marking for Shipments and Storage, and MIL–STD–130, Identification Marking of U.S. Military Property, when marking warranty items.

16. Section 246.710 is amended by revising paragraph (1) to read as follows:

246.710 Contract clauses.

(1) Use a clause substantially the same as the clause at 252.246–7001, Warranty of Data, in solicitations and contracts that include the clause at 252.227–7013, Rights in Technical Data and Computer Software, when there is a need for greater protection or period of liability than provided by the inspection and warranty clauses prescribed in FAR part 46.

* * * * *

[FR Doc. 05–10234 Filed 5–23–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 15

RIN 1018–AH89

Importation of Exotic Wild Birds into the United States; Notice of Reopening of Comment Period on Proposed Rule to Add Blue-Fronted Amazon Parrots from Argentina's Sustainable-Use Management Plan to the Approved List of Non-Captive-Bred Species Under the Wild Bird Conservation Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the Fish and Wildlife Service (Service), give notice that we are reopening the comment period for the proposed rule to add blue-fronted amazon parrots (*Amazona aestiva*) from Argentina's sustainable-use management plan to the approved list of non-captive-bred (wild-caught) species under the Wild Bird Conservation Act of 1992 (WBCA). We are reopening the public comment period to allow all interested parties time to comment on Dr. Jorge Rabinovich's study, ''Modeling the Sustainable Use of the Blue-Fronted Parrot (*Amazona aestiva*) in the Dry Chaco Region of Argentina.'' The proposed rule was published and the public comment period initially opened on August 6, 2003 (68 FR 46559). We reopened the public comment period on March 29, 2005 (70 FR 15798) in order to accept comments related to Dr. Rabinovich's study, and we are now reopening it for an additional 45 days.

DATES: Comments must be submitted directly to the Service (see **ADDRESSES** section) on or before July 8, 2005. Any comments received after the closing date may not be considered in the final determination on the proposal.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information to Dr. Peter O. Thomas, Chief, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203.

2. You may hand-deliver written comments and information to the Division of Management Authority, at the above address, or fax your comments to (703) 358–2298.

3. You may send your comments by electronic mail (e-mail) to *bluefront@fws.gov.* Please submit e-mail comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include ''Attention: [blue-fronted amazon]'' and your name and return address in your message. Please note that the e-mail address, *bluefront@fws.gov,* will be closed out at the end of the public comment period.

4. We request that you not submit duplicate comments by multiple means. See **SUPPLEMENTARY INFORMATION** for comment procedures.

To obtain a copy of the aforementioned study, you can download or print it from *http://www.fws.gov/international/* or contact Anne St. John at (703) 358–2095 (phone) or (703) 358–2298 (facsimile) to receive a faxed or mailed copy.

FOR FURTHER INFORMATION CONTACT: Dr. Peter O. Thomas, Chief, Division of Management Authority, U.S. Fish and Wildlife Service; telephone (703) 358–2093; fax (703) 358–2280.

SUPPLEMENTARY INFORMATION:

Background

The WBCA limits or prohibits import into the United States of exotic bird species to ensure that their wild populations are not harmed by international trade. It also encourages wild bird conservation programs in countries of origin by ensuring that all imports of such species are biologically sustainable and not detrimental to the survival of the species. On November 16, 1993, we published a final rule in the **Federal Register** (58 FR 60536) in which we informed the public that imports of all CITES-listed birds (as defined in the final rule) were prohibited, except for (a) species included in an approved list; (b) specimens for which an import permit has been issued; (c) species from countries that have approved sustainable-use management plans for those species; or (d) specimens from approved foreign captive-breeding facilities.

On August 6, 2003, we published in the **Federal Register** (68 FR 46559) a rule proposing to approve a sustainable-use management plan developed by the CITES Management Authority of Argentina for blue-fronted amazon parrots under the WBCA. The rule proposed to add blue-fronted amazon parrots from Argentina's program to the approved list of non-captive-bred (wild-caught) species contained in 50 CFR 15.33(b). The public comment period on that proposed rule was open for 60 days, and in our final rule, we will address the comments we received. On March 29, 2005 (70 FR 15798), we reopened the comment period to enter into the record, Dr. Jorge Rabinovich's 2004 study, ''Modeling the Sustainable Use of the Blue-Fronted Parrot (*Amazona aestiva*) in the Dry Chaco Region of Argentina,'' and any comments we receive regarding the relationship of this study to the proposed addition of blue-fronted amazon parrots from Argentina's program to the approved list of non-captive-bred (wild-caught) species under the WBCA.

Public Comments Solicited

We request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this study and its relationship to the proposed rule. In making a final decision, we will take into consideration the comments we received and their relationship to the proposed action. Such communications may lead to a final determination that differs from the proposed rule.

The initial comment period on this proposed rule closed on October 6, 2003. In response to the receipt of Rabinovich's 2004 study, on March 29, 2005 (70 FR 15798), we reopened the public comment period on our proposed rule for 30 days, until April 28, 2005. To date, we have not yet made a final decision regarding the approval of Argentina's sustainable-use management plan for blue-fronted amazon parrots. To allow all interested parties time to submit their comments on this report for the record, we are reopening comment period for an additional 45 days.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Division of Management Authority (see **ADDRESSES** section).

References Cited

Rabinovich, Jorge. 2004. Unpublished report. Centro de Estudios Parasitológicos y de Vectores (CEPAVE), Universidad Nacional de La Plata, La Plata, Prov. de Buenos Aires, Argentina. 147 pp. with figures.

Author

The primary author of this notice is Anne St. John (see **ADDRESSES** section).

Authority

The authority for this action is the Wild Bird Conservation Act of 1992

(Pub. L. 102–440, 16 U.S.C. 4901–4916.).

Dated: May 12, 2005.

Paul Hoffman,

Acting Assistant Secretary—+Fish and Wildlife and Parks.

[FR Doc. 05–10253 Filed 5–23–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050504121–5121–01; I.D. 050205B]

RIN 0648–AT40

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Spiny Dogfish Management Program and Trawl Individual Quota Program and Establishment of a Control Date

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

ACTION: Advance notice of proposed rulemaking; notice of control date for the Pacific Coast groundfish fishery; request for comments.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) is considering implementing management measures for the spiny dogfish (*Squalus acanthias*) fishery off Washington, Oregon and California. This document announces a control date of April 8, 2005, for the spiny dogfish fishery. The control date for the spiny dogfish fishery is intended to discourage increased fishing effort in the limited entry and open access groundfish fisheries targeting spiny dogfish based on economic speculation while the Pacific Council develops and considers management measures for the spiny dogfish fishery. In addition, this document provides supplemental information on a control date for a limited entry groundfish trawl individual quota (IQ) program announced in the **Federal Register** on January 9, 2004, by clarifying that the control date does not preclude processors from being eligible to own quota as part of the trawl IQ program.

DATES: Comments may be submitted in writing by June 23, 2005.

ADDRESSES: You may submit comments, identified by I.D. 050205B by any of the following methods:

- E-mail: *dogfish.nwr@noaa.gov*: Include 050205B in the subject line of the message.
- Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736, Attn: Jamie Goen
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Jamie Goen

FOR FURTHER INFORMATION CONTACT: The Pacific Fishery Management Council at 866–806–7204; or Steve Freese at 206–526–6140.

SUPPLEMENTARY INFORMATION: The Pacific Council established under section 302(a)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(F)) (Magnuson-Stevens Act) is considering management measures for the spiny dogfish (*Squalus acanthias*) fishery off Washington, Oregon and California. In addition, NMFS previously announced a control date for a limited entry groundfish trawl IQ program off Washington, Oregon and California that is clarified later in this notice. The Pacific Coast groundfish fishery is managed under the Pacific Coast Groundfish Fishery Management Plan (FMP) approved on January 4, 1982 (47 FR 43964, October 5, 1982), as amended 18 times. Implementing regulations for the FMP and its amendments are codified at 50 CFR part 660, subpart G.

Control Date for the Spiny Dogfish Fishery

Recent interest in the spiny dogfish fishery and concern over the status of the stock has led the Pacific Council to consider management measures for the spiny dogfish fishery off Washington, Oregon and California. On May 5, 2005 (70 FR 23804), NMFS published a temporary emergency rule to set bycatch limits in the directed open access fishery for canary and yelloweye rockfish in order to protect those species from impacts from new vessels interested in participating in the open access fishery for dogfish (Historically, a limited number of vessels have targeted dogfish off the West Coast even though harvest of the species is currently not limited. [Note: Spiny dogfish are included in the ''Other Fish'' category in Pacific Coast groundfish management. Thus, the harvest of spiny dogfish is included in the optimum yield (OY) for ''Other Fish,'' which is not limited.]

In the past few years, large areas along the coast have been closed to the non-trawl groundfish fishery to protect overfished rockfish species. Some vessels explored accessing these closed areas through an experimental fishing permit (EFP) sponsored by the Washington Department of Fish and Wildlife in an effort to test whether vessels can target spiny dogfish in the closed area while keeping catch of overfished rockfish species limited. EFP results proved promising in terms of participating vessels maintaining low bycatch rates while targeting dogfish. However, before the Pacific Council and NMFS might consider moving forward with management measures to create a targeted spiny dogfish fishery additional information is necessary, including an assessment of the status of the stock.

A formal stock assessment has not been conducted on the West Coast stock of spiny dogfish. A formal stock assessment is planned for the 2007 stock assessment cycle. In the meantime, little is known about the status of spiny dogfish on the West Coast, except that like other shark species, they are slow growing, late to mature, and have a low fecundity, making them susceptible to becoming overfished.

Thus, in an effort to discourage increased fishing effort on spiny dogfish in the limited entry and open access groundfish fisheries based on speculative new entrants while the Pacific Council considers management measures, the Pacific Council recommended and NMFS is announcing a control date of April 8, 2005, in advance of a rulemaking. Management measures may include setting an acceptable biological catch (ABC) and OY specific to spiny dogfish. While a control date is not necessary for setting an ABC/OY, it may be used if management measures include limiting future participation in the spiny dogfish fishery. If the Pacific Council recommends and NMFS adopts management measures for the spiny dogfish fishery, the measures would be implemented through a proposed and final rulemaking, and possibly an FMP amendment.

The control date announces to the public that the Pacific Council may decide not to count activities occurring after the control date toward determining a person's qualification for participation in the spiny dogfish fishery. Spiny dogfish landed after April 8, 2005, potentially may not be included in the catch history used to qualify for participation in the spiny dogfish fishery.

Implementation of any management measures for the fishery will require

amendment of the regulations implementing the FMP and may also require amendment of the FMP itself. Any action will require Council development of a regulatory proposal with public input and a supporting analysis, NMFS approval, and appropriate rulemaking procedures. Interested parties are urged to contact the Pacific Council office to stay informed of the development of any planned regulations. Fishers are not guaranteed future participation in the spiny dogfish fishery, regardless of their date of entry or level of participation in the fishery.

This notification hereby establishes April 8, 2005, for potential use in determining historical or traditional participation in the spiny dogfish fishery. This action does not commit the Pacific Council to developing any particular management regime or to use any specific criteria for determining entry to the fishery. The Pacific Council may choose a different control date or a management program that does not make use of such a date. The Pacific Council may also choose to take no further action to control entry or access to the fishery. Any action by the Pacific Council will be taken pursuant to the requirement for FMP development established under the Magnuson-Stevens Act.

This advance notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

Trawl IQ Program Control Date Clarification

As announced in the **Federal Register** on January 9, 2004 in an advanced notice of proposed rulemaking (69 FR 1563), the Pacific Council is considering implementing an IQ program for the Pacific Coast groundfish limited entry trawl fishery off Washington, Oregon and California. In advance of a rulemaking on the trawl IQ program, that notice announced a control date of November 6, 2003, for the trawl IQ program as follows: ''the control date for the trawl IQ program is intended to discourage increased fishing effort in the limited entry trawl fishery based on economic speculation while the Pacific Council develops and considers a trawl IQ program. This control date will apply to any person potentially eligible for IQ shares. Persons potentially eligible for IQ shares may include vessel owners, permit owners, vessel operators, and crew.'' To clarify, the control date for the trawl IQ program does not preclude processors from being eligible to own quota in the trawl IQ program should the Pacific Council approve and NMFS implement a trawl IQ program.

In addition, as mentioned above under the control date for spiny dogfish, the control date previously announced for the trawl IQ program does not commit the Pacific Council to developing any particular management regime or to use any specific criteria for determining entry into the trawl IQ program. The Pacific Council may choose a different control date or a management program that does not make use of such a date. The Pacific Council may also choose to take no further action. Any action by the Pacific Council will be taken pursuant to the requirement for FMP development established under the Magnuson-Stevens Act.

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

Dated: May 18, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–10352 Filed 5–23–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 99
Tuesday, May 24, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Forest Service

Title: 36 CFR Part 228, Subpart A—Locatable Minerals.

OMB Control Number: 0596–0022.

Summary of Collection: The United States Mining Law of 1982, as amended, governs the prospecting for and appropriation of metallic and most nonmetallic minerals on 192 millions acres of National Forest set up by proclamation from the public domain. It gives individuals the right to search for and extract valuable mineral deposits of locatable minerals and secure title to the lands involved. Recording that claim in the local courthouse and with the appropriate BLM State Office affords protection to the mining claimant from subsequent locators. A mining claimant is entitled to reasonable access to claim for further prospecting, mining or necessary related activities, subject to the other laws and applicable regulations. The purpose of the regulations at 36 CFR part 228, subpart A, is to set some specific rules and procedures through which use of the surface of National Forest System lands in connection with mineral operations authorized by the United States mining laws shall be conducted so as to minimize adverse environmental impacts on surface resources. The Forest Service (FS) will collect information using form FS 2800–5, Plan of Operations for Mining Activities on National Forest System Lands.

Need and Use of the Information: FS will collect information requirements for a Notice of Intent to include the name, address, and telephone number of the operator; the area involved; the nature of the proposed operations; the route of access to the area of operations and the method of transport. The information requirements for a Plan of Operations includes: The name and legal mailing address of the operators; a description of the type of operations proposed; a description of how it would be conducted; a description of the type and standard of existing/proposed roads/access route; a description of the means of transportation to be used; a description of the period during which the proposed activity will take place; and measures to meet the environmental protection requirements. The information requirements for a cessation of operation include: Verification to maintain the structures, equipment and other facilities; expected reopening date; estimate of extended duration of operations; and maintenance of the site, structure, equipment and other facilities during nonoperating periods.

Description of Respondents: Business or other for-profit.

Number of Respondents: 2,151.

Frequency of Responses: Reporting: other (approved for a given period).

Total Burden Hours: 8,699.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–10256 Filed 5–23–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Request for Applications (RFA): Research and Development Risk Management Research Partnerships; Correction

Announcement Type: Notice of availability of funds and request for application for risk management research partnerships; Correction.

CFDA Number: 10.456.

Dates: The closing date and time for receipt of an application is 5:00 p.m. C.D.T. on July 5, 2005. Applications received after the deadline will not be evaluated by the technical review panel and will not be considered for funding. All awards will be made and agreements completed no later than September 30, 2005.

Summary: Due to technical errors, the following notice supersedes the original Request for Applications, published on May 6, 2005, for Research and Development Risk Management Research Partnerships at 70 FR 23969–23975.

Overview: The purpose of the Risk Management Research Partnerships is to fund the development of non-insurance risk management tools that will be utilized by agricultural producers to assist them in mitigating the risks inherent in agricultural production. The proposals must address at least one of the ten objectives listed in part I.D. In addition, all proposals must clearly demonstrate the usefulness and benefits of the tool to producers of priority commodities and provide a plan for ongoing maintenance and support as

described in part III.C.2. Approximately $4 million is available to fund an undetermined number of partnerships. Projects may be funded for a period of up to three years. Applications are accepted from public and private entities; individuals are not eligible to apply. No cost sharing by the applicant is required. There are no limitations on the number of applications each applicant may submit.

I. Funding Opportunity Description

A. Background

The Risk Management Agency (RMA), on behalf of the Federal Crop Insurance Corporation (FCIC), is committed to meeting the risk management needs and improving or developing risk management tools for the nation's farmers and ranchers. It does this by offering Federal crop insurance and other risk management products and tools through a network of private-sector entities and by overseeing the creation of new products, seeking enhancements in existing products, and by expanding the use of a variety of risk management tools. Risk management tools include a variety of risk management options and strategies developed to assist producers in mitigating the risks inherent in agricultural production. Risk management tools may include: Financial management tools to mitigate price and production risks; tools to enhance measurement and prediction of risks in order to facilitate risk diversification; tools to improve production management, harvesting, record keeping or marketing. For the purposes of this announcement, risk management tools do not include insurance products, plans of insurance, policies, modifications thereof or any related material.

B. Purpose

The purpose of this program is to fund partnership agreements that assist producers, minimize their production risks, and/or develop risk management tools. The agreements are for the development of risk management tools for use directly by agricultural producers. To aid in meeting these goals each partnership agreement awarded through this program will provide the recipient with funds, guidance, and the substantial involvement of RMA to carry out these risk management initiatives. Applications requesting funding for the development of insurance products, plans of insurance, policies, modifications thereof or related materials are excluded from consideration under this announcement.

C. Authorization

In accordance with section 522(d) of the Federal Crop Insurance Act (Act), FCIC announces the availability of funding for risk management research activities. Priority will be given to those activities addressing the need for risk management tools for producers of the following agricultural commodities (For purposes of this announcement, these commodities are collectively referred to as ''Priority Commodities.''):

- *Agricultural commodities covered by section 196 of the Agricultural Market Transition Act (7 U.S.C. 7333) (Noninsured Assistance Program (NAP))*. Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.
- *Specialty crops*. Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.
- *Underserved commodities*. This group includes: (a) Commodities, including livestock that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock, with inadequate crop insurance coverage.

D. Objectives

The project objectives listed below highlight the research priorities of RMA. The objectives are listed in priority order, with the most important objective designated as 1, the second most important designated as 2, *etc.* The order of priority will be considered in making awards. The suggested emphasis discussed within each objective is not meant to be exhaustive. Applicants may propose other topics within any project objective but justification for those topics must be provided.

RMA encourages proposals that address multiple risks and will result in the development of tools that provide an integrated or holistic approach to risk mitigation. Preference will be given to such proposals.

Proposals may address multiple objectives, but each proposal must specify a single primary objective for funding purposes.

In the order of priority, the project objectives are:

1.To develop risk management tools to assist producers in finding alternative products, techniques or strategies related to disease management (*e.g.*, soybean rust) and/or pest mitigation under various farming practices.

2. To develop risk management tools to assist producers in reducing the impact of multiple-year losses, such as the multiple-year losses due to sustained or recurring drought and to increase the economic and production stability of agricultural producers.

3. To develop risk management tools to assist forage and rangeland producers in improving techniques for one or more of the following: Managing production, *e.g.*, optimization of grazing patterns; establishing and maintaining forage production records; drought mitigation; and harvesting or marketing production.

4. To develop risk management tools to assist limited resource and/or traditionally underserved farmers and ranchers and/or producers with limited English language proficiency that traditionally produce agricultural commodities covered by NAP, specialty crops and underserved agricultural commodities. The tools developed under this objective should address risks that may be specific to the targeted producers and/or will assist the targeted producers in gaining meaningful access to existing risk management tools and information. (Definitions: A limited resource farmer is a producer or operator of a farm with an annual gross income of $20,000 or less derived from all sources of revenue or a producer on a farm of less than 25 acres (aggregated for all crops) where a majority of the producer's gross income from farming operations does not exceed $20,000; and/or direct or indirect gross farm sales not more than $100,000 in each of the previous two years adjusted for inflation using Prices Paid by Farmer Index as compiled by the National Agricultural Statistical Service (NASS) and 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 two years (to be determined annually using Commerce Department Data). Underserved farmers and ranchers include: Women, African Americans, Asians and Pacific Islanders, American Indians, Alaskan Natives, and Hispanics.)

5. To develop risk management tools to assist livestock producers in improving techniques for one or more of the following: planning and managing the production of livestock, including disease management and control; improving techniques for breeding of

livestock; and managing price, revenue, or production and market risks.

6. To develop risk management tools to assist agricultural producers in developing a better understanding of the interaction of financial markets, marketing, crop insurance, and production costs and assist producers in the determination of the optimal combination of risk management strategies.

7. To clarify labor requirements and assist producers in complying with requirements to better meet the physically intense and time-compressed planting, tending, and harvesting requirements associated with the production of specialty crops and underserved agricultural commodities.

8. To develop risk management tools encouraging self-protection for production agricultural enterprises vulnerable to losses due to terrorism.

9. To provide risk management tools to State foresters or equivalent officials for the prescribed use of burning on private forest land for the prevention, control and suppression of fire.

10. To develop risk management tools to further increase the economic and production stability of wild salmon fishermen.

II. Award Information

A. Award Description

Approximately $4 million is available for partnership agreements that will fund the development of risk management tools. Awards under this program will be made on a competitive basis. Projects may be funded for a period of up to three years for the activities described in this announcement. Projects can also be in two parts with the first part including the research and feasibility studies and the second part including the development, implementation, delivery and maintenance of the risk management tool. If the development of the tool is determined not to be feasible, the partnership may be terminated by RMA after completion of the first part with funding reduced accordingly.

There is no commitment by RMA to fund any particular project or to make a specific number of awards. Applicants awarded a partnership agreement for an amount that is less than the amount requested will be required to modify their application to conform to the reduced amount before execution of the partnership agreement. No maximum or minimum funding levels have been established for individual projects. All awards will be made and agreements completed no later than September 30, 2005.

Recipients of awards must demonstrate non-financial benefits from a partnership agreement and must agree to substantial involvement of RMA in the project. RMA encourages collaborative efforts and geographic diversity of proposed projects.

In conducting activities to achieve the purpose of this proposed research, the recipient will be responsible for the activities listed under Section II. A. 1 of this part. RMA will be responsible for the activities listed under Section II. A. 2 of this part.

1. Recipient Activities

The applicant will be required to perform the following activities:

a. Finalize, in cooperation with RMA, the partnership agreement.

b. Finalize, in cooperation with RMA, the plan to administer, maintain and update the risk management tool in the future. The applicant must develop a plan for the delivery of the risk management tool to producers and the ongoing maintenance and support of the risk management tool, including how the applicant will fund the delivery, support, maintenance and updating of the tool to maintain its applicability, benefits, usefulness, and value to producers. The applicant must also deliver the risk management tool to producers and support, maintain and update the tool as applicable.

c. Define non-financial benefits and the substantial involvement of the RMA.

d. Coordinate, manage, document and implement the timely completion of the approved research and development activities.

e. Abide by the plans and provisions contained in the partnership agreement.

f. Report on program performance in accordance with the partnership agreement.

g. The recipient may be required to make a presentation to the FCIC Board of Directors.

h. Adhere to RMA guidelines for systems development and information technology development.

2. RMA Activities

RMA will be substantially involved during the performance of the funded activity. Potential types of substantial involvement may include, but are not limited to the following activities:

a. Collaborate on the research plan;

b. Assist in the selection of subcontractors and project staff;

c. Review and approve critical stages of project development before subsequent stages may be started;

d. Provide assistance in the management or technical performance of the project;

e. Collaborate with the recipient in the development of materials associated with the funded project, as it relates to publication or presentation of the results and the distribution of the risk management tools to the public, any producer groups, RMA, and the FCIC Board of Directors;

f. Assist in the collection of data and information that may be available in RMA databases;

g. Collaborate with the recipient in the development of a proposal to administer, maintain and update the risk management tool in the future; and

h. Similar type of activities.

B. Other Activities

In addition to the specific activities listed above, the applicant may suggest other activities that would contribute directly to the purpose of this program. For any additional activity suggested, the applicant should identify the objective of the activity, the specific tasks required to meet the objective, specific timelines for performing the tasks, and specific responsibilities of the partners. For any additional activity suggested, the applicant should identify specific ways in which RMA could or should have substantial involvement in that activity.

III. Eligibility Information

A. Eligible Applicants

Proposals are invited from qualified public and private entities. Eligible applicants include colleges and universities, Federal, State, and local agencies, Native American tribal organizations, non-profit and for-profit private organizations or corporations, and other entities. Individuals are not eligible applicants.

Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (*e.g.,* debarment and suspension; a determination of non-performance on a prior contract, cooperative agreement, grant or partnership; a determination of a violation of applicable ethical standards).

B. Cost Sharing or Matching

Cost sharing, matching, in-kind contributions, or cost participation is not required.

C. Other

1. Applicants must demonstrate the usefulness of the proposed risk management tool and the benefits of the tool to producers of priority commodities. Applicants must include

information supporting the need for the tool, such as a market analysis, or communications from producers or producer organizations expressing a need for the proposed tool. The proposal must also clearly define how the proposed tool will meet the needs of the producer groups identified. The second objective is that the proposed risk management tool meet specific identified needs of the producer and the proposed risk management tool be supported by the applicant without the need of resources from RMA. Refer to part V.B for the review and selection process.

2. If the project proposed for development requires ongoing maintenance, support and delivery to producers beyond the development stage, the applicant must submit a plan to continue the maintenance, support and delivery of the tool without relying on RMA's resources. If the applicant does not plan to directly support, maintain and deliver the tool using non-award funds after the development period funded by this award is completed, then the proposal should identify a third party sponsor who will do so. For example, if a proposed tool would require constant updating of data and availability on a website in order to be utilized by producers, then a sponsor should be identified that would be able to provide the funds necessary to maintain and host the tool. Third party sponsors may include government agencies, grower organizations, industry organizations, private sector entities, etc. If the tool proposed does not require support, maintenance, updating or revisions to maintain applicability or value or does not require continued delivery to producers, the proposal should so state and provide the basis why such actions are not required. Refer to part V.B for the review and selection process.

3. Applicants must be able to demonstrate they will receive non-financial benefits as a result of the partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete educational programs). Refer to part V.A.2 for evaluation criteria.

IV. Application and Submission Information

A. Address To Request Application Package

Applicants may download an application package from the Risk Management Agency Web site at: *http://www.rma.usda.gov.* Applicants may also request an application package from: RMA/RED Partnership Agreement Program, USDA, RMA/RED, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133–4676, phone: (816) 926–6343, fax: (816) 926–7343, e-mail: *RMARED.Application@rma.usda.gov.*

Completed and signed application packages must be sent to: RMA/RED Partnership Agreement Program, USDA, RMA/RED, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133–4676. Applicants are encouraged to submit completed and signed application packages using overnight mail or delivery service to ensure timely receipt by the USDA. Applicants using the U.S. Postal Service should allow for extra security-processing time for mail delivered to government offices.

B. Content and Form of Application Submission

A complete and valid application package must include an original, twelve complete paper copies are requested, three copies are required, and one copy (Microsoft Word format preferred) of the application package on diskette or compact disc, and:

1. A completed and signed OMB Standard Form 424, ''Application for Federal Assistance.''
2. A completed and signed OMB Standard Form 424–A, ''Budget Information—Non-construction Programs.'' Reviewers will need sufficient information to effectively evaluate the budget. Indirect cost for projects submitted in response to this solicitation are limited to 10 percent of the total direct cost of the agreement. A sample budget narrative, including suggestions for format and content, is available on the RMA Web site (*http://www.rma.usda.gov*) or upon request.
3. A completed and signed OMB Standard Form 424–B, ''Assurances, Non-construction Programs.''
4. A completed and signed OMB Standard Form LLL, ''Disclosure of Lobbying Activities.''
5. A completed and signed AD–1047, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters (Primary Covered Transactions.'')
6. A completed and signed AD–1049, ''Certification Regarding Drug-Free Workplace.''
7. A statement of the non-financial benefits of any partnership agreement to the recipient. (Refer to part II.B ''Non-financial Benefits.'')
8. A completed Form R&D–1, ''Title Page and Proposal Summary.'' Each proposal must specify the single primary objective for evaluation and funding purposes. The same or similar proposals cannot be submitted multiple times with different primary objectives specified. If the same or similar proposals are submitted, the first received will be the only one evaluated.
9. A proposal narrative submitted with the application package should be limited to 10 single-sided pages. Reviewers will need sufficient information to effectively evaluate the application under the criteria contained in part V. A sample narrative, including suggestions for format and content, is available on the RMA website (*http://www.rma.usda.gov*) or upon request.
10. An appendix containing any attachments that may support information in the narrative (Optional).
11. A completed Form R&D–2, ''Statement of Work.''

Applicants are responsible for ensuring the application materials are received by the closing date. Incomplete application packages will not receive further consideration.

C. Submission Dates and Times

The closing date and time for receipt of an application is 5 p.m. CDT on July 5, 2005. Applications received after the deadline will not be evaluated by the technical review panel and will not be considered for funding.

D. Funding Restrictions

No maximum or minimum funding levels have been established for individual projects or for categories of objectives. The funding level by category of objective will be determined by FCIC. Indirect cost for projects submitted in response to this solicitation are limited to 10 percent of total direct cost of the agreement. Each project may be funded for a period of up to three years for the activities described in this announcement.

Partnership agreement funds may not be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;
2. To purchase, rent, or install fixed equipment;
3. Repair or maintain privately owned vehicles;
4. Pay for the preparation of the partnership application;
5. Fund political activities;
6. Pay costs incurred prior to receiving this partnership agreement;

7. Fund any activities prohibited in 7 CFR Parts 3015 and 3019, as applicable.

E. Other Submission Requirements

1. An original and twelve (12) paper copies are requested, three copies are required, of the complete and signed application, and one copy (Microsoft Word format preferred) on diskette or compact disc must be submitted in one package at the time of initial submission.

2. All applications must be submitted and received by the deadline. Applications that do not meet all of the requirements in this announcement are considered incomplete applications. Late or incomplete applications will not be considered in this competition and will be returned to the applicant.

3. Applications will be considered as meeting the announced deadline if they are received in the mailroom at the address stated above service on or before the deadline. Applicants are cautioned that express, overnight mail or other delivery services do not always deliver as agreed. Applicants are responsible for mailing applications well in advance, to ensure that applications are received on or before the deadline time and date. Applicants should be aware that there may be significant delays in delivery if applications are mailed using the U.S. Postal Service due to the additional security measures that mail delivered to government offices now require. Applicants should take this into account because failure of such delivery services will not extend the deadline.

4. Although the application package may be downloaded electronically, RMA cannot accommodate transmissions of application submissions by facsimile or through other electronic media. Therefore, applications transmitted electronically will not be accepted regardless of the date or time of submission or the time of receipt.

V. Application Review Information

A. Criteria

1. Research Objectives—Maximum 40 points

The application must receive a minimum score of 28 points under this criterion in order to be considered for further evaluation and funding. Applications receiving less than 28 points will be eliminated and will not be evaluated under criteria 2 through 4.

The proposal must clearly define the development, management and implementation of a risk management tool designed to meet the needs of the producers outlined for at least one of the objectives listed in part I.D. Proposals that best meet the objective and are innovative, clear, concise, useful, easy to understand, and address multiple risks that result in the development of tools that provide an integrated or holistic approach to risk mitigation will be given the highest score. The proposal will be reviewed to determine if it is similar to a project that has been funded, has been recommended for funding, or is currently under development through other means.

2. Indication of RMA Involvement and Non-Financial Benefits—Maximum 10 Points

The proposal clearly indicates areas of substantial involvement by RMA and clearly indicates benefits derived from the partnership that extend beyond the financial benefits or funding of the research proposal. Those proposals that clearly outline the involvement of RMA in all aspects of the project and demonstrate non-financial benefit will receive the highest score. Examples of non-financial benefits would be the benefits derived by an educational institution by providing research opportunities to students or benefits derived through the furtherance of an organization's mission.

3. Research Approach, Methodology, Development and Implementation—Maximum 40 Points

The proposal clearly demonstrates a sound research approach and defines the methodology to be used as well as describes the development and implementation of the risk management tool. Proposals that demonstrate a clear, concise and generally accepted research methodology and innovative approach will receive the highest number of points.

4. Management—Maximum 10 Points

The proposal clearly demonstrates the applicant's ability and resources to coordinate and manage all aspects of the proposed research project. The applicant whose approach is the most cost effective and optimizes the use and effective application of the funding will receive the highest score.

B. Review and Selection Process

Each application will be evaluated using a five-part process. First, each application will be screened by RMA to ensure that each proposal specifies a single primary objective for evaluation and funding purposes and the proposal meets the objectives stated in part I.D. The same or similar proposals cannot be submitted multiple times with different primary objectives specified. If the same or similar proposals are submitted, the first received will be the only one evaluated. Applications that do not meet the objectives stated in part I.D and all other requirements in this announcement or are incomplete will not receive further consideration.

Second, the proposal must clearly demonstrate the usefulness of the tool and the benefits of the tool to producers of priority commodities and demonstrate that there is a reasonable expectation that the tool will actually be used by a substantial number of such producers. Any proposal that does not do this will not receive further consideration.

Third, the plan will be evaluated to ensure that the risk management tool can be delivered to producers and will be supported, maintained, updated or revised as necessary. Any proposal where the plan does not adequately address each of these issues will not receive further consideration. If the plan states that such actions are not necessary, the basis for such a determination will be evaluated and the proposal reviewed to determine if such determination is reasonable. If it is determined that any such actions are required and they are not contained in the plan, the proposal will not receive further consideration.

Fourth, all eligible applications will be evaluated using the criterion in part V.A.1. Applications must score at least 28 points under this criteria in order to be to be evaluated further.

Fifth, all applications scoring the required 28 points will be evaluated further under part V.A.2 through 4.

For the second and third steps, a review panel will consider all applications that are complete and meet the objectives in part I.D. and all other requirements in this announcement. If the panel determines that an application is eligible to be reviewed under steps four and five, the review panel will review the merits of the applications. The evaluation of each application will be conducted by a panel of not less than three independent reviewers. The panel will be comprised of representatives from USDA, other federal agencies, and others representing public and private organizations, as needed. The narrative and any appendixes provided by each applicant will be used by the review panel to evaluate the merits of the project that is being proposed for funding. The panel will examine and score applications based on the evaluation criteria and weights contained in part V.A.

In order to be considered for funding, a proposal must score at least 75 points.

For the last step, those applications meeting the minimum number of points will be listed in initial rank order by objective. The highest-ranking proposal for each objective will be funded in the order of priority (the highest ranking proposal meeting objective 1 will be funded first and the highest ranking proposal meeting objective 2 will be funded second, *etc.*). It is possible that funds could be exhausted before funding projects for every objective. If there are funds remaining, the process will be repeated until the funds are obligated. The projects selected for funding will be presented, along with funding level recommendations, to the Manager of FCIC, who will make the final decision on awarding of a partnership agreement.

If the Manager of FCIC determines that any application is sufficiently similar to a project that has been funded or has been recommended to be funded under this announcement or any other research and development program, then the Manager may elect to not fund that application in whole or in part.

VI. Award Administration Information

A. Award Notices

Receipt of applications will be acknowledged by e-mail, whenever possible. Therefore, each applicant is encouraged to provide an e-mail address in the application. If an e-mail address is not indicated on an application, receipt will be acknowledged by letter. There will be no notification of incomplete, unqualified or unfunded applications until the awards have been made.

When received by RMA, applications will be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should contact the Research and Development Division at (816) 926–6343.

B. Administrative and National Policy Requirements

1. Access to Panel Review Information

Upon written request, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

2. Notification of Partnership Agreement Awards and Notification of Non-Selection

Following approval of the applications selected for funding, notice of project approval and authority to draw down funds will be made to the selected applicants in writing. Within the limit of funds available for such purpose, the awarding official of RMA shall enter into partnership agreements with those applicants whose applications are judged to be most meritorious under the procedures set forth in this announcement. The partnership agreement provides the amount of Federal funds for use in the project period, the terms and conditions of the award, and the time period for the project.

The effective date of the partnership agreement shall be the date the agreement is executed by both parties. All funds provided to the applicant by FCIC must be expended solely for the purpose for which funds are obligated in accordance with the approved application and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied, as a result of any award made pursuant to this announcement.

Notification of denial of funding will be sent to applicants after final funding decisions have been made. Reasons for denial of funding can include incomplete proposals, proposals that did not meet the objectives, scored low or were duplicative.

3. Confidential Aspects of Proposals and Awards

When an application results in a partnership agreement, it becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within the application, including the basis for such designation. The original copy of a proposal that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the express written consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to award.

4. Administration

All partnership agreements are subject to 7 CFR part 3015.

5. Prohibitions and Requirements With Regard to Lobbying

All partnership agreements are subject to 7 CFR part 3018. A copy of the certification and disclosure forms must be submitted with the application.

6. Applicable OMB Circulars

All partnership agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars.

C. Reporting

Applicants awarded a partnership agreement will be required to submit quarterly progress and financial reports (SF–269) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period.

VII. Agency Contact

If applicants have any questions they may contact: USDA, RMA/RED, 6501 Beacon Drive, Stop 0813, Kansas City, Missouri 64133–4676, or phone: (816) 926–6343,or fax: (816) 926–7343,or e-mail: *RMARED.Application@rma.usda.gov.*

VIII. Other Information

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application.

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

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 05–10252 Filed 5–23–05; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Peninsula Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic Peninsula Resource Advisory Committee will meet on Thursday, June 16, 2005. The meeting will be held at the PUD Auditorium, 307 West Cota Street, Shelton, Washington. The meeting will begin at 9:30 a.m. and end at approximately 3:30 p.m. Agenda topics are: Approval of prior meeting minutes; approval of by-laws; update on prior-year Title III projects; update of national RAC training meeting; update on prior year Title II projects; review project proposals; select projects for recommendation for approval; and public comments. All Olympic Peninsula Resource Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, Province Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd., Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor, at (360) 956–2301.

Dated: May 17, 2005.

Dale Hom,

Forest Supervisor, Olympic National Forest.

[FR Doc. 05–10294 Filed 5–23–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Public Teleconference on the Rural Cooperative Development Grant Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of public teleconference.

SUMMARY: This notice is issued to inform non-profit entities interested in applying for the 2005 Rural Cooperative Development Grant Program that two teleconferences will be held to discuss the 2005 Notice of Solicitation of Applications.

DATES: The public teleconferences will be held on May 31 and June 2, starting at 1 p.m. eastern time. They will end by 4 p.m. unless concluded earlier. Interested entities must register by May 26.

ADDRESSES: Entities must register by submitting an e-mail or sending a letter to: Roberta D. Purcell, Deputy Administrator, Cooperative Programs, Rural Business-Cooperative Service, Room 4016–S, Stop 3250, 1400 Independence Avenue, SW., Washington, DC 20250–3250, *cpgrants@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Deputy Administrator, Cooperative Programs, Rural Business-Cooperative Service, Room 4016–S, Stop 3250, 1400 Independence Avenue, SW., Washington, DC 20250–3250, *cpgrants@usda.gov*, telephone: (202) 720–7558.

SUPPLEMENTARY INFORMATION: The teleconference will be conducted by representatives of the Department of Agriculture. The purpose of the teleconference is to discuss the Rural Cooperative Development Grant Notice of Solicitation of Applications published in the **Federal Register** on May 13, 2005 and to answer questions from interested applicants. Entities must register at the address listed above by May 26 in order to reserve a line and to obtain the teleconference number and pass code.

Dated: May 18, 2005.

Peter J. Thomas,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 05–10286 Filed 5–23–05; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology (VCAT), National Institute of Standards and Technology (NIST), will meet Tuesday, June 14, 2005, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include updates on NIST's activities and the U.S. Measurement System Initiative, presentations on Science and Technology Priorities in the Administration and R&D Spending Trends in the Federal Government, a VCAT Panel on Best Practices for Organizational Development, and two laboratory tours. Discussions scheduled to begin at 8:30 a.m. and to end at 9:30 a.m. on June 14, on the NIST budget, planning information and feedback sessions will be closed. Agenda may change to accommodate Committee business. The final agenda will be posted on the NIST web site. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Carolyn Peters no later than Thursday, June 9, and she will provide you with instructions for admittance. Mrs. Peter's email address is *carolyn.peters@nist.gov* and her phone number is (301) 975–5607.

DATES: The meeting will convene on June 14 at 8:30 a.m. and will adjourn at 5 p.m.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1000, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 27, 2004, that portions of the meeting of the Visiting Committee on Advanced Technology which deal with discussion of sensitive budget and planning information that would cause harm to third parties if publicly shared be closed in accordance with Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2.

Dated: May 19, 2005.

Richard F. Kayser,

Acting Deputy Director.

[FR Doc. 05–10332 Filed 5–23–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051905A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for an EFP to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) proposes to recommend that an EFP be issued in response to an application submitted by the Cornell Cooperative Extension of Suffolk County (Cornell). The EFP would allow one commercial fishing vessel to conduct a study examining vent sizes in black sea bass pots from approximately June 1, 2005, through May 31, 2006. The Assistant Regional Administrator has made a preliminary determination that the application contains all of the required information and warrants further consideration and that the activities to be authorized under the EFP would be consistent with the goals and objectives of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. However, further review and consultation may be necessary before a final determination is made to issue an EFP.

DATES: Comments on this action must be received on or before June 8, 2005.

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *DA5–127@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on Cornell Black Sea Bass Escape Vent EFP Proposal.'' 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 Cornell Black Sea Bass Escape Vent EFP Proposal.'' Comments may also be sent via fax to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, phone: 978–281–9326, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: On March 24, 2005, Cornell submitted an application for a continuation of their study of the effects of vent size and shape on black sea bass behavior and escapement from pot gear. The applicant has submitted a new EFP request for a continuation of the study they began in 2004. During 2004, the project conducted Research Set-Aside compensation trips to fund the research. The new EFP would allow the applicant to conduct the research portion of their project. The EFP would allow exemption from the Northeast (NE) lobster trap and tagging requirements at 50 CFR 697.19(a) and (c), the black sea bass gear restrictions for pot and trap gear (escape vent and marking) at § 648.144(b), and the black sea bass minimum size restrictions at § 648.143.

The exempted fishing activity involves research fishing in Federal waters. The sea trials would be conducted in the waters surrounding Long Island, New York, including the Atlantic Ocean, Block Island Sound, and Long Island Sound, from approximately June 1, 2005, through May 31, 2006. The sampling protocol lists the following vent sizes and configurations to be used in this study: Double circular 2.5–inch (6.4–cm) diameter (presently the standard size in the black sea bass fishery and the regulatory size for lobster in Lobster Management Area (LMA) 4); 5.75–inch (14.61–cm) by 2.0–inch (5.1–cm) rectangular (current regulatory size for lobster); double circular 2.625–inch (6.668–cm) diameter (required in the lobster fishery as of January 1, 2005, in all areas except LMA 1 and 6); single circular 2.375–inch (6.033–cm) diameter (current regulatory size for black sea bass); 2.0–inch (5.1–cm) square (current regulatory size for black sea bass). Vents would be placed in a side panel near the bottom of the pot. The pots would be set in blocks of six (five experimental, one control) with two blocks to a string. Ten strings would be hauled every 10 days. One additional string would be hauled every 40 days to estimate mortality. One federally permitted commercial fishing vessel would be used to conduct the research fishing trips.

It is estimated that 5,000 pounds of black sea bass and 500 pounds of lobster would be landed. It is further estimated that 1,000 pounds of black sea bass, 500 pounds of scup, and 200 pounds of lobster would be discarded. All bycatch would be released alive whenever possible. Sub-legal sized black sea bass would be retained in onboard live tanks for length frequency measurement and then released as soon as practicable. Fish would be landed in New York. Scientists from Cornell would be onboard during all research trips.

An EFP would be issued to one federally permitted commercial black sea bass vessel to exempt it from the regulations noted above. Exemption from the lobster and black sea bass trap requirements would allow the project to use pots in excess of the regulated pot limit while conducting the study. Exemption from the black sea bass minimum size restrictions would allow the vessels to temporarily retain sub-legal sized black sea bass to obtain length frequency measurements while conducting the study.

The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request.

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.

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

Dated: May 19, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–2589 Filed 5–23–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Request for Bilateral Textile Consultations with the Government of the People's Republic of China and the Establishment of Import Limits for Cotton Knit Shirts and Blouses (Category 338/339); Cotton Trousers (Category 347/348); and Cotton and Man-Made Fiber Underwear (Category 352/652), Produced or Manufactured in the People's Republic of China

May 20, 2005.

AGENCY: Committee for the Implementation of Textile Agreements (Committee).

ACTION: Notice

EFFECTIVE DATE: May 23, 2005.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-

4212. For information on the quota status of these limits, refer to the Bureau of Customs and Border Protection website (http://www.cbp.gov), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

On May 23, 2005, as provided for under paragraph 242 of the Report of the Working Party on the Accession of China to the World Trade Organization (Accession Agreement), the United States requested consultations with the Government of the People's Republic of China with respect to imports of Chinese origin cotton knit shirts and blouses (Category 338/339); cotton trousers (Category 347/348); and cotton and man-made fiber underwear (Category 352/652). In accordance with paragraph 242 of the Accession Agreement and the procedures set forth by the Committee on May 21, 2003 (68 FR 27787), as clarified on August 18, 2003 (68 FR 49440), the United States is establishing limits on Chinese origin cotton knit shirts and blouses (Category 338/339); cotton trousers (Category 347/348); and cotton and man-made fiber underwear (Category 352/652), beginning on May 23, 2005 and extending through December 31, 2005 in order to assist in the implementation of these measures.

Paragraph 242 of the Accession Agreement allows World Trade Organization Members that believe imports of Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with the People's Republic of China with a view to easing or avoiding such market disruption. Upon receipt of the request, the People's Republic of China has agreed to hold its shipments to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made. Because this restraint period will be for less than 12 months, the restraint limit will be prorated to conform to the number of days remaining in the year, beginning on May 23, 2005. The Member requesting consultations may implement such a limit. Consistent with paragraph 242, consultations with the People's Republic of China will be held within 30 days of receipt of the request for consultations, and every effort will be made to reach agreement on a mutually satisfactory solution within 90 days of receipt of the request for consultations. If agreement on a different limit is reached, the Committee will issue a **Federal Register** Notice containing a directive to the Bureau of Customs and Border Protection to implement the negotiated limit.

Consistent with the terms of China's WTO Accession Agreement, these limits will only last through December 31, 2005. Therefore the 12-month notional limits, which are 7.5 percent above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made, are being prorated to correspond to the amount of days of the year covered by the restraint period. As they begin on May 23 and run through December 31, 2005, a period of 223 days, the notional limits will be prorated by a ratio of 223/365.

On April 8, 2005, the Committee solicited public comments on the self-initiated investigations request (70 FR 17978, 70 FR 17979, 69 FR 17980). This public comment period ended on May 9, 2005. The public comment period had also ended for the threat-based requests filed last fall covering the same three product categories (69 FR 64912, 69 FR 64034, 69 FR 64914). The Committee determined that imports of Chinese cotton knit shirts and blouses (Category 338/339); cotton trousers (Category 347/348); and cotton and man-made fiber underwear (Category 352/652), due to market disruption and the threat of market disruption, threatening to impede the orderly development of trade in these textile products, and that imports of cotton knit shirts and blouses (Category 338/339); cotton trousers (Category 347/348); and cotton and man-made fiber underwear (Category 352/652) from China play a significant role in the existence and threat of market disruption. A summary statement of the reasons and justifications for the U.S. request for consultations concerning imports of Categories 338/339, 347/348, and 352/652 from the People's Republic of China follows this notice.

A description of the textile and apparel categories in terms of Harmonized Tariff Schedule of the United States numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2005). Information regarding the 2005 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 20, 2005.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 23, 2005, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton knit shirts and blouses (Category 338/339); cotton trousers (Category 347/348); and cotton and man-made fiber underwear (Category 352/652), produced or manufactured in the People's Republic of China and exported during the period beginning on May 23, 2005, and extending through December 31, 2005, in excess of the following limits.

Category	Quantity
338/339	4,704,115 dozen.
347/348	4,340,638 dozen.
352/652	5,062,892 dozen.

Products which have been exported to the United States prior to May 23, 2005, shall not be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

SUMMARY OF REASONS AND JUSTIFICATIONS FOR U.S. REQUEST FOR CONSULTATIONS WITH CHINA PURSUANT TO PARAGRAPH 242 OF THE REPORT OF THE WORKING PARTY ON THE ACCESSION OF CHINA TO THE WORLD TRADE ORGANIZATION

Cotton Knit Shirts and Blouses

Category 338/339

The United States believes that imports of Chinese origin cotton knit shirts and blouses are, due to the existence of market disruption, threatening to impede the orderly development of trade in these products. Further, the United States believes that imports of Chinese origin cotton knit shirts and blouses are, due to the threat of market disruption, threatening to impede the orderly development of trade in these products. Either finding supports a request for consultations with the Government of the People's Republic of China under Paragraph 242 of the Report of the Working Party on the Accession of China to the World Trade Organization (''Paragraph 242''). The following facts, and others contained in this Statement, support these beliefs:

U.S. Imports from China Are Increasing Rapidly in Absolute Terms. U.S. imports of cotton knit shirts and blouses from China were 2,816,081 dozens for the entire twelve months of 2004. In the first quarter of 2005, U.S. imports from China increased to 7,137,399 dozens, an increase of 1,277 percent from the first quarter of 2004 and over two and a half times the level of total calendar year 2004 imports from China.

U.S. Imports from the World Are Increasing Rapidly in Absolute Terms. U.S. imports of cotton knit shirts and blouses from all sources, excluding cotton knit shirts and blouses containing U.S. components that were imported under outward processing programs, increased from 58,343 thousand dozens in the first quarter of 2004 to 68,354 thousand dozens in the first quarter of 2005 - an increase of 17 percent. Approximately two-thirds of this increase was attributable to imports from China.

The Average Unit Value of Imports from China Is Falling in 2005. In 2004, the average unit value of U.S. cotton knit shirts and blouses imports from China was US$99.57 per dozen. In the first three months of 2005, the average unit value of those imports fell to US$39.88 per dozen, compared to US$44.38 per dozen for ''rest of world'' imports.

SUMMARY OF REASONS AND JUSTIFICATIONS FOR U.S. REQUEST FOR CONSULTATIONS WITH CHINA PURSUANT TO PARAGRAPH 242 OF THE REPORT OF THE WORKING PARTY ON THE ACCESSION OF CHINA TO THE WORLD TRADE ORGANIZATION

Cotton Trousers, Slacks and Shorts

Category 347/348

The United States believes that imports of Chinese origin cotton trousers, slacks and shorts are, due to the existence of market disruption, threatening to impede the orderly development of trade in these products. Further, the United States believes that imports of Chinese origin cotton trousers, slacks and shorts are, due to the threat of market disruption, threatening to impede the orderly development of trade in these products. Either finding supports a request for consultations with the Government of the People's Republic of China under Paragraph 242 of the Report of the Working Party on the Accession of China to the World Trade Organization (''Paragraph 242''). The following facts, and others contained in this Statement, support these beliefs:

U.S. Imports from China Are Increasing Rapidly in Absolute Terms. U.S. imports of cotton trousers, slacks and shorts from China were 2,184,056 dozens for the entire twelve months of 2004. In the first quarter of 2005, U.S. imports from China increased to 6,794,375 dozens, an increase of 1,573 percent from the first quarter of 2004 and over three times the level of total calendar year 2004 imports from China.

U.S. Imports from the World Are Increasing Rapidly in Absolute Terms. U.S. imports of cotton trousers, slacks and shorts from all sources, excluding cotton trousers, slacks and shorts containing U.S. components that were imported under outward processing programs, increased from 32,194 thousand dozens in the first quarter of 2004 to 38,844 thousand dozens in the first quarter of 2005 - an increase of 21 percent. Over 90 percent of this increase was attributable to imports from China.

The Average Unit Value of Imports from China Is Falling in 2005. In 2004, the average unit value of U.S. cotton trousers, slacks and shorts imports from China was US$154.53 per dozen. In the first three months of 2005, the average unit value of those imports fell to US$66.64 per dozen, compared to US$82.07 per dozen for ''rest of world'' imports.

SUMMARY OF THE REASONS AND JUSTIFICATIONS FOR U.S. REQUEST FOR CONSULTATIONS WITH CHINA PURSUANT TO PARAGRAPH 242 OF THE REPORT OF THE WORKING PARTY ON THE ACCESSION OF CHINA TO THE WORLD TRADE ORGANIZATION

Cotton and Man-Made Fiber Underwear

Category 352/652

The United States believes that imports of Chinese origin cotton and man-made fiber underwear (''underwear'') are, due to the existence of market disruption, threatening to impede the orderly development of trade in these products. Further, the United States believes that imports of Chinese origin underwear are, due to the threat of market disruption, threatening to impede the orderly development of trade in these products. Either finding supports a request for consultations with the Government of the People's Republic of China under Paragraph 242 of the Report of the Working Party on the Accession of China to the World Trade Organization (''Paragraph 242''). The following facts, and others contained in this Statement, support these beliefs:

U.S. Imports from China Are Increasing Rapidly in Absolute Terms. U.S. imports of underwear from China were 5,211,785 dozens for the entire twelve months of 2004. In the first quarter of 2005, U.S. imports from China increased to 5,252,622 dozens, an increase of 318 percent from the first quarter of 2004.

U.S. Imports from the World Are Increasing Rapidly in Absolute Terms. U.S. imports of underwear from all sources, excluding underwear containing U.S. components that were imported under outward processing programs, increased from 28,468 thousand dozens in the first quarter of 2004 to 32,770 thousand dozens in the first quarter of 2005 - an increase of 15 percent. More than 90 percent of this increase was attributable to imports from China.

The Average Unit Value of Imports from China Is Falling in 2005. In 2004, the average unit value of U.S. underwear imports from China was US$31.46 per dozen. In the first three months of 2005, the average unit value of those imports fell to US$15.68 per dozen, compared to US$15.80 per dozen for ''rest of world'' imports.

[FR Doc. 05–10449 Filed 5–20–05; 2:11 pm]

BILLING CODE 3510–DS

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), (44 U.S.C. chapter 35). Copies of the ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Dave Bellama, 202–606–5000 ext. 483. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–4718, within 30 days from the date of this publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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, *e.g.*, permitting electronic submissions of responses.

Comments: A 60-day **Federal Register** notice for the Training and Technical Assistance Cooperative Agreements was published on February 14th, 2005. The comment period ended on April 15, 2005. No comments were received during this period.

Description: The Corporation is seeking approval of the Application Instructions: Training and Technical Assistance Cooperative Agreements, currently approved through emergency clearance. The application to be published by the Corporation's Office of Leadership Development and Training will be completed by applicant organizations interested in providing training and technical assistance (T/TA) services to the Corporation's grantees.

The application includes submission and compliance requirements, application instructions, selection criteria, and reporting requirements for applications selected for awards. This application will be completed electronically using the Corporation's Web-based grants management system, eGrants.

Type of Review: New; currently approved through emergency clearance.

Agency: Corporation for National and Community Service.

Title: Application Instructions: Training and Technical Assistance Cooperative Agreements.

OMB Number: 3045–0105.

Frequency: Once in three years for applicants. Selected applicants will report bi-annually.

Affected Public: Current and prospective training and technical assistance (T/TA) providers.

Number of Respondents: 75.

Estimated Time Per Respondent: Averages 80 hours per respondent for 75 applicants and 80 hours each for the 15 selected applicants to report annually on their performance.

Total Burden Hours: 7,200.

Total Burden Cost (capital/startup): None.

Total Annual Cost (operating/maintaining systems or purchasing services): None.

Dated: May 11, 2005.

Gretchen Van Der Veer,

Director, Office of Leadership Development and Training.

[FR Doc. 05–10357 Filed 5–23–05; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed reinstatement of its State Administrative Standards (hereinafter 'Standards') form. This form is used by the Corporation as one of its oversight and monitoring tools of the state commissions that are Corporation grantees.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 25, 2005.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, AmeriCorps*State/National; Attention Gayle Hilleke, Project Manager, State Administrative Standards, Room 9510; 1201 New York Avenue, NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 565–2789, Attention Gayle Hilleke, Project Manager, State Administrative Standards.

(4) Electronically through the Corporation's e-mail address system: *ghilleke@cns.gov*.

FOR FURTHER INFORMATION CONTACT: Gayle Hilleke, (202) 606–5000, ext. 431, or by e-mail at *ghilleke@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are expected 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 submissions of responses).

Background

The State Administrative Standards form was developed in 1999 in consultation with state commissions. State commissions collectively asked for clearly stated standards by which the Corporation would assess the adequacy of their administrative systems. Indicators of competency were developed for each element of the Standards. All fifty-two commissions were reviewed once using the Standards form. The Corporation took the next year and a half to assess the process, design a new risk-based approach (as suggested by our internal audit), and streamline the form by eliminating redundancies, combining similar items, and clarifying the language.

The information that is collected will help the Corporation determine the extent to which each state commission has in place the administrative systems for effective operation. The form will be used for both self- and external assessments of the state commissions. Assessment results will be used by grantees for continuous improvement and by the Corporation for guiding training and technical assistance resources, determining appropriate levels of grantee oversight, and determining eligibility for access to competitive funding.

Current Action

The Corporation seeks to reinstate and revise the previous form. When revised, the form will be reduced from eleven (11) standards containing a total of one hundred and nine (109) elements to eight (8) standards with a total of sixty (60) elements. The form will now be completed in eGrants. The form will otherwise be used in the same manner as the previous form.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: State Administrative Standards Forms.

OMB Numbers: 3045–0064: State Administrative Standards Form.

Agency Number: SF 424–NSSC.

Affected Public: State Commissions of the Corporation for National and Community Service.

Total Respondents: 53.

Frequency: An average of ten (10) commissions annually.

Average Time Per Response: 300 hours per state commission.

Estimated Total Burden Hours: 3000 hours per 10 state commissions.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 16, 2005.

Rosie K. Mauk,

Director, AmeriCorps.

[FR Doc. 05–10359 Filed 5–23–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 23, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: May 18, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: Impact Evaluation of Academic Instruction for After-School Programs.

Frequency: On Occasion.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 9,600

Burden Hours: 3,201.

Abstract: Data collection for impact evaluation of intensive academic reading and math instruction in after-school programs.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2703. When

you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–10290 Filed 5–23–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Implementation of Constitution Day and Citizenship Day on September 17 of Each Year

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of implementation of Constitution Day and Citizenship Day.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement announces that, pursuant to legislation passed by Congress, educational institutions receiving Federal funding are required to hold an educational program pertaining to the United States Constitution on September 17 of each year. This notice implements this provision as it applies to educational institutions receiving Federal funding from the Department.

FOR FURTHER INFORMATION CONTACT: Alex Stein, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W218, Washington, DC 20202–5910. Telephone: (202) 895–9085 or via Internet: *Alex.Stein@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in section.

SUPPLEMENTARY INFORMATION: This notice informs educational institutions receiving Federal funds from the U.S. Department of Education (Department) of a new statutory requirement for implementation of an educational program pertaining to the United States Constitution, on a date designated by statute as Constitution Day and Citizenship Day (''Constitution Day''). This Congressional initiative is authorized by Section 111 of Division J of Pub. L. 108–447, the ''Consolidated Appropriations Act, 2005,'' Dec. 8, 2004; 118 Stat. 2809, 3344–45 (Section 111). The Assistant Deputy Secretary for Innovation and Improvement (Assistant Deputy Secretary) takes this action in order to implement this provision as it applies to educational institutions receiving Federal funding from the Department.

Section 111(b) states ''[e]ach educational institution that receives Federal funds for a fiscal year shall hold an educational program on the United States Constitution on September 17 of such year for the students served by the educational institution.'' For purposes of the Department's implementation of this requirement, ''educational institutions'' includes but is not limited to ''local educational agencies'' and ''institutions of higher education'' receiving Federal funding from the Department.

Section 111 applies to all educational institutions receiving Federal funding, not only those receiving Federal funding from the Department. However, the Department's authority only extends to those educational institutions receiving funding from the Department, and consequently the Department can only regulate with regard to those institutions.

Section 111 requires that Constitution Day be held on September 17 of each year, commemorating the September 17, 1787 signing of the Constitution. However, when September 17 falls on a Saturday, Sunday, or holiday, Constitution Day shall be held during the preceding or following week.

Section 111 does not authorize funds to carry out this requirement, and Section 111(d) indicates that this section shall apply ''without fiscal year limitation.'' Accordingly, the Assistant Deputy Secretary intends that this notice pertain to this fiscal year and all subsequent years.

Some informational resources pertaining to the Constitution are listed below. In addition to these, the Department is aware that there may be other public and private resources available that may be helpful to educational institutions in implementing Constitution Day. While the Department does not endorse any particular program or Web site, this information is provided because it may be of use to educational institutions developing their Constitution Day programs.

One of the Library of Congress' repositories for Constitutional documents and information may be accessed at: *http://memory.loc.gov/ammem/bdsds/bdsdhome.html*.

The National Archives also has a Web site with a scan of the U.S. Constitution available online at: *http://www.archives.gov/national_archives_experience/charters/constitution.html*: In addition, the National Archives has a nationwide network of research facilities, including presidential libraries that welcome students as young as 14 years of age. Information about the facilities (by region and state) can be located online at: *http://www.archives.gov/facilities/index.html*.

In addition to the resources mentioned above, it is our understanding that the U.S. Office of Personnel Management will be making available to all Federal agencies, information to help train and educate Federal employees on the Constitution and, in particular, its relationship to the Oath of Office Federal employees take. This information will be posted shortly on the OPM Web site, at: *http://www.opm.gov/*. We expect that educational institutions may find this material useful in planning their Constitution Day activities.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *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: May 19, 2005.

Nina Shokraii Rees,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 05–10355 Filed 5–23–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–78–000, et al.]

Duquesne Power, L.P., et al.; Electric Rate and Corporate Filings

May 16, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Duquesne Power, L.P.

[Docket No. EC05–78–000]

Take notice that on May 10, 2005, Duquesne Power, L.P. (Duquesne Power) and Duquesne Light Company (DLC) submitted an application pursuant to section 203 of the Federal Power Act for authorization to complete an internal reorganization whereby Duquesne Power, which currently is an indirect wholly-owned subsidiary of DLC, will become a wholly-owned subsidiary of DQE Financial Corp. Duquesne Power states that the jurisdictional facility owned by Duquesne Power and indirectly included in this reorganization is Duquesne Power's Market-based Rate Tariff.

Duquesne Power states that a copy of the application was served on the Pennsylvania Public Utility Commission.

Comment Date: 5 p.m. eastern time on May 31, 2005.

2. Cinergy Services, Inc. on Behalf of PSI Energy, Inc. and the Cinncinnati Gas & Electric Company Cinergy Services, Inc., on Behalf of Allegheny Energy Supply Wheatland Generating Facility, LLC

[Docket No. EC05–79–000]

Take notice that on May 10, 2005, Allegheny Energy Supply Wheatland Generating Facility, LLC (Wheatland LLC), and Cinergy Services, Inc., on behalf of its franchised public utility affiliates, PSI Energy, Inc. and The Cincinnati Gas & Electric Company (Cinergy) (collectively, Applicants), tendered for filing an application requesting all necessary authorizations under section 203 of the Federal Power Act, 16 U.S.C. 824b (2000), for Wheatland LLC to transfer the 508 MW Wheatland Generating Facility located in Wheatland, Indiana, by sale from Wheatland LLC to Cinergy. Applicants have requested confidential treatment of the documents submitted in Exhibit I of the Application.

Applicants state that copies of this filing have been served on the Indiana Utility Regulatory Commission and the City of Piqua.

Comment Date: 5 p.m. eastern time on June 9, 2005.

3. TXU Pedricktown Cogeneration Company LP and Pedricktown Plant Holdings, LLC; TXU Pedricktown Cogeneration Company LP

[Docket No. EC05–80–000 and ER03–256–005]

Take notice that on May 11, 2005, TXU Pedricktown Cogeneration Company LP (TXU Pedricktown) and Pedricktown Plant Holdings, LLC (PPH) (together, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization for the disposition of jurisdictional facilities related to the transfer of 100 percent of the upstream ownership interests in TXU Pedricktown to PPH. Applicants state that TXU Pedricktown is an exempt wholesale generator under section 32 of the Public Utility Holding Company Act of 1935, that owns and operates a 122 MW cogeneration facility located in Pedricktown, New Jersey. Applicants have requested confidential treatment of Exhibit I to the Application. In addition, TXU Pedricktown has submitted a notice of change in status in Docket No. ER03–256.

Applicants state that copies of the filing were served upon all persons listed on the official service list in Docket No. ER03–256.

Comment Date: 5 p.m. eastern time on June 1, 2005.

4. Brownsville Power I, L.L.C.; Caledonia Power I, L.L.C.; CinCap IV, LLC; CinCap V, LLC; Cinergy Capital & Trading, Inc.; the Cincinnati Gas & Electric Co.; Cinergy Power Investments, Inc.; PSI Energy, Inc.; St. Paul Cogeneration, LLC

[Docket Nos. ER00–826–002; ER00–828–002; ER98–421–013, ER98–4055–010, ER01–1337–005, ER96–2504–010; ER02–177–006; ER96–2506–008; ER03–1212–004]

Take notice that on May 10, 2005, Brownsville Power I, LLC, Caledonia Power I, L.L.C. CinCap IV, LLC, CinCap V, LLC, Cinergy Capital & Trading, Inc., The Cincinnati Gas & Electric Co. (CG&E), Cinergy Power Investments, Inc., St. Paul Cogeneration, LLC, and PSI Energy, Inc. (PSI), each of which are direct or indirect subsidiaries of Cinergy Corporation (Cinergy) (collectively, the Cinergy Entities), tendered for filing a notice of change in status.

Comment Date: 5 p.m. eastern time on May 31, 2005.

5. Reserved

6. Choctaw Generation Limited Partnership

[Docket No. ER98–3774–003]

Take notice that on May 10, 2005, Choctaw Generation Limited Partnership, (Choctaw) submitted a notification of change in status.

Comment Date: 5 p.m. eastern time on May 31, 2005.

7. Phelps Dodge Energy Services, LLC

[Docket No. ER99–2923–002]

Take notice that on May 10, 2005, Phelps Dodge Energy Services, LLC (PDES) submitted for filing its triennial market power update and its revised market-based tariff reflecting the incorporation of the Reporting Requirement adopted in Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority,* 110 FERC ¶ 61,097 (2005). PDES also submitted a notification of change in status.

Comment Date: 5 p.m. eastern time on May 31, 2005.

8. Trigen-Syracuse Energy Corporation

[Docket No. ER00–2603–003]

Take notice that on May 10, 2005, Trigen-Syracuse Energy Corporation, (Syracuse) submitted a notification of change in status.

Comment Date: 5 p.m. eastern time on May 31, 2005.

9. New Mexico Electric Marketing, LLC

[Docket No. ER02–77–004]

Take notice that on May 11, 2005, New Mexico Electric Marketing, LLC, (NewMex) submitted for filing substitute pages to its Rate Schedule FERC No. 1 filed on December 10, 2004 in Docket No. ER02–77–002 and amended on March 9, 2005 in Docket No. ER02–77–003.

Comment Date: 5 p.m. eastern time on May 23, 2005.

10. PJM Interconnection, L.L.C.

[Docket Nos. ER05–605–001 and EL05–90–001]

Take notice that, on May 4, 2005, PJM Interconnection, L.L.C. (PJM) submitted a substitute interconnection service agreement and a substitute construction service agreement in compliance with the Commission's order issued April 19, 2005, in *PJM Interconnection, L.L.C.,* 111 FERC ¶ 61,098 (2005).

PJM states that copies of the filing were served on parties on the official service list in the above-captioned proceedings.

Comment Date: 5 p.m. eastern time on May 25, 2005.

11. Spring Canyon Energy LLC

[Docket No. ER05–717–001]

Take notice that on May 13, 2005, Spring Canyon Energy LLC, (Spring Canyon) submitted an amendment to it March 21, 2005 filing in Docket No. ER05–717–000 an application for market-based rate authorization and its proposed market-based rate taiff.

Comment Date: 5 p.m. eastern time on May 20, 2005.

12. Judith Gap Energy LLC

[Docket No. ER05–721–001]

Take notice that on May 13, 2005, Judith Gap Energy LLC (Judith Gap) filed an amendment to its March 21, 2005 filing in Docket No. ER05–721–000 an application for market-based rate authorization and its proposed market-based rate tariff.

Comment Date: 5 p.m. eastern time on May 20, 2005.

13. Western Systems Power Pool, Inc.

[Docket No. ER05–952–000]

Take notice that on May 10, 2005, the Western Systems Power Pool, Inc. (WSPP) submitted an amendment to the WSPP Agreement to include the City of Corona Department of Water and Power (Corona), DB Energy Trading LLC (DBET) and the City of Rancho Cucamonga (Rancho Cucamonga) as members of WSPP. The WSPP requests an effective date of March 9, 2005.

WSPP states that copies of WSPP's filing were served upon Corona, DBET and Rancho Cucamonga. In addition, WSPP states that copies of the filing were e-mailed to WSPP members who have supplied e-mail addresses for the Contract Committee and Contacts lists. This filing also has been posted on the WSPP homepage *(http://www.wspp.org).*

Comment Date: 5 p.m. eastern time on May 31, 2005.

14. Phelps Dodge Power Marketing, LLC

[Docket No. ER05–953–000]

Take notice that on May 10, 2005, Phelps Dodge Power Marketing, LLC submitted for filing, pursuant to section 205 of the Federal Power Act and Part 35 of the Commission's regulations an application for market-based rate authorization to sell energy, capacity, reassign transmission capacity and resell firm transmission rights. PDPM requests a waiver of the code of conduct and affiliate restrictions. PDPM also requests that the Commission grant the waivers and exemptions from regulations typically granted to the holders of market-based rate authorization.

Comment Date: 5 p.m. eastern time on May 31, 2005.

15. USGen New England, Inc.

[Docket No. ER05–954–000]

Take notice that on May 10, 2005, USGen New England, Inc. (USGenNE) submitted a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1—Market-Based Rate Schedule originally accepted for filing in Docket No. ER98–6–000. USGenNE requests an effective date of April 2, 2005.

USGenNE states that the Notice of the proposed cancellation has not been served on any party because USGen New England, Inc. is not currently engaged in any sales of electric power or entered into any power or related contracts with any purchasers.

Comment Date: 5 p.m. eastern time on May 31, 2005.

16. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–955–000]

Take notice that on May 11, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an interconnection and operating agreement among the City of Dike, Iowa, the Midwest ISO and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy. Midwest ISO requests an effective date of April 13, 2005.

Midwest ISO states that a copy of this filing was served on the City of Dike, Iowa and Interstate Power and Light Company.

Comment Date: 5 p.m. eastern time on June 1, 2005.

17. Encogen Northwest, L.P.

[Docket No. ER05–956–000]

Take notice that on May 11, 2005, Encogen Northwest, L.P. (Encogen) filed a notice of cancellation of its FERC Electric Tariff, Original Volume No. 1, originally accepted in Docket No. ER05–421–000. Encogen requests an effective date of May 6, 2005.

Comment Date: 5 p.m. eastern time on June 1, 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. E5–2594 Filed 5–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filings (Tuesday, May 17, 2005)

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER03–956–004.

Applicants: Duke Energy Marketing America, LLC.

Description: Duke Energy Marketing America, LLC submits revisions to its FERC Electric Tariff, Original Volume 1 under ER03–956.

Filed Date: 5/12/2005.

Accession Number: 20050516–0031.

Comment Date: 5 p.m. Eastern Time on Thursday, June 2, 2005.

Docket Numbers: ER05–576–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a compliance filing in order to report that it has no refund liability etc, pursuant to FERC's 4/13/05 Order under ER05–576.

Filed Date: 5/12/2005.

Accession Number: 20050516–0155.

Comment Date: 5 p.m. Eastern Time on Thursday, June 2, 2005.

Docket Numbers: ER05–587–001.
Applicants: Virginia Electric and Power Company.
Description: Virginia Electric & Power Co dba Dominion Virginia Power informs FERC that the date of integration into PJM Interconnection, LLC was completed and made effective on 5/1/05, pursuant to FERC's 4/5/05 Order under ER05–587.
Filed Date: 5/12/2005.
Accession Number: 20050516–0030.
Comment Date: 5 p.m. Eastern Time on Thursday, June 2, 2005.

Docket Numbers: ER05–729–000.
Applicants: Rainbow Energy Marketing Corporation.
Description: Rainbow Energy Marketing Corporation withdraws First Revised Sheet No. 1 to amend its FERC Electric Tariff at the request of Commission Staff under ER05–729.
Filed Date: 5/12/2005.
Accession Number: 20050512–5016.
Comment Date: 5 p.m. Eastern Time on Thursday, June 2, 2005.

Docket Numbers: ER05–957–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits an Interconnection & Operating Agreement with Turtle Mountain Community College, Inc et al., under ER05–957.
Filed Date: 5/12/2005.
Accession Number: 20050513–0046.
Comment Date: 5 p.m. Eastern Time on Thursday, June 2, 2005.

Docket Numbers: ER05–958–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits an Interconnection and Operating Agreement with Uilk Wind Farm LLC et al., pursuant to Section 205 of the Federal Power Act etc under ER05–958.
Filed Date: 5/12/2005.
Accession Number: 20050513–0047.
Comment Date: 5 p.m. Eastern Time on Thursday, June 2, 2005.

Docket Numbers: ER05–959–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc agent for Entergy Arkansas, Inc et al., submits the annual information filing containing the 2005 rate redetermination in accordance with the annual rate redetermination provisions of Appendix 1 etc ER05–959.
Filed Date: 5/12/2005.
Accession Number: 20050516–0054.
Comment Date: 5 p.m. Eastern Time on Thursday, June 2, 2005.

Docket Numbers: ER05–960–000.
Applicants: AEP Texas North Company.
Description: AEP Texas North Co submits an executed Interconnection Agreement with FPL Energy Horse Hollow Wind, LP dated 5/9/05 under ER05–960.
Filed Date: 5/12/2005.
Accession Number: 20050516–0026.
Comment Date: 5 p.m. Eastern Time on Thursday, June 2, 2005.

Docket Numbers: ER05–961–000.
Applicants: Pacific Gas & Electric Company.
Description: Pacific Gas & Electric Co submits a Generator Special Facilities Agreement with Tri-Dam Project of the South San Joaquin and Oakdale Irrigation District under ER05–961.
Filed Date: 5/12/2005.
Accession Number: 20050516–0027.
Comment Date: 5 p.m. Eastern Time on Thursday, June 2, 2005.

Docket Numbers: ER05–962–000.
Applicants: Entergy Services, Inc.
Description: Entergy Arkansas, Inc submits the thirty-fourth Amendment to the Power Coordination, Interchange and Transmission Service Agreement with Arkansas Electric Coop Corp dated 5/8/05 under ER05–962.
Filed Date: 5/12/2005.
Accession Number: 20050516–0028.
Comment Date: 5 p.m. Eastern Time on Thursday, June 2, 2005.

Docket Numbers: ER05–963–000.
Applicants: Alpena Power Marketing, L.L.C.
Description: Alpena Power Marketing, LLC submits a Notice of Cancellation and an Order 614 compliant cancelled rate schedule sheet terminating their market-based rate schedule under ER05–963.
Filed Date: 5/12/2005.
Accession Number: 20050516–0029.
Comment Date: 5 p.m. Eastern Time on Thursday, June 2, 2005.

Docket Numbers: ER00–2173–005; ER00–3219–005; ER01–1300–006.
Applicants: Northern Indiana Public Service Company.
Description: Northern Indiana Public Service Co et al. submits its compliance filing with FERC's 4/14/05 Order under ER00–2173 et al. Filed Date: 5/13/2005.
Accession Number: 20050516–0152.
Comment Date: 5 p.m. Eastern Time on Friday, June 3, 2005.

Docket Numbers: ER02–1437–002.
Applicants: Triton Power Michigan LLC.
Description: Triton Power Michigan LLC submits its Triennial Market Power Analysis in support of its market-based rate authorization etc under ER02–1437.
Filed Date: 5/13/2005.
Accession Number: 20050516–0156.
Comment Date: 5 p.m. Eastern Time on Friday, June 3, 2005.

Docket Numbers: ER02–1656–026.
Applicants: California Independent System Oper. Corp.
Description: Further amendments to the California Independent System Operator Corporation's amended comprehensive market design proposal under ER02–1656. Part 1 of 2.
Filed Date: 5/13/2005.
Accession Number: 20050517–0094.
Comment Date: 5 p.m. Eastern Time on Friday, June 3, 2005.

Docket Numbers: ER05–734–002.
Applicants: Energy Investments, LLC.
Description: Energy Investments, LLC submits an amendment to its 3/28/05 filing to include a description of the upstream ownership under ER05–734.
Filed Date: 5/13/2005.
Accession Number: 20050517–0285.
Comment Date: 5 p.m. Eastern Time on Friday, June 3, 2005.

Docket Numbers: ER05–964–000.
Applicants: TXU Electric Delivery Company.
Description: TXU Electric Delivery Co submits First Revised Sheet 34 to FERC Electric Tariff, Fourth Revised Volume 2 under ER05–964.
Filed Date: 5/13/2005.
Accession Number: 20050516–0101.
Comment Date: 5 p.m. Eastern Time on Friday, June 3, 2005.

Docket Numbers: ER05–965–000.
Applicants: TXU Electric Delivery Company.
Description: TXU Electric Delivery Co submits First Revised Sheet 28–29 & 37–38 to FERC Electric Tariff, Ninth Revised Volume 1 etc., to be effective 5/31/04 under ER05–965.
Filed Date: 5/13/2005.
Accession Number: 20050516–0100.
Comment Date: 5 p.m. Eastern Time on Friday, June 3, 2005.

Docket Numbers: ER05–966–000.
Applicants: Pacific Gas & Electric Company.
Description: Pacific Gas and Electric Co submits Shiloh Wind Partners LLC -Generator Special Facilities Agreement, executed on 3/23/05 etc., under ER05–966.
Filed Date: 5/13/2005.
Accession Number: 20050517–0180.
Comment Date: 5 p.m. Eastern Time on Friday, June 3, 2005.

Docket Numbers: ER05–967–000.
Applicants: Western Massachusetts Electric Company.
Description: Western Massachusetts Electric Co. submits the First Revised Service Agreement NU–IA–2 under ER05–967. Part 1 of 2.

Filed Date: 5/13/2005.
Accession Number: 20050516–0139.
Comment Date: 5 p.m. Eastern Time on Friday, June 3, 2005.

Docket Numbers: ER05–968–000.
Applicants: Basin Creek Equity Partners, LLC.
Description: Application of Basin Creek Equity Partners, LLC for Order Accepting Initial Market Based Rate Tariff and Granting Certain Waivers etc under ER05–968.
Filed Date: 5/13/2005.
Accession Number: 20050516–0157.
Comment Date: 5 p.m. Eastern Time on Friday, June 3, 2005.

Docket Numbers: ER99–1714–004.
Applicants: Lake Road Generating Company, LP.
Description: Lake Road Generating Co., LP submits its updated triennial market power analysis under ER99–1714.
Filed Date: 5/13/2005.
Accession Number: 20050517–0098.
Comment Date: 5 p.m. Eastern Time on Friday, June 3, 2005.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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 to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding (ER05– –000 docket numbers), interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at*http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling line to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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. E5–2595 Filed 5–23–05; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filings (Wednesday, May 18, 2005)

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER02–2595–009.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc.'s proposed revisions to Schedule 16 (Financial Transmission Rights Administrative Service Cost Recovery Adder) of the Open Access Transmission & Energy Markets Tariff, ER02–2595.
Filed Date: 5/16/2005.
Accession Number: 20050518–0003.
Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER05–969–000.
Applicants: Midwest Independent Transmission System Operator.
Description: Midwest Independent Transmission System Operator, Inc. submits a Large Generator Interconnection Agreement with Northern States Power Co dba Xcel Energy—Generation Function et al. under ER05–969.
Filed Date: 5/16/2005.
Accession Number: 20050517–0145.
Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER05–971–000.
Applicants: Indiana Municipal Power Agency.
Description: Indiana Municipal Power Agency submits an initial Rate Schedule 2 and supporting cost data to establish its revenue requirement for providing cost-based Reactive Supply and Voltage Control etc., under ER05–971.
Filed Date: 5/16/2005.
Accession Number: 20050518–0010.
Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER05–972–000.
Applicants: Southwest Power Pool.
Description: Southwest Power Pool, Inc. submits a revision to Attachment AD of its Open Access Transmission Tariff to incorporate an agreement with Southwestern Power Administration under ER05–972.
Filed Date: 5/16/2005.
Accession Number: 20050518–0007.
Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER05–973–000.
Applicants: ISO New England Inc.
Description: ISO New England, Inc. submits its Capitals Projects Report, and a schedule of the unamortized costs of the ISO's funded capital expenditures for the first quarter ending 3/31/05 under ER05–973.
Filed Date: 5/16/2005.
Accession Number: 20050518–0009.
Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER05–974–000.
Applicants: FirstEnergy Service Company.
Description: Cleveland Electric Illuminating Co et al., submits revised market based rate power sales tariff for wholesale sales of electric capacity & energy, FERC Electric Tariff, Second Revised Volume 2 of FirstEnergy Operating Companies.
Filed Date: 5/16/2005.
Accession Number: 20050518–0008.
Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER96–1551–012.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits First Revised Sheet 6 to FERC Electric Tariff, First Revised Volume 3 etc., under ER96–1551.
Filed Date: 5/16/2005.
Accession Number: 20050517–0287.
Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously

intervened in the same docket. 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 to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding (ER05– –000 docket numbers), interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2596 Filed 5–23–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

May 18, 2005.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission, Energy.

DATE AND TIME: May 25, 2005, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recorded listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

890TH—MEETING

Item No.	Docket No.	Company
	Administrative Agenda	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
	Markets, Tariffs, and Rates—Electric	
E–1	RM05–4–000	Interconnections for Wind Energy
E–2	RM05–16–000	Generator Run Status Information.
E–3	RM05–17–000	Information Requirements for Available Transfer Capability.
E–4	RM04–12–000	Accounting and Financial Reporting for Public Utilities Including RTOs.
E–5	PL05–1–000	Market Monitoring Units in Regional Transmission Organizations and Independent System Operators.
E–6	PL03–1–000	Pricing Policy for Efficient Operation and Expansion of Transmission Grid.
E–7	OMITTED.	
E–8	OMITTED.	
E–9	OMITTED.	
E–10	ER05–754–000	ISO New England Inc., New England Transmission; Owners: Boston Hydro-Electric Company, Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, Central Maine Power Company, Central Vermont Public Service Corporation, Green Mountain Power Corporation, New England Power Company, Northeast Utilities Service Company, The United Illuminating Company, and Vermont Electric Cooperative, Inc. Asset Owners in the United States portion of the Hydro-Quebec High Voltage Direct Current Transmission Facilities: New England Electric Transmission Corporation, Vermont Electric Transmission Company, New England Hydro-Transmission Electric Company, Inc and New England Hydro-Transmission Corporation.
E–11	ER05–741–000	Public Service Company of New Mexico.
E–12	ER05–742–000	Cambridge Electric Light Company and Commonwealth Electric Company.
E–13	ER05–763–000, ER04–1209–000, EL05–29–000, ER05–410–000.	Southern California Edison Company.
E–14	ER05–794–000, ER05–809–000	Midwest Independent Transmission System Operator, Inc.
E–15	ER05–802–000	Midwest Independent Transmission System, Operator, Inc.

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Item No.	Docket No.	Company
E–16	ER05–797–000	Orange and Rockland Utilities, Inc.
E–17	ER05–816–000	CES Marketing VI, LLC.
	ER05–817–000	CES Marketing VII, LLC.
	ER05–818–000	CES Marketing VIII, LLC.
	ER05–819–000	CES Marketing IX, LLC.
	ER05–820–000	CES Marketing X, LLC.
	ER01–480–003, ER01–480–004	Mobile Energy, LLC.
	ER01–915–002, ER01–915–003	CPN Pleasant Hill, LLC.
E–18	ER05–725–000, ER05–725–001	Deephaven RV Sub Fund Ltd.
E–19	ER98–2329–003, ER98–2329–004, ER98–2329–005.	Central Vermont Public Service Corporation.
E–20	OMITTED.	
E–21	ER04–156–006	Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, all d/b/a Allegheny Power. PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc.
	ER05–513–000	PJM Interconnection L.L.C.
	ER05–515–000	Baltimore Gas and Electric Company, and PEPCO Holdings Inc. operating affiliates: Potomac Electric Power Company, Delmarva Power & Light Company and Atlantic City Electric Company.
E–22	OMITTED.	
E–23	ER04–691–034, ER04–691–035, EL04–104–032, EL04–104–033.	Midwest Independent Transmission System Operator, Inc.
E–24	ER04–691–029	Midwest Independent Transmission System Operator, Inc.
	EL04–104–028	Public Utilities With Grandfathered Agreements in Midwest ISO Region.
E–25	ER01–205–007, ER01–205–005, ER01–205–004.	Xcel Energy Services, Inc.
	ER98–2640–005, ER98–2640–004	Northern States Power Company and Northern States Power Company (Wisconsin).
	ER98–4590–003, ER98–4590–002	Public Service Company of Colorado.
	ER99–1610–010, ER99–1610–009, ER99–1610–008.	Southwestern Public Service Company and New Century Services, Inc.
E–26	ER01–1527–004, ER01–1527–005, ER01–1527–006.	Sierra Pacific Power Company.
	ER01–1529–004, ER01–1529–005, ER01–1529–006.	Nevada Power Company.
E–27	ER01–2537–001	CalPeak Power—Midway LLC.
	ER01–2543–001	CalPeak Power—Panoche LLC.
	ER01–2544–001	CalPeak Power—Vaca Dixon LLC.
	ER01–2545–001	CalPeak Power—El Cajon LLC.
	ER01–2546–001	CalPeak Power—Enterprise LLC.
	ER01–2547–001	CalPeak Power—Border LLC.
E–28	ER04–1248–002	Union Light, Heat and Power Company and Cincinnati Gas & Electric Company.
E–29	ER02–388–003	HC Power Marketing LLC.
E–30	ER04–829–004, ER04–829–005	PJM Interconnection, L.L.C. and Virginia Electric and Power Company.
E–31	ER97–851–012, ER97–851–013, ER97–851–015.	H.Q. Energy Services (U.S.) Inc.
E–32	ER97–4345–015, ER97–4345–014, ER97–4345–016.	OGE Energy Resources, Inc.
	ER98–511–003, ER98–511–002, ER98–511–004.	Oklahoma Gas and Electric Company.
E–33	OMITTED.	
E–34	ER99–3855–003	Cleco Power LLC.
	ER99–2300–005, ER99–2300–004	Cleco Marketing & Trading LLC.
	ER99–2928–002, ER99–2928–001	Cleco Evangeline LLC.
	ER01–1397–003, ER01–1397–002	Perryville Energy Partners, L.L.C.
	ER02–1406–005, ER02–1406–004, ER02–1406–001.	Acadia Power Partners, LLC.
	ER01–2887–003	South Point Energy Center, LLC.
	ER99–2858–005, ER99–2858–003, ER99–2858–002.	MEP Pleasant Hill, LLC.
	ER01–2688–005	Gilroy Energy Center, LLC.
	ER99–3855–002	Cleco Power LLC.
E–35	ER99–2541–005, ER99–2541–006	Carthage Energy, LLC.
	ER97–3556–012, ER97–3556–013, ER97–3556–014.	Energetix, Inc.

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	ER99–221–007, ER99–221–009	New York State Electric & Gas Corporation.
	ER99–220–010, ER99–220–011	NYSEG Solutions, Inc.
	ER97–3553–002, ER97–3553–001, ER97–3553–003.	Rochester Gas and Electric Corporation.
	ER01–1764–002, ER01–1764–003,.	
	ER00–262–004, ER00–262–005	PEI Power II, LLC. South Glens Falls Energy, LLC.
	ER05–731–000	Central Maine Power Company.
E–36	OMITTED.	
E–37	ER04–834–001, ER00–1737–004, ER00–1737–005, ER00–1737–006, ER00–2839–002.	Virginia Electric and Power Company.
	ER02–24–002, ER02–24–004, ER02–24–005.	Armstrong Energy Limited Partnership, LLLP.
	ER01–468–001, ER01–468–003	Dominion Energy Marketing, Inc.
	ER00–3621–002, ER00–3621–004	Dominion Nuclear Connecticut, Inc.
	ER00–3620–002, ER00–3620–003	Dominion Nuclear Marketing I, Inc.
	ER00–3619–002, ER00–3619–003	Dominion Nuclear Marketing II, Inc.
	ER00–3746–003, ER00–3746–005, ER00–3746–006.	Dominion Nuclear Marketing III, L.L.C.
	ER02–22–002, ER02–22–004	Dresden Energy, LLC.
	ER99–1695–002, ER99–1695–004, ER99–1695–005.	Elwood Energy, LLC.
	ER02–23–002, ER02–23–006	Fairless Hills Energy, LLC.
	ER99–1432–002, ER99–1432–005, ER99–1432–006.	Kincaid Generation, L.L.C.
	ER02–26–002, ER02–26–004	Pleasants Energy, LLC.
	ER96–2869–005, ER96–2869–007, ER96–2869–008.	State Line Energy, L.L.C.
	ER02–25–002, ER02–25–004	Troy Energy, LLC.
E–38	OMITTED.	
E–39	ER97–3359–003, ER97–3359–005, ER97–3359–006, ER97–3359–007, ER97–3359–008.	Florida Power & Light Company.
	ER02–2559–001, ER02–2559–002, ER02–2559–003, ER02–2559–004.	Backbone Mountain Windpower LLC.
	ER01–1071–002, ER01–1071–003, ER01–1071–004, ER01–1071–005.	Badger Windpower, LLC.
	ER02–669–002, ER02–669–004	Bayswater Peaking Facility, LLC.
	ER02–2018–004, ER02–2018–002	Blythe Energy, LLC.
	ER01–2074–002. ER01–2074–003, ER01–2074–004, ER01–2074–005.	Calhoun Power Company I, LLC.
	ER90–80–001, ER90–80–002, ER90–80–003, ER00–2391–004.	Doswell Limited Partnership.
	ER98–2494–006, ER98–2494–004, ER98–2494–007.	ESI Vansycle Partners, L.P.
	ER00–3068–002, ER00–3068–003, ER00–3068–004, ER00–3068–005.	FPL Energy Cape, LLC.
	ER03–34–001, ER03–34–002, ER03–34–003, ER03–34–004.	FPL Energy Hancock County Wind, LLC.
	ER98–3511–006, ER98–3511–007, ER98–3511–008, ER98–3511–009.	FPL Energy Maine Hydro, Inc.
	ER02–1903–003, ER02–1903–001	FPL Energy Marcus Hook, LP.
	ER98–3562–006, ER98–3562–007, ER98–3562–008.	FPL Energy Mason, LLC.
	ER99–2917–003, ER99–2917–004, ER99–2917–005, ER99–2917–007.	FPL Energy MH 50, L.P.
	ER03–179–004, ER03–179–002	FPL New Mexico Wind, LLC.
	ER02–2166–001, ER02–2166–003, ER02–2166–004.	FPL Pennsylvania Windfarms, Inc.
	ER98–3566–009, ER98–3566–010, ER98–3566–011, ER98–3566–012.	FPL Energy Power Marketing, Inc.
	ER02–2120–002	FPL Energy Rhode Island State Energy, L.P.
	ER02–1838–003, ER02–1838–001	FPL Energy Seabrook, LLC.
	ER01–838–002, ER01–838–003, ER01–838–004, ER01–838–005.	FPL Energy Vansycle, LLC.
	ER98–3563–006, ER98–3563–007, ER98–3563–008, ER98–3563–009.	FPL Energy Wyman, LLC.
	ER98–3564–006, ER98–3564–007, ER98–3564–008, ER98–3564–009.	FPL Energy Wyman IV, LLC.
	ER01–1972–002, ER01–1972–003, ER01–1972–004, ER01–1972–005.	Gray County Wind Energy, LLC.

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Item No.	Docket No.	Company
	ER98–2076–006, ER98–2076–005, ER98–2076–007, ER98–2076–008.	Hawkeye Power Partners, LLC.
	ER03–155–003, ER03–155–001	High Winds, LLC.
	ER03–623–003, ER03–623–004, ER03–623–005.	Jamaica Bay Peaking Facility, LLC.
	ER98–4222–001, ER98–4222–002, ER98–4222–004.	Lake Benton Power Partners II, LLC.
	ER01–1710–003, ER01–1710–002, ER01–1710–005.	Mill Run Windpower, LLC.
	ER01–2139–004, ER01–2139–003, ER01–2139–006.	Somerset Windpower, LLC.
	ER98–1965–003, ER98–1965–002, ER98–1965–005.	West Texas Wind Energy Partners, LP.
E–40	ER96–1361–007, ER96–1361–008	Atlantic City Electric Company.
	ER98–4138–003, ER98–4138–004	Potomac Electric Power Company.
	ER99–2781–005, ER99–2781–006, ER99–2781–002.	Delmarva Power & Light Company.
	ER98–3096–009, ER98–3096–008, ER98–3096–010.	PEPCO Energy Services, Inc.
	ER01–202–002, ER01–202–003, ER01–202–001.	Potomac Power Resources, Inc.
	ER00–1770–008, ER00–1770–009, ER00–1770–004.	Conectiv Energy Supply, Inc., Conectiv Atlantic Generation, LLC and Conectiv Delmarva Generation, Inc.
	ER02–453–004, ER02–453–005	Conectiv Bethlehem, LLC.
	ER04–472–001, ER04–472–002	Fauquier Landfill Gas, LLC.
	ER04–529–001, ER04–529–002	Rolling Hills Landfill Gas, LLC.
E–41	ER01–1265–002, ER01–1265–004, ER01–1265–005.	Mirant Americas Energy Marketing, LP.
	ER01–1263–002, ER01–1263–003, ER01–1263–004, ER01–1263–005.	Mirant Zeeland, LLC.
	ER01–1266–002, ER01–1266–004, ER01–1266–005.	Mirant Bowline, LLC.
	ER01–1267–002, ER01–1267–003, ER01–1267–004, ER01–1267–005, ER01–1267–006.	Mirant California, LLC.
	ER01–1268–003, ER01–1268–005, ER01–1268–006.	Mirant Canal, LLC.
	ER01–1269–002, ER01–1269–003, ER01–1269–004, ER01–1269–005.	Mirant Chalk Point, LLC.
	ER01–1270–002, ER01–1270–003, ER01–1270–004, ER01–1270–005, ER01–1270–006.	Mirant Delta, LLC.
	ER01–1271–003, ER01–1271–005, ER01–1271–006.	Mirant Kendall, LLC.
	ER01–1272–002, ER01–1272–004, ER01–1272–005.	Mirant Lovett, LLC.
	ER01–1273–002, ER01–1273–003, ER01–1273–004, ER01–1273–005.	Mirant Mid-Atlantic, LLC.
	ER01–1274–003, ER01–1274–005, ER01–1274–006.	Mirant New England, LLC.
	ER01–1275–002, ER01–1275–004, ER01–1275–005.	Mirant NY–Gen, LLC.
	ER01–1276–002, ER01–1276–003, ER01–1276–004, ER01–1276–005.	Mirant Peaker, LLC.
	ER01–1277–002, ER01–1277–003, ER01–1277–004, ER01–1277–005.	Mirant Potomac River, LLC.
	ER01–1278–002, ER01–1278–003, ER01–1278–004, ER01–1278–005, ER01–1278–006.	Mirant Potrero, LLC.
	ER02–537–002, ER02–537–004, ER02–537–005.	Shady Hill Power Co., LLC.
	ER02–900–001, ER02–900–003, ER02–900–004.	Mirant Sugar Creek, LLC.
	ER02–1028–001, ER02–1028–003, ER02–1028–004.	Wrightsville Power Facility, LLC.
	ER02–1052–001, ER02–1052–003, ER02–1052–004.	West Georgia Generating Co., LLC.
	ER02–1213–001, ER02–1213–003, ER02–1213–004.	Mirant Energy Trading, LLC.
	ER02–1331–002, ER02–1331–004, ER02–1331–006.	Mirant Oregon, LLC.

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Item No.	Docket No.	Company
	ER03–160–001, ER02–900–003, ER02–900–004.	Mirant Las Vegas, LLC.
E–42	OMITTED.	
E–43	ID–4187–000	Corbin A. McNeill, Jr.
E–44	PA04–10–000, PA04–12–000	Florida Power Corporation, Carolina Power & Light Company.
E–45	RM05–13–000	Electronic Filing of Interlocking Positions and Twenty Largest Purchasers Information.
E–46	RM05–15–000	Modifications of Nuclear Plant Decommissioning Trust Fund Guidelines.
E–47	RM05–11–000	Electronic Filing of the Application for Authorization for the Issuance of Securities or the Assumption of Liabilities.
E–48	EL05–69–000, EL05–69–001, EL05–69–002, QF93–126–004, QF93–126–005, QF93–126–006, QF93–126–007.	Birchwood Power Partners, L.P.
E–49	EL05–79–000, ER05–723–000, ER05–723–001.	TransCanada Power (Castleton) LLC.
E–50	EL04–84–000	Entergy Services, Inc.
E–51	EL05–56–000	*Connecticut Department of Public Utility Control* v. *Bangor-Hydro Electric Company, Central Maine Power Company, NSTAR Electric & Gas Corporation on behalf of its affiliates: Boston Edison Company, Commonwealth Electric Company, Cambridge Electric Light Company and Canal Electric Company.* New England Power Company, Northeast Utilities Service Company on behalf of its operating company affiliates: Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Power and Electric Company and Holyoke Water Power Company, The United Illuminating Company, Vermont Electric Power Company, Central Vermont Public Service Corporation, Green Mountain Power Corporation and Florida Power & Light Company-New England Division.
E–52	EL05–89–000	*Maine Public Utilities Commission* v. *Central Maine Power Company and Bangor Hydro-Electric Company.*
E–53	OMITTED.	
E–54	EL05–85–000	*Adrian Energy Associates, LLC, Cadillac Renewable Energy, LLC, Genesee Power Station LP, Grayling Generating Station, LP, Hillman Power Company, LLC, T.E.S Filer City Station, LP, Viking Energy of Lincoln, Inc. and Viking Energy of McBain, Inc.* v. *Michigan Public Service Commission, Commissioner J. Peter Lark, Commissioner Robert B. Nelson and Commissioner Laura Chapelle.*
E–55	ER02–485–004	Midwest Independent Transmission System Operator, Inc.
E–56	OMITTED.	
E–57	EL05–109–000	Tax Deduction for Manufacturing Activities Under American Jobs Creation Act of 2004.
E–58	AC05–17–000	Baltimore Gas and Electric Company.
E–59	ER03–1247–003, ER03–1247–004, ER03–1247–001, ER03–1247–002.	Northeast Utilities Service Company.
E–60	ER04–898–000, ER04–898–001	Virginia Electric and Power Company.
E–61	ER00–565–011	Pacific Gas and Electric Company.
E–62	ER04–152–000	Nevada Power Company.
E–63	EL05–15–002	*Arkansas Electric Cooperative Corporation* v. *Entergy Arkansas, Inc.*
	EL04–134–002	*East Texas Electric Cooperative, Inc.* v. *Entergy Arkansas, Inc.*
E–64	ER04–901–000	Entergy Services, Inc.
E–65	RM04–14–001	Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority.
E–66	OMITTED.	
E–67	ER05–69–001	Boston Edison Company.
E–68	EL05–17–001	*KeySpan-Ravenswood, LLC* v. *New York Independent System Operator, Inc.*
E–69	EL05–58–001	*ConocoPhillips Company, and Equilon Enterprises LLC dba Shell Oil Products U.S.* v. *Los Angeles Department of Water and Power.*
E–70	ER05–215–001, ER05–215–002	Midwest Independent Transmission System Operator, Inc.
E–71	OMITTED.	
E–72	OMITTED.	
E–73	EL05–57–001	*Williams Power Company, Inc.* v. *California Independent Systems Operator Corporation.*
E–74	OMITTED.	
E–75	ER96–719–002, EL04–106–001, EL04–106–000, ER96–719–003, ER96–719–004.	MidAmerican Energy Company.
E–76	EL02–113–009, EL03–180–009, EL03–154–006.	El Paso Electric Company, Enron Power Marketing, Inc., and Enron Capital and Trade Resources Corporation, Enron Power Marketing, Inc. and Enron Energy Services, Inc.
E–77	ER01–1639–007	Pacific Gas and Electric Company.
E–78	ER02–2560–004	*Louisville Gas and Electric Company and Kentucky Utilities Company* v. *East Kentucky Power Cooperative, Inc.*
E–79	ER04–609–003, ER04–609–004	California Independent System Operator Corporation.

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E–80	ER00–2019–015, ER01–819–008, ER03–608–005.	California Independent System Operator Corporation.
E–81	EL03–180–008, EL03–154–005, EL02–115–011.	Enron Power Marketing, Inc.
E–82	OMITTED.	
E–83	OMITTED.	
E–84	ER98–3809–000	3E Technologies, Inc.
	ER97–2867–000	AC Power Corporation.
	ER99–2369–000	ACES Power Marketing LLC.
	ER98–4685–000	ACN Power, Inc.
	ER00–105–000	AI Energy, Inc.
	ER03–0770–000	AIG Energy, Inc.
	ER96–1818–000	Alliance Power Marketing, Inc.
	ER97–512–000	A'Lones Group, Inc.
	ER00–861–000	Alrus Consulting, LLC.
	ER96–1145–000	Alternate Power Source, Inc.
	ER01–1758–000	Altorfer Inc.
	ER97–1932–000	American Cooperative Services, Inc.
	ER97–464–000	Amvest Coal Sales, Inc.
	ER97–2045–000	Amvest Power, Inc.
	ER99–2792–000	Archer Daniels Midland Company.
	ER98–3378–000	Astra Power, LLC.
	ER97–2132–000	Atlantic Energy Technologies, Inc.
	ER01–2355–000	Beacon Generating, LLC.
	ER00–679–000	Black River Power, LLC.
	ER98–1821–000	Bollinger Energy Corporation.
	ER97–886–000	Brooklyn Navy Yard Cogeneration Partners, LP.
	ER98–4515–000	Cadillac Renewable Energy LLC.
	ER98–701–000	California Polar Power Broker, L.L.C.
	ER01–1701–000	Callaway Golf Company.
	ER99–1875–000	Canadian Niagara Power Company, Ltd.
	ER01–2692–000	Canastota Windpower, LLC.
	ER00–2945–000	Candela Energy Corporation.
	ER01–2138–000	Capital Energy, Inc.
	ER01–1183–000	Celerity Energy of New Mexico, LLC.
	ER01–390–000	Chandler Wind Partners, Inc.
	ER96–2640–000	CHI Power Marketing, Inc.
	ER90–225–000	Chicago Electric Trading, L.L.C.
	ER99–964–000	Cielo Power Market, L.P.
	ER00–2187–000	CMS Distributed Power, L.L.C.
	ER97–1968–000	Colonial Energy, Inc.
	ER90–24–000	Commonwealth Atlantic L.P.
	ER97–4253–000	Commonwealth Energy Corporation.
	ER01–1836–000	Community Energy, Inc.
	ER98–1790–000	Competisys LLC.
	ER01–2562–000	Competitive Energy Services, LLC.
	ER03–428–000	ConocoPhillips Company.
	ER96–1410–000	Cook Inlet Energy Supply L.P.
	ER01–544–000	Cook Inlet Power, LP.
	ER96–2624–000	Cumberland Power, Inc.
	ER01–138–000	Delta Person Limited Partnership.
	ER01–2071–000	Desert Power, L.P.
	ER02–1866–000	Desert Southwest Power, LLC.
	ER94–1161–000	Direct Electric Inc.
	ER94–1099–000	Eclipse Energy, Inc.
	ER99–3098–000	EGC 1999 Holding Company, L.P.
	ER94–1478–000	Electrade Corporation.
	ER00–3358–000	Energy Alternatives, Inc.
	ER98–2020–000	Energy Clearinghouse Corp.
	ER03–1294–000	Energy Cooperative of New York, Inc.
	ER98–2918–000	Energy PM, Inc.
	ER96–358–000	Energy Resource Management Corp.
	ER01–2221–000	Energy Transfer-Hanover Ventures, LP.
	ER00–874–000	Energy West Resources, Inc.
	ER96–138–000	EnergyOnline, Inc.
	ER99–2061–000	Enjet, Inc.
	ER99–254–000	ENMAR Corporation.
	ER01–1166–000	Enron Sandhill Limited Partnership.
	ER96–2964–000	Enserco Energy Inc.
	ER98–3233–000	Environmental Resources Trust, Inc.
	ER01–2439–000	Equitec Power, LLC.
	ER01–666–000	EWO Marketing, L.P.

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Item No.	Docket No.	Company
	ER97–382–000	Exact Power Co., Inc.
	ER00–3039–000	Exeter Energy Limited Partnership.
	ER96–918–000	Federal Energy Sales, Inc.
	ER00–1258–000	First Electric Cooperative Corporation.
	ER97–3580–000	First Power, LLC.
	ER99–2454–000	Florida Keys Electric Cooperative Association, Inc.
	ER02–687–000	FMF Energy, Inc.
	ER00–2706–000	Foote Creek IV, LLC.
	ER96–795–000	Gateway Energy Marketing.
	ER96–1933–000	Gelber Group, Inc.
	ER01–1078–000	George Colliers, Inc.
	ER01–2405–000	GNA Energy, LLC.
	ER98–4334–000	Golden Valley Power Company.
	ER99–4324–000	Green Mountain Energy Company.
	ER98–2535–000	Hafslund Energy Trading LLC.
	ER01–1760–000	Haleywest L.L.C.
	ER01–2159–000	Hermiston Generating Company, L.P.
	ER02–1257–000	Hermiston Power Partnership.
	ER01–3023–000	Hinson Power Company, LLC.
	ER01–2129–000	Holt Company of Ohio.
	ER96–1819–000	ICC Energy Corporation.
	ER01–2395–000	IDACORP Energy, LP.
	ER95–802–000	IEP Power Marketing, LLC.
	ER98–3478–000	INFINERGY Services, LLC.
	ER00–1519–000	InPower Marketing Corporation.
	ER94–6–000	InterCoast Power Marketing Company.
	ER01–688–000	IPP Energy LLC.
	ER00–2306–000	It's Electric & Gas, L.L.C.
	ER95–784–000	J. Anthony & Associates, Ltd.
	ER95–295–000	Kaztex Energy Ventures, Inc.
	ER95–232–000	Kimbal Power Company.
	ER03–1259–000	Kloco Corporation.
	ER95–1018–000	Kohler Company.
	ER97–2904–000	Lake Benton Power Partners, LLC.
	ER94–1672–000	Lambda Energy Marketing Company.
	ER99–3554–000	Lone Star Steel Sales Company.
	ER02–30–000	Longhorn Power, LP.
	ER96–1947–000	LS Power Marketing, LLC.
	ER01–1507–000	Lumberton Power, LLC.
	ER00–1781–000	Marquette Energy, LLC.
	ER98–1992–000	Medical Area Total Energy Plant, Inc.
	ER99–801–000	Metro Energy Group, LLC.
	ER01–95–000	Miami Valley Lighting, Inc.
	ER99–1156–000	Michigan Gas Exchange, L.L.C.
	ER95–78–000	Mid-American Resources, Inc.
	ER96–2027–000	Midwest Energy, Inc.
	ER99–3125–000	Minergy Neenah, L.L.C.
	ER99–1293–000	Monmouth Energy, Inc.
	ER96–2143–000	Monterey Consulting Associates, Inc.
	ER01–2509–000	Morrow Power, LLC.
	ER99–2324–000	MPC Generating, LLC.
	ER97–610–000	Murphy Oil USE, Inc.
	ER95–1278–000	NAP Trading and Marketing, Inc.
	ER95–1374–000	National Fuel Resources, Inc.
	ER94–1593–000	National Power Exchange Corp.
	ER95–192–000	National Power Management Company.
	ER01–352–000	National Gas Trading Corporation.
	ER98–2618–000	Nautilus Energy Company.
	ER99–2537–000	Navitas, Inc.
	ER97–2681–000	New Millennium Energy Corp.
	ER96–1122–000	NFR Power, Inc.
	ER96–2892–000	NGTS Energy Services.
	ER96–2585–000	Niagara Mohawk Power Corp.
	ER98–1915–000	Nine Energy Services, LLC.
	ER99–2384–000	NJR Energy Services Company.
	ER00–795–000	Nordic Electric, L.L.C.
	ER01–2224–000	Nordic Energy Barge 1 & 2, L.L.C.
	ER00–774–000	Nordic Marketing, L.L.C.
	ER94–152–000	North American Energy Conservation, Inc.
	ER02–245–000	North American Energy, L.L.C.
	ER97–1716–000	North Atlantic Utilities Inc.
	ER01–904–000	North Carolina Power Holdings, LLC.

890TH—MEETING—Continued

Item No.	Docket No.	Company
	ER98–622–000	North Star Power Marketing, LLC.
	ER02–41–000	North Western Energy Marketing, LLC.
	ER98–3048–000	Northeast Electricity Inc.
	ER98–1125–000	Northeast Empire L.P. #2.
	ER01–1479–000	Northwest Regional Power, LLC.
	ER02–845–000	Northwestern Wind Power, LLC.
	ER99–2774–000	NP Energy Inc.
	ER02–246–000	NSTAR Companies.
	ER97–181–000	Oceanside Energy, Inc.
	ER01–2783–000	ODEC Power Trading, Inc.
	ER99–2883–000	Old Mill Power Company.
	ER02–1029–000	Oncor Electric Delivery Company.
	ER97–18–000	P&T Power Company.
	ER95–379–000	Peak Energy, Inc.
	ER03–372–000	Peak Power Generating Company.
	ER98–3719–000	People's Electric Corp.
	ER95–430–000	Phibro Power LLC.
	ER02–417–000	Phoenix Wind Power LLC.
	ER01–1821–000	Power Dynamics, Inc.
	ER95–72–000	Power Exchange Corporation.
	ER99–3275–000	Power Management Co., LLC.
	ER96–2303–000	Power Providers Inc.
	ER97–3187–000	Power Systems Group, Inc.
	ER96–1–000	Powertec International, LLC.
	ER98–4333–000	Primary Power Marketing, L.L.C.
	ER01–2463–000	Pro-Energy Development, LLC.
	ER95–968–000	Progas Power Inc.
	ER99–4380–000	Proliance Energy, L.L.C.
	ER99–1876–000	PS Energy Group, Inc.
	ER96–404–000	Questar Energy Trading Company.
	ER00–23–000	Rayburn Country Electric Cooperative, Inc.
	ER02–809–000	Renewable Energy Resources LLC.
	ER01–2760–000	Ridge Crest Wind Partners, LLC.
	ER96–1516–000	SEMCOR Energy.
	ER01–1121–000	SF Phosphates Limited Company, LLC.
	ER99–2109–000	Shell Energy Services Company, LLC.
	ER98–2603–000	Southwood 2000, Inc.
	ER95–362–000	Stand Energy Corporation.
	ER01–542–000	STI Capital Company.
	ER98–4643–000	Storm Lake Power Partner I, LLC.
	ER99–1228–000	Storm Lake Power Partners II, LLC.
	ER96–3107–000	Strategic Energy, LLC.
	ER00–167–000	Strategic Energy Management Corp.
	ER96–2591–000	Strategic Power Management, Inc.
	ER99–1410–000	StratErgy, Inc.
	ER97–870–000	Sunoco Power Marketing, L.L.C.
	ER96–2524–000	Symmetry Device Research, Inc.
	ER00–1250–000	Tacoma Energy Recovery Company.
	ER95–581–000	Tennessee Power Company.
	ER95–1787–000	Texaco Natural Gas Inc.
	ER97–4185–000	Texas-New Mexico Power Co.
	ER01–2694–000	The Energy Group of America, Inc.
	ER99–3571–000	The Legacy Energy Group, LLC.
	ER96–2241–000	Thicksten Grimm Burgum, Inc.
	ER02–298–000	Thompson River Co-Gen, LLC.
	ER01–373–000	Tiger Natural Gas, Inc.
	ER00–494–000	TransAlta Centralia Generation, LLC.
	ER98–3184–000	TransAlta Energy Marketing (CA) Inc.
	ER98–1055–000	TransAlta Energy Marketing (US) Inc.
	ER96–1316–000	TransAlta Energy Marketing Corp.
	ER01–3148–000	TransAlta Energy Marketing Corp. (US).
	ER95–692–000	TransCanada Energy Ltd.
	ER98–564–000	TransCanada Power Marketing, Ltd.
	ER01–2234–000	Travis Energy & Environment, Inc.
	ER97–3428–000	Tri-Valley Corporation.
	ER96–105–000	U.S. Power & Light, Inc.
	ER96–3092–000	United American Energy Corp.
	ER93–3–000	United Illuminating Company.
	ER01–1709–000	VIASYN, Inc.
	ER02–1046–000	Walton County Power, LLC.
	ER96–2830–000	Washington Gas Energy Services, Inc.
	ER98–537–000	Western Energy Marketers, Inc.

890TH—MEETING—Continued

Item No.	Docket No.	Company
	ER00–1928–000	Western New York Wind Corporation.
	ER02–2001–000	Electric Quarterly Reports.
E–85	ER95–892–055	CL Power Sales One, LLC.
	ER95–892–056, ER95–892–057	CL Power Sales Two, LLC.
	ER96–2652–049	CL Power Sales Seven, LLC.
	ER96–2652–050	CL Power Sales Eight, LLC.
	ER96–2652–051	CL Power Sales Ten, LLC.
E–86	ER04–449–003	New York Independent System Operator, Inc., New York Transmission Owners.
E–87	ER95–1007–014, ER95–1007–018	Logan Generating Company, L.P.
	ER00–1742–001, ER00–1742–002	Madison Windpower, LLC.
	ER01–2741–002, ER01–2741–003	Plains End, LLC.
E–88	OMITTED.	
Markets, Tariffs, and Rates—Gas		
G–1	RM05–2–000	Policy for Selective Discounting by Natural Gas Pipelines.
G–2	RP05–20–002, RP05–21–002	Columbia Gulf Transmission Company, Columbia Gas Transmission Corporation.
G–3	RP05–267–000, RP97–406–033, RP00–15–005, RP00–344–004, RP00–632–014.	Dominion Transmission, Inc.
G–4	AI05–1–000	Jurisdictional Public Utilities and Licensees, Natural Gas Companies, Oil Pipeline Companies.
G–5	RP05–278–000	Guardian Pipeline, L.L.C.
G–6	PR05–7–000	ONEOK WesTex Transmission L.P.
G–7	PR04–9–000, PR04–9–001	Bay Gas Storage Company, Ltd.
G–8	OMITTED.	
G–9	RP05–43–002	Dominion Cove Point LNG LP.
G–10	RP05–113–001, RP03–398–014, RP04–155–006, RP04–280–002, RP04–94–003.	Northern Natural Gas Company.
G–11	RP04–201–005, RP04–201–004	ANR Pipeline Company.
G–12	RM05–12–000	Modification of Natural Gas Reporting Regulations.
G–13	RM05–14–000	Revision of FERC Form No. 73, Oil Pipeline Data Filing Instructions.
G–14	OMITTED.	
G–15	TM99–6–29–009	Transcontinental Gas Pipe Line Corporation.
G–16	OR92–8–024, OR93–5–015, OR94–3–014, OR94–4–016.	SFPP, L.P.
	OR95–5–013	*Mobil Oil Corporation* v. *SFPP, L.P.*
	OR95–34–012	*Tosco Corporation* v. *SFPP, LP*
	OR96–2–010 OR96–2–011, OR96–10–007, OR96–10–009, OR98–1–009, OR98–1–011, OR00–4–002, OR00–4–004.	*ARCO Products Co. a Division of Atlantic Richfield Company, Texaco Refining and Marketing Inc., and Mobile Corporation* v. *SFPP, L.P.*
	OR96–2–003, OR96–2–004, OR96–10–008, OR96–10–009, OR96–17–004, OR96–17–006, OR97–2–004, OR97–2–005, OR98–2–005, OR98–2–007, OR00–8–005, OR00–8–007.	*Ultramar Diamond Shamrock Corporation and Ultramar, Inc.* v. *SFPP, L.P.*
	OR98–13–005, OR98–13–007, OR00–9–005, OR00–9–007.	*Tosco Corporation* v. *SFPP, L.P.*
	OR00–7–005, OR00–7–006	*Navajo Refining Corporation* v. *SFPP, L.P.*
	OR00–10–005, OR00–10–006	*Refinery Holding Company.*
	IS98–1–001, IS98–1–002	SFPP, L.P.
G–17	CP02–92–002	AES Ocean Express LLC.
Energy Projects—Hydro		
H–1	P–287–009	Midwest Hydro, Inc.
H–2	P–1494–251	Grand River Dam Authority
H–3	RM05–18–000	Modification of Hydropower Procedural Regulations, Including Deletion of Certain Outdated or Non-Essential Regulations.
H–4	P–4656–018	Boise Kuna Irrigation District, Nampa & Meridian Irrigation District, New York Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District.
H–5	P–11175–023	Crown Hydro LLC.
H–6	P–2493–027	Puget Sound Energy, Inc.
H–7	P–2030–036	Portland General Electric Company and Confederated Tribes of the Warms Springs Reservation of Oregon.

890TH—MEETING—Continued

Item No.	Docket No.	Company
Energy Projects—Certificates		
C–1	OMITTED	
C–2	CP02–405–001	SG Resources Mississippi, L.L.C.
C–3	CP05–32–000, CP05–32–001	Northwest Pipeline Corporation.
C–4	CP05–50–000	Colorado Interstate Gas Company
C–5	OMITTED.	
C–6	CP05–3–000	CenterPoint Energy Gas Transmission Company.
C–7	RM05–1–001	Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transmission Projects.
C–8	RP05–234–000	*Marathon Oil Company* v. *Trailblazer Pipeline Company.*
C–9	OMITTED.	

Magalie R. Salas,

Secretary.

The Capitol Connection offers the opportunity for remote listening and viewing of the meeting. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu and click on ''FERC''.*

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in Hearing Room 2. Members of the public may view this briefing in the Commission Meeting overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 05–10387 Filed 5–20–05; 8:25 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Parker-Davis Project—Rate Order No. WAPA–123

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of order revising the Wholesale Firm Power Service Rate Schedule.

SUMMARY: This action is to revise the existing Parker-Davis Project (P–DP) Wholesale Firm Power Service Rate Schedule PD–F6 to include language pertinent to the Lower Colorado River Basin Development Fund surcharge, which the Western Area Power Administration (Western) is legislatively required to assess to P–DP power service customers in the states of Arizona, California, and Nevada beginning June 1, 2005. Title I, section 102(c) of the Hoover Power Plant Act of 1984 specifies that beginning June 1, 2005, and until the end of the repayment period for the Central Arizona Project, the Secretary of Energy shall provide for surplus revenues to the Lower Colorado River Basin Development Fund by including the equivalent of 4½ mills per kilowatthour in the rates set by the Secretary of Energy that are charged to Arizona purchasers and 2½ mills per kilowatthour in rates charged to California and Nevada purchasers of P–DP power.

FOR FURTHER INFORMATION CONTACT: Mr. Jack D. Murray, Rates Team Lead, Desert Southwest Region, Western Area Power Administration, P. O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 605–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00 effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission.

The existing P–DP firm rate methodology contained within Rate Order No. WAPA–75 was approved for 5 years. Subsequent rate orders extended the methodology until September 30, 2006. The revision of Rate Schedule PD-F6 for wholesale firm power service will not modify the approved rate methodology.

Western is required by statute to begin imposing the surcharge on June 1, 2005. The Hoover Power Plant Act of 1984, Title I, section 102(c) states:

> * * * [F]or the Parker Davis project commencing June 1, 2005, and until the end of the repayment period for the Central Arizona project described in section 301(a) of this Act, the Secretary of Energy shall provide for surplus revenues by including the equivalent of 4½ mills per kilowatthour in the rates charged to purchasers in Arizona for application to the purposes specified in subsection (f) of this section and by including the equivalent of 2½ mills per kilowatthour in the rates charged to purchasers in California and Nevada for application to the purposes of subsection (g) of this section as amended and supplemented: *Provided further,* that after the repayment period for said Central Arizona project, the equivalent of 2½ mills per kilowatthour shall be included by the Secretary of Energy in the rates charged to purchasers in Arizona, California, and Nevada to provide revenues for application to the purposes of said subsection (g) of this section.

The rate schedule must be revised to include reference to the surcharge, which will be included on the customers' firm electric service bills for the June 2005 service month. Since the decision to revise Rate Schedule PD–F6 stems from a legislative requirement, Western has no discretion as to the amount or timing of the surcharge. Therefore, Western is not required to carry out a public process. Given the lack of discretion, this surcharge is being implemented under the Hoover Power Plant Act of 1984 and not Delegation Order No. 00–037.00.

Following review of Western's proposal within the DOE, I hereby approve Rate Order No. WAPA–123, which revises Rate Schedule PD–F6 for P–DP firm power to include the Lower Colorado River Development Surcharge beginning June 1, 2005.

Dated: May 13, 2005.

Clay Sell,

Deputy Secretary.

Department of Energy, Deputy Secretary

[Rate Order No. WAPA–123]

In the Matter of Western Area Power Administration Rate Schedule Revision for Parker-Davis Project Wholesale Firm Power Service Rate

Order Confirming and Approving Revision of the Parker-Davis Project Wholesale Firm Power Service Rate Schedule

This wholesale firm power service rate was established following section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project system involved.

By Delegation Order No. 00–037.00 effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission.

Background

The existing rate methodology, Rate Order No. WAPA–75, was approved for 5 years. By subsequent rate orders, the rate was extended through September 30, 2006.

Discussion

This action is to revise the existing Parker-Davis Project (P–DP) Wholesale Firm Power Service Rate Schedule PD–F6 to include language pertinent to the Lower Colorado River Basin Development Fund surcharge, which Western is legislatively required to assess to P–DP power customers in the states of Arizona, California, and Nevada beginning June 1, 2005. Title I, section 102(c) of the Hoover Power Plant Act of 1984 specifies that beginning June 1, 2005, and until the end of the repayment period for the Central Arizona Project, the Secretary of Energy shall provide for surplus revenues to the Lower Colorado River Basin Development Fund by including the equivalent of 4½ mills per kilowatthour in the rates set by the Secretary of Energy that are charged to Arizona purchasers and 2½ mills per kilowatthour in rates charged to California and Nevada purchasers of P–DP power.

On the Deputy Secretary of Energy's approval, Rate Order No. WAPA–123 will revise existing P–DP Wholesale Firm Power Service Rate Schedule PD–F6 to include the Lower Colorado River Development Surcharge beginning June 1, 2005.

Order

In view of the above and under the authority of the Hoover Power Plant Act of 1984, I hereby revise, effective June 1, 2005, the existing Rate Schedule PD–F6 for wholesale firm power service to include the Lower Colorado River Development Surcharge. The revised Rate Schedule PD–F6 shall remain in effect through September 30, 2006.

Dated: May 13, 2005.

Clay Sell,

Deputy Secretary.

[FR Doc. 05–10307 Filed 5–23–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0042; FRL–7916–8]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Coke Oven Batteries (Renewal); OMB Control Number 2060–0253; EPA ICR Number 1362.06

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on May 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 23, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0042, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: María Malavé, Compliance Assessment and Media Programs Division, Mail Code 2223A, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 14, 2004 (69 FR 55430) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0042, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether

submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NESHAP for Coke Oven Batteries (Renewal).

Abstract: The National Emissions Standards for Coke Oven Batteries were proposed on December 4, 1992, and promulgated on October 27, 1993. These standards apply to all coke oven batteries, whether existing, new, reconstructed, rebuilt or restarted. It also applies to all batteries using the conventional by-product recovery, the nonrecovery process, or any new recovery process. Under this rule, all existing batteries must choose a compliance track. Two compliance approaches are available under the rule: the ''MACT (Maximum Achievable Control Technology) track,'' and the ''LAER (Lowest Achievable Emission Rate) extension track,'' and straddling both tracks (until January 1, 1998). Applicability dates vary depending on the emission limitation the affected facility is subject to. This information is being collected to assure compliance with 40 CFR part 63, subpart L.

Owners or operators of coke oven batteries, whether existing, new, reconstructed, rebuilt or restarted, are required to comply with monitoring, recordkeeping and reporting requirements. Owners or operators of the affected facilities described must make one-time-only notifications to elect a compliance track and to certify initial compliance. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to coke oven batteries provide information on the operation of the emissions control device and compliance with the visible emissions standard. Semiannual reports of compliance certifications are required. These notifications, reports, and records will be used by EPA and states to: (1) Identify batteries subject to the standards; (2) ensure that MACT and LAER are properly applied; and (3) ensure that daily monitoring and work practice requirements are implemented as required.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,754 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Plants with coke oven batteries using the conventional by-product recovery, the nonrecovery process, or any new recovery process.

Estimated Number of Respondents: 19.

Frequency of Response: Initial, semiannual, and on occasion.

Estimated Total Annual Hour Burden: 78,938 hours.

Estimated Annual Costs: $6,302,094, which includes $0 in Operations and Maintenance costs, $0 in Capital Expense, and $6,302,094 in Respondent Labor costs.

Changes in the Estimates: There is a decrease of 25,721 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease in burden from the most recently approved ICR is due to a decrease in the number of plants with coke oven batteries. However, there was an estimated cost increase due to an increase in labor rates. There were no capital/startup and operation and maintenance costs associated with continuous emission monitoring for the renewal of the ICR, therefore, there is no change in this burden category.

Dated: May 10, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–10344 Filed 5–23–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7916–7]

Federal Advisory Committee to Examine Detection and Quantitation Approaches in Clean Water Act Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; FACA Committee Meeting Announcement.

SUMMARY: As required by the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Water, gives notice of the first meeting of the Federal Advisory Committee on Detection and Quantitation Approaches and Uses in Clean Water Act Programs.

DATES: The meeting will be held on Tuesday, June 21, 2005, from 9 a.m. to 5 p.m. The meeting will continue on Wednesday, June 22, 2005, from 8 a.m. to 4 p.m. All times are Eastern Daylight Time.

ADDRESSES: The meeting will be held at the Hilton Old Town, 1767 King Street, Alexandria, Virginia 22314, across from the King Street Metro stop. Members of the public may attend this meeting in person or via teleconference. The public may obtain the call-in number and access code for the teleconference lines from Marion Kelly, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Document Availability: Any member of the public interested in receiving a draft agenda or making a presentation at the meeting may contact Richard Reding, Designated Federal Officer, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. In general, each individual making an oral presentation will be limited to a total of three minutes. Requests for the draft agenda or making an oral presentation

will be accepted up to two business days prior to the meeting date. The draft agenda also may be viewed through EDOCKET, as provided in section I.A. of the **SUPPLEMENTARY INFORMATION** section of this notice.

Submitting Comments

Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in section I.B of the **SUPPLEMENTARY INFORMATION** section. Comments will be accepted up to two business days prior to each meeting date.

FOR FURTHER INFORMATION CONTACT: Ms. Marion Kelly, Engineering and Analysis Division, MC 4303T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1045; Fax number: (202) 566–1053; e-mail address: *kelly.marion@epa.gov;* Richard Reding, Ph.D., Designated Federal Officer, Environmental Protection Agency, Office of Water, MC 4303T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–2237; Fax number: (202) 566–1054; e-mail address: *reding.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

This notice announces the first meeting of the Federal Advisory Committee on Detection and Quantitation Procedures and Uses in Clean Water Act Programs. The establishment of this committee was announced in a **Federal Register** notice published on July 13, 2005 (70 FR 25565.) The purpose of the committee is to evaluate and recommend detection and quantitation procedures for use in EPA's analytical methods programs for compliance monitoring under 40 CFR part 136. The committee will analyze and evaluate relevant scientific and statistical approaches, and protocols. The committee also will review data and interpretations of data using current and recommended approaches. The major objectives are to provide advice and recommendations to the EPA Administrator on policy issues related to detection and quantitation, and scientific and technical aspects of procedures for detection and quantitation. Proposed agenda items for the meeting include, but are not limited to, discussion of ground rules; process design; statements of interest by committee members; establishing a common base of information and identification of key policy questions; discussion of possible alternatives to current detection and quantitation procedures; and composition of a Technical Work Group to assist the committee. This meeting is open to the public.

Information on Services for Individuals With Disabilities

For information on access or services for individuals with disabilities, please contact Ms. Marion Kelly at (202) 566–1045 or e-mail: *kelly.marion@epa.gov* to request accommodation of a disability, at least ten days prior to the meeting so that appropriate arrangements can be made to facilitate their participation.

A. How Can I Get Copies of Related Information?

1. *Docket.* EPA has established an official public docket for this committee under Docket ID NO. OW–2004–0041. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Documents in the official public docket are listed in the index in EPA's electronic public docket and comment system, EDOCKET. Documents are available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copies of the draft agendas may be viewed at the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OW Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number (OW–2004–0041).

For public commenters, it is important to note that EPA's policy is that comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks mailed or delivered to the docket will be transferred to EPA's electronic public docket. Written public comments mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number (OW–2004–0041) in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and it allows EPA to contact you if further information on the substance of the comment is needed or if your comment cannot be read due to technical difficulties. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EDOCKET.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EDOCKET at *http://www.epa.gov/edocket/,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet home page, *http://www.epa.gov,*

select ''Information Sources,'' ''Dockets,'' and ''EDOCKET.'' Once in the system, select ''search,'' and then key in Docket ID No. OW–2004–0041. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW.Docket@epa.gov,* Attention Docket ID No. OW–2004–0041. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM mailed to the mailing address identified in section I.B.2 of this notice. These electronic submissions will be accepted in Word, WordPerfect or rich text files. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: U.S. Environmental Protection Agency, OW Docket, EPA Docket Center (EPA/DC), Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW–2004–0041.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. OW–2004–0041 (note: this is not a mailing address). Such deliveries are only accepted during the docket's normal hours of operation as identified in section I.A.1 of this notice.

Dated: May 18, 2005.

Richard Reding,

Designated Federal Officer.

[FR Doc. 05–10343 Filed 5–23–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals (0022; 0027; 0029; 0061); Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Uniform Application/Uniform Termination for Municipal Securities Principal or Representative; (2) Request for Deregistration for Registered Transfer Agents; (3) Notification of Performance of Bank Services; and (4) Summary of Deposits.

DATES: Comments must be submitted on or before July 25, 2005.

ADDRESSES: Interested parties are invited to submit written comments to Gary A. Kuiper, Counsel, 202–942–3824, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., PA1730–3000, Washington, DC 20429. All comments should refer to (1) Uniform Application/Uniform Termination for Municipal Securities Principal or Representative; (2) Request for Deregistration for Registered Transfer Agents; (3) Notification of Performance of Bank Services; or (4) Summary of Deposits. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number 202–898–3838; e-mail address: *comments@fdic.gov*]. Comments may be inspected and photocopied in the FDIC Public Information Center, 801 17th Street, NW., Room 100, Washington, DC between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. Title: Uniform Application/Uniform Termination for Municipal Securities Principal or Representative.

OMB Number: 3064–0022.

Form Number: MSD–4; MSD–5.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 75.

Estimated Time per Response: 1 hour.

Total Annual Burden: 75 hours.

General Description of Collection: An insured state nonmember bank which serves as a municipal securities dealer must file Form MSD–4 or MSD–5, as applicable, to permit an employee to become associated or to terminate the association with the municipal securities dealer. FDIC uses the form to ensure compliance with the professional requirements for municipal securities dealers in accordance with the rules of the Municipal Securities Rulemaking Board.

2. Title: Request for Deregistration for Registered Transfer Agents.

OMB Number: 3064–0027.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 15.

Estimated Time per Response: 42 hours.

Total Annual Burden: 6.3 hours.

General Description of Collection: An insured nonmember bank or a subsidiary of such a bank that functions as a transfer agent may withdraw from registration as a transfer agent by filing a written notice of withdrawal with the FDIC as provided by 12 CFR 341.5.

3. Title: Notification of Performance of Bank Services.

OMB Number: 3064–0029.

Form Number: FDIC 6120/06.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 412.

Estimated Time per Response: 1/2 hour.

Total Annual Burden: 206 hours.

General Description of Collection: Insured state nonmember banks are required to notify the FDIC, under section 7 of the Bank Service Corporation Act (12 U.S.C. 1867), of the relationship with a bank service corporation. Form FDIC 6120/06 (Notification of Performance of Bank Services) may be used by banks to satisfy the notification requirement.

4. Title: Summary of Deposits.

OMB Number: 3064–0061.

Frequency of Response: Annually.

Affected Public: All insured financial institutions.

Estimated Number of Respondents: 6,000.

Average Estimated Time per Response: 3 hours.

Total Annual Burden: 18,000 hours.

General Description of Collection: The Summary of Deposits annual survey obtains data about the amount of deposits held at each office of all insured banks with branches in the United States. The survey data provides a basis for measuring the competitive impact of bank mergers and has additional use in banking research.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 19th day of May, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–10349 Filed 5–24–05; 8:45 am]

BILLING CODE 6714–01–P

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy; Cancellation of an Optional Form by the Department of State

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of State has cancelled the following Optional Form because of low demand in the Federal Supply Service: OF 194, Refusal Worksheet.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, 202–312–9605.

DATES: Effective May 24, 2005.

Dated: May 16, 2005.

Barbara M. Williams,

Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 05–10335 Filed 5–23–05; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS); Subcommittee on Privacy and Confidentiality.

Time and Date: June 7, 2005, 9 a.m.–5 p.m.; June 8, 2005, 9 a.m.–5 p.m.

Place: Hubert H. Humphrey Building, Room 705–A, 200 Independence Ave, SW., Washington, DC 20201.

Status: Open.

Purpose: The meeting will focus on privacy and confidentiality issues related to electronic health records and the development of a National Health Information Network. On the first day the Subcommittee will hear from witnesses about the use of electronic health records and health information networks in other countries. The balance of the first day and the second day, the Subcommittee will hear from representatives of Regional Health Information Organizations (known as RHIOs or RHINOs), integrated health delivery systems, and health plans. There will be time set aside for members of the public to speak on the record on the afternoon of the first day.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Maya A. Bernstein, Lead Staff for Subcommittee on Privacy and Confidentiality, Office of the Assistant Secretary for Planning and Evaluation, 434E Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; telephone (202) 690–7100; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO) (4336) as soon as possible.

Dated: May 10, 2005.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 05–10248 Filed 5–23–05; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations—Working Group on Quality.

Time and Date: 9 a.m.–5:30 p.m., June 2, 2005; 8 a.m.–4 p.m., June 3, 2005.

Place: Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Working Group will update its work plan.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Anna Poker, Lead Staff Person for the NCVHS Subcommittee on Special Populations, Working Group on Quality, Agency for Healthcare Research and Quality, Center for Quality Improvement and Patient Safety, 540 Gaither Road, Room #3331, Rockville, MD 20850, Phone: 301–427–1802; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://aspe.os.dhhs.gov/ncvhs,* where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: May 10, 2005.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 05–10249 Filed 5–23–05; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Request for Applications (RFA) AA006]

Increasing Access to HIV Counseling and Testing (VCT) and Enhancing HIV/AIDS Communications, Prevention, and Care in Botswana, Lesotho, South Africa, Swaziland, and Cote d'Ivoire—Amendment

A notice announcing the availability of fiscal year (FY) 2005 funds for Increasing Access to HIV Counseling and Testing (VCT) and Enhancing HIV/AIDS Communications, Prevention, and Care in Botswana, Lesotho, South Africa, Swaziland, and Cote d'Ivoire was published in the **Federal Register** on Tuesday, May 3, 2005, Volume 70, Number 84, pages 22870–22875. The notice is amended as follows:

Replace the current language on page 22873, columns two and three, regarding Prostitution and Related Activities with the following:

• Prostitution and Related Activities.

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all sub-agreements under this award. These provisions must be express terms and conditions of the sub-agreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients receiving U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement referencing this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, ''Prostitution and Related Activities.''') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event it is determined by HHS that the recipient has not complied with this section, ''Prostitution and Related Activities.''

Dated: May 18, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–10293 Filed 5–23–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Colorectal Cancer Screening Demonstration Program

Announcement Type: New.

Funding Opportunity Number: RFA AA030.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates: Letter of Intent (LOI) Deadline: June 8, 2005.

Application Deadline: July 8, 2005.

Executive Summary: Colorectal Cancer (CRC) is the second leading cause of cancer-related deaths in the United States, following lung cancer (1-American Cancer Society 2005, see Attachment D). Strong scientific evidence indicates that regular screening is effective in reducing CRC incidence and mortality (2—Mandel 1993, 3—Mandel 2000, 4—Selby 1992, 5—Kronburg 1996, 6—Hardcastle 1996, see Attachment D).

Screening rates for CRC are currently lower than other cancer screening services (7—Seeff 2004). CRC screening is already occurring in some communities, either in an organized or an opportunistic setting. Some communities are planning to begin screening, but are still building their infrastructure and/or resources.

The Centers for Disease Control and Prevention (CDC) announce the availability of funds in fiscal year (FY) 2005 for three to five cooperative agreements to implement demonstration programs designed to increase population-based CRC screening among persons 50 years and older in a geographically defined area, with screening efforts focused on persons 50 years and older with low incomes and inadequate or no health insurance coverage for CRC screening (priority population). Applicants will need to define the geographic area that their program will cover. Applicants will be asked to describe their current CRC screening efforts and to define what they need to increase CRC screening rates in these two populations: (1) The larger geographically-defined population; and (2) the priority sub-population within that geographically-

defined area. CDC will choose among applicants based on specific evaluation criteria described in this RFA. These will be three year demonstration programs, pending availability of funds.

I. Funding Opportunity Description

Authority: This program is authorized under section 317(k)(2) of the Public Health Service Act, [42 U.S.C. section 247b(k)(2)], as amended.

Background: Colorectal Cancer (CRC) is the second leading cause of cancer-related deaths in the United States, following lung cancer (1). Screening for CRC works both through the identification and removal of precancerous polyps, and the early detection of cancers. Strong scientific evidence indicates that regular screening is effective in reducing CRC incidence and mortality (2–6). Randomized controlled trials have demonstrated a reduction in CRC incidence and mortality with annual and biennial fecal occult blood testing (FOBT) and case-control studies have shown a reduction in CRC mortality associated with the use of sigmoidoscopy. Indirect evidence supports the effectiveness of colonoscopy and double-contrast barium enema (DCBE) for use as CRC screening tests.

Based on scientific evidence, national guidelines have been developed recommending regular CRC screening for average-risk persons with one or more of the following options: FOBT, sigmoidoscopy, FOBT and flexible sigmoidoscopy in combination; colonoscopy, and/or DCBE. The U.S. Preventive Services Task Force (USPSTF) strongly recommends that clinicians screen men and women 50 years of age or older for CRC and give an ''A'' recommendation to regular CRC screening with one of the above listed testing options. Fecal Immunochemical Testing (FIT) is considered an acceptable alternative to FOBT. These tests vary in their costs, availability, and associated risks, and current evidence does not clearly demonstrate which of these tests is most effective.

National survey data show that only approximately half of eligible adults have been screened for CRC according to recommended guidelines. A number of factors are likely contributing to low screening rates including: (1) Lack of knowledge by the public that CRC is common and screening is effective; (2) lack of physician recommendations to get regular screening; (3) lack of a regular health care provider; (4) patient embarrassment, fear of cancer, poor reimbursement; (5) limited insurance coverage for CRC screening or lack of insurance; and (6) lack of organized systems where screening and follow-up may be conducted. Other barriers may exist which are recognized in community settings but not documented in published literature.

Purpose: The purpose of this program is to establish demonstration programs to increase population-based CRC screening among persons 50 years and older in a geographically defined area, and to focus screening efforts on persons with low incomes and inadequate or no health insurance coverage for CRC screening. This program addresses the ''Healthy People 2010'' focus area Cancer, specifically to increase the proportion of adults who receive a colorectal screening examination. *http://www.healthypeople.gov/Document/pdf/Volume1/03Cancer.pdf.*

Measurable outcomes of the program will be: To increase the CRC screening rate among persons 50 years and older in a geographically defined area overall (as defined by the applicant), and among persons 50 years and older within that geographically-defined area with low incomes and inadequate or no health insurance coverage for CRC screening in particular. The CRC screening demonstration programs will need to set their own goal for a projected increase in the number or percentage of CRC screens. Screening rates using one or a combination of the following tests will be measured: FOBT or FIT annually, sigmoidoscopy every 5 years, FOBT and flexible sigmoidoscopy in combination; colonoscopy every 10 years, and/or DCBE every 5 years. No CDC Government Performance and Results Act (GPRA) measure currently addresses CRC screening.

This announcement is only for non-research activities supported by CDC/ATSDR. If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm.*

Special Guidance for Technical Assistance: Technical assistance will be available for potential applicants on two one-hour conference calls, one morning and one evening, scheduled one week after the LOIs are due. Please call 1–888–455–5920 and enter conference passcode 50260 at 3 p.m. EST on Wednesday June 22, 2005 or 1–888–455–5920 and enter conference passcode 32070 at 9 a.m. on Thursday June 23, 2005.

Activities: Cooperative agreement applicants do not have to request funding for each of the program components described below. Awardee activities for this program may include, but are not limited to the activities listed below:

1. Program Management

a. Establish specific, measurable, and realistic short-term (one year) and long-term (three year) objectives consistent with the purpose of this program announcement for the accomplishment of the program activities, including the establishment of realistic screening goals.

b. Recruit and develop staff to maintain the program.

c. Develop a fiscal system that tracks and monitors program expenditures and ensures the accurate and timely reimbursement of services provided by the program.

d. Develop accurate budget requests that correspond with program workplans and prepare/submit required reports on a timely basis.

Performance will be measured by the extent to which the program (1) establishes specific, measurable and realistic objectives (including realistic screening goals); (2) hires/identifies and maintains qualified staff; (3) spends funding efficiently and effectively; and (4) effectively addresses problems as they arise.

2. Provision of Screening and Diagnostic Follow-up Services

a. Provide CRC screening and diagnostic follow-up services for persons 50 years and older with low incomes and inadequate or no health insurance coverage for CRC screening in organized, CRC screening demonstration programs. A more specific priority population can be proposed if this can be justified. The level of poverty of the priority population will be defined by the applicant (typically at or below 250 percent or 200 percent of the Federal poverty level). In the absence of data suggesting which screening test is most effective, grantees will be given flexibility in the selection of screening tests with two important caveats: (1) Grantees can only offer screening tests for which test availability has been assessed and capacity has been demonstrated; and (2) grantees can only offer screening tests recommended by the U.S. Preventive Services Task Force (USPSTF). Since FIT is considered an acceptable alternative to FOBT, it will be a reimbursable service within these programs as an alternative to FOBT, if the program desires. Acceptable tests include:

- Guaiac-based FOBT annually (at-home only).

• Immunochemical FOBT (FIT annually will be considered as an alternative to FOBT).
• Flexible sigmoidoscopy every five years.
• Double-contrast barium enema every five years.
• Colonoscopy every ten years.

b. Implement a program design that offers a single screening test or multiple screening tests. The selection of screening tests offered in the demonstration program may change over the three year period pending prior approval and availability of funds, if a program finds that a test is not in demand among the priority populations or if a newer test is added to USPSTF guidelines during the funding period.

c. Demonstrate readiness to begin offering screening services within six months of award. Elements which will be evaluated to determine readiness include: (1) The identification of providers to perform screening and follow-up service, and to provide care in the event of unanticipated complications; (2) a plan to recruit persons for screening from the larger geographically-defined population and the priority population; (3) a final set of data quality indicators, defined in collaboration with CDC, to be used by the grantees and CDC in assessing the quality of the services provided within the demonstration programs; (4) a final data collection and tracking system; and (5) a plan and funding sources to provide treatment for those persons in whom cancers are identified. CDC will make a site visit within six months of award to assess readiness and approve commencement of screening activities.

Performance will be measured by the extent to which the applicant (1) increases the number of people screened within both the defined geographic area and the priority population; and (2) meets the projected number of screens or the proportional increases in screening as set by the program.

3. Public Education and Outreach

a. Develop and carry out strategies to increase awareness about CRC screening including building on existing public education efforts at the local, state and national level that are consistent with evidence-based interventions recommended in the Community Guide to Preventive Services. Programs may utilize campaign materials from CDC's Screen for Life: National Colorectal Cancer Action Campaign ''Screen for Life,'' which can be tagged for individual program use.

b. Develop and implement an outreach workplan that includes a mix of broad-based activities and one-on-one outreach, using methods known to be effective in reaching priority populations for CRC screening.

Performance will be measured by the extent to which (1) the program can demonstrate the appropriate and effective use of public education and outreach strategies and (2) CRC screening rates are increasing in both the geographically defined area and the priority population.

4. Quality Assurance/Professional Development

a. Establish standards, systems, policies and procedures to maintain quality services, including tracking and follow-up systems to assure the provision of appropriate and timely follow-up of all abnormal screening results and/or diagnoses of cancer.

b. Change/develop systems or policies to better support high quality CRC screening and related care based on an assessment and prioritization of needs.

c. Identify a plan and funding sources to provide treatment for anyone diagnosed with cancer in the demonstration program.

d. Identify a plan to provide treatment for anyone who incurs an unanticipated medical complication from services offered within the demonstration program.

e. Convene a medical advisory board to provide oversight of the quality of services being delivered throughout the three year funding period. CDC will be providing medical and clinical technical assistance to individual programs, and will convene a federal-level CRC Demonstration Screening Program Workgroup to assist in the development of overall program policies and procedures.

f. Develop or enhance initiatives to educate and train health professionals in the detection and control of CRC, including quality of screening and follow-up care.

Performance will be measured by the extent to which the program (1) establishes and uses quality indicators, systems and policies/procedures to monitor and measure the quality of services provided, including a medical advisory board and; (2) successfully conducts appropriate and timely follow-up of abnormal test results and provides referrals to treatment, staging, clinical evaluation of symptoms or treatment of unanticipated complications.

5. Partnership Development and Maintenance

a. Maintain a relationship with the CDC-funded comprehensive cancer control (CCC) implementation program(s) (and their coalitions) within the applicant's state(s) to ensure coordination and integration of program activities with related CCC activities, including alignment of program activities with CCC plans.

b. Develop and maintain collaborative partnerships with a diverse set of entities (such as patients, cancer survivors, community-based organizations, groups that serve or represent priority populations, human service agencies, public health agencies, voluntary agencies, public and private local businesses and employers, nonprofit agencies and institutions, medical providers and health care system representatives) to enhance the design and implementation of the program.

Performance will be measured by the extent to which the program: (1) Demonstrates a strong association with the CCC program/coalition; (2) has included any appropriate and diverse additional partners in program planning; (3) has obtained and can show commitment from participating partners; (4) has documented the roles that partners and CCC Coalition members will play; (5) has obtained representation from the priority populations and has clearly defined a role for representatives from priority populations in program design and implementation. A listing of all CDC-funded CCC programs (implementation level) is provided with this RFA as Attachment A.

6. Data Collection and Tracking

a. Adapt current data collection system and develop data reports to be submitted to CDC related to CRC screening and other clinical and program activities that are part of this demonstration project. Please see Attachment B, Tables B–1 and B–2. These tables represent draft data items that CDC is proposing should be collected by the grantees to assess the quality and appropriateness of the services provided within the demonstration programs. Grantees will be asked to propose data items they feel would be most effective in showing an increase in screening in both the geographically-defined population and the priority population. Grantees will also be asked to propose the best manner in which to collect these data. Using the information proposed by grantees and the draft tables in Attachment B, grantees will work with CDC to finalize an agreed upon set of data items, similar to those in the draft tables. Grantees must assure that the data collected at the individual patient-level will be sufficient for grantees to be able to track the quality and timeliness

of care (including treatment and routine recall) and will adhere to current standards related to data-sharing, data security and patient confidentiality. All submitted data must be de-identified.

Some applicants may only request funds for components of this program other than screening service delivery. Even if an applicant chooses to use non-CDC funding sources to fund their screening service delivery component, all grantees will be required to submit data on the CRC screening and diagnostic services delivered as part of this demonstration project.

b. For grantees that request CDC funds for the screening service delivery component of this program: Collect individual patient-level data to capture clinical services and outcomes and submit aggregate data to CDC. Aggregated data reports will include the proportion of persons within the geographic area defined by the grantee receiving the specific clinical services offered within this program, by each of the demographic variables (for example, a report may include the proportion of persons within the defined geographic area receiving FOBT by age, gender, race, ethnicity, and income level). Develop data quality indicators, in conjunction with CDC, to be used by the grantees and CDC in assessing the quality of the services provided within the demonstration programs. Grantees may be asked by CDC to submit individualized data if submitted aggregate data do not meet data quality indicator standards. The data included in Attachment B, Draft Table B–1, ''Patient-Related Data Elements,'' variable domains 1–7, represent the type of information submitted by the program to CDC that CDC will use to monitor the quality of services delivered (1-unique identifiers, 2-demographics, 3-screening history, 4-screening information, 5-diagnostic procedures provided, 6-cancer/polyp diagnosed, 7-treatment). Final data elements used to obtain this information will be agreed upon by CDC and the grantees. During the three year program period, CDC may begin requiring all data submissions from grantees that receive CDC funds for screening services to be individual patient-level data, pending approval from the Office of Management and Budget (OMB).

c. For grantees that do NOT request CDC funds for the screening service delivery component of this program: collect individual patient-level data but submit aggregate patient-level data to CDC. Develop data quality indicators, in conjunction with CDC, to be used by the grantees and CDC in assessing the quality of the services provided within the demonstration programs. Submissions will be similar to data received from grantees described above in (b), but will be aggregate, and not individual-level. Grantees may be asked by CDC to submit individualized data if submitted aggregate data do not meet quality indicator standards.

d. All programs will submit annual program-level data to CDC to be used to monitor cost and cost-effectiveness, funding sources, program design and an increase in population-based screening over the three year program period for the geographically-defined area chosen by the grantee. The types of data included in Draft Table B–2, ''Program-Related Data Elements,'' variable domains 1–4, will be required for submission to CDC (program costs, funding sources, description of health care delivery systems and population-level screening prevalence data). Final data elements used to obtain this information will be agreed upon by CDC and the grantees.

e. The remaining variable domains from both tables are proposed items that grantees may choose to collect. If programs would like to collect data items beyond those outlined in Attachment B, they will need to provide justification.

Performance will be measured based upon: (1) The extent to which tracking and data collection procedures are in use and form the basis for quality assurance processes; and (2) the submission of timely and complete data to CDC.

7. Patient Support

Programs will establish a patient support system to assure that appropriate screening services are offered, appropriate diagnostic follow-up is received, appropriate treatment is begun, and that any appropriate services necessary but not provided by the program are begun, such as triaging patients with GI symptoms out of the screening program, to be seen immediately for appropriate diagnostic testing. A system for the follow-up and referral of a person whose screening test results are abnormal or suspicious is an essential component of any comprehensive early detection program. In some instances, diagnostic testing can be accomplished during the screening test (*e.g.*, if colonoscopy is used). Clients needing treatment services should be counseled about their eligibility for public-supported third party payment and reimbursement programs, if such programs exist. Activities under patient support should include:

- Follow-up of positive screening test results. If any of the program-selected screening tests other than colonoscopy are positive, they should be followed by a diagnostic colonoscopy.
- Triage of patients to the appropriate health care provider if they are found to have GI symptoms at program enrollment.
- Triage of patients to the appropriate health care provider if they are found to be at increased risk for CRC at program enrollment.
- Referral of patients for staging or treatment. Programs must provide appropriate referrals for medical treatment of persons screened in the program and must ensure, to the extent practicable, the provision of appropriate follow-up services.

Performance will be measured by the extent to which the program establishes a system for patient support to assure appropriate follow-up and referral.

8. Evaluation of the Effectiveness of the Program

Design an evaluation plan to be used to conduct evaluation of demonstration program activities and improve the quality, effectiveness and efficiency of program operations.

Performance will be measured by the extent to which programs use objective, quantitative measures to demonstrate the accomplishment of program goals, objectives, and intended outcomes and to make program improvements.

9. Other

Programs may identify other activities that they must pursue in order to effectively increase CRC screening in their geographically-defined area and the priority population. Such activities, along with their justification, must be fully described in the application, particularly if funding for those activities is being sought.

We anticipate that all funded programs will include the same basic program activities, although the focus of the activities may differ slightly across programs. Because applicant needs may differ, not all programs will require funding for every program activity.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Provide technical assistance to recipients in the development, administration, and evaluation of the program efforts to implement organized community-based CRC screening demonstration programs.
- Assist in the adaptation of existing data collection strategies and tools to be able to collect data to monitor program

effectiveness and tracking for this CRC screening demonstration program. Before screening services are offered under this program, CDC will evaluate proposed data collection plans.

• Evaluate aggregate patient and program-level data received by the grantees and use the results so that CDC can follow program activities and provide quality assurance, help grantees strengthen their programs, make mid-course corrections and document successes. For grantees who only submit aggregate patient-level data (those who do NOT receive CDC funds for screening), if submitted aggregate patient-level data do not meet quality indicator standards, CDC may request individualized data and will work with the grantee to resolve data questions.

• Review and assist with refining the evaluation plan designed/proposed by the grantee to make sure it will be adequate to monitor the goals and objectives of this program. Work closely with grantees throughout the three year funding period to assist programs with evaluation of their demonstration programs and to assure adequate documentation of successes and sharing of applicable strategies and tools across programs.

• Work with grantees to finalize a set of data quality indicators to be used by the grantees and CDC in assessing the quality of the services provided within the demonstration programs.

• Within the first six months, advise on the design of a data collection approach, to make sure that the proposed approach is reasonably certain to achieve the goals of this program. Determine with the funded program that screening services and data collection are ready to begin.

• Provide patient and health care provider education materials from CDC's Screen for Life: National Colorectal Cancer Action Campaign, such as brochures, fact sheets, medical office displays, etc. which can be adapted as necessary.

• Regularly review the literature to ensure that grantees are being provided technical assistance and consultation that reflects the most up-to-date science and practice.

• Convene a CRC Demonstration Screening Program Workgroup, to help oversee program activities and address clinical and other issues.

• Convene a meeting of the funded programs for information sharing, problem solving, and training at least annually.

• Conduct a site visit within the first six months of award to assure program readiness, and subsequently, to assess program progress and mutually resolve problems, as needed.

• Assess program readiness by addressing the following issues: (1) The identification of providers to perform screening and follow-up service, and to provide care in the event of unanticipated complications; (2) a final data collection and tracking system; (3) a plan and funding sources to provide treatment for those persons in whom cancers are identified; (4) a plan for the use of quality indicators to evaluate the appropriate use of clinical services and (5) a plan for recruiting individuals for screening in their geographically-defined area and the priority population.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $2,000,000.

Approximate Number of Awards: Three to Five.

Approximate Average Award: $600,000. (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: None.

Ceiling of Award Range: None.

Anticipated Award Date: August, 2005.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

To be eligible, applicants must demonstrate a relationship with a CDC funded CCC program (implementation level) within their state(s). Applicants will need to clearly define the geographic area covered by their proposed program.

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

• Public nonprofit organizations
• Private nonprofit organizations
• Universities
• Colleges
• Research institutions
• Hospitals
• Community-based organizations
• Cancer Centers
• Community Health Centers
• Regional Hospital Systems
• Large Physician Group Practices
• Health Maintenance Organizations
• Large Public Employers, that do not provide coverage for cancer screenings
• Defined Metropolitan Areas
• Rural health organizations/consortia
• Multi-federal agency consortium covering a defined geographic area
• Other large defined health care systems
• Federally recognized Indian tribal governments
• Indian tribes
• Indian tribal organizations
• State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
• Political subdivisions of States (in consultation with States)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

Special Requirements

If your application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

• Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

• To be eligible, applicants must demonstrate a relationship with a CDC-funded CCC program (implementation level) within their state(s) by providing a letter of support (in the application appendices) from the CDC funded CCC program (implementation level) indicating support for the CRC

demonstration screening program. Applications that do not contain a letter of support from the CDC funded CCC program (implementation level) will not be considered for review. More than one application can be submitted per state, but only one application per state will be selected by CDC. Applicants will need to clearly define the geographic area that their program will cover.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

CDC strongly encourages you to submit your application electronically by utilizing the forms and instructions posted for this announcement at *http://www.grants.gov.*

Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: Two
- Font size: 12-point unreduced
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Program title and number listed in this RFA
- Type of organization submitting the application
- Name of the organization submitting the application
- Amount of funding request
- Official contact person's name, telephone number, fax number, mailing address and e-mail address

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 30. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

All activities designed to reach the objectives of the RFA need to be described. Even if an applicant determines that one or several pre-existing program activities do not require CDC resources, a description of those activities must be included in the application, and those elements will be evaluated.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

Executive Summary

Applicants should provide a clear, concise one to two page summary to include:

- Description of the community where the program will take place, including the geographic boundaries.
- A short description of existing or proposed CRC screening program, including priority population to be screened.
- Amount of funding requested.

Background and Need

Describe the need for this program within the proposed geographically-defined population and among the priority population. The following information should be included:

- Description and size of larger geographically-defined population and the priority population for the program (if a different priority population is chosen from what is defined in this RFA, the applicant must provide a justification for choosing that priority population).
- Description of the burden of CRC within the community/population.
- Proportion of the priority population currently screened.

Existing and Proposed Program Description (including Capacity)

Describe the existing and/or proposed program in detail including:

- All program components, including those outlined in the ''Activities'' section of this RFA and any additional activity proposed by the applicant.
- Which program activities are already existing (if any) and which will/will not be supported by CDC funding.
- Methods for data collection designed to show an increase in screening in both the geographically defined population and the priority population. Include a list of proposed data elements, a proposed plan to gather those data, and plans for assuring data security, protecting patient confidentiality and de-identifying data.
- Which screening and diagnostic tests will be used and the rationale for the selection of screening and diagnostic tests.
- The number of new clients expected to be screened.
- A description of how the priority population will be reached.
- Overall capability of providing the program, including the applicant's history and experience with proposed activities and services related to providing colorectal screening.
- The capacity to offer these tests to the intended audience, including the identification of providers and a follow-up/referral plan.

Program Management

Describe the organization's structure and function, size, activities and methods of routine communication with staff. Describe each current or proposed staff position for this initiative by job title, function, education and experience, general duties, and activities with which that position will be involved. Describe a proposed fiscal system to track and monitor program expenditures and to ensure the accurate and timely reimbursement of services provided by the program.

Workplan

The applicant should provide a detailed work plan for the first year that describes how the proposed activities will be conducted. The work plan should include the following:

- *Objectives:* Specific, realistic, time-phased and measurable short-term (one year) and long-term (three year) objectives consistent with the intent of this program announcement, including targets for screening. The first six months will be for start up, to include finalizing the data collection system with CDC, finalizing the evaluation plan with CDC, and implementing all start up activities so that service delivery may begin within six months of award.
- *Activities:* Specific activities and strategies that will be undertaken to achieve each of the proposed short-term objectives during the budget period.
- *Time Line:* A time line for assessing progress in meeting objectives.
- *Staff Responsibility:* Staff responsible for completion of activities.

• *Measures of Effectiveness:* How activities and their impact will be evaluated, including indicators of program success.

• *Data:* A list of sources that will be used to gather information on measures of effectiveness.

Grantees may choose to use the attached work plan format to present this information (See Attachment C of this RFA).

Collaborative Activities

Describe existing or proposed partnership to support the program, including linkages with the appropriate CCC implementation program(s) and coalition partners. Describe a process for maintaining a relationship with the CCC program/coalition and ensuring that program activities are aligned with CCC plan strategies related to CRC. Provide a letter of support from the CCC Coalition that: (1) Verifies that the applicant's proposal aligns with CRC priorities as defined in the Cancer Plan; and (2) describes methods by which Coalition or individual members will be engaged in the demonstration CRC screening program.

Evaluation

The applicant should describe existing or proposed evaluation activities. Using this outline and CDC's draft evaluation plan, the applicant will work with CDC to finalize an evaluation plan to be completed within the first six months of award. This evaluation plan will be used by the program with CDC to evaluate each program goal and objective and to use the evaluation results to improve program effectiveness. Describe who will be responsible for conducting evaluation activities and working with CDC on a formal evaluation of the program.

Budget and Justification (Narrative Justification Will Not Be Counted Toward Application Page Limit)

Provide a detailed line item budget and narrative justification of all operating expenses consistent with the proposed objectives and planned activities. Each budget item should be clearly related to a stated activity.

Participation in CDC sponsored training, workshops, or meetings is essential to the effective implementation of this program. Travel funds should be budgeted for the following meetings:

• One to two persons to Atlanta, Georgia to discuss program implementation progress (reverse site visit) and for consultation and technical assistance (two days, one trip per year.)

• Up to two additional two-person trips to Atlanta, or other destinations to attend or assist with national workgroups, task forces, or committees (one to three days.)

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

• Curriculum vitae.
• Job descriptions.
• Organizational charts.
• Letters of support.
• Any other supporting documentation.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: June 8, 2005.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, is not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: July 8, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *http://www.grants.gov.* Applications completed online through Grants.gov are considered formally submitted when the applicant organization's Authorizing Official electronically submits the application to *www.grants.gov.* Electronic applications will be considered as having met the deadline if the application has been submitted electronically by the applicant organization's Authorizing Official to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

If you submit a hard copy of your application, CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

• Funds may not be used for research.

• Reimbursement of pre-award costs is not allowed.

• Funds may not be used for the purchase or lease of land or buildings, construction of facilities, renovation of existing space.

• Funds may not be used for the endorsement or promotion of any drugs,

health products, or medical supplies and equipment.

• Funds may be used to support personnel and to purchase supplies and services directly related to program activities consistent with the scope of this announcement. While the purchase of equipment is discouraged, it will be considered for approval if justified on the basis of being essential to the program and not available from another source.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Tanya Hicks, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway, MS K–57, Atlanta, Georgia 30341. Telephone: (770) 488–4325. Fax: (770) 488–3230. E-mail: *THicks@cdc.gov.*

Application Submission Address: CDC strongly encourages applicants to submit electronically at: *http://www.grants.gov.* You will be able to download a copy of the application package from *http://www.grants.gov,* complete it offline, and then upload and submit the application via the Grants.gov site. E-mail submissions will not be accepted. If you are having technical difficulties in Grants.gov, they can be reached by e-mail at support@grants.gov or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. Any such paper submission must be received in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. The paper submission must be clearly marked: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If both electronic and back-up paper submissions are received by the deadline, the electronic version will be considered the official submission.

It is strongly recommended that you submit your grant application using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. Directions for creating PDF files can be found on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF may result in your file being unreadable by our staff;

Or

Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-RFA AA030, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

Existing and Proposed Program Description (Including Capacity) (30 Points)

(a) Overall preparedness (5 points): Does the applicant describe its capability to carry out the proposed objectives of this program, including demonstrating past success with similar programs?

(b) Reaching population to be served (5 points): Does the applicant propose a projected number of screens or a proportional target increase in screening? Does the applicant outline a plan to reach and recruit both the larger population in the geographically defined area and the priority population?

(c) Description of program components (10 points): Does the applicant include a description of all program components (including data collection and tracking, quality assurance and professional development, case management, public education and outreach, and other proposed activities) and indicate which will/will not be supported by CDC funding? Are methods for data collection designed to show an increase in screening in both the geographically defined population and the priority population described? Are a list of proposed data elements, a proposed plan to gather those data elements, and plans for assuring data security, protecting patient confidentiality and de-identifying data included?

(d) Description of tests to be used within demonstration program (5 points): Are the screening and diagnostic tests selected adequately described, including a rationale for selection? Are the proposed tests consistent with USPSTF guidelines? Does the applicant describe adequate availability of selected tests and demonstrate the capacity to offer these tests?

(e) Treatment and complications (5 points): Has the applicant addressed how clients will be offered treatment if a cancer is detected, and how complications will be managed?

Work Plan (20 Points)

(a) Appropriate objectives (10 points): Are proposed short-term (one year) and long-term (three year) objectives specific, time-phased, measurable, realistic, related to identified needs and consistent with the purpose of this program announcement?

(b) Appropriate strategies (10 points): Does the applicant's plan for achieving the proposed activities appear realistic and feasible and relate to the programmatic requirements and purposes of this program announcement?

Collaborative Activities (20 Points)

(a) Linkage with CCC (10 points): Is a linkage established with a CDC-funded CCC implementation program(s) and coalition? Does the applicant provide a letter of support from the CCC program/coalition providing details of its relationship to the applicant and commitment to ensuring linkages to CCC plan implementation?

(b) Working with diverse partners (10 points): Does the applicant describe clear and complete plans to develop or maintain active working relationships with other organizations, agencies, or partners in the design and implementation of the program?

Evaluation (10 Points)

Do the proposed evaluation activities address progress toward meeting goals and objectives, describe indicators of program success, and appear to be reasonable and feasible? Does the

applicant describe how evaluation results will be used to improve program effectiveness? Do they describe who will be responsible for evaluation activities?

Program Management (10 Points)

Does the applicant describe the organization's size, structure and function? Does the applicant demonstrate ability to manage the project, including clear lines of communication and organizational support? Is each current or proposed staff position for this initiative described (including job title, function, required education and experience, general duties, and activities with which that position will be involved)? Does the applicant describe a proposed fiscal system to track and monitor program expenditures and to ensure the accurate and timely reimbursement of services provided by the program?

Background and Need (10 Points)

For applicants addressing population-based CRC screening among persons 50 years and older in a geographically defined area, and focusing screening efforts on persons 50 years and older with low incomes and inadequate or no health insurance coverage for CRC screening (priority population):

Does the applicant adequately describe the need for this program? Does the applicant define the geographic area that their program will cover? Are the characteristics and the size of the defined priority population described? Is the burden of cancer among the community and the priority population described? Is the current CRC screening test prevalence of persons in the defined geographic area and the priority population described?

Or,

For applicants addressing population-based CRC screening among persons 50 years and older in a geographically defined area, and focusing screening efforts on a priority population other than persons 50 years and older with low incomes and inadequate or no health insurance coverage for CRC screening:

Does the applicant adequately describe the need for this program? Does the applicant define the geographic area that their program will cover? Are the characteristics and the size of the defined priority population described? Does the applicant provide a justification for selecting a priority population different from the priority population defined in this RFA? Is the burden of cancer among the community and the priority population described? Is the current CRC screening test prevalence of persons in the defined geographic area and the priority population described?

Executive Summary (Not Scored)

Does the applicant provide an executive summary that describes the community the program will cover, a short description of the proposed program and the amount of funding requested?

Budget and Justification (Not Scored)

Is the budget well defined, reasonable, and consistent with the purpose of the program and the activities proposed? Is a narrative justification provided? Are required travel funds requested?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff and for responsiveness by the Division of Cancer Prevention and Control. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. Applications will be funded in order by score and rank determined by the review panel.

V.3. Anticipated Announcement and Award Dates

Anticipated date of award is August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–8 Public Health System Reporting Requirements.
- AR–9 Paperwork Reduction Act Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–14 Accounting System Requirements.
- AR–15 Proof of Non-Profit Status.
- AR–24 Health Insurance Portability and Accountability Act Requirements.
- AR–25 Release and Sharing of Data.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

An additional Certifications form from the PHS 5161–1 application needs to be included in your Grants.gov electronic submission only. Refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1Certificates.pdf.* Once the form is filled out, attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget for new budget period.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

Additional Reporting Requirements

Patient-related and program-related data (as defined in the ''Activities,'' ''Data Collection and Tracking'' section of this RFA) is due to CDC on a routine basis.

- All programs will submit program-related data annually (June 1).
- Programs receiving CDC funds for screening services will submit aggregate patient-related data quarterly (March 1, June 1, October 1 and December 1), but be required to switch to submission of individual patient-related data during the 3 year program period, pending approval from OMB.
- Programs NOT receiving CDC funds for screening services will submit aggregate patient-related data quarterly (March 1, June 1, October 1 and December 1).
- In year 01 of the program, the first patient-level data will be due March 1, 2006 and first program-related data will be due June 1, 2006.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road. Atlanta, GA 30341. Telephone: 770–488–2700.

For program technical assistance, Laura Seeff, MD, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway, MS K–55, Atlanta, Georgia 30341. 770–488–3223. E-mail address: *lseeff@cdc.gov;*

Or

Leslie Given, MPA, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway, MS K–57, Atlanta, Georgia 30341. Telephone: (770) 488–3099. E-mail address: *lgiven@cdc.gov.*

For financial, grants management, or budget assistance, contact: Barbara Rene Benyard, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770/488–2757. E-mail: *bnb8@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.'' Additional information about CRC can be found at the CDC Division of Cancer Prevention and Control Web site *http://www.cdc.gov/cancer/colorctl/index.htm.*

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

Attachment A—CDC National Comprehensive Cancer Control Program Implementation Programs (as of March 1, 2005)

Alabama
Arkansas
California
Colorado
Florida
Georgia
Hawaii
Iowa
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Missouri
Nebraska
New Jersey
New Mexico
New York
North Carolina
Northwest Portland Area Indian Health Board
Ohio
Pennsylvania
Rhode Island
Texas
Utah
Virginia
Washington
West Virginia

Attachment B

TABLE B–1.—DRAFT PATIENT-RELATED DATA ELEMENTS

Variable domains	Possible data elements	Samples of potential use of data elements for evaluation
1. Unique Identifiers	• Patient identifier. • Record identifier.	
2. Demographics	• Date of birth • Gender. • Race/ethnicity (collected as separate fields). • County of residence, state, zip code.	• Proportion of individuals screened within the specified program catchment area.
3. Screening History	• Previous CRC test (FOBT, FIT, colonoscopy etc.).	• Proportion of rarely/never screened participants. • Date performed (month, year for each) • Results for each (most recent result for each test).
4. Screening Information	• Date and type of procedure provided • Data on completion of screening (completed, refused etc.). • Screening location (code for location) • Complication of screening procedure • Date of complication • Results of tests. • Recommended follow-up tests/diagnostic procedures (if any).	• Types of providers performing enrollment and providing screening services patients). • Types of screening tests provided. • Characteristics of participants by type of screening tests. • Frequency of tests provided over time (*e.g.*, annual FOBT). • Barriers to providing certain tests (*i.e.,* what types of procedures are refused by.

TABLE B–1.—DRAFT PATIENT-RELATED DATA ELEMENTS—Continued

Variable domains	Possible data elements	Samples of potential use of data elements for evaluation
5. Diagnostic Procedure(s) Provided (repeat for additional procedures).	• Data on completion of diagnostic procedures (completed, refused etc.). • Date and type of follow-up procedure(s) (*e.g.,* colonoscopy, DCBE). • Diagnosis location (code for location) ..... • Complication of diagnostic procedure & date.. • Results of tests. ..... • Recommendations for additional follow-up procedures.	• Proportion of individuals with abnormal results. • Number of diagnostic tests performed. • Specificity of screening tests, given results of follow-up (*i.e.*, proportion of abnormal FOBTs that colonoscopy, require follow-up and are shown to be ''false positive'').
6. Cancer/Polp Diagnosis	• Status of final diagnosis ..... • Date & final diagnosis (polyp, cancer etc.). • Location of lesion. ..... • Histology. ..... • Number of polyps & size of largest lesion.. • Behavior (in-situ, invasive). ..... • Stage of diagnosis (cancer only). ..... • Indicate how stage was determined. ..... • Stage from registry.	• Proportion of participants who are diagnosed with CRC. • Proportion of participants who are identified with polyps.
7. Treatment	• Status of treatment. ..... • Date treatment started. ..... • Who is paying for treatment?	• Proportion of participants who receive treatment as indicated by guidelines.
8. Program and Enrollment Location	• Program ..... • Enrollment site (code for location).	• Proportion of individuals enrolled at specific locations.
9. CRC Cancer Risk Factors	• Family history of CRC ..... • Personal history of CRC ..... • Personal history of polyps ..... • Personal history of high risk factors (*e.g.*, IBD, genetic syndromes)..	• Proportion of people in high risk categories. • Effect of outreach efforts on recruiting high risk individuals. • Relationship of personal and family history on screening behavior.
10. Reason for Obtaining Current Screening Test	• Reason for current visit (specific symptoms, routine screening, follow-up on previous abnormal test). • Did doctor recommend CRC screening?	• Proportion of participants currently experiencing symptoms. • Knowledge and attitude toward obtaining CRC screening.

TABLE B–2.—DRAFT PROGRAM-RELATED DATA ELEMENTS

Variable domains	Possible data elements	Samples of potential use of data elements for evaluation
1. Program Costs	• Staff salary costs ..... • Consultant costs ..... • Cost of contracts (linked with by the program specific activities). • Start-up costs (*e.g.*, staff recruitment, equipment). • Training costs. ..... • Screening (FOBT, strategies used by sigmoidoscopy, colonoscopy, DCBE) and diagnosis costs. • CM costs. • Administrative costs. • Costs to patients (*e.g.*, co-pays). • Cost or preparation for endoscopy. • Cost of biopsies. • Cost of complications.	• Variation in costs per person screened by the program. • Factors influencing increases in cost. • Cost-effectiveness of innovative strategies used by the programs. • Assessing potential economy of scale of program structures.

TABLE B–2.—DRAFT PROGRAM-RELATED DATA ELEMENTS—Continued

Variable domains	Possible data elements	Samples of potential use of data elements for evaluation
2. Funding Sources	• Federal dollars • State funding • Private foundations. • In-kind contributions (type kind contributions and duration). • How/with whose dollars is each program area being paid for (FTEs, screening services, etc).	• Sources of funding for programs. • Proportion of in-kind contributions.
3. Description of Health Care Delivery System	• Types of providers (*e.g.,* physicians—primary care or specialist—non-physician provider) systems delivering screening (*e.g.* HMO, cancer center, clinic, hospital) and diagnostic tests (does this belong here?)	• Relationship of provider specialty with screening behavior, types of follow-up procedures provided, etc.
	• Reimbursement mechanisms	• Cost-effectiveness of service delivery structures.
	• Program administrative. • Past experience with CRC screening.	
4. Population-level	• *E.g.,* BRFSS or other population level data.	• Population level measure of increase in screening rates.
5. Outreach/Recruitment Process Talk to Ingrid Hall in EARB about how she captures outreach categories.	• General and priority population for outreach.	• Effectiveness of each type of outreach effort.
	• Types of outreach efforts used (*e.g.*, health fair).	• Effectiveness of outreach in recruiting priority populations.
6. Eligibility Requirements	• Age, family income, and insurance status criteria established by programs.	• Differences in insurance status criteria eligibility criteria between programs.
	• (see note about FPL)	• Number and types of patients recruited based on the eligibility criteria established.
7. Professional Education	• Topics of trainings provided	• Relationship of trainings offered and the patterns of care over time (appropriateness of tests recommended; compliance with CRC screening guidelines).
	• Target audience of training. • Number of attendees and sessions.	
8. Quality	• Use of Medical Advisory Committee (Mac) by grantees.	• Proportion of an active MAC.
	• Description of MAC activities	• Extent to which a MAC is providing oversight to services provided (*e.g.*, reviewing guidelines). • Relationship of MAC involvement to types of tests delivered.
9. Case Management (CM)	• Description of model used to deliver CM services. • Barriers to tracking those with abnormal results.	• Proportion of participants in need of CM services who actually receive them. • CM models that are cost-effective.
	• Duration of CM services (until diagnosis, treatment, or thereafter.	• Factors influencing effective CM that can be translated into strategies for all the programs to implement.
10. Partnerships	• Types of partnerships established (*e.g.,* community centers, minority organizations.	• Identify efforts undertaken to screen priority populations.

Attachment C

WORKPLAN TEMPLATE

Goal					
Objectives	Activities	Measures of effectiveness	Data	Timeframe for assessing progress	Team members responsible
Goal					

WORKPLAN TEMPLATE—Continued

Goal					
Objectives	Activities	Measures of effectiveness	Data	Timeframe for assessing progress	Team members responsible

Workplan—Definition of Terms

Goals

Goals are general, ''big picture'' statements of outcomes a program intends to accomplish to fulfill its mission.

Objectives

Objectives are the ''big steps'' a program will take to attain its goals. Objectives should be S.M.A.R.T. (specific, measurable, achievable, realistic, and time-phased).

Activities

Activities are the ''smaller steps'' a program takes to meet its objectives. Examples include reviewing data and research, identifying resources and staff for program implementation and evaluation, creating Public Service Announcements about screening recommendations, and health provider training about screening technology.

Measures of Effectiveness

Measures of effectiveness, or indicators, translate program concepts and expected impacts into specific measures that can be analyzed and interpreted. There should be at least one measure of effectiveness for each objective. The change measured by an indicator should represent progress a program has made toward achieving goals and objectives.

Examples of indicators include: participation rates, individual behavior, health status, and attitude. Success in achieving the goal of maintaining coalition partnerships could be measured by analyzing participation rates or the number of members at the beginning, throughout and near the end of plan implementation. An increase (or decrease/no change) in participation rate indicates level of progress toward meeting the goal.

Data

Data is a list of sources that will be used to gather information on measures of effectiveness. Data sources may include: People, observations and documents. Examples of data sources include: Behavioral Risk Factor Surveillance System (BRFSS), Surveillance, Epidemiology, and End Results (SEER), needs and satisfaction assessments, program records and reports, cancer registries, interviews, focus groups, and medical claims data.

Attachment D—References for Centers for Disease Control and Prevention RFA AA030, Colorectal Cancer Screening Demonstration Program

1. American Cancer Society. Cancer Facts and Figures, 2005. Atlanta, Georgia: American Cancer Society, 2005 (publication no. 5008.05).

2. Mandel JS, Bond JH, Church TR, Snover DC, Bradley GM, Schuman LM, Ederer F. Reducing mortality from colorectal cancer by screening for fecal occult blood. Minnesota Colon Cancer Control Study. N Engl J Med 1993;328:1365–71.

3. Mandel JS, Church TR, Bond JH, *et al.* The effect of fecal occult-blood screening on the incidence of colorectal cancer. N Engl J Med 2000;343:1603–7.

4. Selby JV, Friedman GD, Quesenberry CP Jr, Weiss NS. A case-control study of screening sigmoidoscopy and mortality from colorectal cancer. N Engl J Med 1992; 326:653–657.

5. Hardcastle JD, Chamberlain JO, Robinson MH, et al. Randomised controlled trial of faecal-occult-blood screening for colorectal cancer. Lancet 1996; 348:1472–1477.

6. Kronborg O, Fenger C, Olsen J, Jorgensen OD, Sondergaard. Randomised study of screening for colorectal cancer with faecal-occult-blood test. Lancet 1996; 348:1467–1471.

7. Seeff LC, Nadel MR, Klabunde C, Thompson T, Shapiro JA, Vernon SW, Coates RJ. Patterns and Predictors of Colorectal Cancer Test Use in the Adult U.S. Population. Cancer 2004;100:2093–103.

[FR Doc. 05–10296 Filed 5–23–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Request for Applications (RFA) 05075]

Expansion and Support of HIV/AIDS/STI/TB Information, Education, and Communication and Behavioral Change Communication Activities in Ethiopia—Amendment

A notice announcing the availability of fiscal year (FY) 2005 funds for Expansion and Support of HIV/AIDS/STI/TB Information, Education, and Communication and Behavioral Change Communication Activities in Ethiopia was published in the **Federal Register** on Tuesday, May 3, 2005, Volume 70, Number 84, pages 22875–22881. The notice is amended as follows:

Replace the current language, starting in the second column on page 22879 through the first column of page 22880, regarding Prostitution and Related Activities with the following:

• Prostitution and Related Activities.

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of

this section, ''Prostitution and Related Activities,'' in all sub-agreements under this award. These provisions must be express terms and conditions of the sub-agreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients receiving U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement referencing this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event it is determined by HHS that the recipient has not complied with this section, ''Prostitution and Related Activities.''

Dated: May 18, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–10292 Filed 5–23–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Health Promotion and Diabetes Prevention Projects for American Indian/Alaska Native (AI/AN) Communities: Adaptations of Practical Community Environmental Indicators

Announcement Type: New.

Funding Opportunity Number: RFA AA029.

Catalog of Federal Domestic Assistance Number: 93.945.

Key Dates: Letter of Intent Deadline (LOI): June 23, 2005.

Application Deadline: July 8, 2005.

I. Funding Opportunity Description

Authority: Public Health Service (PHS) Act, as amended, sections 317(k)(2), 42 U.S.C. 247b(k)(2).

Background

Type 2 diabetes was rare among American Indians until the 1950s, so uncommon that some scientists believed that indigenous people might have some type of immunity to it. In the past 50 years, diabetes has become one of the most common and serious illnesses among American Indians and Alaska Natives (AI/AN). In 2002, the age-adjusted prevalence of diabetes was 15.3 percent among AI/AN adults, in contrast to seven point three percent for the overall U.S. population (August 1, 2003, MMWR). If not controlled over time, diabetes can damage every organ in the body, diminishing the quality and the length of life. The explanations for high rates of diabetes among indigenous North American peoples, however, are not limited to recent societal trends, environmental changes and deliberate lifestyle choices. They are rooted in historical legacies of forced dispossession of their lands, culture, and language. Understanding and acknowledging the complex array of factors involved in diabetes causation and care are important steps in addressing this disease. Culturally-sensitive, community-based prevention interventions, coupled with committed tribal leadership and aggressive clinical programs for risk reduction, are most likely to succeed in stabilizing and eventually reducing the rates of chronic disease in Native communities. Many communities are developing, implementing and evaluating such ecological prevention approaches, which recognize the history, cultural and environmental contributions to high rates of diabetes. These approaches include multiple individual, family, community, and policy interventions that are expected to have positive impact for current and future generations. Multi-level, broad-spectrum approaches to the prevention of diabetes take time to yield results, and can be challenging to sustain the engagement of communities over time.

However, limited practical environmental prevention interventions for diabetes on a community level may have some unique benefits. These benefits may include supplementing multi-level programs by creating an environment supportive of the broader, long-term approaches. Limited practical environmental interventions may also help garner the community's interest in identifying opportunities for environmental adaptations and tracking the progress of community indicators. Incremental progress in improving environmental indicators identified by the community as contributing risk factors for diabetes can have several positive results. For example, they may help to increase community knowledge, confidence in health practices and dispel hopelessness about the devastating impacts of diabetes. Such approaches maintain momentum toward steady progress in identified community health goals and/or health promotion activities.

This program will provide support for community-based and culturally appropriate practical environmental interventions for health promotion and diabetes prevention. These interventions will target practical environmental indicators identified by the community as contributing to risk factors for diabetes. The projects will collaborate with existing local diabetes programs and other community organizations (*e.g.,* schools, supermarkets, restaurants). The interventions will focus on environmental factors that can be adapted and measured by community-level indicators. These indicators can reflect behavioral, policy, or practice adaptations by the community and/or its members. The indicators do not involve evaluation of individual behavior or outcomes and do not require human subject approvals.

The prevention interventions proposed (environmental adaptations) to be implemented by the communities can be measured in various ways. For example, by economic means (*e.g.,* purchase rates of foods), environmental (*e.g.,* increased number of walking paths, increased use of fitness facilities, use of pedometers at pow-wows/community dances) or process measures (*e.g.,* school menus meeting nutritional

guidelines). Other examples of practical environmental adaptations may include: (1) The presence or absence of low-fat, low-sugar food alternatives in vending machines in public buildings; (2) the proportion of restaurant menu items that follow nutritional guidelines; (3) miles of walking trails per capita; or (4) purchase rate of regular soda, or of water bottles, in all stores on a reservation or within a designated community, per month. The three year project period includes year one for program and evaluation planning. Interventions will be implemented and measured over a period of two years.

The projects will also assist other national, regional (including states), and international partners of CDC/Division of Diabetes Translation (DDT), as well as other NCCDPHP grantees, in documenting community-based public health interventions that reduce the risk of diabetes and other chronic diseases.

Purpose

The purpose of the program is to strengthen local capacity of AI/AN communities in implementing limited, practical community environmental interventions for health promotion and diabetes prevention. The Indian Health Service (IHS) estimates that 60 percent of Native Americans live in urban settings and the remaining on or near reservation lands. Native American communities have the highest rates of diabetes, poverty and other health disparities. Many tribal communities (including urban settings) maintain strong cultural traditions, foods and practices. All of the eligible entities provide health promotion and/or disease prevention services to AI/AN populations either under specific legal or legislative mandate. Programs that serve AI/AN populations are attuned to the specific cultural traditions, practices, history, and health status. This program addresses the ''Healthy People 2010'' focus area of diabetes (5), which is aimed at addressing health disparities among racial and ethnic minority populations.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP): Diabetes—Goal: Increase the capacity of state diabetes control programs to address the prevention of diabetes and its complications at the community level, and Nutrition—Goal: Decrease levels of obesity, or reduce the rate of growth of obesity in communities through nutrition and physical activity interventions.

This announcement is only for non-research activities supported by CDC/ATSDR. If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm*.

Activities

Awardee activities for this program are as follows:

- Develop a three year action plan (year one planning, years two to three implementation) for a limited practical community environmental health promotion/diabetes prevention intervention project. Action plan should describe the Project Implementation process. Action plan should include objectives that are specific, measurable, achievable, relevant and time-phased. The implementation process may be guided by a community action organization, collaboration, or a group of partners to plan and implement a community-wide environmental intervention project.
  - If such partnerships or collaborations are already in place, provide a description of how they intend to expand their scope to include the implementation of the intervention project.
  - Relevant partnerships working closely with and developing collaborations for the community intervention may include tribal and/or Indian Health Service (IHS) programs, tribal epidemiological centers, State and local health departments (including Diabetes Prevention and Control Programs). Local, regional tribal colleges or universities or colleges with significant numbers of Native students may be included. Collaborations may also include other partners to share resources and information that could strengthen the program.
  - Action plan should focus on developing and implementing a community-wide prevention intervention strategy for a specified population group (*e.g.*, children, adolescents, young adults, middle aged adults or for the elderly).
  - Action plan for the community intervention should include mechanisms for information sharing, interactive group activities and ongoing quality improvement process. The community intervention should include culturally appropriate behavioral, policy, and community approaches to diabetes prevention.
- Applicants must attend two grantee meetings per year. The budget submitted should reflect travel costs for the project coordinator/director and the evaluator attending the two meetings per year. Location (hotel) and time frame for the meetings will be provided after award. However, meetings will generally be held in Albuquerque, New Mexico.
- Applicants must participate in an evaluation of the community intervention. Each grantee shall secure the services of a qualified local project evaluation consultant with training and experience in evaluation of community-based programs. The grantee shall work with the CDC staff and evaluation consultants to develop local process measures and generic outcome measures.
- It is anticipated that up to 10 percent of grant funds will be required to procure the local evaluation consultant. Applicants will also be required to employ a part-time data collection/data entry employee for the project.
- Other costs in conjunction with the evaluation of the project may include training (onsite and off-site), conference calls and information sharing using email and/or faxing materials.
- Participate in community-wide programs; the programs may include:
  - Identification of one to three environmental issues that community members have stated need to be addressed in order to promote health and help to prevent diabetes. There should be some record that this has been noted as an issue that needs addressing. This may include local newspapers, Tribal Council meetings, Town Hall meetings, or Radio programs.
  - Plans for a community forum that allows dialogue and confirms that these are worthwhile environmental concerns that require adaptation. It may be necessary to reduce a longer list of concerns for this project.
  - Pair the limited set of community-level adaptations to indicators for which baseline data is available and which can be tracked at regular intervals over time.
  - Community programs would inform their community about the program and its goals and the baseline data for the adaptation indicators. The program would establish a time frame and setting to share with their progress with the community. The settings could include regular programs on the radio station, monthly newspaper reports or newsletter mailings, one or more graph or ''thermometer'' type billboards or central-place posters that track progress.
  - A community gathering is held to close the project with accounting of the progress by indicators and dialogue about next steps.

In a cooperative agreement, CDC staff is substantially involved in the program

activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- In collaboration with the recipients, provide training on developing community capacity on health promotion and diabetes primary prevention strategies (*e.g.*, building scientific capacity, collaboration and partnerships, implementing guidelines on model programs on diabetes prevention).
- Provide technical assistance through site visits, conference calls, resource materials, strategic planning and updated information, as needed.
- Facilitate communications locally, regionally, and nationally regarding resources and other opportunities involving the implementation of the action plan activities. This includes coordinating two grantee meetings annually for the coordinators and evaluators of each project.
- Provide technical assistance, evaluation capacity and leadership in the evaluation of grantee action plan activities. The CDC evaluation consultants will assist the grantees in developing local process measures and generic outcome measures.
- Facilitate linkages with state and tribal programs, Indian Health Service and Tribal Epidemiological Centers.
- Provide guidance, as requested, on reporting and documenting effectiveness of action plan and activities.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $525,000 (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: Five to Seven.

Approximate Average Award: $75,000–$100,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: $75,000.

Ceiling of Award Range: $100,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Eligible applicants are:

- AI/AN tribal governments and corporations, and other organizations that qualify under the Indian Civil Rights Act.
- State Charter Tribes.
- Urban Indian Health Programs.
- Indian Health Boards.
- Inter-Tribal Councils.
- Eligible urban tribal and inter-tribal consortia.

Eligibility is limited to the aforementioned applicants because they have the necessary knowledge of, experience, and capability/capacity to work within the AI/AN communities to perform the required activities.

Applicants must provide a copy of a tribal resolution specific to this project from the tribe, or letter of support from the board if a tribal organization. If there is insufficient time to procure such a resolution prior to submitting the application, the resolution must be submitted within six months after award. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- Urban tribal and inter-tribal consortia are eligible if incorporated for the primary purpose of improving AI/AN health and representing such interests for the tribes, Alaska Native Villages and corporations, or urban Indian communities located in its region. AI/AN tribes or urban communities represented may be located in one state or in multiple states. An urban tribal organization is defined as a non-profit corporate body situated in an urban center eligible for services under Title V of the Indian Health Care Improvement Act, Pub. L. 94–437, as amended. Proof of non-profit status 501(c)(3) should be provided as an appendix in the application.
- Tribal resolution or letters of support from the board of a tribal organization must be provided as described.
- **Note:** Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1. CDC strongly encourages you to submit your application electronically by utilizing the forms and instructions posted for this announcement at *http://www.grants.gov.* Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms online, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: Two.
- Font size: 12-point unreduced.
- Single spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- A brief description of the applicant or applicant organization to confirm eligibility.
- A brief description of the proposed intervention to substantiate that it is responsive to this announcement.
- A brief description which demonstrates the applicant's capability and/or experience with community interventions, diabetes prevention and/or health promotion activities.

Application: You must submit a Project Narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced.
- Single spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Statement of need
  - ○ Describe the community demographics, location and brief history of diabetes burden and response both locally and for the state.
  - ○ Describe the local resource organizations in the community.
  - ○ Describe the local health and fitness resources available to the project (*see* Criteria for more detailed descriptions).
- Project Plan
  - ○ Describe how the project is to be implemented, including the roles of partners and staff to be hired.
  - ○ Describe objectives and activities (including responsible staff or partners).
  - ○ Provide a timeline describing the entire project period.
  - ○ Identify target population(s) for the project.
  - ○ Describe potential problems/barriers to the implementation/success of the project and identify solutions.
- Organizational Capacity
  - ○ Describe existing community infrastructure that addresses diabetes directly (*i.e.*, diabetes treatment providers or prevention services) and indirectly (*i.e.*, media and other organizations that can provide public health service).
  - ○ Describe evidence of successful program management experience (see Criteria for more detail).
  - ○ Describe experience with other federal, state or private grants.
  - ○ Describe staffing to be devoted to the project, their roles and/or tasks, required experience and training and time commitment.
  - ○ Provide position descriptions for key personnel (local project coordinator, evaluation consultant and data collection/data entry employee), including time commitment for each.
  - ○ Describe data collection experience and capacity for data storage.
- Local Evaluation Capacity
  - ○ Develop measurable and feasible local process and outcome measures for project activities and objectives.
  - ○ Describe evaluation experience with current or past community projects.
  - ○ State willingness to work with CDC evaluation consultants in developing generic outcome measures.
  - ○ Show evidence of having secured or plans to secure a qualified local evaluation consultant and part-time employee to conduct data collection and data entry (*e.g.*, resume, position description).
- Budget Justification (will not be counted in the stated page limit).

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Position descriptions for local evaluator and data collection/data entry employee.
- Curriculum Vitae/Resume of key personnel—project director, evaluator (if identified).
- Tribal resolution or letter of support from the board of a tribal organization.
- Documentation of current tribal indirect cost agreement.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: June 23, 2005. CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: July 8, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. You may submit your application electronically at *http://www.grants.gov.* Applications completed online through Grants.gov are considered formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov*. Electronic applications will be considered as having met the deadline if the application has been submitted electronically by the applicant organization's Authorizing Official to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

If you submit a hard copy application, CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Construction.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Maria E. Burns, Project Officer, CDC, NCCDPHP, DDT, PDB, NDWP, c/o 1720 Louisiana Blvd., NE, Suite 312, Albuquerque, New Mexico 87110, Telephone: (505) 240–0477, Fax: (505) 272–2824; e-mail address: *mburns@cdc.gov.*

Application Submission Address: CDC strongly encourages applicants to submit electronically at: *http://www.grants.gov*. You will be able to download a copy of the application package from *http://www.grants.gov,* complete it offline, and then upload and submit the application via the Grants.gov site. E-mail submissions will not be accepted.

If you are having technical difficulties in Grants.gov, they can be reached by e-mail at *http:www.support@grants.gov* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday.

CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. Any such paper submission must be received in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. The paper submission must be clearly marked: ''Back-Up for Electronic Submission.'' The paper submission must conform to all requirements for non-electronic submissions. If both electronic and back-up paper submissions are received by the deadline, the electronic version will be considered the official submission.

It is strongly recommended that you submit your grant application using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, *etc.*). If you do not have access to Microsoft Office products, you may submit a PDF file. Directions for creating PDF files can be found on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF may result in your file being unreadable by our staff.

Or: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—RFA AA029, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective, qualitative and quantitative, and must measure the intended process and outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

- Project Plan (40 Points).
  - How adequate is the description of the project to be implemented? (*e.g.,* are the roles of partners and staff to be hired included)—10 Points.
  - How comprehensive are proposed objectives and activities described? (*e.g.,* are responsible partners or staff identified for all activities; will activities complete the project successfully, are the proposed methods feasible)—15 Points.
  - Is there a good description and justification for the identified project target population(s)?—5 Points.
  - Is the time line provided comprehensive? (*i.e.,* does it identify proposed project activities and responsible staff, does the plan cover the entire project period)—5 Points.
  - How comprehensive is the plan in describing and identifying potential problem areas or barriers and proposing solutions? (*e.g.,* changes in vending products, reluctance to changing school or restaurant menus, restricted use of designated existing fitness facilities)—5 Points.
- Statement of Need (25 Points).
  - Does the description provide an adequate baseline picture of the community? (*e.g.,* demographics, location and brief history of local and state diabetes burden and response)—15 Points.
  - How comprehensive is the description of the local resource organizations relevant to the proposed plan? (*e.g.,* health, educational, business)—5 Points.
  - How comprehensive is the description of community health and fitness resources? (*e.g.,* number of current walking trails or fitness facilities and programs; existing community gardens; number and content of vending machines)—5 Points.
- Organizational Capacity (20 points).
  - Is there an adequate description of the infrastructure addressing diabetes? (*e.g.,* local diabetes-specific programs, health education resources, community health coalition or other existing partnerships for health related concerns)—5 Points.
  - Is there adequate evidence provided of successful health program management capability?—2 Points.
  - How comprehensive is the description of experience with other Federal, State or private grants?— 2 Points.
  - How adequate is the description of the project staffing, their tasks/roles, required experience and training, and time commitment? (*i.e.*, are the staff roles clearly defined; do key staff have sufficient experience and training required; is the time commitment for all staff sufficient to accomplish the program goals)—6 Points.
  - Are position descriptions for key personnel provided? Key personnel include the local evaluation consultant, local project director/coordinator (if noted), and data collection/data entry employee.—3 Points.
  - Is the data collection and storage capacity adequately described?—2 Points.
- Local Evaluation Capacity (15 Points).
  - How well do the process and outcome measures describe accomplishment of stated activities and objectives? (*e.g.*, are they measurable objectives, is there a reasonable time frame for proposed project)?—5 Points.
  - Is there well-described evidence of experience of evaluation capacity with other Federal, State or private grants?—3 Points.
  - Is there stated willingness to collaborate with external CDC evaluation consultants?—4 Points.
  - Is evidence of commitment to securing a qualified local evaluator and

data collection/entry employee well documented (*e.g.*, letter of commitment/contract, position descriptions, resumes)?—3 Points.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff and for responsiveness by NCCDPHP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

A Special Emphasis Review Panel consisting of external experts will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above.

The review process will be directed by the Procurement and Grants Office (PGO) staff to ensure compliance with HHS and CDC grant review guidelines.

In addition, the following factors may affect the funding decision:

- Geographic diversity—Not more than one grant awarded per state.
- Rural and urban settings—A balanced mix of grants to Native populations living in urban settings and reservation/rural communities.

CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

The anticipated award announcement date is August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application. Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR part 74 and part 92. For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–9 Paperwork Reduction Act Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–14 Accounting System Requirements.
- AR–15 Proof of Non-Profit Status.
- AR–25 Release and Sharing of Data.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

An additional Certifications form from the PHS 5161–1 application needs to be included in your Grants.gov electronic submission only. Refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1Certificates.pdf.* Once the form is filled out, attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Budget.
   e. Measures of Effectiveness.
   f. Additional Requested Information.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341; Telephone: 770–488–2700.

For program technical assistance, contact: Maria E. Burns, Project Officer, c/o 1720 Louisiana Blvd., NE, Suite 208, Albuquerque, New Mexico 87110; Telephone: (505) 240–0477; e-mail: *mburns@cdc.gov.*

For financial, grants management, or budget assistance, contact: Tracey Sims, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341; Telephone: 770/488–2739; e-mail: *atu9@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–10297 Filed 5–23–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2214–N]

Medicaid Program; Establishment of the Medicaid Commission and Request for Nominations for Members

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

ACTION: Notice.

SUMMARY: This notice announces the establishment of the Medicaid Commission and discusses the group's purpose and charter. It also solicits nominations for members.

DATES: Nominations for membership will be considered if they are received by June 3, 2005.

ADDRESSES: Send nominations to: Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore Maryland 21244–1850, Policy Coordination and Planning Group, Mail stop S2–26–12, Attention: Mary Beth Hance

FOR FURTHER INFORMATION CONTACT: Mary Beth Hance, (410) 786–4299. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Department of Health and Human Services is establishing a Medicaid Commission under Pub. L. 92–463, Federal Advisory Committee Act, to advise the Secretary on ways to modernize the Medicaid program so that it can provide high-quality health care to its beneficiaries in a financially sustainable way.

II. Charter, General Responsibilities, and Composition of the Medicaid Commission

A. Charter Information and General Responsibilities

On May 19, 2005, the Secretary signed the charter establishing the Medicaid Commission. The Commission will terminate 30 days after the date of submission of the final report to the Secretary, but no later than January 31, 2007. The Commission, as chartered under the legal authority of 42 U.S.C 217a, section 222 of the Public Health Service Act, is also governed by the provisions of the Pub. L. 92–463, as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of advisory committees, and the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(b).

You may view obtain a copy of the Secretary's charter for the Medicaid Commission at *http://www.cms.hhs.gov/faca/stcomm.asp.*

The Commission shall submit two reports to the Secretary for his consideration and submission to Congress. By September 1, 2005, the Commission will provide recommendations on options to achieve $10 billion in scorable Medicaid savings over five years while at the same time make progress toward meaningful longer-term program changes to better serve beneficiaries. The Commission will also consider, to the extent feasible, specific performance goals for the Medicaid program, as a basis for its longer-term recommendations. By December 31, 2006, the Commission is tasked with making longer-term recommendations on the future of the Medicaid program that ensures the long-term sustainability of the program.

Meetings shall be open to the public except when closure is specifically allowed by statute, and after all statutory and regulatory requirements for doing so have been met. The Secretary or other official to whom the authority has been delegated shall make such determinations. Notice of all meetings shall be given to the public.

The Commission shall develop proposals that address the following long-term issues:

- Eligibility, benefits design, and delivery;
- Expanding the number of people covered with quality care while recognizing budget constraints;
- Long term care;
- Quality of care, choice, and beneficiary satisfaction;
- Program administration; and
- Other topics that the Secretary may submit to the Commission.

The Secretary will request the representatives of the three public policy organizations (as referenced below) to consider these issues and provide relevant information to the Commission within specified timeframes. The Commission shall consider how to address these issues under a budget scenario that assumes Federal and State spending under the current baseline; a scenario that assumes Congress will choose to lower the rate of growth in the program; and a scenario that may increase spending for coverage. The Commission shall assume that the basic matching relationship between the Federal Government and States will be continued.

B. Composition of the Medicaid Commission

The Commission shall consist of three types of member groups, of which only one will have authority to vote on the recommendations to be provided to the Secretary. The first group will consist of up to 15 voting members.

Voting Members:

- Former or current Governors.
- Three representatives of public policy organizations involved in major health care policy issues for families, individuals with disabilities, low-income individuals, or the elderly.
- Former or current State Medicaid Directors.
- Individuals with expertise in health, finance, or administration.
- Federal officials who administer programs that serve the Medicaid population.
- The Secretary (or the Secretary's designee) and such other members as the Secretary may specify.
- Ex Officio Members.

Non-Voting Advisor Members:

A group of up to 15 non-voting advisors will support the Commission's deliberations with their special expertise. These will include State and local government officials, consumer and provider representatives who have an inherent interest in the Medicaid program.

Non-voting Congressional Advisor Members:

The Congressional Members will consist of eight non-voting members who are current members of the Senate and House of Representatives. The Secretary will request the following legislative leaders to make one Congressional selection each:

- Senate Majority Leader.
- Senate Minority Leader.
- Chairman, Senate Finance Committee.
- Ranking Member, Senate Finance Committee.
- Speaker, House of Representatives.
- Minority Leader, House of Representatives.
- Chairman, House Committee on Energy and Commerce.
- Ranking Member, House Committee on Energy and Commerce.

III. Submission of Nominations

We are requesting nominations for membership as voting members or as non-voting members on the Medicaid Commission. We will consider qualified individuals who are self-nominated or are nominated by organizations representing States, beneficiaries, and providers when we select these representatives. The Secretary will appoint members to serve on the Commission from among those candidates that we determine have the technical expertise to meet specific agency needs in a manner to ensure an appropriate balance of membership.

Any interested person may nominate one or more qualified individuals for each of the categories listed in section II.B of this notice. Each nomination must include the following information:

1. A letter of nomination that contains contact information for both the nominator and nominee (if not the same).

2. A statement from the nominee that he or she is willing to serve on the Commission for its duration (that is, through January 31, 2007) and an explanation of the nominee's interest in serving on the Commission. (For self-nominations, this information may be included in the nomination letter.)

3. A curriculum vitae that indicates the nominee's educational and Medicaid experiences.

4. Two letters of reference that support the nominee's qualifications for participation on the Commission. (For nominations other than self-nominations, a nomination letter that includes information supporting the nominee's qualifications may be counted as one of the letters of reference.)

To ensure that a nomination is considered, we must receive all of the nomination information specified in section III of this notice by June 3, 2005. Nominations should be mailed to the address specified in the **ADDRESSES** section of this notice.

Authority: 42 U.S.C 217 (a), section 222 of the Public Health Service Act, as amended. The Medicaid Commission is governed by the provisions of Pub. L. 92–463 as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: May 10, 2005.

Mark McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–10409 Filed 5–20–05; 12:01 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start National Training and Technical Assistance Quality Assurance Study.

OMB No.: New Collection.

Description: The Head Start National Training and Technical Assistance Quality Assurance study is being undertaken to document and provide feedback on the work of the newly designed Head Start Training and Technical Assistance (T/TA) system. The Head Start Bureau awarded this contract to Mathematica Policy Research, Inc., and its subcontractor, Xtria LLC, in October 2004.

Providing training and technical assistance has long been a crucial component of the national-regional Head Start system. Through the new T/TA system, however, the Head Start Bureau has placed greater emphasis on quality and consistency of T/TA service delivery. Under the new T/TA system, the Head Start Bureau's T/TA Branch annually sets national priorities. Regional Office T/TA liaisons oversee the system's 12 contracts, awarded in December 2003, which include locally-based content experts in the area of disabilities, early literacy, child development, fiscal administration and management, health, and family and community partnerships. These content experts support locally-based TA specialists (TAS), who work with a caseload of 10 to 12 programs to develop T/TA training plans based on each grantee's self-assessment and the results from the Program Review Instrument for Systems Monitoring (PRISM) process. National contractors provide training and other resources according to priorities determined by the Head Start Bureau and in line with Administration initiatives. Programs can also use their special T/TA grant funds and, when necessary, additional funds from their basic Head Start grant funds to hire consultants or attend training events.

In addition, through Higher Education Grants, universities provide coursework to meet Head Start staff's credentialing needs in partnership with Head Start programs. The Higher Education grantees (HEGs) are organized into three consortia, representing Historically Black Colleges and Universities, Tribal Colleges and Universities, and Hispanic/Latino-serving institutions.

For the regional Head Start system, the Quality Assurance Study will assess (1) Each Head Start region's implementation and structure of the new system, (2) regional T/TA strategies and services provided to grantees, (3) grantees' progress in assessing T/TA needs and identifying appropriate ways to meet these needs, (4) grantees' annual T/TA plans, and (5) grantees' perceptions about the systems' impact on program quality and child outcomes. The study also will analyze whether the HEGs meet their goal of increasing the early childhood credentials of Head Start staff and teachers. In 2005, the study will collect information about the delivery of T/TA services to Head Start and Early Head Start programs through site visits to 48 representative programs (about 4 per region) and site visits to 15 HEGs (5 of each of the 3 types of HEGs). In 2006, the study will visit 36 of the 48 representative Head Start and Early Head Start programs to learn about changes in the T/TA system. All data collection activities have been designed to minimize the burden on respondents by minimizing the time required to respond. Participation in the study is voluntary.

The research will provide the Head Start Bureau and the Administration for Children and Families with information about exemplary practices as well as areas in the T/TA system which could be improved.

Respondents: Early Head Start and Head Start directors, coordinators, specialists, center administrators, teachers, and home visitors; locally-based TA specialists; university-based HEG project directors, university faculty, Head Start program administrators, and Head Start program staff and teachers.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Program Site Visit Protocols (2005)				
Director	48	1	1.5	72
Coordinator/Specialist	144	1	1.25	180
Center Administrator	288	1	1.25	360
Teacher/Home Visitor	480	1	1.25	600
Locally-Based TA Specialists	48	1	1.5	72
Program Reviews [a]	48	1	0.5	24
HEG Site Visit Protocols (2005)				
HEG Project Director/Coordinator	15	1	1.5	22.5
HEG Staff/Faculty	45	1	1	45
HS Director	30	1	1	30
HS Staff	60	1	1	60
Total for 2005				1465.5
Grantee Site Visit Protocols (2005)				
Director	36	1	1.5	54
Coordinator/Specialist	108	1	1.25	135
Center Administrator	216	1	1.25	270
Teacher/Home Visitor	360	1	1.25	450
Locally-Based TA Specialist	36	1	1.5	54

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Program Reviews[a]	36	1	0.5	18
Total for 2005				981

[a] Reviews will be conducted with the locally based TA specialists.

Estimated Total Burden Hours: 2446.5.

Estimated Annualized Burden for both the grantee and HEG site visits is 1223.25 hours. This annual burden was calculated by dividing total burden hours by two years.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, e-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: May 19, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–10339 Filed 5–23–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0516]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; 2005 Food Safety Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 23, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

2005 Food Safety Survey

Under section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(b)(2)), FDA is authorized to conduct research relating to foods and to conduct educational and public information programs relating to the safety of the Nation's food supply. FDA is planning to conduct a consumer survey about food safety under this authority. The food safety survey will provide information about consumers' food safety awareness, knowledge, concerns, and practices. A nationally representative sample of 4,000 adults in households with telephones will be selected at random and interviewed by telephone. This survey will include an oversample of Hispanics with a minimum of 500 Hispanics sampled. Additionally, 200 initial nonrespondents will be asked to participate in a short version of the survey to conduct a nonresponse analysis. Participation will be voluntary. Detailed information will be obtained about food safety risk perception, perceived sources of food contamination, knowledge of particular microorganisms, food handling practices, consumption of raw foods from animals, and perceived foodborne illness and food allergy experience.

The majority of the questions to be asked are identical to ones asked in the 2001 Food Safety Survey (the 2001 survey). Because of recent national consumer education campaigns about food safety and the large amount of media attention to food safety issues in the past few years, consumer attitudes, knowledge, and practices are likely to have changed greatly since the 2001 survey. FDA needs current information to support consumer education programs and regulatory development. Additionally, this data will be used to measure changes in food safety handling practices and food allergy reactions as part of the Healthy People 2010 food safety objectives and allergen goals. New areas on the survey include awareness of bovine spongiform encephalopathy and acrylamide, refrigeration practices, and updated questions on washing practices for fresh fruits and vegetables.

In the **Federal Register** of December 2, 2004 (69 FR 70147), FDA published a 60-day notice requesting public comment on the information collection provisions. Seven comments were received. Four comments did not address the information collection provisions, two comments supported the proposed collection of information, and one comment contended that it is a waste of government funds. The supporting comments requested that data from the survey be made more widely available. None of the comments included any specific suggestions for the questionnaire or survey methodology.

FDA disagrees that the food safety survey is a waste of government funds. The data from the 2005 Food Safety Survey will be used to evaluate the Healthy People 2010 objectives for food safety and for allergens. Data from the 2001 survey served as the baseline for the Healthy People 2010 food safety and allergen objectives. Results from previous food safety surveys were also used by FDA's Center for Food Safety and Applied Nutrition to provide an assessment of the level of safety of consumer food preparation and consumption practices, and levels of

awareness, concern, and knowledge related to food safety.

FDA agrees that the data from the food safety survey should be distributed publicly through peer review journal articles and though government publications. It is anticipated that for the first 6 months after collection, the data will be analyzed internally. After 6 months a summary will be produced and made available to the public. Peer reviewed journal articles are planned following the summary.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Questionnaire	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Pretest	27	1	27	0.5	14
Screener	10,000	1	10,000	0.0167	167
Survey	4,000	1	4,000	0.30	1,200
Nonresponse	200	1	200	0.10	20
Total					1,401

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate is based on FDA's experience with the 2001 survey. Prior to the survey being fielded, a small pretest of 27 individuals (each pretest lasting half an hour) will be conducted. FDA estimates that the survey will require an average of 20 minutes per respondent and that the variation in burden across respondents will be small, based on average interview times for the 2001 survey. The proposed number of respondents is 4,000, each of whom will be asked to complete a one-time telephone interview that requires no preparation time. Additionally, 200 initial nonrespondents will be asked to participate in a short version of the survey to conduct a nonresponse analysis. The screener is estimated to take 1 minute or less per response for a total screener burden of 4,000 respondents plus 6,000 ineligibles screened, taking an estimated 167 hours. The total hours reporting burden to the public is the sum of the pretest, the screener, the completed surveys, and the nonresponse surveys, resulting in an estimated public reporting burden of 1,401 hours.

Dated: May 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–10289 Filed 5–23–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Treatment of Human Viral Infections (Resveratrol)

Drs. Steven Zeichner and Vyjayanthi Krishnan (NCI).

U.S. Provisional Application No. 60/588,013 filed 13 Jul 2004 (DHHS Reference No. E–279–2004/0–US–01).

Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov*.

This application describes the methods for treating or preventing an HIV infection by the administration of an Egr 1 activator called Resveratrol (3, 5, 4″-trihydroxystilbene) and its derivatives. It has been known that HIV, once it infects a cell, integrates into the cellular genome and can (1) rapidly undergo lytic infection, or (2) lay dormant for a period of time (latent infection). The existence of latent infected cells poses a great challenge to HIV therapy because (1) there are no good existing means that can separate the latent infected cells from the uninfected cells; (2) even when antiretroviral drugs are able to completely suppress detectable HIV replication, these latent infected cells will remain and HIV can subsequently complete the viral replication cycle to produce more virus. Since Resveratrol and its derivatives can activate lytic replication from latent infected cells via its effects on Erk1/2 signaling, Resveratrol and its derivatives may lead to therapies in which Resveratrol and/or its derivatives is given together with highly active antiretroviral therapy in an effort to decrease or eliminate the reservoir of latent infected cells with hope of perhaps eventually curing a patient of HIV infection.

Treatment of Human Viral Infections (Proteosome Inhibitors)

Drs. Steven Zeichner and Vyjayanthi Krishnan (NCI).

U.S. Provisional Application No. 60/587,810 filed 13 Jul 2004 (DHHS Reference No. E–280–2004/0–US–01).

Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov*.

This application describes the methods for treating or preventing an HIV infection by the administration of proteosome inhibitors and their derivatives. It has been known that HIV, once it infects a cell, integrates into the cellular genome and can (1) rapidly undergo lytic infection, or (2) lay dormant for a period of time (latent infection). The existence of latent infected cells poses a great challenge to HIV therapy because (1) there are no good existing means that can separate

the latent infected cells from the uninfected cells; (2) even when antiretroviral drugs are able to completely suppress detectable HIV replication, these latent infected cells will remain and HIV can subsequently complete the viral replication cycle to produce more virus. Since proteosome inhibitors can activate lytic replication from latent infected cells, proteosome inhibitors may lead to therapies in which proteosome inhibitors are given together with highly active antiretroviral therapy in an effort to decrease or eliminate the reservoir of latent infected cells with hope of perhaps eventually curing a patient of HIV infection.

Treatment of Human Viral Infections (Imatinib)

Drs. Steven Zeichner and Vyjayanthi Krishnan (NCI).

U.S. Provisional Application No. 60/588,015 filed 13 Jul 2004 (DHHS Reference No. E–281–2004/0–US–01).

Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov*.

This application describes the methods for treating or preventing a HIV infection by the administration of abl-kinase inhibitor called imatinib and its derivatives. Several available agents can inhibit HIV replication by targeting one or another viral protein, such as the viral reverse transcriptase, protease, envelope fusion process, or integrase, or by targeting the interaction of a viral component with a host cell component, for example the host cell viral receptor or co-receptor. However, HIV can readily become resistant to these drugs, and new therapeutic approaches for HIV infection are needed. The studies described in the application show that the expression of many host cell genes changes in response to HIV replication, and show that targeting one of these changes with imatinib can inhibit viral replication. Thus targeting the host cell, and making the host cell less hospitable to the virus can inhibit viral replication. The application thus describes a new agent that inhibits viral replication by acting on the host cell, which may offer new approaches to therapy for HIV infection. These approaches may be less likely to engender rapid resistance in the virus to the therapy.

Treatment of Human Viral Infections (Farnesyl Transferase Inhibitors)

Drs. Steven Zeichner and Vyjayanthi Krishnan (NCI).

U.S. Provisional Application No. 60/587,771 filed 13 Jul 2004 (DHHS Reference No. E–282–2004/0–US–01).

Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov*.

This application describes the methods for treating or preventing an HIV infection by the administration of farnesyl transferase inhibitors such as FTI277, L–744832, BMS214662, R115777 and SCH66336. It has been known that HIV, once it infects a cell, integrates into the cellular genome and can (1) rapidly undergo lytic infection, or (2) lay dormant for a period of time (latent infection). The existence of latent infected cells poses a great challenge to HIV therapy because (1) there are no good existing means that can separate the latent infected cells from the uninfected cells; (2) even when antiretroviral drugs are able to completely suppress detectable HIV replication, these latent infected cells will remain and HIV can subsequently complete the viral replication cycle to produce more virus. Since farnesyl transferase inhibitors can activate lytic replication from latent infected cells by modulating membrane-bound Ras-Rho levels, farnesyl transferase inhibitors may lead to therapies in which farnesyl transferase inhibitor is given together with highly active antiretroviral therapy in an effort to decrease or eliminate the reservoir of latent infected cells with hope of perhaps eventually curing a patient of HIV infection.

Dated: May 17, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–10316 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Review of Research Projects (Cooperative Agreements) U01s.

Date: May 27, 2005.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Valerie L. Prenger, PhD, Health Scientist Administrator, Review Branch, Room 7214, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, (301) 435–0270, *prengerv@nhlbi.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10327 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Meeting

Notice is hereby given of a Conference on Research Training Initiatives, sponsored by the National Institute of Dental and Craniofacial Research (NIDCR).

The conference will be open to the public as indicated below, with attendance limited to space available. This meeting will also be made available by video cast at *http://videocast.nih.gov/*.

Conference Name: Research Training Initiatives.

Date: June 9, 2005.

Open: 8:30 a.m. to 5 p.m.

Agenda: The conference will focus on a variety of issues relating to research training. A significant portion of the meeting will be devoted to discussion of training of both clinician scientists and basic scientists, from building a pipeline, through undergraduate, graduate and postgraduate research training culminating in bridging to scientific independence.

Additional presentations and discussion will focus on models for successful programs at various educational and career development stages, definition of what constitutes success, the role of mentoring, academic environment, K–12 science education and related topics.

Speakers and plenary discussion panel members include representatives from the NIH, the National Academics of Science, the National Science Foundation and the Howard Hughes Medical Institute.

Place: National Institutes of Health, Natcher Building (Building 45), Conference Rm. 1–2, 4500 Center Drive, Bethesda, MD 20892.

Public Comment: Individuals who wish to provide public comment (oral or written) should contact the Acting Deputy Director, NIDCR, Dr. Henning Birkedal Hansen, by telephone at (301) 496–9469 or e-mail at *Henning.Birkedal-Hansen@nih.gov* no later than May 25, 2005.

Contact Person: Henning Birkedal-Hansen, Ph.D., Acting Deputy Director, National Institute of Dental and Craniofacial Research, 31 Center Drive, Room 2C39, Bethesda, MD 20892, (301) 496–9469.

Information is also available on the Institute's home page: *http://www.nidcr.nih.gov/about*, where an agenda and any additional information for the meeting will be posted when available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Ms. Rita Lehr at (301) 496–9469 prior to the meeting.

Dated: May 18, 2005.

Henning Birkedal-Hansen,

Acting Deputy Director, National Institute of Dental and Craniofacial Research.

[FR Doc. 05–10317 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 05–52, Review R21s.

Date: June 20, 2005.

Time: 1:45 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2904, *george_hausch@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 05–78, Review R13.

Date: June 23, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Specialist, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Bldg., RM 4AN38J, Bethesda, MD 20892–6402, (301) 594–4809, *mary__kelly@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 05–76, Review R13.

Date: June 28, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Specialist, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Bldg., RM 4AN38J, Bethesda, MD 20892–6402, (301) 594–4809, *mary__kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10318 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Dental & Craniofacial Research, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and Craniofacial Research, Review of the Craniofacial & Skeletal Diseases Branch, NIDCR.

Date: May 25–27, 2005.

Closed: May 25, 2005, 7 p.m. to 8:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Conference Room 117, Bethesda, MD 20892.

Open: May 26, 2005, 8:30 a.m. to 11:40 a.m.

Agenda: Investigator presentations.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Conference Room 117, Bethesda, MD 20892.

Closed: May 26, 2005, 11:40 a.m. to 1 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Conference Room 117, Bethesda, MD 20892.

Open: May 26, 2005, 1 p..m. to 6 p.m.

Agenda: Investigator presentations, Lab Tour, Poster Presentation.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Conference Room 117, Bethesda, MD 20892.

Closed: May 27, 2005, 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Conference Room 117, Bethesda, MD 20892.

Contact Person: Norman S Braveman, Assistant to the Director, NIH–NIDCR, 31 Center Drive, Bldg. 31, Room 5B55, Bethesda, MD 20892, 301 594–2089, *Norman.Braveman@Nih.Gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about/Council Committees.asp,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10321 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant application and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 05–81, Review Par–04–091, R03s.

Date: June 23, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 05–53, Review Par–04–091, R03s.

Date: June 24, 2005.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 05–82, Review of R21.

Date: June 28, 2005.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 05–54, Review of PAR–05–020, R21s.

Date: July 6, 2005.

Time: 10 a.m. to 11:59 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 05–83, Review R21s.

Date: July 6, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10322 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, NIH Road Map Initiative.

Date: June 15–16, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and

Infertility Loan Repayment Program, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10323 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such a patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Developmental Initial Review Group, Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: June 13, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6908, *ak41o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10324 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Environmental Chemicals and Gynecologic Health.

Date: June 15, 2005.

Time: 12 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10325 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee A.

Date: June 15, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medicine Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10326 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Lithium for the Treatment of Pediatric Mania.

Date: June 13, 2005.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20817.

Contact Person: Kishena C. Wadhwani, PHD, MPH, Scientific Review Administrator, Division of Scientific Review, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892–7510, (301) 496–1485, *wadhwank@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10328 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Concept Clearance Review Acute Respiratory Disorder of the Newborn and its Relationship to Group B Streptococcal Colonization.

Date: June 10, 2005.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10329 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: June 10, 2005.

Open: 8:30 a.m. to 2 p.m.

Agenda: Director's Report, Working Group Reports, Concept Clearance, Training Conference Report.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Norman S Braveman, PhD, Assistant to the Director, NIH–NIDCR, Building 31, Rm. 5B55, Bethesda, MD 20892, (301) 594–2089, *Norman.Braveman@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contract Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about*, where an agenda and any additional information for the meeting will be posed when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10330 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Azithromycin for BPD.

Date: June 13, 2005.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20817.

Contact Person: Kishena C. Wadhwani, PhD, MPH, Scientific Review Administrator, Division of Scientific Review, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892–7510, (301) 496–1485,*wadhwank@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: May 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10331 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Gastrointestinal Mucosal Pathobiology Study Section, June 6, 2005, 9 a.m. to June 7, 2005, 5 p.m. Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on May 11, 2005, 70 FR 24829–24832.

The meeting will be held June 5, 2005, 6 p.m. to June 6, 2005, 5 p.m. The location remains the same. The meeting is closed to the public.

Dated: May 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10319 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 13, 2005, 8 a.m. to June 13, 2005, 5 p.m., Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015, which was published in the **Federal Register** on May 11, 2005, 79 FR 24829–24832.

The meeting will be held at The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037. The meeting date and time remain the same. The meeting is closed to the public.

Dated: May 16, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–10320 Filed 5–23–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2005–21232]

Beacon Port LLC, Liquefied Natural Gas Deepwater Port License Application

AGENCY: Coast Guard, DHS; Maritime Administration, DOT.

ACTION: Notice of application.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) announce that they have received an application for the licensing of a natural gas deepwater port, and that the application appears to contain the required information. This notice summarizes the applicant's plans and the procedures that will be followed in considering the application.

DATES: The Deepwater Port Act of 1974, as amended, requires any public hearing on this application to be held not later than January 19, 2006, and requires a decision on the application to be made not later than April 19, 2006.

ADDRESSES: The public docket for USCG–2005–21232 is maintained by the: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

Docket contents are available for public inspection and copying, at this address, in room PL–401, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility's telephone is 202–366–9329, its fax is 202–493–2251, and its Web site for electronic submissions or for electronic access to docket contents is *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Kevin Tone, U.S. Coast Guard, telephone: 202–267–0226, e-mail: *KTone@comdt.uscg.mil.* If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone: 202–366–0271.

SUPPLEMENTARY INFORMATION:

Receipt of application

On January 18, 2005, the Coast Guard and MARAD received an application from Beacon Port LLC, 600 N. Dairy Ashford, Houston, TX 77079–1175 for all Federal authorizations required for a license to own, construct, and operate a deepwater port governed by the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 *et seq.* (the Act). A portion of the original submission did not contain sufficient information. On April 16, 2005, we received revised information which enabled us to complete our review. On May 10, 2005, we determined that the application appeared to contain all information required by the Act.

Background

According to the Act, a deepwater port is a fixed or floating manmade structure other than a vessel, or a group of structures, located beyond State seaward boundaries and used or intended for use as a port or terminal for the transportation, storage, and further handling of oil or natural gas for transportation to any State.

A deepwater port must be licensed by the Secretary of Transportation. Statutory and regulatory requirements for licensing appear in 33 U.S.C. 1501 *et seq.* and in 33 CFR Part 148. Under delegations from and agreements between the Secretary of Transportation and the Secretary of Homeland Security, applications are processed by the Coast Guard and MARAD. Each application is considered on its merits.

The Act provides strict deadlines for processing an application. Once a notice is published indicating that an application appears to contain the required information, we must hold public hearings on the application within 240 days, and the Secretary of Transportation must render a decision on the application within 330 days. We will publish additional **Federal Register** notices to inform you of these public hearings and other procedural milestones, including environmental review. The Secretary's decision, and other key documents, will be filed in the public docket.

At least one public hearing must take place in each adjacent coastal State. For purposes of the Act, Louisiana and Texas are the adjacent coastal States for this application. Other States can apply for adjacent coastal State status in accordance with 33 U.S.C. 1508(a)(2).

Summary of the Application

The application plan calls for the proposed deepwater port terminal to be located outside State waters in the Gulf of Mexico on the U.S. Outer Continental Shelf (OCS). Beacon Port would consist of a Main Terminal, Riser Platform, and connecting pipelines. The Main Terminal would be located approximately 50 miles (80 km) off the coast, East-Southeast of Galveston, TX (approximately 45 miles (72 km) South of High Island, TX) in OCS lease block High Island Area 27 (HIA 27). The Riser Platform would be located approximately 29 miles off the coast, South-Southeast of Johnson's Bayou, LA (approximately 27 miles South of Holly Beach, LA) in OCS lease block West Cameron 167 (WC 167). Beacon Port would serve as an LNG receiving, storage, and regasification facility. The Main terminal would be located in water depth of approximately 65 feet (20 m).

The proposed Beacon Port Main Terminal would include: two concrete Gravity Based Structures (GBS) that would contain the LNG storage tanks, LNG carrier berthing provisions, LNG unloading arms, low and high pressure pumps, vaporizers, metering, utility systems, general facilities and accommodations. The Main Terminal would be able to receive LNG carriers up to 253,000 cubic meters cargo capacity. LNG carrier arrival frequency would be planned to match specified terminal gas delivery rates. The terminal would have storage capacity for up to 300,000 cubic meters of LNG (150,000 cubic meters per tank) on site.

Regasification of LNG would be accomplished through the use of open rack vaporizers (ORV's). In normal operation, four pumps would operate having a combined total flow rate of approximately 167.5 million gallons per day (26,400 m^3/hr). At peak operation, five pumps would operate with a combined total flow rate of approximately 203 million gallons per day (32,000 m^3/hr).

Beacon Port proposes the installation of approximately 46 miles of offshore natural gas transmission pipeline on the OCS. A 42-inch diameter pipeline would connect the Main Terminal with the Riser Platform. Three additional pipelines (24-inch, 20-inch, and 12.75-inch in diameter) are proposed to connect the Riser Platform with existing gas distribution pipelines in the West Cameron (WC) 167 OCS block. The deepwater port would be designed to handle an average delivery of approximately 1.5 billion standard cubic feet of natural gas per day (Bscfd) with a peak delivery of approximately 1.8 Bscfd.

Dated: May 18, 2005.

B. R. Emond,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection U.S. Coast Guard.

H. Keith Lesnick,

Senior Transportation Specialist, Deepwater Ports Program Manager, U.S. Maritime Administration.

[FR Doc. 05–10362 Filed 5–23–05; 8:45 am]

BILLING CODE 4910–15–P

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; 1018–0117; State Certification of Expenditures, Public Law 106–408

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; Request for comments.

SUMMARY: We (Fish and Wildlife Service) have submitted to OMB a request to renew approval for information collection associated with FWS Form 3–2197a (State Certification of Expenditures). We will use the information that we collect to determine if the States properly expended the funds they received under the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 et seq.) and the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 et seq.). As used in this notice, the term ''States'' includes the 50 States, Commonwealth of Puerto Rico, District of Columbia, Commonwealth of the Northern Mariana Islands, Guam, U.S. Virgin Islands, and American Samoa.

DATES: You must submit comments on or before June 23, 2005.

ADDRESSES: Send your comments and suggestions on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or at *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, 4401 N. Fairfax Drive, MS 222–ARLSQ, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements, explanatory information, or related form, contact Hope Grey at the addresses above 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 related to FWS Form 3–2197a under OMB control number 1018–0117. This approval expires on May 31, 2005. We have sent a request to OMB to renew approval for this information collection, and we are requesting a 3-year term of approval. 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.

On February 3, 2005, we published in the **Federal Register** (70 FR 5692) a notice of our intent to request that OMB renew authority for this information collection. In that notice, we solicited public comments for 60 days, ending April 4, 2005. We received one comment during that period. The commenter opposed the information collection as a waste of taxpayer dollars and also requested a copy of the last report for this information collection. We have noted the concern and have provided the commenter with a copy of the last report to Congress.

Section 133(d)(1) of Public Law 106–408 requires that States that received funds apportioned under the Pittman-Robertson Wildlife Restoration Act or the Dingell-Johnson Sport Fish Restoration Act during the fiscal year must certify their expenditures to the Secretary of the Interior in writing. Within 60 days after the close of each fiscal year, State fish and wildlife agencies use FWS Form 3–2197a to certify that they have properly expended the funds granted to them under the above Acts. The Secretary then transmits the signed forms to Congress by December 31 of each year.

Title: State Certification of Expenditures, Public Law 106–408.

OMB Control Number: 1018–0117.

Frequency of Collection: Annually.

Description of Respondents: States, Commonwealth of Puerto Rico, District

of Columbia, Commonwealth of the Northern Mariana Islands, Guam, U.S. Virgin Islands, and American Samoa.

Annual Burden Estimates: 28 hours per year (56 respondents at 1/2 hour each).

Your comments are invited on: (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility; (2) the accuracy of the agency's estimates of burden utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 18, 2005.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–10310 Filed 5–23–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have submitted the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. The information collected for the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation is needed to assist Federal and State agencies in administering the Sport Fish and Wildlife Restoration grant programs. The 2006 FHWAR will provide up-to-date information on the uses and demands for wildlife-related recreation resources, trends in uses of those resources, and a basis for developing and evaluating programs and projects to meet existing and future needs. We have conducted this survey every 5 years since 1955.

DATES: You must submit comments on or before June 23, 2005.

ADDRESSES: Send your comments and suggestions on this information collection reinstatement to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements, explanatory information, or related materials, contact Hope Grey at the addresses above or by phone 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)). Previously, we had approval from OMB to collect information on the 2001 FHWAR Survey under OMB control number 1018–0088. This approval expired on September 30, 2003. We have submitted a request to OMB to reinstate approval for the 2006 FHWAR information collection. 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.

On November 26, 2004, we published in the **Federal Register** (69 FR 68966) a notice of our intent to request information collection authority from OMB. In that notice, we solicited public comments for 60 days, ending on January 25, 2005. We received comments from only one individual regarding this notice. The commenter expressed an objection to using taxpayers' money to collect information on hunting (which the commenter opposes) and to the survey being conducted every 5 years. The commenter recommended that groups like the Friends of Animals, Fund for Animals, and Humane Society be involved in collecting information. We note the concerns raised by this individual. However, we believe the FHWAR information collection provides an important means of measuring the extent of wildlife-related recreation and will be of great benefit to Federal and State agencies responsible for maintaining and enhancing fish and wildlife resources in the United States. The FHWAR collects information on nonconsumptive activities (observing, feeding, and photographing wildlife) as well as on consumptive activities (hunting and fishing). The survey, conducted only every 5 years, is paid for by grants from multistate conservation grant programs authorized by Public Law 106–408 (sections 113 and 122). Money for the programs comes from Federal excise tax and import duties on hunting, shooting, boating, and angling equipment and from a tax on motorboat and small engine fuel—not from general tax revenues. The Census Bureau was selected to collect the information for the survey because of its expertise, excellent response rates, reliable methodology, and 39 years of experience collecting information for the FHWAR.

We collect the information in conjunction with carrying out our responsibilities under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777M), commonly referred to as the Dingell-Johnson Act, and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i), commonly referred to as the Pitman-Robertson Act. Under these acts, as amended, we provide approximately $500 million in grants annually to States for projects that support sport fish and wildlife management and restoration, including the improvement of fish and wildlife habitats, fishing and boating access, fish stocking, and hunting and fishing opportunities. We also provide grants for aquatic education and hunter education, maintenance of completed projects, and research into problems affecting fish and wildlife resources. These projects help to ensure that the American people have adequate opportunities for fish and wildlife recreation.

The 2006 FHWAR will be the 11th conducted since 1955. We sponsor the survey at the States' request, which is made through the International Association of Fish and Wildlife Agencies. The Census Bureau collects the information using computer-assisted telephone or in-person interviews. A sample of sportspersons and wildlife watchers will be selected from a household screen. Sample persons will be asked about their participation and expenditures. Three detailed interviews

will be conducted during the survey year. The 2006 FHWAR will be similar in scope to past surveys. It will generate information identified as priority data needed by Federal and State agencies responsible for administering the Sport Fish and Wildlife Restoration grant programs. Accordingly, the 2006 FHWAR will produce a comprehensive database of fish and wildlife-related recreation activities and expenditures. It will include the number of persons participating in different types of activities such as freshwater, saltwater, and Great Lakes fishing, and big game, small game, migratory bird, and other animal hunting. Wildlife-watching activities include wildlife observation, feeding, and photographing around the home and on trips away from home. Information is collected on days of participation, species of animals sought, and how much money was spent on trips and for equipment. Information on the characteristics of participants includes age, income, sex, education, race, and residency. The survey data has State level reliability. Federal and State agencies use information from the survey to formulate management and policy decisions related to fish and wildlife restoration and management. Participation patterns and trend information assist in identifying present and future needs and demands.

The information is used for planning the acquisition, development, and enhancement of resources for the benefit of wildlife-related recreation. Land managing agencies use the data on expenditures, economic evaluation, and participation to assess the value of wildlife-related recreational uses of natural resources. States use expenditure information to estimate the economic impact of wildlife-related recreation expenditures on their economies and to support the dedication of tax revenues for fish and wildlife restoration programs. The information collected on resident saltwater fishing assists coastal States in determining the proper ratio for allocating funds between freshwater and saltwater projects as required by the Federal Aid in Sport Fish Restoration Act, as amended. The information is not readily available elsewhere because few States have saltwater licenses or conduct their own surveys. If the 2006 FHWAR data were not available, it would impair the ability of those States to meet their obligations under the Act.

Title: National Survey of Fishing, Hunting, and Wildlife-Associated Recreation.

OMB Control Number: 1018–0088.

Form Number: None.

Frequency of Collection: Household screen interviews and the first detailed sportspersons and wildlife-watchers interviews will be conducted April–June 2006. The second detailed interviews will be conducted September–October 2006. The third and last detailed interviews will be conducted January–March 2007.

Description of Respondents: Individuals.

Total Annual Responses: 95,000 respondents.

Total Annual Burden Hours: 32,254 hours.

The projected number of respondents and the estimated burden for the 2006 FHWAR are:

	Estimated number of household responses	Average time per household (minutes)	Estimated number of participant responses	Average respondent time (minutes)	Total burden (hours)
Screen	*76,000	7			8,867
Screen Reinterview**	3,800	5			317
Hunting & Fishing:					
1st interview			12,000	15	3,000
2nd interview			24,000	10	4,000
3rd interview			36,000	15	9,000
reinterview			2,000	5	167
Wildlife Watching:					
1st interview			7,200	11	1,320
2nd interview			12,000	11	2,200
3rd interview			18,000	11	3,300
reinterview			1000	5	83
Total	79,800	6.9	112,200	12.3	32,254

*The estimated number of respondents reached from a sample of households will be 76,000. About one-half (38,000) of those respondents will sample in and receive a detail interview. An additional 50 percent of those households where one person is sampled (19,000) will have a second person screened in for interviews. Therefore, the total number of respondents is estimated to be 95,000 (76,000 + 19,000) in the 2006 FHWAR.

**Of the survey respondents, 5 percent from the CAPI screener workload and 6 percent from the CAPI third interview sportspersons and wildlife-watchers workloads are reinterviewed by another Census interviewer using a subset of the regular questionnaire. These reinterview responses are compared to the responses of the full interview as a quality control measure.

The total number of respondents can be calculated by adding up the household and participant responses and subtracting the reinterviews and the third interviews. There is some wave 1 and wave 2 overlap.

We expect the burden to be about 15 minutes for the sportsmen and 11 minutes for the wildlife-watching participants. We base the estimate for interview length on the 2001 survey and experience with similar surveys. The combined total estimated hours of respondent burden is 32,254.

We invite your comments on (1) whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Dated: April 1, 2005.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–10311 Filed 5–23–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

U.S. Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration, National Marine Fisheries Service

[I.D. 041205C]

Notice of Intent to Conduct Public Scoping Meetings and to Prepare an Environmental Impact Statement Related to the Elliott State Forest Habitat Conservation Plan; Correction

AGENCIES: Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of intent, to conduct scoping meetings; Correction.

SUMMARY: The U.S. Fish and Wildlife Service and National Marine Fisheries Service (NMFS) published a document in the **Federal Register** on May 9, 2005, with an incorrect date for submitting written comments. The document advised interested parties of their intent to conduct public scoping under the National Environmental Policy Act (NEPA) necessary to gather information to prepare an Environmental Impact Statement (EIS) on an anticipated permit application from the Oregon Division of Forestry (ODF) submitted under of the Endangered Species Act (ESA) for the incidental take of listed species, associated with the Elliott State Forest Habitat Conservation Plan (HCP) in Oregon.

DATES: See **SUPPLEMENTARY INFORMATION** under the heading Correction regarding the corrected date for submission of comments.

ADDRESSES: All comments concerning the preparation of the EIS and the NEPA process should be addressed to: Lee Folliard, FWS, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266, facsimile: (503) 231–6195; or Chuck Wheeler, NMFS, 2900 NW Stewart Parkway, Roseberg, OR 97470–1274, facsimile: (541) 957–3386.

Comments may also be submitted by e-mail to the following address: *ElliottStateForest.nwr@noaa.gov*. In the subject line of the e-mail, include the document identifier: Elliott State Forest HCP. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lee Folliard, (503) 231–6179 or Chuck Wheeler (541) 957–3379.

SUPPLEMENTARY INFORMATION: On May 9, 2005, a document was published in the **Federal Register** (70 FR 24450) with an incorrect date for written comment submissions.

Need for Correction

The document stated written comments would be accepted for 30 days after the date of publication in the **Federal Register**. The date for accepting written comments should read 45 days after date of publication. Accordingly, the **DATES** section of the document is corrected to read as follows:

DATES:

Public scoping meetings are scheduled as follows:

1. May 24, 2005, 6–10 p.m.; Roseburg, OR.
2. May 25, 2005, 6–10 p.m.; North Bend, OR.
3. May 26, 2005, 6–10 p.m.; Salem, OR.

Written comments should be received on or before June 23, 2005.

Dated: March 17, 2005.

David J. Wesley,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

Dated: May 18, 2005.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–10353 Filed 5–23–05; 8:45 am]

BILLING CODES 3510–22–S, 4310–55–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 660–05–1330–EP]

Proposed Otay Hills Quarry Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a joint Environmental Impact Statement (EIS) and Environmental Impact (EIR).

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, 40 CFR 1508.22, and the California Environmental Quality Act (CEQA), notice is herby given that the Bureau of Land Management (BLM) and the San Diego County Department of Planning and Land Use (DPLU) intend to prepare a joint Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) for the proposed development of a rock quarry on private land and federal mineral estate. The proposed EIS/EIR will describe and analyze alternatives for a proposed operation to extract construction aggregates on a 210-acre site in the foothills of Otay Mountain, San Diego County, California.

DATES: This notice initiates the public scoping process. Comments on issues may be submitted in writing to the address listed below. Additionally, public meetings will be held to encourage public input. All public meetings will be announced through the local news media, newspapers, and the BLM Web site *(http://www.ca.blm.gov/palmsprings)* at least 15 days prior to the event. Additional opportunities for public participation will be provided upon publication of the draft EIS/EIR.

ADDRESSES: Comments should be sent to Greg Hill, Otay Hills Project, Bureau of Land Management, 690 W. Garnet Ave., P.O. Box 581260, North Palm Springs, CA 92258 or by fax at (760) 251–4899, or by e-mail at *gchill@ca.blm.gov.* Documents pertinent to this proposal, including comments with the names and addresses of respondents, will be available for public review at the BLM Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours of 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS/EIR. 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. BLM will not consider anonymous comments. 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 Greg Hill, Otay Hills Project, Bureau of Land Management, Palm Springs-South Coast Field Office, (760) 251–4840, or by e-mail at *gchill@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: Superior Ready Mix Company proposes to mine rock for the production of construction aggregates on their property on Otay Mesa, in southwestern San Diego County. The extraction area includes 15 acres of land for which the mineral rights (federal split estate) are held by

the United States and administered by the Bureau of Land Management (BLM). Additionally, the project site lies within the boundary of the San Diego County Multiple Species Conservation Program (MSCP) Subarea Plan and will require a Major amendment to said plan through the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG). The site is 2.5 miles north east of the Otay Mesa International Border Crossing, approximately ¼ mile north of the intersection of Alta Road and Otay Mesa Road. The proposed rock quarry operations will include phased recovery of rock resources, materials processing, concrete batch plant, cement treated base plant, asphalt batch plant, and recycling of asphalt and concrete products. Operations are expected to last approximately 50 years. The total anticipated production of the extraction operations is estimated to be 50 million tons (~25 million cubic yards). Approximately seven million tons is proposed to be extracted from the Federal mineral estate. These Federal mineral materials are proposed to be disposed of in accordance with the 1947 Materials Act (61 Stat. 681) and the Federal mineral materials disposal regulations at 43 CFR part 3600. Total annual production amounts are anticipated to be between 0.6–1.0 million tons of aggregate. The proposed project would generate approximately 460 round trip truck trips per day. The project would also create biological preserve areas prior to extraction. Due to the long-term nature of the extraction activities on the project site, ongoing extraction and reclamation would occur consecutively. As final slopes are graded, these areas would be reclaimed in accordance with reclamation objectives. Reclamation of the site includes the creation of a nearly level pad up to 165 acres in size and an open space easement along the eastern portion of the site. Potential end land uses must be consistent with San Diego County's East Otay Mesa Specific Plan which governs land use on the project site. Two likely uses compatible with the underlying plan and zoning designations for the site include residential development and/or mixed industrial development. The project alternatives are: (A) Proposed Action (210-acre rock quarry, materials processing, batch plants, and recycling of asphalt and concrete products) (B) Reduced Footprint (80-acre rock quarry, materials processing, batch plants, and recycling of asphalt and concrete products) (C) No Build/No Project (Two Scenarios): No Build Alternative would set the baseline environmental setting for the site and would assume that this area will remain undeveloped; No Project Alternative would assume that the site would be developed per the existing land uses approved with the East Otay Mesa Specific Plan.

Dated: March 2, 2005.

Gail Acheson,

Field Manager, Palm Springs-South Coast Field Office.

[FR Doc. 05–10261 Filed 5–23–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–062–05–1220–PM]

Notice of Camping, Parking, Wood Cutting and Wood Gathering Restrictions, Moab Field Office, UT

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of camping, parking, wood cutting, and wood gathering restrictions—Moab Field Office, Utah.

SUMMARY: This notice, applicable to specified public lands administered by BLM's Moab Field Office, limits camping to developed sites and areas (developed campgrounds and designated camping sites), allows BLM to limit the size of designated camping and parking areas, and requires the use of portable toilets at designated camp sites where toilets are not provided. Additionally, this notice prohibits wood cutting and gathering, including Christmas tree cutting, in these intensively used areas. These actions are necessary to protect natural resources, maintain quality recreation opportunities, and provide for public safety.

DATES: This notice is effective May 24, 2005, and shall remain in effect until modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Russell von Koch, Recreation Branch Chief, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, or telephone 435–259–2100.

SUPPLEMENTARY INFORMATION: Frequent use of public lands near Moab, Utah for camping and parking (and related vehicle and off-highway vehicle use) at undeveloped sites, and associated wood cutting and gathering, are damaging soils, vegetation, cultural resources, and scenic values in the locations that are listed below and may damage paleontological values in some of the areas. In addition, certain of these areas have nearby residences, and sanitation is a problem at heavily used sites. The following actions are necessary to halt ongoing impacts and prevent future degradation of resource values, limit impacts on neighboring landowners, provide for sanitation and public safety, and maintain the quality of recreation opportunities.

Camping, Parking, Wood Cutting and Gathering Restrictions

To provide for public safety and halt ongoing impacts and prevent future degradation of resource values, limit impacts on neighboring landowners (where present), and maintain the quality of recreation opportunities, the following actions are necessary on a year-round basis. Camping on BLM administered public land in the following areas is limited to developed campgrounds and designated camping sites. Possession, set up for usage, and use of portable toilets for solid human body waste is required for overnight use at all designated campsites in the areas described below, except at sites where constructed toilets are provided. (A portable toilet is defined as (1) containerized and reusable, (2) commercially available biodegradable system that is landfill disposable, or (3) a toilet within a camper, trailer, or motorhome.) Disposal of portable toilet waste off public land is required. Wood cutting and gathering, including Christmas tree cutting, on BLM administered public land within all of the areas described below is prohibited at all times.

(1) Kane Creek Crossing: the area of public land where the Kane Creek Road crosses Kane Creek (below Hurrah Pass). This includes the public lands in the following sections: T. 27 S., R. 21 E., Sections 10, 14 and 15, the southern half of Section 3, and the southern half of Section 9.

(2) Courthouse/Mill/Tusher/Bartlett/Hidden/Brinks Canyon area: this area includes public lands south of the Blue Hills Road (including side roads up Courthouse Wash, Mill Canyon, Tusher Canyon, Bartlett Canyon, and Hidden Canyon), west of U.S. Highway 191, north of Utah Highway 313, and east of the Dubinky Well Road.

(3) Areas identified in the Canyon Rims Special Recreation Management Area Recreation Plan where camping is restricted. These are public lands within a one-mile radius around Windwhistle and Hatch Campgrounds, the Looking Glass Rock interpretive site, and the Needles and Anticline overlooks.

(4) Areas to the west of and adjacent to residential areas in Moab and Spanish Valley. These include the lands in the following sections: T. 26 S., R. 21

E., Section 12; T 26 S., R. 22 E., Sections 18, 20, and 28 and 29.

(5) The area around Dripping Springs (Ten Mile Canyon). These include the public lands in the following sections: T 24 S., R. 18 E., Sections 4, 5, 6, 7, 8, and 9 (of which only small portions are accessible to vehicular camping due to topography).

(6) Areas south of Moab (in San Juan County) within one mile on either side of the LaSal Mountain Loop Road and the Pack Creek Road, and within one-half mile on either side of the Black Ridge Road. This area includes portions of T. 27 S., R. 23 E., Sections 17, 22, 30 and 31, and portions of T. 28 S., R. 23 E., Sections 4, 5, 6, 7, 8 and 9.

These areas consist of approximately 55,970 acres of BLM administered public lands.

Exceptions

The camping and wood cutting and gathering restrictions do not apply to activities permitted by the BLM, or to traditional and historic uses by Native Americans, BLM official uses, or military, fire, emergency, or law enforcement actions. Backpacking is defined as camping more than 1 mile from a road without a vehicle. Backpacking is not regulated by this notice.

Implementation

Maps showing these and all current Moab Field Office camping and wood cutting and gathering restrictions are available for public review at the Moab Field Office. These restrictions are also shown on a map on the Moab Field Office's Web site at *http://www.blm.gov/utah/moab*. BLM will provide public land users with information about these camping and wood cutting and gathering restrictions using brochures, signs, and bulletin boards with maps at major entry areas. Enforcement actions will be taken as necessary in accordance with 43 CFR 8360.0–7, or violators may be subject to the enhanced penalties provided for by 18 U.S.C. 3571.

Future Planning

This notice of camping, parking, wood cutting, and wood gathering shall not be construed as a limitation on BLM's future planning efforts and/or management of such uses on public lands. BLM will periodically monitor resource conditions and trends in the areas described above and may modify this notice or implement additional limitations or closures as necessary.

Authority: 43 CFR 8364.1.

Dated: February 2, 2005.

Margaret Wyatt,

Moab Field Office Manager.

[FR Doc. 05–10260 Filed 5–23–05; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–410–1652–IA]

Restriction Order Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Restriction Order No. ID–410–01, Wallace Forest Conservation Area, Kootenai County, Idaho.

SUMMARY: The Restriction Order prohibits building, maintaining, or using a fire or campfire within the Wallace Forest Conservation Area, described as all public lands administered by the Bureau of Land Management (BLM) located in T.50 N., R. 2 W., Sec. 31; T. 50 N., R. 3 W., Sec. 35; T. 49 N., R. 2 W., Sec. 6 and those portions of T. 49 N., R. 3 W., Sec. 1, which lie north of Coeur d'Alene Lake, Boise Meridian, all in Kootenai County, Idaho. A map depicting the restricted area is available for public inspection at the Bureau of Land Management, Coeur d'Alene Field Office, 1808 North Third Street, Coeur d'Alene, Idaho. These restrictions become effective immediately and will remain in effect unless revoked and/or replaced with supplementary rules.

DATES: *Effective Date:* May 24, 2005.

FOR FURTHER INFORMATION CONTACT: Terry Kincaid at the BLM Coeur d'Alene Field Office, 1808 N. Third St., Coeur d'Alene, ID 83814 or call (208) 769–5031.

SUPPLEMENTARY INFORMATION: The authority for establishing these restrictions is Title 43, Code of Federal Regulations, 8364.1. The fire restriction is necessary to protect public property from vandalism by fire, protect neighboring residents and adjacent private property from fire dangers, protect public investments, and prevent habitat degradation due to illegal firewood cutting. The affected area is located in a rural setting. Short-term camping is allowed on the undeveloped public land and at one semi-developed campsite, but facilities for the containment of campfires are not provided.

These restrictions do not apply to:

(1) Any Federal, state, or local government officer or member of an organized rescue or fire fighting force while in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, contractor, or cooperator while in the performance of an official duty.

(3) Any person or group expressly authorized by an Authorized Officer to use a fire on the subject public land through the issuance of a permit or other use authorization instrument.

(4) The use of charcoal in portable barbecue grills made of metal with raised edges of sufficient height to contain all ash and residue.

(5) The use of pressurized liquid or gas camp stoves.

Violation of this order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Such violation may also be subject to the enhanced penalties provided for by 18 U.S.C. 3571.

Dated: April 26, 2005.

Jenifer Arnold,

Acting District Manager.

[FR Doc. 05–10259 Filed 5–23–05; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1091 (Preliminary)]

Artists' Canvas 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 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of artists' canvas, provided for in subheadings 5901.90.20 and 5901.90.40 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On April 1, 2005, a petition was filed with the Commission and Commerce by Tara Materials Inc., Lawrenceville, Georgia, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of artists' canvas from China. Accordingly, effective April 1, 2005, the Commission instituted antidumping duty investigation No. 731–TA–1091 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference 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 April 6, 2005 (70 FR 17467). The conference was held in Washington, DC, on April 22, 2005, 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 May 16, 2005. The views of the Commission will be contained in USITC Publication 3777 (May 2005), entitled Artists' Canvas from China: Investigation No. 731–TA–1091 (Preliminary).

Issued: May 16, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–10346 Filed 5–23–05; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice; the first notice was published at 70 FR 10416 and no comments were received. 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; and (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: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* 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 703–292–7556.

NSF 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.

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Graduate Students and Postdoctorates in Science and Engineering.

OMB Approval Number: 3145–0062.

Proposed Project

Graduate students in science, engineering, and health-related fields in U.S. colleges and universities, by source and mechanism of support and by demographic characteristics. An electronic/mail survey, the Survey of Graduate Students and Postdoctorates in Science and engineering originated in 1966 and has been conducted annually since 1972. The survey is the academic graduate enrollment component of the NSF statistical program that seeks to ''provide a central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and technical resources in the United States, and to provide a source of information for policy formulation by other agencies of the Federal government'' as mandated in the National Science Foundation Act of 1950.

The proposed project will continue the current survey cycle for three years. The annual Fall surveys for 2005 through 2007 will survey the universe of 712 reporting units (schools) at 592 graduate degree-granting institutions. There are 12, 262 departments at these schools that offer accredited graduate programs in science, engineering or health. The survey has provided continuity of statistics on graduate school enrollment and support for graduate students in all science & engineering (S&E) and health fields, with separate data requested on demographic characteristics (race/ethnicity and gender by full-time and part-time enrollment status). Statistics from the survey are published in NSF's annual publication series Graduate Students and Postdoctorates in Science and Engineering, in NSF publications Science and Engineering Indicators, Women, Minorities, and Persons with Disabilities in Science and Engineering, and are available electronically on the World Wide Web.

The survey will be sent primarily to the administrators at the Institutional Research Offices. To minimize burden, NSF instituted a Web-based survey in 1998 through which institutions can enter data directly or upload preformatted files. The Web-based survey includes a complete program for editing and trend checking and allows institutions to receive their previous year's data for comparison. Respondents will be encouraged to participate in this Web-based survey should they so wish. Traditional paper questionnaires will also be available, with editing and trend checking performed as part of the survey processing. In the currently

ongoing Fall 2004 GSS survey, preliminary data indicate that 95% of the institutions are submitting the data on the Web-based data collection system. During the 2003 GSS survey cycle, 87% of the institutions used the Web-based data collection system.

The Fall 2003 GSS achieved a total response rate of 99.4 percent for institutions and 99.0 percent for departments. Response rates are not yet available for the currently ongoing Fall 2004 survey.

Estimate of Burden:

Respondents: Individuals.

Estimated Number of Responses: 12,262.

Estimated Total Annual burden on Respondents: 39,235 hours.

Frequency of Responses: Annually.

Dated: May 19, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–10315 Filed 5–23–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 64, ''Travel Voucher'' (Part 1); NRC Form 64A, ''Travel Voucher'' (Part 2); and NRC Form 64B, ''Optional Travel Voucher'' (Part 2).

3. *The form number if applicable:* NRC Form 64; NRC Form 64A and NRC Form 64B.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Contractors, consultants and invited NRC travelers who travel in the course of conducting business for the NRC.

6. *An estimate of the number of responses:* 100.

7. *The estimated number of annual respondents:* 100.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 100 hours (1 hour for each form).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* As a part of completing the travel process, the traveler must file travel reimbursement vouchers and trip reports. The respondent universe for the above forms include consultants and contractors and those who are invited by the NRC to travel, e.g., prospective employees. Travel expenses that are reimbursed are confined to those expenses essential to the transaction of official business for an approved trip.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 23, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

John A. Asalone, Office of Information and Regulatory Affairs (3150–0192), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be emailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 18th day of May 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–2587 Filed 5–23–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–05–021; ASLBP No. 05–839–02–EA]

In The Matter Of Andrew Siemaszko; *Establishment Of Atomic Safety And Licensing Board*

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, see 10 CFR 2.104, 2.202, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Andrew Siemaszko (Enforcement Action)

This proceeding concerns a request for hearing submitted on May 11, 2005, by Andrew Siemaszko in response to an April 25, 2005 NRC staff ''Order Prohibiting Involvement In NRC-License Activities,'' 70 FR 22720 (May 2, 2005). Under the terms of that staff order, because of his alleged failure to report the presence of boric acid near the reactor pressure vessel head on a condition report and a work order prepared in connection with a refueling outage at the Davis-Besse Nuclear Power Station that ended in May 2000, that resulted, in part, in a significant adverse condition going uncorrected, Mr. Siemaszko (1) as of the effective date of the order, is prohibited for five years from engaging in NRC-licensed activities; (2) if currently involved with another licensee in NRC-licensed activities, must immediately cease those activities, inform the NRC of the employer, and provide a copy of the order to the employer; and (3) for a period of five years after the five-year prohibition period has expired, must, within twenty days of accepting his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, provide notice to the agency of the employer or the entity where he is, or will be, involved in NRC-licensed activities.

The Board is comprised of the following administrative judges: Lawrence G. McDade, Chair, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; E. Roy Hawkens, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Dr. Peter S. Lam, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the

administrative judges in accordance with 10 CFR 2.302.

Issued in Rockville, Maryland, this 18th day of May 2005.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 72–8]

Calvert Cliffs Nuclear Power Plant; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding an Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sebrosky, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1132; fax number:(301) 425–8555; e-mail: *jms3@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Special Materials License No. 2505 that would add the NUHOMS–32P as an optional design to the existing NUHOMS–24P design for dry storage of spent nuclear fuel. Calvert Cliffs Nuclear Power Plant, Inc. (CCNPP) is currently storing spent nuclear fuel at the Calvert Cliffs independent spent fuel storage installation (ISFSI) located in Calvert County, Maryland.

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated December 12, 2003, as supplemented, CCNPP submitted a request to the NRC to amend the license (SNM–2505) to add the NUHOMS–32P as an optional design to the existing NUHOMS–24P design for dry storage of spent fuel. The NUHOMS–32P design stores eight more spent fuel assemblies than the NUHOMS–24P design.

The proposed action before the NRC is whether to approve the amendment.

Need for the Proposed Action: The proposed action would allow CCNPP to optimize its dry spent fuel storage capacity by upgrading portions of its ISFSI to use the NUHOMS–32P dry shielded canister. The proposed action would allow CCNPP to reduce the minimum number of canister loadings each year from four (using the NUHOMS–24P design) to three (with the NUHOMS–32P design).

Environmental Impacts of the Proposed Action: The staff has determined that the proposed action would not endanger life or property. No effluents are released from the ISFSI during operation and the proposed changes have no impact to dry shielded canister loading activities. Therefore, there is no significant change in the type or significant increase in the amounts of any effluents that may be released offsite. There is also no significant increase with regard to individual or cumulative occupational radiation exposures because of the proposed action. The proposed amendment includes a technical specification change that would specify that the current neutron source term technical specification limit of ≤2.23E8 would apply to the NUHOMS–24P design and that the NUHOMS–32P design would have a neutron source assembly technical specification limit of ≤3.3E8 neutrons/second/assembly. The contact dose rate for the NUHOMS–32P design in a loss of neutron shielding accident with the revised neutron source term is 1517 mrem/hr. The contact dose rate for the NUHOMS–24P design in a loss of neutron shielding accident is 1126 mrem/hr. The regulatory limit for a design basis accident is 5 rem at 100 meters in accordance with 10 CFR 72.106. When compared to the regulatory limit, the dose rate increase from a loss of neutron shielding for the NUHOMS–32P design would be a minimal change from the dose rate for a loss of neutron shielding accident for a NUHOMS–24P design. All of the other proposed changes have no impact on radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

The amendment only affects the requirements associated with the loading of the casks and does not affect non-radiological plant effluents or any other aspects of the environment. Therefore, there are no significant non-radiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action: As an alternative to the proposed action, the staff considered denial of the amendment request (*i.e.*, the ''no-action'' alternative). Approval or denial of the amendment request would result in minimal change in the environmental impacts. Therefore, the environmental impacts of the proposed action and the alternative action are similar.

Agencies and Persons Consulted: On April 28, 2005, Richard McLean of the State of Maryland was contacted regarding the proposed action and had no concerns. The NRC staff has determined that consultation under Section 7 of the Endangered Species Act is not required for this specific amendment and will not affect listed species or critical habitat. The NRC staff has also determined that the proposed action is not a type of activity having the potential to cause effects on historic properties. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

Conclusions: The staff has reviewed the amendment request submitted by CCNPP and has determined that adding the NUHOMS–32P as an optional design to the existing NUHOMS–24P design for dry storage of spent nuclear fuel would have no significant impact on the environment.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the NRC finds that the proposed action of approving the amendment to the license will not significantly impact the quality of the human environment. Accordingly, the NRC has determined that an environmental impact statement for the proposed license amendment is not warranted.

The request for amendment was docketed under 10 CFR part 72, Docket 72–8. For further details with respect to this action, see the proposed license amendment dated December 12, 2003, as supplemented, by a letter dated May 12, 2004. The NRC maintains an Agencywide Documents Access Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at: *http://www.nrc.gov/reading-rm/adams.html.* Copies of the referenced documents will also be available for review at the NRC Public Document Room (PDR), located at 11555 Rockville Pike, Rockville, MD, 20852. PDR reference staff can be contacted at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.* The PDR reproduction contractor will copy documents for a fee.

Dated in Rockville, Maryland, this 11th of May, 2005.

For The Nuclear Regulatory Commission

Joseph M. Sebrosky,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–2586 Filed 5–23–05; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 29, 2005 through May 12, 2005. The last biweekly notice was published on May 10, 2005 (70 FR 24645).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor

must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: January 21, 2005.

Description of amendment request: The proposed amendment would implement the Alternative Source Term (AST) for the analysis of the radiological consequences of a design-basis Loss-of-Coolant Accident (LOCA). There are no changes proposed to the Operating License or Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Revision of the LOCA analysis to the Alternative Source Term methodology does not affect the design or operation of HBRSEP [H. B. Robinson Steam Electric Plant], Unit No. 2. Rather, once the occurrence of an accident has been postulated, the new source term is an input to evaluate the consequences of the postulated accident. The implementation of the Alternative Source Term has been evaluated in revisions to the LOCA dose analysis at HBRSEP, Unit No. 2. Based on the results of this analysis, it has been demonstrated that the dose consequences are within the regulatory guidance provided by the NRC. This guidance is presented in 10 CFR 50.67 and Regulatory Guide 1.183.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not affect plant structures, systems, or components. The proposed change is to an evaluation methodology and does not initiate design basis accidents.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change is associated with the implementation of a new licensing basis for HBRSEP, Unit No. 2. The new licensing basis implements an Alternative Source Term in accordance with 10 CFR 50.67 and the associated Regulatory Guide 1.183. The results of the revised limiting design basis analysis are subject to revised acceptance criteria. The analysis has been performed using conservative methodologies in accordance with regulatory guidance or other methodologies approved by the NRC in prior plant-specific license amendments. The dose consequences are within the acceptance criteria found in the regulatory guidance associated with Alternative Source Terms.

The proposed change continues to ensure that doses at the exclusion area and low population zone boundaries, as well as the control room, are within the corresponding regulatory limits. Specifically, the margin of safety for the radiological consequences of these accidents is considered to be that provided by meeting the applicable regulatory limits.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Michael L. Marshall, Jr.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: February 14, 2005.

Description of amendment request: The proposed amendment would revise the surveillance requirements (SRs) for the station batteries as specified in Technical Specification (TS) SR 3.8.4.5, the battery service test, and TS SR 3.8.4.6, the battery performance test.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the Proposed Changes Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

No. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed surveillance changes will continue to ensure that the DC system is tested in a manner that will verify operability. Performance of the required system surveillances, in conjunction with the applicable operational and design requirements for the DC system, provide assurance that the system will be capable of performing the required design functions for accident mitigation and also that the system will perform in accordance with the functional requirements for the system as described in the Updated Final Safety Analysis Report for HBRSEP [H. B. Robinson Steam Electric Plant], Unit No. 2. This ensures that the rate of occurrence and consequences of analyzed accidents will not change. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the Proposed Changes Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated?

No. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The proposed surveillance requirement changes will continue to ensure that the DC system is tested in a manner that will verify operability. No physical changes to the HBRSEP, Unit No. 2, systems, structures, or components are being implemented. There are no new or different accident initiators or sequences being created by the proposed Technical Specifications changes. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the Proposed Changes Involve a Significant Reduction in the Margin of Safety?

No. The proposed changes do not involve a significant reduction in the margin of safety. The proposed DC system surveillance requirement changes provide appropriate and applicable surveillances for the DC system. The proposed changes to surveillance requirements for the DC system will continue to ensure system operability. Therefore, these changes do not affect any margin of safety for HBRSEP, Unit No. 2.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Michael L. Marshall, Jr.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: March 3, 2005.

Description of amendment request: The proposed amendment would revise the requirements of Technical Specification (TS) 5.6.5, ''Core Operating Limits Report (COLR).'' Specifically, the proposed change would add topical report EMF–2103(P)(A), ''Realistic Large Break LOCA [loss-of-coolant accident] Methodology for Pressurized Water Reactors,'' to the list of documents specified in TS 5.6.5. TS 5.6.5 lists the approved methodologies that can be used to determine the core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

The proposed methodology will be reviewed and approved by the NRC prior to its use for HBRSEP [H. B. Robinson Steam Electric Plant], Unit No. 2. Analyzed events are assumed to be initiated by the failure of plant structures, systems, or components. The determination of core operating limits in accordance with this new methodology will meet the limitations specified in the NRC safety evaluation of the new methodology. The topical report associated with the new methodology demonstrates that the integrity of the fuel will be maintained and that design requirements will continue to be met. The proposed change does not involve physical changes to any plant structure, system, or component. Therefore, the probability of occurrence for a previously analyzed accident is not significantly increased.

The consequences of a previously analyzed accident are dependent on the initial conditions assumed for the analysis, the behavior of the fuel during the analyzed accident, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The proposed methodology continues to meet applicable design and safety analyses acceptance criteria. The proposed change does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. As a result, no analysis assumptions are violated and there are no adverse effects on the factors that contribute to offsite or onsite dose as the result of an accident. The proposed change does not affect setpoints that initiate protective or mitigative actions. The proposed change ensures that plant structures, systems, or components are maintained consistent with the safety analysis and licensing bases. Based on this evaluation, there is no significant increase in the consequences of a previously analyzed event. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated?

The proposed change does not involve any physical alteration of plant systems, structures, or components, other than allowing for fuel design in accordance with NRC approved methodologies. The proposed methodology continues to meet applicable criteria for Large Break Loss of Coolant Accident (LBLOCA) analysis. No new or different equipment is being installed. No installed equipment is being operated in a different manner. There is no alteration to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. As a result, no new failure modes are being introduced. There are no changes in the methods governing normal plant operation, nor are the methods utilized to respond to plant transients altered. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety?

The margin of safety is established through the design of the plant structures, systems, and components, through the parameters within which the plant is operated, through the establishment of the setpoints for the actuation of equipment relied upon to respond to an event, and through margins contained within the safety analyses. The proposed change in the methodology used for LBLOCA analyses does not impact the condition or performance of structures, systems, setpoints, and components relied upon for accident mitigation. The proposed

change does not significantly impact any safety analysis assumptions or results. Therefore, the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Michael L. Marshall, Jr.

Dominion Nuclear Connecticut, Inc., Docket Nos. 50–245, 50–336, and 50–423, Millstone Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut

Date of amendment request: December 21, 2004.

Description of amendment request: The requested change will delete Technical Specification (TS) requirements for annual Occupational Radiation Exposure Reports (all units), annual report regarding challenges to pressurizer relief and safety valves (Units 2 and 3), and Monthly Operating Reports (Units 2 and 3).

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated December 21, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates the TSs reporting requirements to provide a monthly operating letter report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve significance hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: Darrell J. Roberts.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: March 9, 2005.

Description of amendment request: Current Technical Specifications (TSs) require that all operations involving a reduction in reactor coolant boron concentration or that involve positive reactivity changes be suspended under certain conditions. The requested changes modify the TSs to incorporate wording related to the reactor coolant system (RCS), electrical power systems, and refueling operations to provide operational flexibility during mode changes or addition of coolant during shutdown operations. Additionally, changes are to be made to the TS bases, as appropriate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not in any way alter the SDM [shutdown margin] or refueling boron concentration. It limits introduction of coolant into the RCS of reactivity more positive than that necessary to meet the required SDM or refueling boron concentration. This proposed change does not affect the input or assumptions for any accidents previously evaluated nor does it affect initiation of an accident. Based on this discussion, the proposed amendment does not increase the probability or consequence of an accident previously evaluated.

Criterion 2: Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change allows introduction of coolant into the RCS with different temperature or lower boron concentration, however, the required boron concentration or SDM is maintained. The proposed amendment does not introduce failure modes, accident initiators, or malfunctions that would cause a new or different kind of accident. No plant modifications are associated with the change. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change provides the flexibility necessary for continued safe reactor operations while limiting any potential for excess positive reactivity additions. [The] SDM and required boron concentration are not affected. Therefore, based on the above, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06141–5127.

NRC Section Chief: Darrell J. Roberts.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: December 23, 2004.

Description of amendment request: The requested amendment would

relocate certain Technical Specifications regarding refueling operations to the Technical Requirements Manual (TRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The communications equipment, refueling machine, and spent fuel pool crane are not designed to perform accident mitigation functions. The proposed change to relocate selected refueling specifications does not modify any plant equipment and does not impact any failure modes that could lead to an accident. Relocating the specifications to the TRM where changes would be controlled under the 10 CFR 50.59 process does not change the ability of the communications or refueling equipment to function as expected. Additionally, these specifications have no affect on the consequence of any analyzed accident since the equipment is not related to accident mitigation. Based on this discussion, the proposed amendment does not increase the probability or consequences of an accident previously evaluated.

Criterion 2: Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change[s] do[es] not modify any plant equipment and there is no impact on the capability of the existing equipment to perform their intended functions to move fuel safely or conduct refueling operations while in contact with the control room. No system setpoints are being modified and no changes are being made to the method in which refueling operations are conducted. No changes to the heavy loads program are being proposed by this change. No new failure modes are introduced by the proposed changes. The proposed amendment does not introduce accident initiators or malfunctions that would cause a new or different kind of accident. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The relocation of Technical Specification 3/4.9.5, ''Refueling Operations, Communications,'' to the TRM does not imply any reduction in its importance in [e]nsuring communication between the control room and the refueling station. The proposed change will not alter the requirement on communication between the control room and the refueling station, it will not alter any of the assumptions used in the fuel handling accident analysis, nor will it cause any safety system parameters to exceed their acceptance limit. The relocation of Technical Specification 3/4.9.6, ''Refueling Machine'' to the TRM does not alter the requirement for the lifting device on the refueling machine to have adequate capacity or for the interlocks to be demonstrated operable prior to fuel movement. The assumptions used in the accident analysis are not impacted by this change and no impact to any safety system parameters will result. The relocation of Technical Specification 3/4.9.7, ''Crane Travel—Spent Fuel Storage Areas,'' to the TRM will not alter the requirement that the crane interlocks and/or physical stops are operable, nor will it alter any of the assumptions used in the fuel handling accident analysis. Heavy load lifts are administratively controlled by a safe load path and crane interlocks. The proposed change[s] do[es] not modify any heavy load path criteria. Administrative changes associated with the proposed revision such as relocation of associated Technical Specification Bases to the TRM will not have an impact on any established safety margins.

The proposed change[s] do[es] not affect any of the assumptions used in the accident analysis, nor do they affect any operability requirements for equipment important to plant safety. Therefore, the proposed change[s] will not result in a significant reduction in the margin of safety as defined in the Bases for Technical Specifications covered in this License Amendment Request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06141–5127.

NRC Section Chief: Darrell J. Roberts.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 25, 2002, as supplemented by letters dated November 13, and December 16, 2003, September 22, 2004, and April 6, 2005.

Description of amendment request: The amendments would revise the Technical Specifications (TS) for the Ventilation Filter Testing Program (VFTP), Annulus Ventilation System (AVS), Auxiliary Building Filtered Ventilation Exhaust System (ABFVES), Fuel Handling Ventilation Exhaust System (FHVES), and Control Room Area Ventilation System (CRAVS), and containment penetrations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

Does operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated? No.

This license amendment request proposes amendments to the system TS and/or Bases and/or VFTP TS requirements for the AVS, ABFVES, FHVES, and CRAVS. It also proposes amendments to the TS and Bases for Containment Penetrations. The AVS is in standby during normal plant operations and operates only following a Safety Injection signal or during a test. It is not an accident initiator. The ABFVES is in operation during normal plant operations. However, the ABFVES is not used in direct support of any phase of power generation or conversion or transmission, shutdown cooling, fuel handling operations, or processing of radioactive fluids. Therefore, it is not an accident initiator. The FHVES is utilized to support fuel handling operations when moving recently irradiated fuel. It is not an accident initiator. The CRAVS operates during normal plant operations. However, it is not an accident initiator (the CRAVS being defined so as to exclude equipment that maintains an appropriately low temperature in the control room). The status of containment penetrations is required to be controlled so as to minimize the consequences of a fuel handling accident or a weir gate drop accident. The containment penetrations by themselves are not accident initiators. No accident initiators are associated with the changes proposed in this license amendment request. For these reasons, operation of the facility in accordance with this proposed amendment does not involve a significant increase in the probability of any accident previously evaluated.

In support of the proposed amendment, an analysis has been performed to determine the radiological consequences of the design basis [Loss of Coolant Accident] LOCA at Catawba Nuclear Station. The analysis made use of the Alternative Source Term (AST) methodology and in general conformed to the regulatory positions of Regulatory Guide 1.183 and the draft regulatory positions of DG–1111. Total Effective Dose Equivalent (TEDE) radiation doses at the Exclusion Area Boundary (EAB), boundary of the Low Population Zone (LPZ), and to the control room operators were calculated and found to be acceptable. TEDEs were calculated for a design basis LOCA postulated for a Catawba nuclear unit operating with all low enriched uranium (LEU) fuel and with 4 mixed oxide (MOX) lead fuel assemblies (LFAs). It was found that insertion of 4 MOX LFAs did not produce a significant increase in the TEDEs for a design basis LOCA.

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The new value for the control room TEDE radiation dose is higher than the TEDE radiation dose equivalent to the radiation

doses currently reported in the UFSAR. However, the limiting control room TEDE radiation dose reported in this submittal is lower than the acceptance criterion * * * The new LPZ TEDE radiation dose is higher than the equivalent TEDE radiation dose currently represented. On the other hand, the margin to the acceptance criterion is [large] * * *. The TEDE radiation doses newly computed at the EAB for the design basis LOCA are lower than the corresponding equivalent EAB TEDE radiation dose currently represented in the UFSAR. The margin in the EAB TEDE radiation dose to the guideline value is [also large]. * * * In all cases, there is significant margin between the newly calculated post-LOCA TEDE radiation doses and the corresponding regulatory guideline values. In the sense that the margins to the germane regulatory guideline values are still large, the new values of TEDE radiation doses are comparable to the equivalent TEDE associated with the post-LOCA radiation doses currently listed in the UFSAR. Furthermore, these margins for the design basis LOCA do not significantly decrease with insertion of the 4 MOX LFAs. Therefore, the proposed amendment is determined to not result in a significant increase in accident consequences.

AST analyses also were completed for the design basis locked rotor accident (LRA) and rod ejection accident (REA). Again, these design basis accidents were postulated to occur at a Catawba nuclear unit operating with either an all LEU core or with 4 MOX LFAs. The TEDEs following these design basis accidents were compared to the equivalent TEDEs associated with the current license basis analyses. The equivalent TEDEs were computed from the post-accident whole body and thyroid radiation doses using the method prescribed in Regulatory Guide 1.183, as noted above. TEDEs only at offsite locations were compared as post-accident control room radiation doses are not reported for these design basis accidents in the Catawba UFSAR.

* * * * * * *

For the EAB, LPZ, and control room, the post-LRA TEDEs are seen to increase from the values equivalent to the radiation doses from the current license basis analyses. (This is attributed primarily to the increase in assumed fraction of the fuel pins with clad failure following a design basis LRA at Unit 2. * * *) However, the margins to the acceptance criteria of 2.5 Rem at the offsite locations and 5 Rem in the control room are still significant.

* * * * * * *

For the EAB, LPZ, and control room, the post-REA TEDEs are seen to increase from the values equivalent to the radiation doses from the current license basis analyses, as they did for the design basis LRA. (This is attributed to a number of reasons. These include increase in the fraction of gap activity released to containment, inclusion of limiting radial peaking in the source term, and inclusion of alkali metals.) However, the margins to the acceptance criteria of 6.3 Rem at the offsite locations and 5 Rem in the control room are still significant * * *.

The changes proposed to the TS for Containment Penetrations are editorial in nature and will have no effect upon accident consequences.

The changes proposed to the VFTP TS for the AVS, ABFVES, and FHVES will not result in a significant increase in any accident consequences. The changes to make the penetration values for Unit 2 consistent with Unit 1 for the AVS, ABFVES, and FHVES are acceptable because the appropriate safety factors as delineated in the applicable regulatory guideline documents are still maintained. The change to the flowrate specified for the ABFVES is consistent with the design basis operation of this system. Also, the editorial changes proposed to the VFTP TS will have no impact on any accidents.

Operation of the facility in accordance with the proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated.

Second Standard

Does operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated? No.

This proposed amendment does not involve addition, removal, or modification of any plant system, structure, or component. These changes will not affect the operation of any plant system, structure, or components as directed in plant procedures.

The analysis performed in support of this license amendment request, together with the analyses of the design basis fuel handling accident and weir gate drop reported in previously submitted and NRC approved license amendment requests, includes full scope implementation of AST methodology. This analysis does not represent any change in the post-accident operation of any plant system, structure, or component.

Operation of the facility in accordance with this amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Third Standard

Does operation of the facility in accordance with the proposed amendment involve a significant reduction in the margin of safety? No.

Margin of safety is related to confidence in the ability of fission product barriers to perform their design functions following any of their design basis accidents. These barriers include the fuel cladding, the Reactor Coolant System, and the containment. The performance of these barriers either during normal plant operations or following an accident will not be affected by the changes associated with the license amendment request.

The AVS is associated with the containment fission product barrier. Its post-accident operation will not be affected by implementation of the amendment to its TS. The operation of the ABFVES either during normal plant operations or following an accident will not be affected by implementation of the amendment to its TS. The operation of the FHVES either during normal plant operations or following an accident will not be affected by implementation of the amendment to its TS. The operation of the CRAVS either during normal plant operations or following an accident will not be adversely affected by the proposed changes to its TS Bases. The operation of Containment Penetrations following an accident will not be adversely affected by the proposed change to its TS.

As noted, an analysis of radiological consequences of the design basis LOCA at Catawba Nuclear Station has been performed in support of this license amendment request. The design basis LOCA scenarios were selected based on extensive evaluations of Catawba, its design basis, and its anticipated response to a design basis LOCA. Credit was taken only for safety related systems, structures, and components in simulating the mitigation of radiological consequences of the LOCA. Limiting values were taken for performance characteristics of the Class 1E systems modeled in the analysis. The radiological consequences (TEDE radiation doses at the EAB, LPZ, and in the control room) are within the regulatory guideline values with significant margin.

The changes proposed to the VFTP TS for the AVS, ABFVES, and FHVES will not result in a significant reduction in the margin of safety. These changes are supported by regulatory guidance documents, and are consistent with existing system operation. Also, the editorial changes proposed to the VFTP TS will not have any impact on safety.

Operation of the facility in accordance with the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 30, 2004, as supplemented by letter dated April 26, 2005.

Description of amendment request: The proposed amendment would change the existing steam generator (SG) tube surveillance program to be consistent with that being proposed by the Technical Specifications Task Force (TSTF) in TSTF–449. These proposed changes would revise Technical Specification (TS) 1.1 on definitions, TS 3.4.13 on reactor coolant system

operational leakage, TS 5.5.9 on SG program, and TS 5.6.7 on SG tube inspection reports, and add a new TS 3.4.16 on SG tube integrity. Also, as a result of the licensee replacing the SGs with SGs having a new Alloy 690 thermally treated tubing design, the TSs would be revised to reflect this replacement. The September 30, 2004, application was noticed in the **Federal Register** on November 9, 2004 (69 FR 64987).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change requires a Steam Generator Program that includes performance criteria that will provide reasonable assurance that the steam generator (SG) tubing will retain integrity over the full range of design basis operating conditions (including startup, power operation, hot standby, cooldown, anticipated transients and postulated accidents). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational LEAKAGE. These criteria assure that the probability of an accident will not be increased.

The primary to secondary accident induced leakage rate for any design basis accidents, other than an SG tube rupture, shall not exceed the leakage rate assumed in the accident analysis in terms of total leakage rate for all SGs and leakage rate for an individual SG. [The primary to secondary accident induced leakage rate is relatively inconsequential for the SG tube rupture analysis.] The operational LEAKAGE performance criterion meets current NRC regulations and NEI [Nuclear Energy Institute] 97–06 criteria for reactor coolant system (RCS) operational primary to secondary LEAKAGE through any one SG of 150 gallons per day. These criteria assure that accident doses will stay within regulatory and licensing basis limits.

Therefore, the proposed change does not affect the probability or consequences of any ANO–1 [Arkansas Nuclear One, Unit 1] analyzed accidents.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed performance based requirements are an improvement over the requirements imposed by the current technical specifications. Implementation of the proposed Steam Generator Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. The proposed change enhances SG inspection requirements.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the Steam Generator Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the Steam Generator Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current technical specifications.

Therefore, the margin of safety is not changed by the proposed change to the ANO–1 TSs.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Allen G. Howe.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: March 30, 2005.

Description of amendment request: The proposed amendment adopts the following Nuclear Regulatory Commission (NRC) approved Technical Specification Task Force (TSTF) changes that affect the Boiling Water Reactor (BWR)/6 Improved Standard Technical Specifications:

TSTF No.	Description	TS section affected	Type of change
046, Rev. 1	Clarify the Containment Isolation Valve Surveillance Requirement (SR) to apply only to automatic isolation valves.	SR 3.6.1.3.4 SR 3.6.4.2.2 SR 3.6.5.3.3	Administrative.
222, Rev. 1	Control Rod Scram Time Testing	SR 3.1.4.1 SR 3.1.4.4	Administrative.
264, Rev.	Delete flux monitors specific overlap SRs	SR 3.3.1.1.5 SR 3.3.1.1.6 Table 3.3.1.1–1	Less Restrictive.
275, Rev. 0	Clarify requirements for Diesel Generator (DG) start signal on Reactor Pressure Vessel (RPV) level—low, low, low during RPV cavity flood-up.	Table 3.3.5.1–1, Footnote (a).	Administrative.
276, Rev. 2	Revise DG full load rejection test	SR 3.8.1.9 SR 3.8.1.10 SR 3.8.1.14	Less Restrictive.
300, Rev. 0	Eliminate DG loss of coolant accident-Start SRs while in shutdown when emergency core cooling system is not required.	SR 3.8.2.1	Less Restrictive.
322, Rev. 2	Secondary Containment Integrity SRs	SR 3.6.4.1.3 SR 3.6.4.1.4	Administrative.
400, Rev. 1	Clarification of SR on bypass of DG automatic trips	SR 3.8.1.13	Administrative.
416, Rev. 0	SR 3.5.1.2 Notation	LCO 3.5.1 SR 3.5.1.2 LCO 3.5.2 SR 3.5.2.4	Administrative.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the TS [Technical Specifications] involve both administrative and less restrictive changes. The administrative changes involve wording changes that clarify requirements without changing the original intent. As such, these types of changes do not affect initiators of analyzed events and do not affect the mitigation of any accidents or transients.

The less restrictive changes involve modifications to Surveillance Requirements. The modified Surveillance Requirements do not cause the plant to be operated in a new or different manner and the required equipment continues to be tested in a manner and at a frequency necessary to provide confidence that the equipment can perform its intended safety function. Consequently, no initiators to accidents previously evaluated are affected and no mitigating equipment assumed in accidents previously evaluated is adversely affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed), do not change the design function of any equipment, and do not change the methods of normal plant operation. Accordingly, the proposed changes do not create any new credible failure mechanisms, malfunctions, or accident initiators not previously considered in the GGNS [Grand Gulf Nuclear Station] design and licensing basis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes have no affect on any safety analysis assumptions or methods of performing safety analyses. The changes do not adversely affect system OPERABILITY or design requirements and the equipment continues to be tested in a manner and at a frequency necessary to provide confidence that the equipment can perform its intended safety functions. 10 CFR 50.36 (c)(3) requires the TS to include Surveillance Requirements relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met. The GGNS TS Surveillance Requirements will continue to provide this assurance with the proposed adoption of the NRC approved TSTF changes.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Allen G. Howe.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: December 14, 2004.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.3.G, ''Scram Discharge Volume [SDV],'' to allow vent or drain lines with inoperable valves to be isolated instead of requiring the valves to be restored to Operable status or to be in Hot Shutdown within 12 hours.

The NRC staff issued a Notice of Opportunity for Comment in the **Federal Register** on February 24, 2003 (68 FR 8637), on possible amendments to revise the action for one or more SDV vent or drain lines with an inoperable valve, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a Notice of Availability of the models for referencing license amendment applications in the **Federal Register** on April 15, 2003 (68 FR 18294). The licensee affirmed the applicability of the model NSHC determination (modified slightly as a result of the Pilgrim Nuclear Power Station TS format) in its application dated December 14, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1: The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A change is proposed to allow the affected SDV vent and drain line to be isolated when there are one or more SDV vent or drain lines with vent or drain valves inoperable instead of requiring the valves to be restored to operable status or be in Hot Shutdown within 12 hours. With one SDV vent or drain valve inoperable in one or more lines, the isolation function would be maintained since the redundant valve in the affected line would perform its safety function of isolating the SDV. Following the completion of the required action, the isolation function is fulfilled since the associated line is isolated. The ability to vent and drain the SDV is maintained and controlled through administrative controls. This requirement assures the reactor protection system is not adversely affected by the inoperable valves. With the safety functions of the valves being maintained, the probability or consequences of an accident previously evaluated are not significantly increased.

Criterion 2: The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: The proposed change does not involve a significant reduction in [a] margin of safety.

The proposed change ensures that the safety functions of the SDV vent and drain valves are fulfilled. The isolation function is maintained by redundant valves and by the required action to isolate the affected line. The ability to vent and drain the SDV is maintained through administrative controls. In addition, the reactor protection system will prevent filling of the SDV to the point that it has insufficient volume to accept a full scram. Maintaining the safety functions related to isolation of the SDV and insertion of control rods ensures that the proposed change does not involve a significant reduction in the margin of safety.

Based on the reasoning presented above, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

NRC Section Chief: Darrell J. Roberts.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: January 21, 2005.

Description of amendment request: The proposed change permanently revises Isolation Condenser (IC) Technical Specifications (TS) Section 3.5.3, ''IC System.'' Specifically, surveillance requirement SR 3.5.3.4 is modified by the addition of a note which states the IC System heat removal capability surveillance is not required to be performed until 12 hours after adequate reactor power is achieved to perform the test.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

According to 10 CFR 50.92, ''Issuance of amendment,'' paragraph (c), a proposed amendment to an operating license involves a no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

In support of this determination, an evaluation of each of the three criteria set forth in 10 CFR 50.92 is provided below regarding the proposed license amendment.

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design function of the Isolation Condenser (IC) System is to provide reactor core cooling in the event that the reactor becomes isolated from the turbine and the main condenser by closure of the main steam isolation valves (MSIVs). Although the system is an Engineered Safety Feature System, no credit for IC System operation is taken in the accident analysis. The IC System is designed and installed to provide adequate core cooling, thereby mitigating the consequences of this reactor isolation transient (e. g., inadvertent closure of the MSIVs). This transient has been evaluated in the Updated Final Safety Analysis Report (UFSAR) as an event of moderate frequency. The IC system is designed to operate automatically or manually to perform its design function for reactor pressures greater than 150 psig. Since the IC System is not credited, this TS change does not impact any of the assumptions, inputs, or results of the UFSAR reactor isolation analysis.

The addition of the note to the Technical Specifications surveillance requirement does not alter the IC System design function or the processes and parameters by which the system and its components perform its function. The addition of this note allows the plant to enter an operating mode necessary to allow performance of the heat removal capability surveillance. The purpose of this heat removal capability surveillance is to verify proper flow path and the ability to remove a design heat load. The proposed change does not alter the ability or methods used to verify flow path or heat removal capability. Nor does the change alter the acceptance criteria for satisfactory performance. Therefore, the change does not result in an increase in the consequences of a reactor isolation transient. Additionally, there are no IC System malfunctions or component failures that could initiate a reactor isolation transient. The proposed change does not alter the system or its operation and will not change the IC System's impact on initiating accidents or transients. Therefore, this change, and any associated impacts, will not increase the probability of the occurrence of an accident or transient.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The addition of the note to the Technical Specifications surveillance requirement does not alter the IC System design function or the processes and parameters by which the system and its components perform its function. The existing Technical Specification does not provide any limitations on when the IC System heat removal capability surveillance may be performed. Present plant procedures perform this surveillance at between 60% and 75% reactor power to ensure sufficient steam is available to simulate design heat loads. The addition of the note to the Technical Specification does not create any constraints on plant operating conditions associated with performance of the IC System heat removal capability surveillance. Operation of the IC System to perform the required surveillance in operating Modes 1, 2, or 3 has been previously evaluated and is presently allowed.

The proposed change does not modify the procedural steps for performing the Technical Specification required surveillance. Nor does the change alter the methodology for evaluating acceptable performance. No physical or operational changes are made that could result in plant or system operation in conditions not previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Technical Specification surveillance requirement SR 3.5.3.4 requires verification of the IC System's heat removal capability every 60 months. This surveillance ensures the proper system flow path and ability to remove decay heat following a reactor isolation. The methodology and acceptance criteria for this surveillance are not impacted by this change. Technical Specifications presently allow performance of this surveillance in Modes 1, 2, or 3 and plant procedures presently perform this surveillance in Mode 1. The surveillance is still required to demonstrate the IC System design basis capability of removing the design requirement of 252.5 x 10^6 Btu/hr. Other IC System surveillance requirements are not directly or indirectly impacted by this change. Additionally, this amendment request results in no change to the system's actuation response, operation, or setpoints for performance.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Gene Y. Suh.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: June 11, 2004.

Brief description of amendment request: The proposed license amendment request would relocate surveillance test intervals of various Technical Specification (TS) surveillance requirements to a new program controlled in accordance with the requirements of 10 CFR 50.59. The proposed changes would add a new program, the Surveillance Frequency Control Program, to the Administrative Controls section of the TSs. The proposed amendment is a pilot submittal in support of the Boiling Water Reactor Owners' Group Risk-Informed Initiative 5b, ''Relocate Surveillance Test Intervals to Licensee Control.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or

consequences of an accident previously evaluated?

Response: No. The proposed change involves the relocation of various surveillance test intervals from Technical Specifications (TS) to a licensee-controlled program and is administrative in nature. The proposed change does not involve the modification of any plant equipment or affect basic plant operation. The proposed change will have no impact on any safety related structures, systems or components. Surveillance test intervals are not assumed to be an initiator of any analyzed event, nor are they assumed in the mitigation of consequences of accidents. The surveillance requirements themselves will be maintained in TS[s] along with the applicable Limiting Conditions for Operation (LCOs) and Action statements. The surveillances performed at the intervals specified in the licensee-controlled program will assure that the affected system or component function is maintained, that the facility operation is within the Safety Limits, and that the LCOs are met.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No. The proposed change does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function or is tested. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with the safety analysis assumptions.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed change is administrative in nature, does not negate any existing requirement, and does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by relocation of the surveillance test intervals to a licensee-controlled program.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Darrell J. Roberts.

Exelon Generation Company, LLC, Docket No. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: July 22, 2004, as supplemented December 3, 2004.

Description of amendment request: The proposed amendment would modify the operability and surveillance requirements in Technical Specification 3/4.1.3, ''Control Rods.'' Specifically, the proposed changes would (1) exclude a fully inserted immovable control rod from the shutdown action statement, (2) eliminate consideration of control rod drive water pressure in the action statement, and (3) limit the 24-hour exercise test of other control rods to a one-time occasion following detection of an immovable control rod.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The first proposed change would exclude fully inserted immovable control rods from consideration in the plant shutdown action statement. An inoperable control rod that has been fully inserted, and disarmed, has satisfied the safety function of that control rod since it is in a position of maximum contribution to shutdown capability. A plant shutdown for this situation would result in an unnecessary plant thermal cycle without any compensatory safety benefit. Under the proposed change, inoperable inserted rods would continue to be counted in the operability requirement precluding power operation with more than 8 inoperable control rods.

The second proposed change removes the control rod drive (CRD) water pressure limits from the insertion capability test of inoperable, non-stuck, control rods. Reactor pressure, assisted by a pre-charged accumulator, provides the driving force for the rapid shutdown of the reactor (scram), independent of the CRD water pressure. Variation of this pressure is not an indicator of a degraded control rod, and does not inhibit the safety function of the control rod. Control rod scram and exercise testing requirements assure the operability of the CRD system. The proposed change would eliminate the need to unnecessarily insert a control rod into the core if it could not be repositioned using the normal drive water pressure setting.

The third proposed change would limit the increased frequency surveillance requirement (every 24 hours) exercise test of withdrawn control rods upon discovery of an immovable control rod to a one-time test in lieu of every 24 hours. A one-time 24-hour test is sufficient to determine if a generic control rod problem exists. Under the proposed change, following the 24-hour test, and in absence of any additional detectable problems, the control rod exercise test would revert back to a normal testing frequency. Repetitive 24-hour tests [have] the potential to reduce the operable lifespan of hydraulic control unit components and increases the potential for a reactivity management event.

The proposed changes will not impede the ability of the surveillance requirements to detect control rod degradation, or inhibit the control rod drive system from performing its designed safety function.

Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No. The proposed changes do not alter the physical design, safety limits, or safety analysis assumptions, associated with the operation of the plant. Accordingly, the changes do not introduce any new accident initiators, nor do they reduce or adversely affect the capabilities of any plant structure, system, or component to perform their safety function.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No. A fully inserted [control] rod has satisfied its safety function by being in the position of maximum contribution to shutdown reactivity. Eliminating the CRD water pressure limits does not impact scram capability. Further, the proposed changes will eliminate extended accelerated control rod testing that may shorten the lifespan of control components without any compromise in the detection of control rod operability problems. The proposed changes would not impact control rod operability and surveillance requirements that are necessary to assure that the control rod system will perform its designed safety function.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Darrell J. Roberts.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: April 20, 2005.

Description of amendment request: The proposed amendment would revise the technical specifications (TSs) to replace plant-specific position titles with generic position titles. The proposed changes are consistent with NUREG–1430, ''Standard Technical Specifications—Babcock and Wilcox Plants,'' Revision 3. Also, the licensee proposes to delete TS 6.7, ''Safety Limit Violation or Protective Limit Violation,'' including a change to TS 2.1.2, ''Safety Limits and Limiting Safety System Settings—Reactor Core,'' associated with the deletion of TS 6.7. Additionally, the licensee proposes to relocate to the Technical Requirements Manual (TRM), the Process Control Program requirements from TS 6.8, ''Procedures and Programs,'' and from TS 6.14, ''Process Control Program (PCP).'' Associated with this change, TS Definition 1.30, ''Process Control Program,'' is proposed to be deleted. Also, TS 6.15, ''Offsite Dose Calculation Manual (ODCM),'' is proposed to be modified to eliminate the requirement that changes to the ODCM be reviewed and accepted by the Plant Operations Review Committee (PORC). Lastly, the licensee proposes to revise in the TS the title, ''Industrial Security Plan'' to ''Physical Security Plan.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes affect the requirements for the administrative controls section of the Technical Specifications. The proposed changes are primarily intended to make the plant-specific position/organizational titles found in the administrative controls section of the Technical Specifications more generic. The proposed changes do not affect any plant structures, systems, and components, and have no effect on plant operations. The proposed changes are administrative and do not affect any existing limits. Accident initial conditions, probability, and assumptions remain as previously analyzed. The proposed changes will have no effect on accident initiation frequency. The proposed changes do not invalidate the assumptions used in evaluating the radiological consequences of any accident. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are administrative and do not introduce any new or different accident initiators. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are administrative and will not have a significant effect on any margin of safety. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Gene Y. Suh.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: April 22, 2005.

Description of amendment request: The proposed amendment would revise the technical specifications (TSs) related to fuel handling and storage. Specifically, the proposed change is to reflect that spent fuel storage racks are no longer installed in the cask pit or transfer pit and that there are no longer any low-density fuel storage racks in the spent fuel pool. Additionally, the proposed changes would relocate the requirements of TS 3/4.9.7, ''Crane Travel—Fuel Handling Building,'' to the Technical Requirements Manual (TRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment would relocate the requirements of TS 3/4.9.7 to the DBNPS [Davis-Besse Nuclear Power Station] TRM. Any subsequent changes to the TRM would require evaluation under the appropriate regulatory processes (e.g., 10 CFR 50.59). The proposed relocation of TS 3/4.9.7 does not affect any accident initiators. The relocated TRM requirements will assure the initial conditions assumed in the analysis of a fuel handling accident are maintained. The proposed change does not affect the ability of plant equipment to mitigate the consequences of any accident. The proposed changes to reflect that fuel storage racks are no longer installed in the cask pit or transfer pit and that low density fuel storage racks are no longer installed in the spent fuel pool are consistent with the current plant configuration. The proposed changes do not affect any accident initiators. The revised requirements will continue to assure the capability to mitigate the consequences of a fuel handling accident in the fuel storage area. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed relocation of TS 3/4.9.7 to the TRM does not alter the design, operation, or testing of any structure, system, or component. The proposed changes to reflect that fuel storage racks are no longer installed in the cask pit or transfer pit and that low density fuel storage racks are no longer installed in the spent fuel pool are consistent with the current plant configuration. No new accident initiators are created. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed relocation of TS 3/4.9.7 to the TRM does not alter the design, operation, or testing of any structure, system, or component. The proposed changes to reflect that fuel storage racks are no longer installed in the cask pit or transfer pit and that low density fuel storage racks are no longer installed in the spent fuel pool are consistent with the current plant configuration and do not adversely affect the ability of any structure, system, or component to perform its safety function. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Gene Y. Suh.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: May 2, 2005.

Description of amendment request: The proposed amendment would revise technical specification (TS) Figure 2.1–1, ''Reactor Core Safety Limit'' and TS Table 2.2–1, ''Reactor Protection System Instrumentation Trip Setpoints.'' These TS revisions would support the use of Framatome Mark B–HTP fuel in the reactor.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes include a revision of the Reactor Core Safety Limits specified in Technical Specification (TS) Section 2.1.1, and a revision of the Reactor Protection System (RPS) Reactor Coolant System (RCS) Pressure-Temperature setpoint Allowable Value provided in TS Section 2.2.1. The proposed changes preserve the design DNB [departure from nucleate boiling] Ratio safety criterion that there shall be at least a 95% probability at a 95% confidence level that the hot fuel rod in the core does not experience a departure from nucleate boiling during normal operation or events of moderate frequency. Further, there are no evaluated accidents in which the fuel cladding or fuel assembly structural components are assumed to arbitrarily fail as an accident initiator. The fuel handling accident analysis assumes that the cladding does, in fact, fail as a result of an undefined fuel handling event. However, the probability of an accident initiator for the fuel handling accident is independent of the parameters changed in this amendment request. In addition, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not alter any assumptions previously made in the radiological consequence evaluations, or affect mitigation of the radiological consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident scenarios, failure mechanisms or single failures are introduced as a result of the proposed. All systems, structures, and components previously required for the mitigation of an event remain capable of fulfilling their intended design function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not involve a significant reduction in a margin of safety because extensive analyses of the primary fission product barriers, conducted in support of the proposed changes, have concluded that all relevant design criteria remain satisfied, both from the standpoint of the integrity of the primary fission product barrier and from the standpoint of compliance with the regulatory acceptance criteria. As appropriate, all evaluations have been performed using methods that have either been reviewed and approved by the Nuclear Regulatory Commission or that are in compliance with applicable regulatory review guidance and standards.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Gene Y. Suh.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: January 10, 2005.

Description of amendment request: The amendment request proposes to revise the surveillance interval associated with Technical Specification Surveillance Requirement 4.6.1.3b from once every 6 months to once every 24 months for verification that only one door in each containment air lock can be opened at a time.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will neither effect nor change any design function, or method of performing or controlling design functions, or any analysis that verifies the capability of structures, systems and components (SSCs) to perform their designed function(s). The proposed amendment will have no adverse effect on plant operation or its controlled configuration. As a result, the proposed amendment will not change assumptions, or change, degrade or prevent actions described or assumed in accidents evaluated and described in the Seabrook Station Updated Final Safety Analysis Report (UFSAR). The proposed change extends the surveillance interval from 6 months to 24 months to verify proper functioning of the containment air lock interlocks. The proposed change to the Surveillance Requirement testing interval does not adversely affect performance of the Surveillance Requirement that verifies the functional status of the air lock interlock to prevent both air lock doors to be open simultaneously. Containment integrity is not affected by the proposed amendment. The radiological consequences of an event are unchanged, since the functional status of the air lock interlock is not adversely affected and the air lock doors' ability to withstand the maximum expected post accident containment pressure is not adversely affected by the proposed change. Therefore, the proposed amendment does not adversely affect nuclear safety or continued safe operation of Seabrook Station, or result in an increase in the radiological consequences of any accident described in the Seabrook Station UFSAR.

Therefore, it is concluded that the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment will neither effect nor change any design function, or method of performing or controlling design functions, or any analysis that verifies the capability of structures, systems and components (SSCs) to perform their designed function(s). The proposed amendment will have no adverse effect on plant operation or its controlled configuration. As a result, the proposed amendment will not change assumptions, or change, degrade or prevent actions described or assumed in accidents evaluated and described in the Seabrook Station UFSAR. There are no changes associated with extending the surveillance interval for the air lock interlock that could potentially introduce new failure modes or accident initiators.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change extends the surveillance interval from 6 months to 24

months to verify proper functioning of the containment air lock interlock. The containment air lock interlocks are normally not challenged and operating experience has shown these components have an excellent surveillance pass rate. Furthermore, increasing the surveillance interval has no affect on the air lock doors' ability to withstand the maximum expected post accident containment pressure. Containment integrity is not affected by the proposed amendment. The proposed amendment will neither effect nor change any design function, or method of performing or controlling design functions, or any analysis that verifies the capability of structures, systems and components (SSCs) to perform their designed function(s). The functional status of the containment air lock interlocks will continue to be verified.

Therefore, it is concluded that the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief: Darrell J. Roberts.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 28, 2005.

Description of amendment request: The proposed amendment would extend the expiration date of Facility Operating License (FOL) NPF–86 for Seabrook Station, Unit No. 1 by approximately 3.4 years. The extension would set the date of expiration of the FOL to occur 40 years from the date of issuance of the full-power operating license. Specifically, the FOL, with a current expiration date of October 17, 2026 would be revised to expire on March 15, 2030. This change would allow the recapture of zero-power and low-power testing time in accordance with SECY–98–296, ''Agency Policy Regarding Licensee Recapture of Low-Power Testing or Shutdown Time for Nuclear Power Plants,'' dated December 21, 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated since it does not involve a change to design configuration or operation of the facility. The proposed change does not effect the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station UFSAR [updated final safety analysis report]. In addition, Seabrook Station Unit [No.] 1 was designed and constructed to ensure a 40-year service life. Design features were incorporated that provide for inspection of structures, systems and components during the 40-year service life. Surveillance, inspection and maintenance practices have been implemented in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code and the unit Technical Specifications to provide assurance that any degradation in plant safety-related equipment will be identified and corrected to provide continued safe operation of the unit throughout the duration of the facility operating license.

The recapture period requested by this amendment is for 3.4 years. This time is insignificant from an aging effect perspective when considered in conjunction with the surveillance, inspection and maintenance programs implemented to provide early indication of degradation in plant safety-related equipment. Continual maintenance and testing provides for continued safe operation of the unit throughout the duration of the facility operating license.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment revises the expiration of the facility operating license such that the expiration of the facility operating license is based upon issuance of the FPOL [full-power operating license] and not upon issuance of the ZPOL/LPOL [zero-power operating license/low-power operating license]. The proposed change[s] do[es] not involve physical alteration of plant systems[,] structures or components or changes in parameters governing the manner in which the plant is operated and maintained.

Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed amendment revises the expiration of the facility operating license such that the expiration of the facility operating license is based upon issuance of the FPOL and not upon issuance of the ZPOL/LPOL. No physical changes are being made to the design features or operation of the facility.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant system pressure boundary and the containment structure) to limit the radiological dose to the public and control room operators in the event of an accident. The proposed amendment to the facility operating license has no impact on the margin of safety and robustness provided in the design and construction of the facility. In addition, the proposed amendment will not relax any of the criteria used to establish safety limits, nor will the proposed amendment relax safety system settings or limiting conditions of operation as defined in the Technical Specifications.

Therefore, the proposed amendment does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief: Darrell J. Roberts.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: April 26, 2005.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) 5.6.5.b., ''Core Operating Limits Report (COLR),'' to add the Palisades-specific fuel assembly growth model to the analytical methods referenced in the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed license amendment augments an existing analytical method used to determine the core operating limits per Technical Specification 5.6.5.b. Accidents previously evaluated will be unaffected because they will continue to be analyzed using applicable methodologies approved by the Nuclear Regulatory Commission to ensure all required safety limits are met. The proposed amendment does not affect the acceptance criteria for any Final Safety Analysis Report (FSAR) safety analysis analyzed accidents and anticipated operational occurrences. As such, the proposed amendment does not increase the probability or consequences of an accident. The proposed amendment does not involve

operation of the required structures, systems or components (SSCs) in a manner or configuration different from those previously recognized or evaluated.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not involve a physical alteration of any SSC or a change in the way any SSC is operated. The proposed amendment does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the changes being requested.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not, by itself, introduce a failure mechanism. The proposed amendment does not involve any physical changes to the plant or manner in which the plant is operated. The proposed changes do not affect the acceptance criteria for any FSAR safety analysis analyzed accidents or anticipated operational occurrences. All required safety limits would continue to be analyzed using methodologies approved by the Nuclear Regulatory Commission.

Therefore, the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Section Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 23, 2004.

Description of amendment request: The proposed amendment revises the descriptive wording of Technical Specifications Table 1–1, ''RPS [reactor protection system] Limiting Safety System Settings,'' for the Reactor Trip setpoint for Low Steam Generator Water Level to relocate unnecessary detail and converts Technical Specifications Section 4.0, Design Features, to be consistent with NUREG–1432, Revision 3, ''Standard Technical Specifications for Combustion Engineering Plants.'' These changes will be needed to support the operation of Fort Calhoun Station (FCS) after major components (steam generators, pressurizer, and reactor vessel head) are replaced in 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are not related to an initiator of any previously evaluated accident. The proposed changes revise descriptive information only, and will not prevent safety systems from performing their accident mitigation function as assumed in the safety analysis.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes only relocate descriptive information in the Technical Specifications to the USAR [Updated Safety Analysis Report]. Modifications will not be made to existing equipment nor will any new or different types of equipment be installed. The proposed changes to the Technical Specifications will not alter assumptions made in safety analysis and licensing bases.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed administrative changes only relocate descriptive information in the FCS Technical Specifications to the USAR, and have no effect on safety margins.

Therefore, this technical specification change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of amendment request: September 8, 2004.

Description of amendment request: The proposed amendments would change the SSES 1 and 2 Technical Specifications (TSs) limiting conditions for operation (LCO) 3.8.4, ''DC Sources-Operating,'' to incorporate the Technical Specifications Change Task Force (TSTF) 16, Revision 2, and other unrelated editorial changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence [sic] or consequences of an accident previously evaluated?

Response: No.

The Technical Specification allowed Completion Time for any inoperability is not an initiator to any accident sequence analyzed in the Final Safety Analysis Report (FSAR). The changes do not involve any physical change to structures, systems, or components (SSCs) and does not alter the method of operation or control of SSCs. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by these changes. No additional failure modes or mechanisms are being introduced and the likelihood of previously analyzed failures remains unchanged.

Operation in accordance with the proposed Technical Specification (TS) ensures that the AC distribution system and supported equipment functions remain capable of performing the function as described in the FSAR. Therefore, the mitigative functions supported by the system will continue to provide the protection assumed by the analysis.

The correction of typographical errors, changes in format and the deletion of a no longer required one-time exemption are administrative changes.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the

function demands on credited equipment be changed. No alterations in the procedures that ensure the plant remains within analyzed limits are being proposed, and no changes are being made to the procedures relied upon to respond to an off-normal event as described in the FSAR. The correction of typographical errors, changes in format and the deletion of a no longer required one-time exemption are administrative changes. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change is acceptable because the restoration times for deenergized AC distribution subsystems has been previously evaluated in Unit 2 Amendment No. 148. Additional margin of safety is gained with the inclusion of the requirement to enter applicable actions for inoperable Class lE battery chargers as a result of inoperable AC bus(es). The correction of typographical errors, changes in format and the deletion of a no longer required one-time exemption are administrative changes. Therefore the plant response to analyzed events will continue to provide the margin of safety assumed by the analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Richard J. Laufer.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of amendment request: January 28, 2005.

Description of amendment request: The proposed amendments would change the SSES 1 and 2 Technical Specifications (TSs) 5.5.6, ''Inservice Testing Program,'' to replace the reference to American Society of Mechanical Engineers (ASME) Boiler and PressureVessel Code, Section XI, with a reference to ASME Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code) as the source of requirements for the inservice testing of ASME Code Class 1, 2, and 3 pumps and valves. These changes are consistent with the implementation of the SSES 1 and 2 Third 10-Year Interval Inservice Testing Program in accordance with the requirements of 10 CFR 50.55a(f).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence [sic] or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise Technical Specification 5.5.6 for SSES Units 1 and 2 to conform to the requirements of 10 CFR 50.55a(f) regarding the inservice testing of pumps and valves for the Third 10-Year Interval. The current Technical Specifications reference the ASME Boiler and Pressure Vessel Code, Section XI, requirements for the inservice testing of ASME Code Class 1, 2, and 3 pumps and valves. The proposed changes would reference the ASME OM Code, which is consistent with 10 CFR 50.55a(f) and accepted for use by the NRC. The proposed changes are administrative in nature.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes revise Technical Specification 5.5.6 for SSES Units I and 2 to conform to the requirements of 10 CFR 50.55a(f) regarding the inservice testing of pumps and valves for the Third 10-Year Interval. The current Technical Specifications reference the ASME Boiler and Pressure Vessel Code, Section XI, requirements for the inservice testing of ASME Code Class 1, 2, and 3 pumps and valves. The proposed changes would reference the ASME OM Code, which is consistent with 10 CFR 50.55a(f)and accepted for use by the NRC. The proposed changes are administrative in nature.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes revise Technical Specification 5.5.6 for SSES Units I and 2 to conform to the requirements of 10 CFR 50.55a(f) regarding the inservice testing of pumps and valves for the Third 10-Year Interval. The current Technical Specifications reference the ASME Boiler and Pressure Vessel Code, Section XI, requirements for the inservice testing of ASME Code Class 1, 2, and 3 pumps and valves. The proposed changes would reference the ASME OM Code, which is consistent with 10 CFR 50.55a(f) and accepted for use by the NRC. The proposed changes are administrative in nature.

Therefore, the proposed change[s] does [sic] not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Richard J. Laufer.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of amendment request: February 7, 2005.

Description of amendment request: The proposed amendments would change the SSES 1 and 2 Technical Specifications (TSs) for ''Secondary Containment,'' limiting condition for operation (LCO) 3.6.4.1, by revising the frequency note applicable to Surveillance Requirements (SR) 3.6.4.1.4 and SR 3.6.4.1.5. The revised note requires each SR be performed with the 3 zone configuration every 60 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a significant increase in the probability of an accident previously evaluated because neither Secondary Containment nor the Standby Gas Treatment System is an initiator of an accident. Both mitigate accident consequences.

The consequences of a Design Basis Analysis-Loss of Coolant Accident (DBA–LOCA) have been evaluated in the FSAR [final safety analysis report]. Revising the surveillance frequency to require the most limiting configurations to be tested with the 60-month period rather than just the three zone configuration provides assurance that the most limiting secondary containment configuration is tested every 60 months in accordance with the original intent of the surveillance frequency. The proposed change also provides added assurance of acceptable performance within the analysis assumptions of the FSAR. The radiological evaluation of DBA–LOCA doses, including doses offsite, control room habitability, and exposures for personnel are not impacted.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a physical alteration of the plant. No new or different [kind] of equipment will be installed nor will there be changes in methods governing normal plant operation.

The potential for the loss of plant systems or equipment to mitigate the effects of an accident is not altered.

The proposed changes do not require any new operator response or introduce any new opportunities for operator error not previously considered.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in [a] margin of safety?

Response: No.

The proposed change does not involve a significant reduction in [a] margin of safety.

The surveillance test change ensures all the secondary containment configurations are tested within a 60-month period when only one configuration was previously required to be tested. This change has a positive effect on the margin of safety as it provides more restrictive testing requirement that will provide added assurance of acceptable secondary containment performance.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Richard J. Laufer.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2 (SSES 2), Luzerne County, Pennsylvania

Date of amendment request: March 18, 2005.

Description of amendment request: The proposed amendment would revise the SSES 2 Technical Specification (TS) 3.3.8.1, ''Loss of Power (LOP) Instrumentation,'' to: (1) clarify that Condition A applies to inoperable instrumentation other than during the performance of Surveillance Requirement (SR) 3.8.1.19 loss-of-coolant accident/loss of offsite power testing on Unit 1 and to revise TS Bases section to clarify that this condition is applicable to both Unit 1 and Unit 2 LOP Instrumentation, (2) add new Condition B to allow the LOP instrumentation for two Unit 1 4.16kV Engineered Safeguards System buses in the same Division to be inoperable for up to 8 hours for the performance of SR 3.8.1.19 on Unit 1. In addition, the proposed amendment would revise the SSES 2 TS 3.8.7, ''Distribution Systems-Operating,'' to: (1) eliminate ''or more'' and the plural to subsystems such that the condition would read ''One Unit 1 AC [alternating current] electrical power distribution subsystem inoperable,'' (2) add new Condition D for two Unit 1 AC electrical power distribution subsystems inoperable.

This will impose an 8-hour Completion Time for restoration of at least one of the two Unit 1 AC distribution subsystems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The Technical Specification allowed Completion Time for any inoperability is not an initiator to any accident sequence analyzed in the Final Safety Analysis Report (FSAR). The changes do not involve any physical change to structures, systems, or components (SSCs) and does not alter the method of operation or control of SSCs. The current assumptions in the safety analysis regarding accident initiators and mitigation of accidents are unaffected by these changes. No additional failure modes or mechanisms are being introduced and the likelihood of previously analyzed failures remains unchanged.

Operation in accordance with the proposed Technical Specification (TS) ensures that the AC distribution system and supported equipment functions remain capable of performing the function as described in the FSAR [final safety analysis report]. Therefore, the mitigative functions supported by the system will continue to provide the protection assumed by the analysis.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints, at which protective or mitigative actions are initiated, affected by this change. This change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alterations in the procedures that ensure the plant remains within analyzed limits are being proposed, and no changes are being made to the procedures relied upon to respond to an off-normal event as described in the FSAR. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change is acceptable because the restoration time for deenergized AC distribution subsystems has been previously evaluated in Unit 2 Amendment No. 148. Therefore[,] the plant response to analyzed events will continue to provide the margin of safety assumed by the analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Richard J. Laufer.

PSEG Nuclear, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: March 4, 2005.

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3.5.1, ''Accumulators,'' to extend the completion time (CT) for Action (a) from 1 hour to 24 hours. The accumulators are part of the emergency core cooling system and consist of tanks partially filled with borated water and pressurized with nitrogen gas. The contents of the tank are discharged to the reactor coolant system (RCS) if, as during a loss-of-coolant accident (LOCA), the coolant pressure decreases to below the accumulator pressure. Action (a) of TS 3.5.1 specifies a CT to restore an accumulator to operable status when it has been declared inoperable for a reason other than the boron concentration of the water in the accumulator not being within the required range. This change was proposed by the Westinghouse Owners Group participants in the TS Task Force (TSTF) and is designated TSTF–370. TSTF–370 is supported by NRC-

approved Topical Report WCAP–15049–A, ''Risk-Informed Evaluation of an Extension to Accumulator Completion Times,'' submitted on May 18, 1999. The NRC staff issued a Notice of Opportunity for Comment in the **Federal Register** on July 15, 2002 (67 FR 46542), on possible amendments concerning TSTF–370, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a Notice of Availability of the models for referencing license amendment applications in the **Federal Register** on March 12, 2003 (68 FR 11880). The licensee affirmed the applicability of the following NSHC determination in its application dated March 4, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The basis for the accumulator limiting condition for operation (LCO), as discussed in Bases Section 3.5.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of the WCAP–15049, ''Risk-Informed Evaluation of an Extension to Accumulator Completion Times,'' evaluation, the proposed change will allow plant operation with an inoperable accumulator for up to 24 hours, instead of 1 hour, before being required to begin shutdown. The impact of the increase in the accumulator CT on core damage frequency for all the cases evaluated in WCAP–15049 is within the acceptance limit of 1.0E–06/yr for a total plant core damage frequency less than 1.0E–03/yr. The incremental conditional core damage probabilities calculated in WCAP–15049 for the accumulator CT increase meet the criterion of 5E–07 in Regulatory Guides (RGs) 1.174 [''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis''] and 1.177 [''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications''] for all cases except those that are based on design basis success criteria. As indicated in WCAP–15049, design basis accumulator success criteria are not considered necessary to mitigate large-break LOCA events, and were only included in the WCAP–15049 evaluation as a worst-case data point. In addition, WCAP–15049 states that the NRC has indicated that an incremental conditional core damage frequency greater than 5E–07 does not necessarily mean the change is unacceptable.

The proposed TS change does not involve any hardware changes nor does it affect the probability of any event initiators. There will be no change to normal plant operating parameters, engineered safety feature actuation setpoints, accident mitigation capabilities, accident analysis assumptions or inputs.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. As described in Section 9.1 of the WCAP–15049 evaluation, the plant design will not be changed with this proposed TS CT increase. All safety systems still function in the same manner and there is no additional reliance on additional systems or procedures. The proposed accumulator CT increase has a very small impact on core damage frequency. The WCAP–15049 evaluation demonstrates that the small increase in risk due to increasing the accumulator allowed outage time is within the acceptance criteria provided in RGs 1.174 and 1.177. No new accidents or transients can be introduced with the requested change and the likelihood of an accident or transient is not impacted.

The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed TS change. No new failure mode has been created and no new equipment performance burdens are imposed.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not involve a significant reduction in a margin of safety. There will be no change to the departure from nucleate boiling ratio (DNBR) correlation limit, the design DNBR limits, or the safety analysis DNBR limits.

The basis for the accumulator LCO, as discussed in Bases Section 3.5.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of the WCAP–15049 evaluation, the proposed change will allow plant operation with an inoperable accumulator for up to 24 hours, instead of 1 hour, before being required to begin shutdown. The impact of this on plant risk was evaluated and found to be very small. That is, increasing the time the accumulators will be unavailable to respond to a large LOCA event, assuming accumulators are needed to mitigate the design basis event, has a very small impact on plant risk. Since the frequency of a design basis large LOCA (a large LOCA with loss of offsite power) would be significantly lower than the large LOCA frequency of the WCAP–15049 evaluation, the impact of increasing the accumulator CT from 1 hour to 24 hours on plant risk due to a design basis large LOCA would be significantly less than the plant risk increase presented in the WCAP–15049 evaluation.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the NRC staff proposes to determine that the requested change does not involve a significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: Darrell J. Roberts.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: August 5, 2004, as superceded in its entirety by letter dated March 15, 2005.

Brief description of amendments: The proposed amendments would revise Technical Specification (TS) 3.7.10 entitled ''Control Room Emergency Filtration/Pressurization System (CREFS)'' to extend the Completion Time for ACTION B., ''Two CREFS Trains inoperable due to inoperable Control Room boundary in MODES 1, 2, 3, and 4'' from 24 hours to 14 days for implementation of the Turbine Generator Protection System Digital Modification currently scheduled during the eleventh refueling outage for Unit 1 (1RF11) and the ninth refueling outage for Unit 2 (2RF09). The description of CONDITION E would also be revised for implementation of this modification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Do the proposed changes involve a significant increase the probability or consequences of an accident previously evaluated?

Response: No.

This is a revision to the Technical Specifications for the CREFS which is a mitigation system designed to minimize in leakage and to filter the Control Room atmosphere to protect the operator following accidents previously analyzed. An important part of the system is the Control Room boundary. The Control Room boundary integrity is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. The analysis of the consequences of analyzed accident scenarios under the Control Room breach conditions along with the compensatory actions for restoration of Control Room integrity demonstrate that the consequences of any accident previously evaluated are not increased. Therefore, it is concluded that this change does not significantly increase the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will not impact the accident analysis. The change will not alter the requirements of the CREFS or its function during accident conditions. The administrative controls and compensatory actions will ensure the CREFS will perform its safety function. No new or different accidents result from the revised Completion Time or the restated TS Condition E. The change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The change does not alter assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current plant operating practice. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by these changes. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period or time without compensatory actions and administrative controls. The proposed change does not affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition. Therefore the proposed change does not involve a reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92'') are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Allen G. Howe.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: September 15, 2004.

Brief description of amendment: The amendment deleted the Technical Specification (TS) requirements related to hydrogen recombiners and hydrogen/oxygen monitors. The TS changes are consistent with the revision of Title 10, Code of Federal Regulations, Section 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' that became effective on October 16, 2003; and Revision 1 of the NRC-approved Industry/Technical Specifications Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–447, ''Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors.''

Date of issuance: April 28, 2005.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 164.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 01, 2005 (70 FR 5235). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 2005.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: December 1, 2004.

Brief description of amendments: The amendments eliminate the requirements to submit monthly operating reports and occupational radiation exposure reports.

Date of issuance: May 9, 2005.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 272 and 249.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 2005 (70 FR 5236).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated May 9, 2005.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: December 6, 2004.

Brief description of amendment: The amendment deleted the requirements to submit monthly operating reports and occupational radiation exposure reports.

Date of issuance: April 28, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 166.

Facility Operating License No. NPF–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: February 1, 2005 (70 FR 5236).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 2005.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: July 19, 2004, as supplemented by letters dated March 8 and March 22, 2005.

Brief description of amendments: The amendments revised the Technical Specifications (TS) 3.8.4, ''DC Sources—Operating'' and TS 3.8.6, ''Battery Cell Parameters'' to allow for the replacement of the existing nickel-cadmium diesel generator batteries with conventional lead-acid batteries.

Date of issuance: April 27, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance April 27, 2005.

Amendment Nos.: 223 and 218.

Renewed Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 21, 2004 (69 FR 76488). The supplements dated March 8 and March 22, 2005, provided additional information that clarified the application, did not expand the scope of the July 19, 2004, application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 27, 2005.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: June 9, 2004, and as supplemented by letter dated April 1, 2005.

Brief description of amendment: This amendment revises Technical Specifications (TS) Limiting Condition for Operation (LCO) 3.4.11, ''RCS [Reactor Coolant System] Pressure and Temperature (P/T) Limits,'' to replace the P/T curves for inservice leak and hydrostatic testing, non-nuclear heating and cooldown, and nuclear heating and cooldown currently illustrated in TS Figures 3.4.11–1, 3.4.11–2, and 3.4.11–3, respectively.

Date of issuance: May 12, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 193.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 31, 2004 (69 FR 53102).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 12, 2005.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: December 17, 2004.

Brief description of amendment: The amendment deletes Technical Specification (TS) 5.6.1, ''Occupational Radiation Exposure Report,'' and TS 5.6.4, ''Monthly Operating Reports.''

Date of issuance: May 3, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No: 167.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 1, 2005 (70 FR 9992).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 2005.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: April 14, 2004, as supplemented on December 15, 2004.

Brief description of amendment: This amendment eliminates secondary containment operability requirements when handling sufficiently decayed irradiated fuel or performing core alterations. The secondary containment is still required to be operable during operations with the potential to drain the reactor vessel.

Date of issuance: April 28, 2005.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 215.

Facility Operating License No. DPR–35: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 12, 2004 (69 FR 60679). The December 15, 2004, supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 2005.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 17, 2004, as supplemented by letters dated October 18, 2004, February 2, February 21, March 8, and April 5, 2005.

Brief description of amendment: The amendment revised Technical Specification (TS) 5.3.1, to allow the use of a limited number of lead test assemblies, the use of ZIRLO™ as an acceptable fuel cladding, and to allow a limited substitution of zirconium alloy or stainless steel filler rods for fuel rods, while relocating the maximum fuel enrichment from TS 5.3.1 to TS 5.6.1. TS 6.9.1.11.1 is revised to allow the use of the Westinghouse Nuclear Physics code package and to incorporate the methodology used to support ZIRLO™ cladding material. Additionally, the amendment approved the administrative changes of correcting a referencing report error of the CESEC code and deleting the TS Index from the TSs.

Date of issuance: May 9, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 200.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register***: July 20, 2004 (69 FR 43460). The supplements dated October 18, 2004, February 2, February 21, March 8, and April 5, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Docket Nos. 50–010, 50–237 and 50–249, Dresden Nuclear Power Station, Units 1, 2 and 3, Grundy County, Illinois

Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: October 21, 2004, as supplemented January 4, 2005.

Description of amendments requests: The amendment deletes the TS requirements to submit monthly operating reports and annual occupational radiation exposure reports. The change is consistent with Revision 1 of NRC-approved Technical Specifications Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–369, ''Elimination of Requirements for Monthly Operating Reports and Occupational Radiation Exposure Reports.'' This TS improvement was announced in the **Federal Register** (69 FR 35067) on June 23, 2004, as part of the Consolidated Line Item Improvement Process (CLIIP).

Date of issuance: April 29, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: Byron Station, Unit 1—142, Unit 2—142; Braidwood Station, Unit 1—136, Unit 2—136; Dresden Nuclear Power Station, Unit 1—42, Unit 2—214, Unit 3—206; LaSalle County Station, Unit 1—173, Unit 2—159; Quad Cities Nuclear Power Station, Unit 1—225, Unit 2—220; Zion Nuclear Power Station, Unit 1—184, Unit 2—171.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72, NPF–77, DPR–2, DPR–19, DPR–25, NPF–11, NPF–18, DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. Date of initial notice in **Federal Register:** April 08, 2005 (70 FR 18061). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 2005.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Gene Y. Suh.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendment: October 21, 2004.

Brief description of amendment: The amendments deleted the Technical Specifications (TSs) 6.9.1.5.a and 6.9.1.6 requirements to submit monthly operating reports and annual occupational radiation exposure reports. The change is consistent with Revision 1 of the U.S. Nuclear Regulatory Commission's Technical Specifications Task Force (TSTF) Change Traveler, TSTF–369, ''Elimination of Requirements for Monthly Operating Reports and Occupational Radiation Exposure Reports.''

Date of issuance: April 29, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 175 and 137.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the TSs.

*Date of initial notice in **Federal Register***: June 23, 2004 (69 FR 35067). This TS improvement was announced in the **Federal Register** as part of the Consolidated Line Item Improvement Process. A notice for these TS changes was announced on April 8, 2005 (70 FR 18059). The April 8, 2005, notice incorrectly referenced a January 4, 2005, supplement to the application. This supplement was reference by error. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 2005.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: September 10, 2004.

Brief description of amendment: This amendment deletes the Technical Specifications associated with hydrogen recombiners and hydrogen monitors.

Date of issuance: April 19, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 135.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register***: February 15, 2005 (70 FR 7767). Add the following statement, if appropriate.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: January 28, 2004, as supplemented by letter dated November, 22, 2004.

Brief description of amendment: This amendment revised technical specifications (TSs) 1.4, ''Frequency,'' 5.5.2, ''Primary Coolant Sources Outside Containment,'' and 5.5.11, ''Safety Function Determination Program,'' by adopting three industry-proposed Standard Technical Specifications (STS) changes, which the Nuclear Regulatory Commission (NRC) has approved and included in Revision 3 of the STSs. These changes are Technical Specifications Task Force (TSTF) traveler numbers 273, 284, and 299. The licensee's request to revise TS 3.3.1.1, ''Reactor Protection System Instrumentation,'' which is associated with TSTF–264 is addressed by the NRC staff by a separate Safety Evaluation.

Date of issuance: May 12, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 258.

Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** April 13, 2004 (69 FR 19571).

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 12, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: February 10, 2004.

Brief description of amendments: The amendments (1) extended from 1 hour to 24 hours the completion time (CT) for Condition C of technical specification (TS) 3.5.1, which defines requirements for the safety injection accumulators. Condition C of TS 3.5.1 specifies a CT to restore an accumulator to operable status when it has been declared inoperable for a reason other than the boron concentration of the water in the accumulator not being within the required range; (2) deleted Condition B which permits one or both accumulators to be inoperable, by removing power to the accumulator isolation valve(s), for maintenance or testing; (3) modified Condition E to remove reference to Condition B; and (4) re-lettered the Conditions and Actions to reflect deletion of Condition B.

Date of issuance: April 28, 2005.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 217, 222.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** April 13, 2004 (69 FR 19573).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 28, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: May 3, 2004, as supplemented by letters dated February 4, and March 28, 2005.

Brief description of amendments: The amendments revise the licensing to define a new hydraulic analysis methodology for demonstrating functionality of the cooling water (CL) system following a design-basis seismic event. The seismic analysis methodology for the CL system is revised to include (1) evaluation of CL system performance following a seismic event assuming a rupture of a non-seismic pipe at the worst case location, and (2) application of acceptance criteria from the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section lll, to demonstrate that the CL system non-seismic piping will maintain pressure boundary integrity with design-basis seismic loads.

Date of issuance: May 10, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 169, 159.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Updated Safety Analysis Report.

*Date of initial notice in **Federal Register:*** July 6, 2004 (69 FR 40677).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 10, 2005.

No significant hazards consideration comments received: No.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: August 6, 2004, as supplemented March 14, 2005.

Brief description of amendment: This amendment deletes the Technical Specification requirements associated with hydrogen recombiners and hydrogen monitors.

Date of issuance: May 5, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 90.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** February 15, 2005 (70 FR 7768). The supplement dated March 14, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 2005.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: December 27, 2004.

Brief description of amendments: The amendments delete TS 5.7.1.1.a, ''Occupational Radiation Exposure Report'' and TS 5.7.1.4, ''Monthly Operating Reports.''

Date of issuance: May 10, 2005.

Effective date: May 10, 2005, to be implemented within 60 days of issuance.

Amendment Nos.: Unit 2—195; Unit 3—186.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** February 1, 2005 (70 FR 5248). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 10, 2005.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: December 2, 2004, as supplemented by letters dated February 15, March 9, and April 11, 2005.

Brief description of amendment: The amendment revises portions of the Sequoyah Unit 2 Technical Specification Surveillance Requirement 4.4.5 to eliminate the requirement to inspect a portion of the tube within the tubesheet region. This will allow any flaws in the region, which is no longer inspected, to remain in service.

Date of issuance: May 3, 2005.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 291.

Facility Operating License No. DPR–79: Amendment revises the technical specifications.

Date of initial notice in Federal Register: January 18, 2005 (70 FR 2899). The supplemental letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 2005.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: October 28, 2004.

Brief description of amendments: This amendment deletes the Technical Specifications associated with hydrogen recombiners and hydrogen monitors.

Date of issuance: April 21, 2005.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: 117/117.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 15, 2005 (70 FR 7770).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 21, 2005.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the

Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.
2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.
3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: April 18, 2005, as supplemented by letter dated April 19, 2005.

Description of amendment request: The amendment revises Technical Specification (TS) 5.5.9, ''Steam Generator (SG) Tube Surveillance Program,'' to add changes to the SG inspection scope for Wolf Creek Generating Station for only the current refueling outage 14 and the subsequent operating cycle. Specifically, the amendment modifies the inspection requirements for portions of the SG tubes within the hot leg tubesheet region of the SGs.

Date of issuance: April 28, 2005.

Effective date: Effective the date of issuance, and shall be implemented before entry into Mode 4 in the restart from the current Refueling Outage 14.

Amendment No.: 162.

Facility Operating License No. NPF–42: Amendment revises the technical specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. The Coffey County Republican on April 22 and 26, 2005, and the Emporia Gazette on April 25 and 26, 2005. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. Comments have been received. The resolution of the comments, the Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

determination are contained in a safety evaluation dated April 28, 2005.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Robert A. Gramm.

Dated at Rockville, Maryland, this 16th day of May, 2005.

For the Nuclear Regulatory Commission.

James E. Lyons,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–10063 Filed 5–23–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Information Collection: RI 25–49

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an information collection. RI 25–49, Verification of Full-Time School Attendance, is used to verify that adult student annuitants are entitled to payments. OPM must confirm that a full-time enrollment has been maintained.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of OPM, and whether it will have practical utility; whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

Approximately 10,000 RI 38–45 forms are completed annually. Each form requires approximately 60 minutes to complete. The annual estimated burden is 10,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via email to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Dan G. Blair,

Acting Director.

[FR Doc. 05–10269 Filed 5–23–05; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 25–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 25–7, Marital Status Certification Survey, is used to determine whether widows, widowers, and former spouses receiving survivor annuities from OPM have remarried before reaching age 55 and, thus, are no longer eligible for benefits from OPM.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological techniques or other forms of information technology.

Approximately 2,500 forms are completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 625 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Retirement Services Programs, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Dan G. Blair,

Acting Director.

[FR Doc. 05–10270 Filed 5–23–05; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: SF 3102

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. SF 3102, Designation of Beneficiary (FERS), is used by an employee or an annuitant covered by the Federal Employees Retirement System to designate a beneficiary to receive any lump sum due in the event of his/her death.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of OPM, and whether it will have practical utility; whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

Approximately 2,037 SF 3102 forms are completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 509 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–

8358, FAX (202) 418–3251 or via email to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Retirement Services Program, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Dan G. Blair,

Acting Director.

[FR Doc. 05–10271 Filed 5–23–05; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Extension of a Revised Information Collection: Nonforeign Area Cost-of-Living Allowance Price and Background Surveys

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for extension of two previously-approved information collections for which approval will soon expire. OPM uses the two information collections, a price survey and a background survey, to gather data to be used in determining nonforeign area cost-of-living allowances (COLAs) paid to certain Federal employees in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. OPM conducts Price Surveys in the Washington, DC, area on an annual basis and once every 3 years in each allowance area on a rotating basis. Prior to these surveys, OPM conducts Background Surveys that are similar to the Price Surveys, but much more limited in scope. OPM uses the results of the Background Surveys to prepare for the Price Surveys.

The COLA Price Survey is necessary for collecting living-cost data used to determine COLAs. OPM uses the Price Survey results to compare prices in the allowance areas with prices in the Washington, DC, area and to derive COLA rates where local living costs significantly exceed those in the DC area. The COLA Background Survey is necessary to determine the continued appropriateness of items, services, and businesses selected for the annual price surveys. OPM uses the Background Survey results to identify items to be priced and the outlets at which OPM will price the items in the Price Surveys.

OPM will survey selected retail, service, realty, and other businesses and local governments in the allowance areas and in the Washington, DC, area. OPM will contact approximately 2,000 establishments in each annual Price Survey and approximately 100 establishments in each annual Background Survey. Participation in the surveys is voluntary.

OPM estimates that the average price survey interview will take approximately 6 minutes, for a total burden of 200 hours. The average background survey interview will take approximately 6.5 minutes, for a total burden of 11 hours.

For copies of this proposal, please contact Mary Beth Smith-Toomey at (202) 606–8358; fax: (202) 418–3251; or E-mail: *mbtoomey@opm.gov.*

DATES: Submit comments on or before June 23, 2005.

ADDRESSES: *Comments:* Send or deliver comments to:

- Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; fax: (202) 606–4264, or e-mail: *cola@opm.gov.;* and
- Brenda Aguilar, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kurt M. Springmann, (202) 606–2838.

SUPPLEMENTARY INFORMATION: OPM published notice of its intention to request an extension of the price and background surveys in the **Federal Register** on February 1, 2005 (70 FR 5258). OPM received no comments.

Office of Personnel Management.

Dan G. Blair,

Acting Director.

[FR Doc. 05–10272 Filed 5–23–05; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Comment Request for Review of an Expiring Information Collection: Establishment Information Form, Wage Data Collection Form, Wage Data Collection Continuation Form DD 1918, DD 1919, and DD 1919C

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), the Office of Personnel Management (OPM) seeks comments on its intention to request Office of Management and Budget clearance of three currently approved information collection forms. The Establishment Information Form, the Wage Data Collection Form, and the Wage Data Collection Continuation Form are wage survey forms developed by OPM for use by the Department of Defense to establish prevailing wage rates for Federal Wage System employees.

DATES: Submit comments on or before July 25, 2005.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; fax (202) 606–4264; or e-mail *pay-performance-policy@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; fax (202) 606–4264; or e-mail *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Department of Defense contacts approximately 21,200 businesses annually to determine the level of wages paid by private enterprise establishments for representative jobs common to both private industry and the Federal Government. Each survey collection requires 1–4 hours of respondent burden, resulting in a total yearly burden of approximately 75,800 hours.

Comments are particularly invited on whether (1) this information is necessary for the proper performance of OPM functions, (2) it will have practical utility, (3) our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology, and (4) ways in which we can minimize the burden of the collection of information on those who are to respond through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251, or e-mail *mbtoomey@opm.gov.* Please include a mailing address with your request.

Office of Personnel Management.

Dan G. Blair,

Acting Director.

[FR Doc. 05–10273 Filed 5–23–05; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26871; 812–12946]

Touchstone Investment Trust, et al.; Notice of Application

May 18, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in one or more affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Touchstone Investment Trust (''TINT''), Touchstone Strategic Trust (''TST''), Touchstone Tax-Free Trust (''TTFT''), Touchstone Variable Series Trust (''TVST'') (each, a ''Trust,'' and collectively, the ''Trusts''), on behalf of all of the existing and future series of each Trust (each, a ''Fund,'' and collectively, the ''Funds''), Touchstone Advisors, Inc. (''Touchstone Advisors''), and any other registered open-end management investment company or series thereof that is now or in the future advised by Touchstone Advisors or a person controlling, controlled by, or under common control with Touchstone Advisors (each, including Touchstone Advisors, an ''Advisor'') (each such investment company or series thereof included in the term ''Funds'').

FILING DATES: The application was filed on March 20, 2003, and was amended on May 13, 2005.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 13, 2005, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 221 East Fourth Street, Suite 300, Cincinnati, Ohio 45202–4311.

FOR FURTHER INFORMATION CONTACT: Marc R. Ponchione, Senior Counsel, at (202) 551–6874, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. The Trusts are Massachusetts business trusts that are registered under the Act as open-end management investment companies. Each Trust is comprised of a number of Funds, each with its own investment objectives and policies.[1]

2. Touchstone Advisors, an Ohio corporation and an investment adviser registered under the Advisers Act of 1940, as amended (''Advisers Act''), is the investment adviser to each of the Funds. Touchstone Advisors has engaged sub-advisors (''Sub-Advisors'') to handle the day-to-day portfolio management of each of the Funds.[2] Each Sub-Advisor has discretionary authority to invest all of a particular Fund's Cash Balances, as defined below, allocated to it.

3. TINT, TTFT, and TVST each have one or more money market Funds that comply with rule 2a–7 under the Act (''Money Market Funds''). The Funds that are not Money Market Funds (the ''Non-Money Market Funds'') invest in a variety of debt and/or equity securities in accordance with their investment objectives and policies.

4. Applicants state that each Non-Money Market Fund has, or may be expected to have cash that has not been invested in portfolio securities (''Uninvested Cash''). Uninvested Cash may result from a variety of sources, including, but not limited to, dividends or interest received from portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, and new monies received from investors. The Funds may implement a securities lending program in the future under which the Funds will lend portfolio securities to registered broker-dealers or other institutional investors. The loans will be continuously secured by collateral, which may include cash (''Cash Collateral,'' and together with Uninvested Cash, ''Cash Balances''), equal at all times in value to at least the market value of the securities loaned. Any investment of Cash Collateral will comply with all present and future applicable Commission or staff positions regarding securities lending arrangements.

5. Applicants request an order to permit the Non-Money Market Funds to use their Cash Balances to purchase and redeem shares of the Money Market Funds, and the Money Market Funds to sell their shares to, and redeem their shares as requested by, the Non-Money Market Funds. Investment of Cash Balances in shares of the Money Market Funds will be made only if permitted by the Non-Money Market Fund's investment restrictions and to the extent consistent with each Non-Money Market Fund's investment restrictions and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire the securities of another investment company if the

[1] All existing registered investment companies that currently intend to rely on the requested order are named as applicants, and any other existing or future Fund that subsequently relies on the order will comply with the terms and conditions in the application.

[2] Each Advisor and each Sub-Advisor is or will be registered under the Advisers Act.

securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's assets. Section 12(d)(1)(B) of the Act provides, in pertinent part, that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's outstanding voting stock, or if the sale will cause more than 10% of the acquired company to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) to permit the Non-Money Market Funds to invest Cash Balances in the Money Market Funds.

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Money Market Fund will maintain a highly liquid portfolio, a Money Market Fund would not need to maintain a special reserve or balance to meet redemptions by a Non-Money Market Fund. Applicants state that the proposed arrangement will not result in an inappropriate layering of fees because, to the extent a Money Market Fund charges a sales load, redemption fee, asset-based distribution fee under a plan adopted under rule 12b–1 under the Act, or service fee (as defined in Rule 2830(b)(9) of the Rules of Conduct of the National Association of Securities Dealers (the ''NASD Conduct Rules''), the Advisor will waive its advisory fee for each Non-Money Market Fund in an amount that offsets the amount of such fees incurred by a Non-Money Market Fund. If a Money Market Fund offers more than one class of shares, each Non-Money Market Fund will invest only in the class with the lowest expense ratio at the time of the investment. Before the next meeting of the board of trustees (''Board of Trustees'') of a Non-Money Market Fund is held for the purpose of voting on an advisory contract with the Advisor or Sub-Advisor under section 15 of the Act, the Advisor and the Sub-Advisor will provide the Board of Trustees with specific information regarding the approximate cost to the Advisor and Sub-Advisor of, or the portion of the advisory fee under the existing advisory contract with the Advisor or the Sub-Advisor attributable to, managing the Uninvested Cash of the Non-Money Market Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract with the Advisor or Sub-Advisor for a Non-Money Market Fund, the Board of Trustees, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Trustees''), shall consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Advisor and the Sub-Advisor should be reduced to account for reduced services provided to the Non-Money Market Fund. Applicants represent that no Money Market Fund will acquire the securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act beyond the limits contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, to sell or purchase any security to or from the investment company. ''Affiliated persons,'' as defined in section 2(a)(3) of the Act, include persons that are under common control. Control is defined in section 2(a)(9) of the Act as ''the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.'' Applicants state that because the Funds share a common investment adviser and have identical Boards of Trustees, each of the Funds may be deemed to be under common control with all of the other Funds, and, therefore, an affiliated person of the other Funds.

5. Section 17(b) of the Act authorizes the Commission to grant an order exempting a transaction otherwise prohibited by section 17(a) if the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company involved and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that the proposed transactions meet the terms of section 17(b) of the Act and are consistent with the standards for relief set forth in section 6(c) of the Act. Applicants state that the proposed transactions are reasonable and fair and would not involve overreaching because shares of the Money Market Funds will be purchased and redeemed by the Non-Money Market Funds at net asset value. Applicants also note that the Non-Money Market Funds will retain their ability to invest their Cash Balances directly in short-term obligations, as permitted by each Non-Money Market Fund's investment objectives and policies. Applicants state that each Money Market Fund reserves the right to discontinue selling shares to any of the Non-Money Market Funds if the Board of Trustees of the Money Market Fund determines that such sales would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that the Non-Money Market Funds and the Money Market Funds, by participating in the proposed transactions, and the Advisor and a Sub-Advisor (to the extent that the Sub-Advisor manages the assets of both a Non-Money Market Fund and a Money Market Fund), by managing the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

8. In considering whether to approve a joint transaction under rule 17d–1 under the Act, the Commission considers whether the investment company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the investment by the Non-Money Market Funds in shares of the Money Market Funds would be on the same basis as any other shareholder and would be indistinguishable from any other shareholder account and that the proposed transactions satisfy the standards of rule 17d–1 under the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The shares of the Money Market Funds sold to and redeemed by the Non-Money Market Funds may be subject to a sales load, redemption fee, asset-based distribution fee under a plan adopted under Rule 12b–1 under the 1940 Act, or service fee (as defined in Rule 2830(b)(9) of the NASD Conduct Rules). The Advisor will waive its advisory fee for each Non-Money Market Fund in an amount that offsets the amount of such fees incurred by a Non-Money Market Fund.

2. Before the next meeting of the Board of Trustees of a Non-Money Market Fund is held for the purpose of voting on an advisory contract with the Advisor or Sub-Advisor under section 15 of the Act, the Advisor and the Sub-Advisor will provide the Board of Trustees with specific information regarding the approximate costs to the Advisor and the Sub-Advisor of, or portion of the advisory fee under the existing advisory contract with the Advisor and the Sub-Advisor attributable to, managing the Uninvested Cash of the Non-Money Market Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract with the Advisor or a Sub-Advisor for a Non-Money Market Fund, the Board of Trustees, including a majority of the Disinterested Trustees, shall consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Advisor and the Sub-Advisor should be reduced to account for the reduced services provided to the Non-Money Market Fund by the Advisor and the Sub-Advisor as a result of Uninvested Cash being invested in the Money Market Funds. The Non-Money Market Fund's minute books will record fully the Board of Trustees' consideration in approving the advisory contract with the Advisor or a Sub-Advisor, including the considerations relating to fees referred to above.

3. Each of the Non-Money Market Funds will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Non-Money Market Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25% of the Non-Money Market Fund's total assets.

4. Investment of Cash Balances in shares of the Money Market Funds will be in accordance with each Non-Money Market Fund's respective investment restrictions, if any, and will be consistent with each Non-Money Market Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Non-Money Market Fund and Money Market Fund that may rely on the order shall be advised by an Advisor and will be in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act).

6. No Money Market Fund shall acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in a securities lending program, a majority of the Fund's Board of Trustees, including a majority of the Disinterested Trustees, will approve the Fund's participation in the securities lending program. The Board of Trustees also will evaluate the securities lending program and its results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interest of the shareholders of the Fund.

8. The securities lending program of each Fund will comply with all present and future Commission and staff positions regarding securities lending programs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2585 Filed 5–23–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5067]

Overseas Schools Advisory Council Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Meeting on Tuesday, June 21, 2005, at 9:30 a.m. in Conference Room 1406, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the recent activities of American-sponsored overseas schools and the overseas schools regional associations, presentations on developing improved communications and fundraising capabilities for the Council, and a presentation on a recent Council project to enhance the educational programs of American overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to June 11, 2005. Each visitor will be asked to provide his/her date of birth and Social Security number at the time of registration and attendance and must carry a valid photo ID to the meeting. All attendees must use the C Street entrance to the building.

Dated: May 18, 2005.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council, Department of State.

[FR Doc. 05–10333 Filed 5–23–05; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

Bureau of Administration

[Public Notice 5086]

Notice of Availability of Alternative Fuel Vehicle (AFV) Report for Fiscal Year 2004

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The U.S. Department of State, Bureau of Administration, is issuing this notice in order to comply with the Energy Policy Act of 1992 and 42 U.S.C. 13218(b). The purpose of this notice is to announce the public availability of the Department of State's final Fiscal Year 2004 report at the following Web site: http://www.state.gov/m/a/c8503.htm.

FOR FURTHER INFORMATION CONTACT: Questions regarding AFV reports on the

State Department Web site should be addressed to the Domestic Fleet Management and Operations Division (A/OPR/GSM/FMO) [Attn: Chappell Garner], 2201 C Street, NW., Room B258, Washington, DC 20520, telephone 202–647–3245.

Dated: May 18, 2005.

Vincent J. Chaverini,

Deputy Assistant Secretary Office of Operations, , Department of State.

[FR Doc. 05–10334 Filed 5–23–05; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for Improved Station Access and Additional Parking at the MTA Metro-North Railroad North White Plains Station, Westchester County, NY

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The FTA, in cooperation with the Metropolitan Transportation Authority (MTA) Metro-North Railroad (Metro-North) and the Westchester County Department of Transportation (WCDOT), intend to prepare an Environmental Impact Statement (EIS) on a proposal to improve station access and provide additional parking at the Metro-North North White Plains Station, Westchester County, New York (Proposed Action).

The FTA is the lead Federal agency under the National Environmental Policy Act of 1969 (NEPA). The Proposed Action is being developed by Metro-North and WCDOT, the co-sponsors of the Proposed Action. The EIS will be prepared in accordance with NEPA and the applicable regulations for implementing NEPA, as set forth in 23 CFR part 771 and 40 CFR parts 1500–1508. The EIS is being prepared to satisfy the requirements of the New York State Environmental Quality Review Act (SEQRA). Items that will be considered in the Proposed Action are:

- Expansion of parking capacity through the construction of a multi-level parking structure at Metro-North's North White Plains Station;
- Improved access to/from the proposed expanded parking facilities from the east side of the railroad tracks;
- Enhanced customer service facilities for intermodal connections and parking demand management strategies such as: Jitney services, feeder buses supported by park-and-ride lots, carpool and vanpool arrangements, bicycling and walking;
- Restoration of a portion of the Bronx River Parkway Reservation which is currently used for customer parking back to parkland; and
- Rerouting a portion of the Bronx River Parkway Reservation bike pathway in the study area.

The EIS will evaluate a build alternative, comprising a multi-level parking structure and four possible access alternatives, a No Action Alternative and any additional reasonable alternatives generated by the scoping process. Scoping will be accomplished through meetings and correspondence with interested persons, organizations, and Federal, State, regional, and local agencies.

DATES: The public is invited to participate in a scoping meeting on June 14th, 2005 commencing at 7 p.m. at the location identified under **ADDRESSES** below to ensure that all significant issues are identified and considered. Presentation boards depicting the Proposed Action will be available for review at the meeting. Metro-North and WCDOT representatives will be present at the meeting.

Formal presentations by Metro-North and WCDOT regarding the project will be made at 7 p.m., followed by the opportunity for the public to make comments on the scope of the EIS. Registration to speak will begin at 6:30 p.m. and will remain open until 8:30 p.m.. A stenographer will be available at the meeting to record oral comments. Those wishing to speak are requested to register at the meeting location upon arrival, however, registration to speak will remain open until 8:30 p.m. The meeting will conclude when all registered speakers have been heard.

Printed versions of the Scoping Information Document are available at a number of public libraries and municipal offices. A list of these locations can be obtained by contacting Mr. James Hoegler, PE, AICP, or Ms. Patricia Chemka, AICP, at the telephone numbers listed below under **ADDRESSES,** or by visiting the following Web sites: *http://www.mta.info* (click ''MTA–Home'' then ''Planning Studies,'' and ''North White Plains Station '') and the WCDOT Web site: *http://www.westchestergov.com/transportation.* The Scoping Information Document may also be requested by writing to these individuals, or may be viewed on-line by visiting the Web sites listed above.

The scoping comment period will remain open through July 11, 2005. Written comments on the scope of the EIS may be tendered at the scoping meeting, or may be sent to Mr. James Hoegler, PE, AICP at Metro-North Railroad, or Ms. Patricia Chemka, AICP at WCDOT at the addresses given under **ADDRESSES** below. Requests to be placed on the study mailing list may also be made by calling or by writing to these individuals.

ADDRESSES: The public scoping meeting will be held: Tuesday, June 14, 2005 in rooms C and D at the Westchester County Center, 198 Central Avenue (at the Bronx River Parkway), White Plains, NY 10606.

The scoping meeting site is accessible to mobility-impaired people and interpreter services will be provided for persons with hearing impairments upon request. People with special needs should contact Mr. James Hoegler at Metro-North (888) 836–8301 at least five (5) days prior to the meeting.

Written comments will be taken at the meeting or may be sent to the following addresses thru July 11, 2005: Mr. James Hoegler, PE, AICP, MTA Metro-North Railroad, 345 Madison Avenue, 3rd Floor, New York, NY 10017, phone (888) 836–8301; or Ms. Patricia Chemka, AICP, Westchester County Department of Transportation, 100 East 1st Street, 9th Floor, Mount Vernon, NY 10550, phone (914) 813–7753.

FOR FURTHER INFORMATION CONTACT: Mr. Irwin B. Kessman, Director of Planning and Program Development, Federal Transit Administration, (212) 668–2170.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA, Metro-North and WCDOT invite interested individuals, organizations, and Federal, State, and local agencies to provide comments on the scope of the Proposed Action. During the scoping process, comments should focus on specific social, economic, or environmental issues to be evaluated, and on suggesting alternatives that may be less costly or have fewer environmental impacts while achieving similar transportation objectives. To assist interested parties in formulating their comments, a Scoping Information Document has been prepared and is available on the MTA Web site and the Westchester County Web site addresses noted above, or upon request from the Metro-North and WCDOT representatives identified above. The Scoping Information Document includes the purpose and need for the Proposed Action, a description of the preliminary alternatives, environmental issues that will be addressed during the course of the study, and an outline of the on-going public participation program.

II. Description of the Study Area

The North White Plains Station is located along Metro-North's Harlem Line on Harlem Avenue west of Broadway (NY Route 22) and east of the Bronx River Parkway, approximately 0.25 miles north of Interstate 287 (I–287), in the northern section of the City of White Plains, Westchester County, New York. The station is located amidst many one-way roads near the municipal boundaries of the City of White Plains, the Towns of North Castle and Greenburgh.

The Harlem Line, which generally runs north-south through the City of White Plains, is one of three major passenger rail lines which provide regularly scheduled daily train service between New York City, Grand Central Terminal, and various locations in Westchester County. The northern terminus of the Harlem Line is in Wassaic, in the Town of Amenia, Dutchess County, New York.

The Primary Study Area is defined as the area west of Harlem Avenue and east of the Bronx River Parkway Reservation (BRPR) between Holland Avenue to the south and Fisher Lane to the north. This area consists of Harlem Avenue, the land currently occupied by station parking areas, the station itself, and immediately adjacent facilities (e.g., drop off/pick up; intermodal area).

Towards its goal of improving access to public transportation, Metro-North has identified the North White Plains Station as a Strategic Passenger Facility due to its central location and the level of train service currently provided. Metro-North currently provides a level of train service to the North White Plains Station that is among the top five on the Harlem Line and among the top ten systemwide. Three parking areas currently serve Metro-North customers at the North White Plains Station, with Metro-North and Westchester County owning the majority of the approximately 1,250 available parking spaces.

Vehicular access to the station from the north and south is provided primarily by Broadway to the east and the Bronx River Parkway to the west. The majority of parking spaces that serve the station are located on the west side of the tracks and can only be accessed via the Bronx River Parkway at Fisher Lane. A one-way travel restriction on Fisher Lane in the vicinity of the railroad underpass prevents full west-to-east travel across the study area.

III. Purpose and Need for the Proposed Action

The need for the Proposed Action is due to the current parking deficiency, forecasted growth in ridership and projected customer diversions from other stations. In addition, access to the North White Plains Station is hampered by its location amidst a series of one-way roads such as Fisher Lane.

Parking utilization at the North White Plains Station is approximately 90 percent on any typical weekday. Metro-North experience suggests that drivers perceive a lot as full when the utilization exceeds 85 percent. A separate effort by Metro-North to estimate parking demand systemwide at its rail stations in New York State, which included a survey of the waiting lists for permits to park at the North White Plains Station, indicates the total current demand at the North White Plains Station to be approximately 1,560 spaces. Parking demand is forecast to be approximately 2,800 in 2015 and approximately 4,600 in 2,025. The construction of a multi-level parking structure would provide additional parking capacity to Metro-North customers to accommodate both current and future demand for parking (in 2015).

In addition, access to the North White Plains Station is hampered by its location amidst a series of one-way roads such as Fisher Lane. Fisher Lane currently provides the only means of access to the parking areas located west of the tracks, areas which provide approximately 80% of all North White Plains Station parking. All Metro-North customers who use these parking areas must travel through the Bronx River Parkway—Fisher Lane intersection for access. This intersection currently experiences heavy traffic during the morning peak hours. Improved station access would reduce the site's dependence on the Bronx River Parkway—Fisher Lane intersection.

IV. Alternatives

The EIS will evaluate Build and No-Action alternatives. The Build alternative will provide improvements that enhance connections to the existing transportation system and will meet the anticipated increase in parking demand.

Metro-North and WCDOT conducted a Planning Study for the Proposed Action in advance of the EIS. The purpose of the study was to identify area constraints and determine the viability for the Proposed Action. The study identified a range of alternative improvement options to address the parking and access deficiencies at North White Plains Station. Two garage concepts and eleven access alternatives were developed and analyzed. Printed versions of the Planning Study are available on the Web sites indicated above in **DATES**. Copies can also be viewed at the Metro-North and WCDOT offices by contacting Mr. Hoegler or Ms. Chemka at the telephone numbers listed above in **ADDRESSES**.

As a result of the Planning Study, one garage concept and four access alternatives will be progressed in the EIS. These alternatives both improve site access to/from the east side of the railroad tracks and increase parking capacity. Specifically, the alternatives to be evaluated are include:

(a) Parking Garage Concept

Currently, there are approximately 1,250 surface parking spaces at the North White Plains Station. The Proposed Action would result in approximately 2,700 parking spaces, a net increase of about 116% (approximately 1,450 spaces). This would be accomplished through the construction of an approximate 2,200 space parking structure. The structure would contain the 1,450 net new spaces as well as approximately 750 spaces relocated into the garage from surface lots, permitting the most efficient use of the limited available space. Approximately 500 surface spaces would remain.

The Planning Study revealed that due to area constraints and projected demand for parking spaces, the southern portion of the Westchester County-operated parking is the most feasible location for a new parking structure. It is also the largest contiguous area owned by Metro-North.

(b) Site Access Alternatives

1. New access from the North—Construction of a new single lane underpass located south of the existing Fisher Lane underpass that would be used for eastbound travel. The existing Fisher Lane underpass would be converted to westbound travel;
2. New access from the East—Construction of a new two-way underpass from an extended Glenn Street under the Metro-North tracks;
3. New access from the South—Construction of a one-way (ingress-only) surface driveway from Cemetery Road;
4. New access from the South—Construction of a reversible one-lane ramp over Metro-North tracks on the south side of proposed partial two-way Cemetery Road.

Each of the four access alternatives is feasible with the parking garage concept. The access alternatives will be assessed equally and one will be progressed along with the garage as the Proposed Action. *No Action Alternative.* This alternative provides for minor improvements, repairs, and other

maintenance actions to the existing parking areas and access points in the future, without the Proposed Action.

V. Potential Effects

Upon completion, the proposed improvements associated with the Proposed Action are anticipated to eliminate existing and future parking deficiencies through 2015. It will also generate positive impacts for Metro-North customers, Westchester County residents, businesses, workers, and visitors.

Impacts that may occur as a result of the Proposed Action will be evaluated in the EIS. Metro-North and WCDOT have identified several environmental areas of concern, including, but not limited to: Traffic; historic and archaeological resources; parkland; wetlands; visual character; and safety and security. Potential temporary effects associated with the construction phase include noise, vibration, impacts on pedestrian and vehicular traffic, and air quality. The EIS will describe the methodology used to assess impacts; identify the affected environment; and identify opportunities and measures for mitigating adverse impacts. Principles of environmental construction management, resource protection and mitigation measures, and the ''MTA Metro North Railroad Sustainable Design/Design for the Environment Generic Recommendations and Guidelines'', dated August 19, 2002 and developed pursuant to New York State Executive Order No. 111, Green and Clean State Buildings and Vehicles, will be incorporated into the Build Alternatives.

VI. FTA Procedures

During the NEPA process, FTA will comply with the requirements of Section 106 of the National Historic Preservation Act, Section 4(f) of the Department of Transportation Act (49 U.S.C. 303), the conformity requirements of the Clean Air Act, Executive Order 12898 on Environmental Justice and, to the maximum extent practicable, all other applicable federal environmental statutes, regulations, and executive orders, in accordance with FTA policy and regulations.

A Draft EIS will be prepared and made available for public and agency review and comment. A public hearing will be held on the Draft EIS. On the basis of the Draft EIS and the public and agency comments thereon, a preferred alternative will be selected and will be fully described and further developed in the Final EIS.

Issued on: May 19, 2005.

Letitia Thompson,

Regional Administrator, Region II.

[FR Doc. 05–10360 Filed 5–23–05; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–04–18682]

Frontal New Car Assessment Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of final decision on the New Car Assessment Program (NCAP) pilot programs for child safety.

SUMMARY: The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act required that a safety rating for child restraints be established to provide practicable, readily understandable, and timely information to consumers. In addition, the TREAD Act directed the Secretary of Transportation to consider placing child restraints in the rear seat of vehicles crash-tested under NCAP. In response to this mandate, NHTSA established a consumer information program for add-on child restraints based on their ease of use, and announced that it would perform two pilot programs to gather additional information about other aspects of child passenger safety. One pilot program would subject child restraints to a 48 km/h (30 mph) sled test. This program focused on the protection provided by the child restraint. The second pilot program placed child restraints in the rear seat of vehicles in frontal NCAP tests. This program focused on the protection the vehicle provided to properly restrained children. Based on the data collected from both pilot programs, the agency has decided not to implement a dynamic child restraint system (CRS) rating based on sled tests, and to continue collecting data from NCAP frontal crash tests to resolve some outstanding technical issues and to gather additional data on the Hybrid III 6-year-old and 10-year-old child dummies. In addition, the agency will develop a better understanding of the real world data and its relationship to NCAP child results. The agency will make a decision on the merits of a vehicle child protection rating in conjunction with any possible revisions to the frontal testing program, which the agency is currently evaluating.

Privacy Act: Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the petition (or signing the petition, 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.*

FOR FURTHER INFORMATION CONTACT: For technical issues concerning the dynamic sled pilot program, contact Mr. Sean Doyle of the New Car Assessment Program. Telephone: (202) 366–1740. Facsimile: (202) 493–2739. Electronic mail: *Sean.Doyle@nhtsa.dot.gov.* For technical issues concerning the vehicle pilot program, contact Mr. Brian Park of the New Car Assessment Program. Telephone: (202) 366–1740. Facsimile: (202) 493–2739. Electronic mail: *Brian.Park@nhtsa.dot.gov.* For legal issues, contact Ms. Deirdre Fujita of the Office of Chief Counsel. Telephone: (202) 366–2992. Facsimile: (202) 366–3820. Electronic mail: *Dee.Fujita@nhtsa.dot.gov.* You may send mail to these officials at: The National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

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I. Introduction

On November 1, 2000, Congress passed the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414, 114 Stat. 1800). Section 14(b) of this act directed the Secretary of Transportation to determine ''whether to include child restraints in each vehicle crash tested under NCAP.'' Additionally, section 14(g) directed NHTSA to ''establish a child restraint safety rating consumer information program to provide practicable, readily understandable, and timely information to consumers for use in making informed decisions in the purchase of child restraints.''

NHTSA published a notice on November 6, 2001, which discussed existing programs throughout the world that rate the dynamic performance of

child restraints, and addressed comments in response to the agency's child restraint system (CRS) safety plan.[1] The notice also discussed possible methods of rating CRS, including, dynamic performance in sled tests and ease of use. The notice also discussed using child dummies in the rear seat of frontal NCAP crash tests to rate vehicles on child protection.

On November 5, 2002, a Notice of Final Decision was published in response to comments received relating to the proposed rating systems.[2] In response to the congressional mandate outlined in the TREAD Act, a final protocol for an ease of use rating for child restraints was established and immediately implemented. The agency also announced its intent to conduct two pilot programs. One would investigate the feasibility of rating child restraints on their ability to protect children, based upon a dynamic sled test. The other would investigate the possibility of rating vehicles on their ability to protect children in the rear seat, based upon frontal NCAP tests incorporating CRS.

The first pilot program was a 48 km/h (30 mph) dynamic sled test pilot program to assess the dynamic performance of child restraints using the test seat assembly, test dummies (Child Restraint Air Bag Interaction (CRABI), Hybrid III 3-year-old dummy and Hybrid III 6-year-old dummy), and Injury Assessment Reference Values (IARVs) of the then proposed upgrade to Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems.''[3]

The second pilot program placed CRS restrained child dummies in the rear seat of frontal NCAP vehicle crash tests. It was hoped that the data attained from this pilot program would allow the agency to determine the relative contributions of both the child restraint, and the vehicle in which the child restraint is installed, to child occupant protection. Also, the agency wished to use this pilot program to evaluate whether one dummy size could be used as a surrogate for other child dummy sizes, and whether various child or harness types of restraints affected performance in a frontal crash test.

At the conclusion of the pilot programs, NHTSA said it would evaluate all the test results and make that evaluation available to the public. If the information attained through the pilot programs allowed the agency to resolve the remaining technical issues discussed in the 2002 notice, and the test data indicated that NHTSA could develop meaningful rating programs, it was intended that both a child restraint rating, based on the sled testing, and a vehicle rating, based on the child occupant performance in frontal NCAP tests, would be implemented in model year 2005.[4]

The test results and technical analyses of both the sled and vehicle pilot programs are addressed in separate reports and are located in the NHTSA docket (Docket No. 2004–18682). This notice will discuss the agency's decision as it pertains to each of these pilot programs. The agency has determined that it will not proceed with a child restraint rating based on sled tests conducted at 48 km/h (30 mph). The agency has also determined that a decision on a vehicle rating for child occupant protection is not possible at this time based on the current test data. Therefore, NHTSA will continue testing child restraints in frontal NCAP vehicle tests to gather additional test data as well as determine the usefulness to consumers that such a program would provide. If a vehicle rating program based on rear seat child occupant protection were to be implemented in the future, it would occur simultaneously with any revisions that will be made to the frontal NCAP.[5] Changes to the frontal NCAP are being considered as a result of changes made to FMVSS No. 208.[6]

II. CRS Dynamic Pilot Program

A. Sled Testing

The two main goals of the dynamic CRS sled test pilot program were to (1) statistically compare the dynamic performance between different CRS configurations, and (2) determine the range of dynamic performance for CRS models. The testing was conducted in accordance with the recent upgrade in the FMVSS No. 213 rulemaking. Sled tests were performed at 48 km/h (30 mph) with the 1-year-old CRABI dummy (restrained in infant and convertible restraints), the Hybrid III 3-year-old dummy (restrained in convertible, combination, and booster restraints), and the Hybrid III 6-year-old dummy (restrained in combination and booster restraints).[7] The test matrix was designed to perform paired t-tests[8], which controlled for all differences within a test except the variable of interest. The same model of child restraint was tested in the two outboard positions on the sled bench in two different configurations. Given the large number of dummy-CRS combinations, it was important to test as many combinations as possible, yet have a sample size that would permit meaningful statistical comparisons. Each CRS was tested in more than one configuration by either varying orientation of the restraint (forward-facing or rear-facing), attachment to the sled (LATCH[9], belt with tether, or belt only), CRS usage (with or without a base), or test dummy.

The test matrix resulted in a total of 40 different CRS models being tested. These 40 models represented a large majority of the restraints available in the market at the time of testing. Various child restraint types, models, and brands were tested in six different test series. These series included:

(1) One child restraint on the sled bench versus two child restraints.[10]

(2) Infant seats with and without their optional base (same CRS model per comparison).

(3) Hybrid III 3-year-old dummies versus 1-year-old CRABI dummies in rear-facing child restraints (same CRS model per comparison).[11]

(4) Hybrid III 3-year-old dummies versus 1-year-old CRABI dummies in forward-facing child restraints (same CRS model per comparison).

(5) Child restraints with a lap belt and top tether versus LATCH.

(6) Hybrid III 3-year-old dummies in belt-positioning booster seats versus Hybrid III 6-year-old dummies in belt-positioning boosters.

The first goal was set to assist the agency in determining whether child restraints with multiple configurations would have to be tested in each of these configurations to get an accurate representation of the child restraints'

[1] 65 FR 70687, Docket No. NHTSA–2000–7938

[2] 67 FR 67448, Docket No. NHTSA–2001–10053

[3] June 24, 2003 Final Rule (68 FR 37620 Docket No, NHTSA–03–15351)

[4] By model year 2005, we mean October 2004 to coincide with the commencement of the fiscal year 2005 New Car Assessment Program

[5] 69 FR 61071

[6] Effective beginning with the 2008 model year, FMVSS No. 208 will be upgraded to the current NCAP test speed of 35 mph for a belted 50th percentile HIII dummy. May 12, 2000 Final Rule (65 FR 30680).

[7] Appendix A, Table A1, contains a description of various types of child restraints.

[8] For paired t-tests, the data is dependent, *i.e.* there is a one-to-one correspondence between the values in the two samples and it determines whether the two values differ from each other in a statistically significant way.

[9] Lower Anchors and Tether for Children.

[10] Current FMVSS No. 213 compliance test procedure only permits testing of one CRS at a time on the sled bench.

[11] FMVSS No. 213 does not currently have a standard test procedure for testing the Hybrid III three-year-old dummy in rear-facing child restraints. Therefore NCAP relied on an installation procedure used by test facilities and other organizations that have experience testing Hybrid III three-year old dummies in rear-facing CRS.

dynamic performance. Subjecting each CRS to various testing configurations permitted a comparison between the dynamic performances of the same CRS in different configurations and allowed the agency to determine the feasibility of developing a rating program that would require testing of only one CRS configuration per restraint model, rather than potentially several configurations for some models. Such a rating program could then accurately reflect the child restraint's dynamic performance with one test, rather than needing to develop a more complicated rating scheme reflecting different performance for the various configurations.

To expand upon data acquired in previous testing, the agency also intended for the pilot program testing to help determine the range of dynamic performance between CRS models. This data would assist the agency in determining whether there are significant differences between the dynamic sled test performance of different child restraint models, and thus whether or not a rating program based on sled tests would provide meaningful information to consumers.

Further detail on the methodology and experimental design of this pilot program can be found in the technical report, ''Child Restraint Dynamic Performance Evaluation in a 48km/h (30 mph) Sled Test,'' located in docket NHTSA–04–18682.

B. Findings

Analysis of the sled test results was mainly based on two injury criteria: Head Injury Criterion (HIC) and chest acceleration [12]. These two injury criteria were chosen because HIC and chest acceleration are the two measurements that are most readily correlated to probability of injury. In addition, the agency felt that if a rating system were eventually developed, using HIC and chest acceleration would allow the agency to follow the same approach that is currently used for the adult dummies in frontal NCAP.

Statistical findings for the six series of tests are summarized in Table 1, and indicated the following:

■ Similar performance was attained in forward facing (FF) CRSs irrespective of the dummy size.

■ Securing the CRSs with LATCH or lap belt plus tether produced similar results for a given CRS.

■ Higher HIC responses occurred when infant seat CRSs were tested with the removable base attached.

■ For rear facing (RF) CRSs, higher HIC occurred when tested with the Hybrid III 3-year-old as compared to the 1-year-old CRABI dummy.

■ For belt positioning booster (BPB) seats, higher HIC occurred when tested with the Hybrid III 3-year-old versus the Hybrid III 6-year-old dummy.

These results indicated that multiple tests would be necessary to establish a rating for infant, rear facing, and belt positioning booster CRSs, since testing in one configuration and/or with one particular dummy size would not assure that the results would apply to another configuration or dummy.

TABLE 1

CRS configuration	Statistical difference in HIC performance?	Statistical difference in chest acceleration performance?
One CRS on sled vs. two CRS on sled	NO	NO.
Hybrid III 3-year-old vs. 1-year-old CRABI FF	NO	NO.
LATCH vs. Lap Belt w/top tether	NO	NO.
Base vs. No base (infant seat)	YES, Base removed had lower HIC.	NO.
Hybrid III 3-year-old vs. 1-year-old CRABI RF	YES, 1-year-old CRABI RF had lower HIC.	NO.
Hybrid III 3-year-old vs. Hybrid III 6-year-old in BPB	YES, Hybrid III 6-year-old in BPB had lower HIC.	NO.

Furthermore, the testing performed confirmed earlier studies conducted by the agency showing relatively little distinction in CRS performance based upon HIC and chest acceleration when tested on the sled in the same configuration.[13] As shown in Appendix A, Figures A1–A3, tests using numerous make/model CRSs with the CRABI, Hybrid III 3-year-old, and Hybrid III 6-year-old dummies in rear facing, forward facing, and belt positioning booster CRS resulted in tightly clustered responses for both HIC and chest acceleration. The responses were also well within the established FMVSS No. 213 injury tolerance levels.

C. NHTSA's Decision on a CRS Dynamic Rating Program

Table A2 in Appendix A illustrates how there are often several different configurations for one specific child restraint type. The sled test data from this pilot program has shown that similar dynamic performance results cannot be assumed for different configurations of the same CRS model. As such, any CRS dynamic rating program would have to test many child restraints in multiple configurations, possibly with multiple dummies, to provide a rating for any one child restraint. Not doing so could consequently provide consumers with incomplete and inaccurate information. Moreover, if one restraint is tested in all applicable configurations, without a combined rating, the potential for multiple ratings for any one child restraint model could result in confusion for consumers.

The pilot program test results showed relatively small performance differences, particularly for chest acceleration, between the best and worst performer when tested under the same configuration. In effect, the agency found that for any given configuration, most makes and models produced results that were within an interval of 30 percent of the FMVSS No. 213 injury tolerance levels. This included the convertible and combination restraints as well as the infant restraints and belt-positioning booster seats. Given that all child restraints of the same type, when tested in the same configuration,

[12] Head and knee excursions, along with other injury measures were also collected and are available in the technical report, ''Child Restraint Dynamic Performance Evaluation in a 48km/h (30 mph) Sled Test'' located in docket NHTSA–04–18682.

[13] In the November 5, 2002 notice, the agency had concerns that a rating program based on 30 mph sled tests would not provide meaningful information to consumers, as all child restraints subjected to this test would have received either a four- or five-star rating.

perform very well and produce results that fall within a relatively tight response cluster, the agency believes that it is not feasible to develop a CRS dynamic rating that would provide meaningful consumer information over such a small range of dynamic performance, especially when multiple configurations are involved.

An additional agency concern is the frequent rotation of the CRS product line and short shelf life. Unlike vehicle models, which tend to have multiple year lifecycles before redesign, CRS model changes occur much more frequently. The shelf life for a typical CRS can be as short as six to eight months, and performing a dynamic sled test on each CRS model in its multiple configurations would make it unlikely that consumers would have relevant information available to them in making a purchasing decision. In consideration of the above, NHTSA has decided not to implement a dynamic CRS rating based on 48 km/h (30 mph) sled tests. The agency believes that when child restraints are used correctly, they are very effective in providing child passenger safety. Accordingly, the agency views the current ease-of-use consumer information program, which improves correct installation of child restraints by telling consumers which restraints are easier to use and by motivating manufacturers to make their child restraints easier to use, as sufficient in providing consumers with helpful and meaningful information when purchasing a child restraint.

III. Vehicle Pilot Program

A. Vehicle Testing

The three main goals of the vehicle pilot program were to investigate (1) whether or not the response performance for various dummy sizes and restraint configurations would indicate similar levels of occupant protection, (2) how different restraints affect performance, and (3) to separate the vehicle performance from the child seat performance. As such, the agency designed a test matrix to gather statistically comparable information as follows: Comparison of forward-facing vs. rear-facing child restraints, comparison of forward-facing child restraints vs. booster seats, comparison of one five-point harness model vs. another five-point harness model, and comparison of five-point harness vs. overhead shield restraints. The agency collected data from one hundred and eight frontal vehicle tests that used the 1-year-old CRABI dummy, the Hybrid III 3-year-old dummy, and the Hybrid III 6-year-old.

All convertible and forward-facing child restraints were installed using the LATCH system when used in the forward facing mode. For rear-facing child restraints, only the lower anchorages of the LATCH system were used to secure the child restraint. For every vehicle, the seating position behind the right front seat passenger had the same child restraint model (baseline CRS), which contained a forward facing Hybrid III 3-year-old child dummy. The CRS and child dummy used in the seating position behind the driver was varied in order to satisfy the program goals, and to serve as a comparison against the baseline CRS.

Further detail on the methodology, experimental design, and results of the pilot program can be found in the technical report, ''Evaluation of Child Occupant Protection in a 56 km/h (35 mph) Frontal Barrier Crash'', located in docket NHTSA–04–18682.

B. Findings

This section discusses the findings in resolving the three main program goals. As with the analysis done for CRS Dynamic Pilot Program, HIC and chest acceleration were used for the analysis. The vehicle pilot program studied three CRS/dummy configurations. The first was the Hybrid III 3-year-old dummy positioned in a forward-facing convertible CRS compared to the 1-year-old CRABI dummy positioned in a rear-facing convertible CRS. The results of these paired tests showed no statistically significant difference in HIC values, but testing did show higher chest acceleration for the 1-year-old CRABI than the Hybrid III 3-year-old tested in the same vehicle. In addition, the testing also showed that some rear-facing restraints interacted with the front seatback during the crash event. However, due to the limited sample size, and the inability to quantify the interaction with video coverage and instrumentation, the agency feels that more research is needed to fully understand the importance of this interaction.

The second configuration analyzed as part of this pilot program compared a Hybrid III 3-year-old in a forward-facing convertible CRS to a Hybrid III 6-year-old that utilized the vehicle seat belts and a belt-positioning booster. Again, no statistically significant difference was found between the HIC values for each of the paired tests. However, the chest acceleration values for the Hybrid III 6-year-old were significantly higher than those of the Hybrid III 3-year-old. Further testing and analyses are needed to better understand these results, since standard NCAP instrumentation and camera coverage do not provide sufficient information to fully assess potential causes for this result.

The third comparison evaluated by the agency examined two child restraints that were identical, with the exception of the harness type. One child restraint had a five-point harness, while the other had an overhead shield. Statistical analysis showed that there was no significant difference for HIC or chest acceleration for the dummy in the five-point harness compared to the dummy in the overhead shield.

The agency also evaluated whether the same pair of CRS models, tested in multiple vehicles, would display a similar spread in injury results between the two different child restraints in every vehicle tested. Eleven vehicles were tested with the same two forward facing child restraints, the Evenflo Vanguard V and the Britax Roundabout. Both restraints were chosen based on cost, popularity, and availability at the time of testing. The average cost of the Vanguard V was about one-third the cost of the Roundabout. All tests utilized the Hybrid III 3-year-old dummy and the child restraints were secured using LATCH. The results for these tests are shown in Appendix A, Table A3. For these eleven tests, the injury values were typically lower for the Vanguard V than for the Roundabout, suggesting that the cost of a child restraint may have little to do with the level of safety offered by a CRS. In addition, paired t-testing showed that the average difference between the two child restraints is small based upon the injury risk curves.[14] The difference in average HIC response was 58, or a difference of less than 2 percent head injury risk. The difference in average chest acceleration response was 3 G, or about 2 percent difference in chest injury risk. Both t-tests did not achieve statistical significance.

Because the Hybrid III 3-year-old child dummy was positioned in the same child restraint in every vehicle crash, thus establishing a baseline, the agency was able to compare the vehicle crash pulse characteristics to the child dummy injury readings. While the HIC readings showed little to no correlation with the crash pulse for the Hybrid III 3-year-old dummy, the chest acceleration readings did. The chest acceleration readings had a

[14] Viano, DC., and Arepally, S., Assessing the Safety Performance of Occupant Restraint Systems,'' Proceedings of the 34th Stapp Car Crash Conference, SAE Paper 902328, Warrendale, PA, November 1990.

correlation [15] ($R^2 \approx 0.7$) with pulse duration, with higher chest acceleration associated with shorter pulse durations. Chest acceleration showed a weaker correlation ($R^2 \approx 0.4$) with peak acceleration and static crush.

Determining the source of difference in child seat performance was of interest. We wanted to find out what percent of the total variation in the HIC and chest G values are due to the vehicles. Analysis of variance indicated that about 75% of the variation in chest acceleration and about 60% of the variation in HIC values could be attributed to the vehicle make and model. An additional finding was that the vehicle type, such as passenger car, sport utility vehicle, van, or truck, did not statistically correlate with the child dummy results, and that there was no statistical correlation between the driver or front passenger dummy readings and the rear seat Hybrid III 3-year-old dummy readings.

C. NHTSA's Decision on a Vehicle Rating System for Child Protection

The agency's test data indicates that for the Hybrid III 3-year-old dummy, chest acceleration has some correlation to a vehicle's crash performance and that both the HIC and chest acceleration readings are more influenced by the vehicle than by the child restraint. However, we have insufficient data for the other dummy sizes to make a determination. As such, the agency feels that additional testing is necessary before a final decision can be made.

The CRS in-vehicle testing pilot program gathered important data on the CRABI, Hybrid III 3-year-old, and the Hybrid III 6-year-old child dummies. However, the agency is concerned that the results may have been affected by the interaction of the child seat with the front seat. Therefore, the agency would like to collect additional data to better understand the effect of this interaction on performance. When comparing the Hybrid III 3-year-old to the Hybrid III 6-year-old, the agency found that the dummies had statistically different values for chest acceleration, but not HIC. Further testing and analyses are needed to better understand these results.

Under Anton's Law (Pub. L. 107–318, 116 Stat. 2772), Congress mandated that the agency develop a test dummy representing a 10-year-old dummy for use in testing child restraints used in passenger motor vehicles. The agency has completed development and evaluation of the dummy, and will soon propose rulemaking to incorporate it into the Code of Federal Regulations. In-vehicle testing with this dummy, along with the Hybrid III 6-year-old dummy, will allow the agency to gather additional data on booster seat performance and determine if either of these dummies should be used in any potential vehicle rating.

The agency continues to believe that child restraints are highly effective in reducing the likelihood of death and/or serious injuries to children in motor vehicle crashes. The agency notes that misuse and non-use of child restraints are the predominant cause for fatalities involving children, and that even in these very severe frontal NCAP tests, none of the forward-facing child restraints had a structural failure. Similarly, when examining the data, the agency also notes that many of the vehicles provided relatively good performance. However, the agency is concerned that some vehicles did show dummy measurements in excess of established child injury reference values. The agency is working to better understand the meaning of these measurements as they relate to a high-speed frontal collision. Thus far, the understanding of the injury mechanism and injury risks to properly restrained children in appropriate child restraints for full frontal crashes is limited. The agency is using comprehensive collection and assembly of all available data, and is working with other interested parties, to better understand the child injury measures for these NCAP tests and the corresponding real world injuries.

Lastly, recent amendments to FMVSS No. 208 require vehicles manufactured after September 1, 2007, to meet the injury criteria of that standard at the NCAP test speed for the belted 50th percentile male dummy. Because compliance tests will then be performed at frontal NCAP test speeds, the agency is considering possible changes to NCAP. The agency has proposed several alternative approaches to revise the frontal NCAP, including incorporation of rear seat child occupant measurements into the rating system [69 FR 61071].

Given these reasons, the agency feels that more information is needed in order to decide whether to begin rating vehicles for child occupant protection using the CRS restrained rear seat in the frontal NCAP tests. To resolve the technical issues discussed in this notice, the agency will continue to collect rear seat child protection data from NCAP frontal crash tests.

IV. Conclusions

The agency has concluded that a dynamic CRS rating program would not provide meaningful information for consumers, and has decided it will not implement a dynamic CRS rating based on sled tests. The agency believes that the current ease of use consumer information program is providing consumers with helpful and meaningful information when purchasing a child restraint.

In terms of a vehicle rating for child occupant protection, NHTSA has concluded that more testing and analysis is needed before a final determination can be made on the inclusion of child response information in NCAP. To gather the necessary information, NHTSA will continue to collect CRS restrained rear seat child occupant data using 1-year-old CRABI, Hybrid III 3-year-old, Hybrid III 6-year-old, and Hybrid III 10-year-old dummies in frontal NCAP crash tests. In addition, NHTSA plans to further examine and analyze the injury risks of children in real world frontal crashes. NHTSA plans to make a decision and publish a notice discussing the merits of a consumer information program that rates vehicles on their ability to protect child occupants in conjunction with any possible revisions to frontal NCAP.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: May 6, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

Appendix A

TABLE A1

Child restraint type	Description
Infant Seat	For infants from birth to about 27 inches who weigh up to 20 pounds.
Convertible Seat.	When Used Rear Facing: ■ All are recommended for use by infants less than 1 year and up to about 20 pounds. ■ Some are recommended for rear facing use, for heavier infants (30–35 pounds), and less than 1 year. When Used Forward Facing: ■ All are rated for children up to 40 pounds. ■ Used forward facing by children who are between 20 and 40 pounds, and over 1 year.

[15] Linear Correlation; $R^2 = 1.0$ is perfect linear correlation, $R^2 = 0.0$ has no linear correlation.

TABLE A1—Continued

Child restraint type	Description
Combination Seat.	When Used Rear Facing: ■ All are recommended for use by infants less than 1 year and up to about 20 pounds. ■ Some can be used for children from birth in place of a infant seat. ■ Some are recommended for rear facing use, for heavier infants (30–35 pounds), and less than 1 year. When Used Forward Facing: ■ All are rated for children up to 40 pounds. ■ Remove harness when child reaches 40 pounds and use the vehicle's adult lap and shoulder belt. ■ Many can be used for children up to 8 years old in place of a booster seat.
Booster Seat ..	■ Recommended for use by children approximately 20 to 40 pounds, when used with harness. ■ Remove harness when child reaches 40 pounds and use the vehicle's adult lap and shoulder belt for children up to 8 years old.

TABLE A2

		Child restraint type				
		Infant	Convert.	Combo 2-in-1	Combo 3-in-1	BPB
Dummy	CRABI	X	X		X	
	3YO		X	X	X	X
	6YO			X	X	X
Orientation	Rear Facing	X	X		X	
	Forward Facing		X	X	X	X
Attachment	LATCH	X	X	X	X	
	Belt w/ Tether		X	X	X	
	Belt Only	X	X	X	X	X
Usage	Base	X				
	No Base	X				

CRABI-Child Restraint Air Bag Interaction.
Infant Seat—Rear-facing seat for use by infants from birth until at least one year.
Forward-Facing Only Seat—CRS with internal harness used for toddlers age 1 to age 4.
Convertible Seat—Hybrid of infant seat and forward-facing only seat.
Belt Positioning Booster (BPB)—Forward-facing seat with no harness. Used to properly position vehicle 3-point belts on children age until at least age 8.
2-in-1 Combo—Hybrid of forward-facing only seat and belt positioning booster.
3-in-1 Combo—Hybrid of infant seat, forward-facing only seat, and belt positioning booster.

TABLE A3

Model	Evenflo Vanguard 5		Britax Roundabout	
	HIC 36	Chest acceleration	HIC 36	Chest acceleration
Acura TL	646	47	710	48
Chevrolet Malibu	1027	53	830	52
Dodge Intrepid	694	40	791	51
Hyundai XG350	970	55	976	64
Lincoln LS	641	39	816	50
Mitsubishi Endeavor	694	54	889	47
Suzuki Aerio	793	56	729	68
Toyota Camry	765	50	906	52
Toyota Highlander	1000	64	1107	57
Toyota Sienna	676	41	705	40
Toyota Solara	625	47	716	51

BILLING CODE 4910–59–P

Figure A1

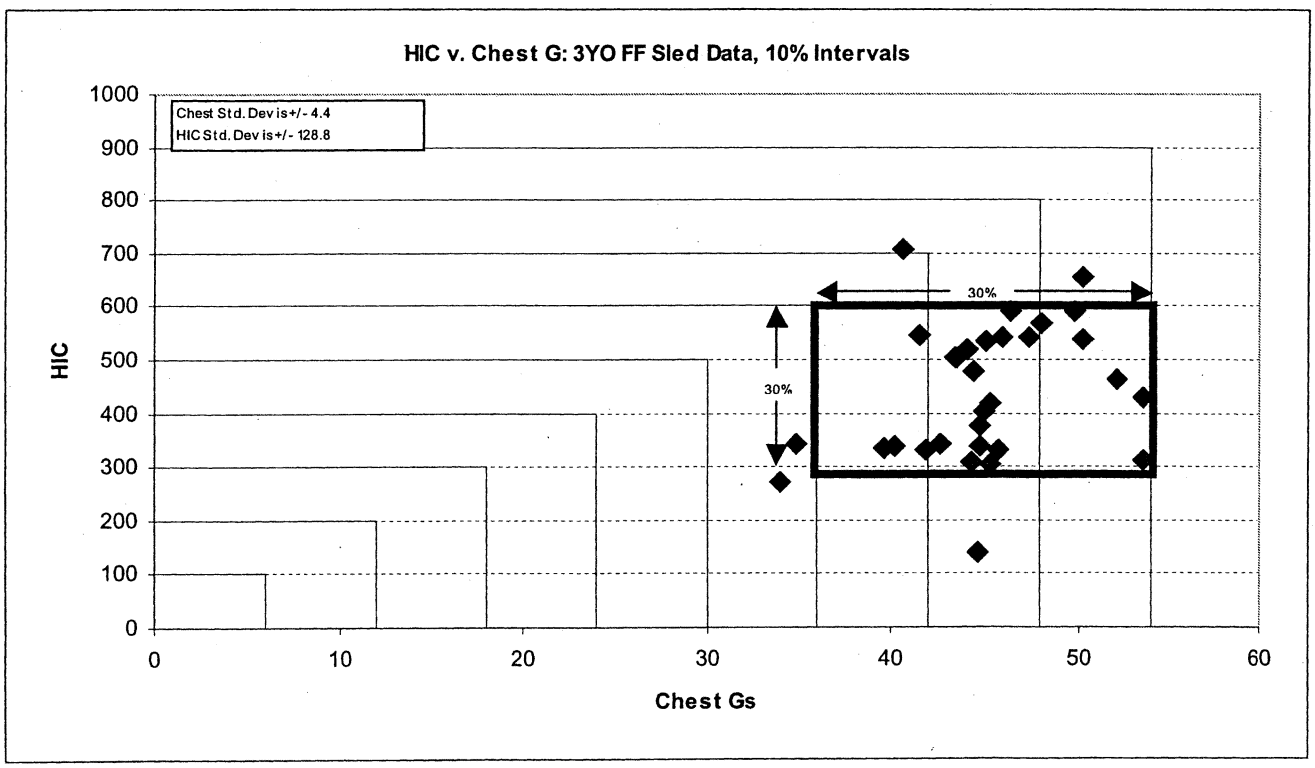

HIC v. Chest G: 3YO FF Sled Data, 10% Intervals
Chest Std. Dev is +/- 4.4
HIC Std. Dev is +/- 128.8
HIC
Chest Gs
30%
30%
0
100
200
300
400
500
600
700
800
900
1000
0
10
20
30
40
50
60

Figure A2

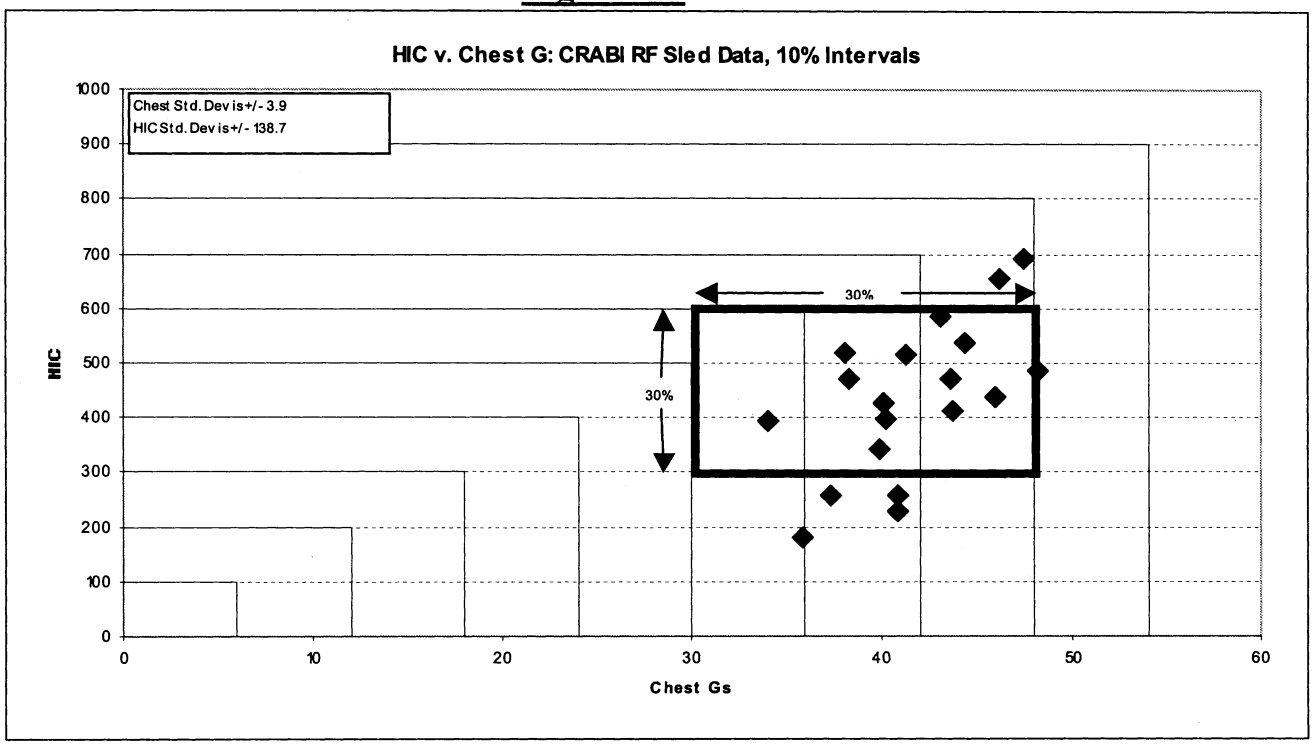
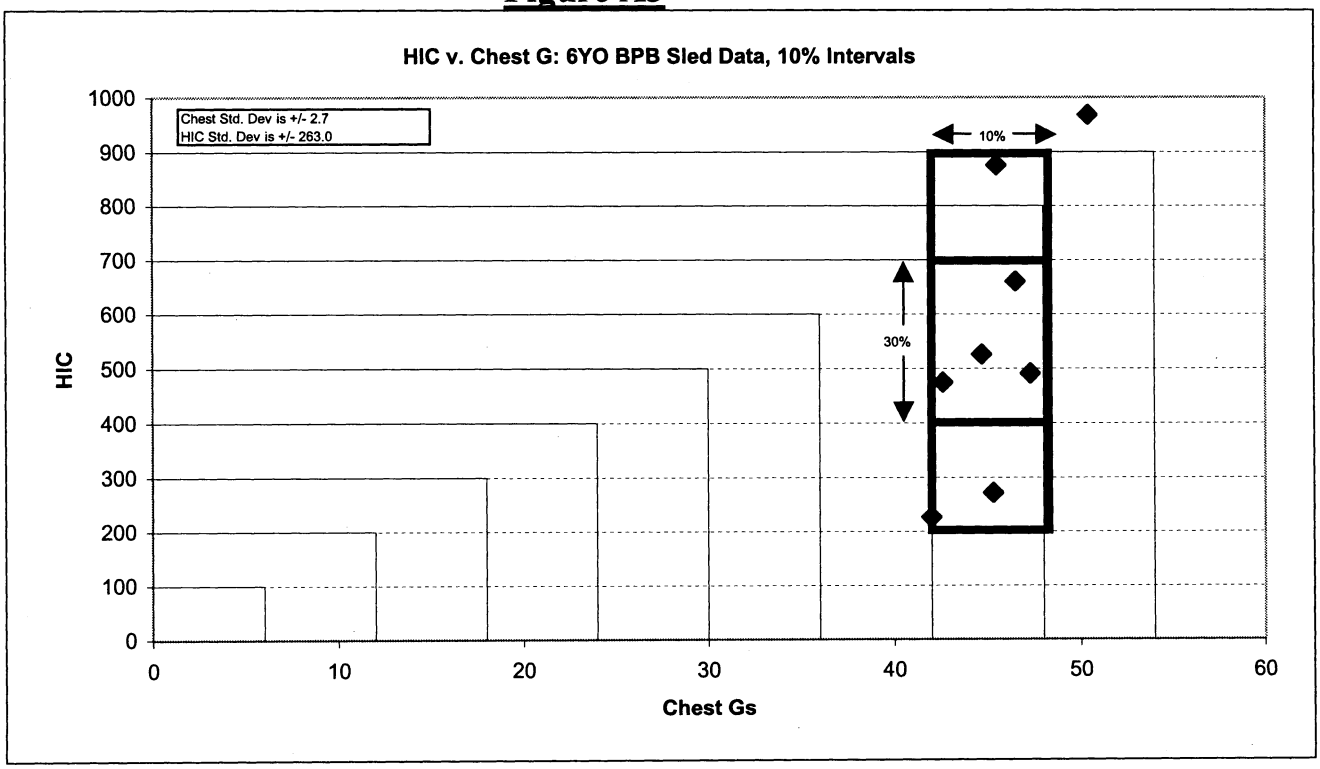


Figure A3



[FR Doc. 05–10049 Filed 5–23–05; 8:45 am]
BILLING CODE 4910–59–C

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 13, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before June 23, 2005 to be assured of consideration.

Departmental Offices/Office of Foreign Assets Control

OMB Number: 1505–0202.

Form Numbers: TD F 90–22.60 and TD F 90–22.60(SP).

Type of Review: Extension.

Title: Request for a Specific License to Visit and Immediate Family Member.

Description: Submissions will provide the U.S. Government with information to be used in enforcing the limitations on Cuba travel-related transactions incident to visiting immediate family members by persons subject to U.S. jurisdiction.

Respondents: Individuals or households.

Estimated Number of Respondents: 35,000.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: Other (Triennially).

Estimated Total Reporting Burden: 5,833 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (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. 05–10312 Filed 5–23–05; 8:45 am]
BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 17, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before June 23, 2005 to be assured of consideration.

Departmental Offices/Office of Foreign Assets Control

OMB Number: 1505–0168.
Form Numbers: None.
Type of Review: Extension.
Title: Travel Service Provider and Carrier Service Provider Submission.
Description: Submissions will provide the U.S. Government with information to be used in enforcing economic sanctions programs administered by OFAC under 31 CFR Chapter V.
Respondents: Business and other for-profit.
Estimated Number of Respondents/Recordkeepers: 175.
Estimated Burden Hours Per Respondent/Recordkeeper: 5 minutes.
Frequency of Response: Other (Variable).
Estimated Total Reporting/Recordkeeping Burden: 19,000 hours.
Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Alexander T. Hunt, (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. 05–10313 Filed 5–23–05; 8:45 am]
BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 17, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 23, 2005 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0006.
Form Number: TTB F 5520.3.
Type of Review: Extension.
Title: Application—Volatile Fruit-Flavor Concentrate Plants, TTB REC 5520/2.
Description: Persons who wish to establish premises to manufacture volatile fruit-flavor concentrates are required to file an application so requesting. TTB uses the application information to identify persons responsible for such manufacture, since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement.
Respondents: Business of other for-profit.
Estimated Number of Recordkeeping: 10.
Estimated Burden Hours Per Recordkeeper: 3 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 30 hours.
OMB Number: 1513–0022.
Form Number: TTB F 5520.2.
Type of Review: Extension.
Title: TTB REC 5520/1 Annual Report of Concentrate Manufacturers and Usual and Customary Business Records—Volatile Fruit-Flavor Concentrate.
Description: Manufacturers of volatile fruit-flavor concentrate must provide reports as necessary to insure the protection of the revenue. The report accounts for all concentrates manufactured, removed, or treated so as

to be unfit for beverage use. The information is required to verify that alcohol is not being diverted thereby jeopardizing tax revenues.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 91.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 30 hours.

OMB Number: 1513–0031.

Form Number: TTB F 5100.12 and TTB F 5110.67.

Type of Review: Extension.

Title: Specific Transportation Bond—Distilled Spirits or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six and Continuing Transportation Bond—Distilled Spirits and Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six.

Description: TTB F 5100.12 and TTB F 5110.67 are specific bonds that protect the tax liability on distilled spirits and wine while in transit from one type of bonded facility to another. They identify the shipment, the parties, the date and the amount of bond coverage.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1513–0055.

Form Numbers: TTB F 5640.2.

Type of Review: Extension.

Title: Offer in Compromise of Liability Incurred Under Federal Alcohol Administration Act, as amended.

Description: Persons who have committed violations of the FAA Act may submit an offer in compromise. The offer is a request by the party in violation to compromise penalties for the violations in lieu of civil or criminal action. TTB F 5640.2 identifies the violation(s) to be comprised by the person committing them, amount of offer plus justification for acceptance.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 12.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 24 hours.

OMB Number: 1513–0094.

Form Number: TTB F 5300.26.

Type of Review: Extension.

Title: Federal Firearms and Ammunition Excise Tax Return.

Description: This information is needed to determine how much tax is owed for firearms and ammunition. TTB uses this information to verify that a taxpayer has correctly determined and paid tax liability on the sale or use of firearms and ammunition. Businesses, including small to large, and individuals may be required to use this form.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 965.

Estimated Burden Hours Per Respondent: 7 hours.

Frequency of Response: Quarterly, Other (annual is no tax is due).

Estimated Total Reporting Burden: 27,020 hours.

Clearance Officer: William H. Foster, (202) 927–8210, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–10314 Filed 5–23–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–54–94]

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–54–94 (TD 8668), Environmental Settlement Funds—Classification (Section 301.7701–4).

DATES: Written comments should be received on or before July 25, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Paul Finger, 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 Larnice Mack, at (202) 622–3179, or at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Environmental Settlement Funds—Classification

OMB Number: 1545–1465.

Regulation Project Number: PS–54–94.

Abstract: This regulation provides guidance to taxpayers on the proper classification of trusts formed to collect and disburse amounts for environmental remediation of an existing waste site to discharge taxpayers' liability or potential liability under applicable environmental laws. Section 301.7701–4(e)(3) of the regulation provides that the trustee of an environmental remediation trust must furnish to each grantor a statement that shows all items of income, deduction, and credit of the trust for the taxable year attributable to the portion of the trust treated as owned by the grantor. The statement must provide the grantor with the information necessary to take the items into account in computing the grantor's taxable income.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 2,000.

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: May 16, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–2597 Filed 5–23–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Internal Revenue Service; Tax Exempt and Government Entities Division (TE/GE); Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Advisory Committee on Tax Exempt and Government Entities (ACT) will hold a public meeting on Wednesday, June 8, 2005.

FOR FURTHER INFORMATION CONTACT: Steven J. Pyrek, Director, Communications and Liaison, 1111 Constitution Ave., NW., SE:T:CL—Penn Bldg, Washington, DC 20224. Telephone: 202–283–9966 (not a toll-free number). E-mail address: *Steve.J.Pyrek@irs.gov.*

SUPPLEMENTARY INFORMATION: By notice herein given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the ACT will be held on Wednesday, June 8, 2005, from 9 a.m. to 2 p.m., at the Internal Revenue Service, 1111 Constitution Ave., NW., Room 3313, Washington, DC. Issues to be discussed relate to Employee Plans, Exempt Organizations, and Government Entities.

Reports from four ACT subgroups cover the following topics:

- Survey and Review of Existing Information and Guidance for Indian Tribal Governments.
- Record Retention Burden for Tax-Exempt Bonds.
- Establishing the Enrolled Retirement Plan Agent Under Circular 230.
- Improving Compliance of Newly Created Charities.

Last minute agenda changes may preclude advance notice. Due to limited seating and security requirements, attendees must call Cynthia PhillipsGrady to confirm their attendance.

Ms. PhillipsGrady can be reached at (202) 283–9954. Attendees are encouraged to arrive at least 30 minutes before the meeting begins to allow sufficient time for security clearance. Picture identification must be presented. Please use the main entrance at 1111 Constitution Ave., NW., to enter the building.

Should you wish the ACT to consider a written statement, please call (202) 283–9966, or write to: Internal Revenue Service, 1111 Constitution Ave., NW., SE:T:CL–Penn Bldg, Washington, DC 20224, or e-mail *Steve.J.Pyrek@irs.gov.*

Dated: May 18, 2005.

Steven J. Pyrek,

Designated Federal Official, Tax Exempt and Government Entities Division.

[FR Doc. E5–2599 Filed 5–23–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Cancelled Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel (via teleconference) has been cancelled. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting, which would have been held, Thursday, June 2, 2005, from 12 p.m. to 1 p.m. E.T., is hereby cancelled.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227 or 954–423–7979.

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 Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel that was published in the **Federal Register** on May 10, 2005, has been cancelled. If you have any questions regarding this cancellation please contact Ms. Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

Dated: May 19, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–2598 Filed 5–23–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0606]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 23, 2005.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0606.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0606'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Regulation for Submission of Evidence—Title 38 CFR 17.1C1 (a) (2).

OMB Control Number: 2900–0606.

Type of Review: Extension of a currently approved collection.

Abstract: The regulation authorizes VA to bill ''reasonable charges'' instead of ''reasonable cost'' for medical care or services provided or furnished to a veteran for a non-service connected disability. Under the provisions of 38 CFR 17.101(a)(4), a third party payer that is liable for reimbursing VA for care and services VA provided to a veteran with non-service-connected conditions continues to have the option of paying either the billed charges or the amount the health plan demonstrates it would pay to providers other than entities of the United States for the same care or services in the same geographic area. If the amount submitted for payment is less than the amount billed, VA will accept the submission as payment, subject to verification at VA's discretion. VA may request the third-party payer to submit evidence or information to substantiate the appropriateness of the payment amount (*e.g.*, health plan policies, provider agreements, medical evidence, and proof of payment to other providers demonstrating the amount paid for the same care and services VA provided). VA uses the information to determine whether the third-party payer has met the test of properly demonstrating its equivalent private sector provider payment amount for the same care or services and within the same geographic area as provided by VA.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on January 11, 2005, at pages 1934–1935.

Affected Public: Business or other for-profit, Individuals or households, not for profit institutions, farms, Federal government, and State, local or tribal government.

Estimated Total Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 400.

Dated: May 10, 2005.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. E5–2590 Filed 5–23–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0116]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 23, 2005.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0116.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0116'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution, VA Form 21–4193.

OMB Control Number: 2900–0116.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 21–4193 is used to determine whether a beneficiary's VA compensation or pension rate should be reduced or terminated when he or she is incarcerated in a penal institution in excess of 60 days after conviction.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on January 11, 2005, at pages 1935–1936.

Affected Public: Federal government, and State, local or tribal government.

Estimated Annual Burden: 416 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,664.

Dated: May 10, 2005.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. E5–2591 Filed 5–23–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0166]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 23, 2005.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0166.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0166'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Application for Ordinary Life Insurance, Replacement Insurance for Modified Life Reduced at Age 65,

National Service Life Insurance, VA Form 29–8485.

b. Application for Ordinary Life Insurance, Replacement Insurance for Modified Life Reduced at Age 70, National Service Life Insurance, VA Form 29–8485a.

c. Application for Ordinary Life Insurance, Replacement Insurance for Modified Life Reduced at Age 65, National Service Life Insurance, VA Form 29–8700.

d. Information About Modified Life Reduction, VA Forms 29–8700a–e and VAForms 29–8701a–e.

e. Application for Ordinary Life Insurance, Replacement Insurance for Modified Life Reduced at Age 70, National Service Life Insurance, VA Form 29–8701.

OMB Control Number: 2900–0166.

Type of Review: Extension of a currently approved collection.

Abstract: Policyholders use forms to apply for replacement of Modified Life insurance. Modified Life insurance coverage is reduced automatically by one-half from its present face value on the day before a policyholder's 65th and 70th birthdays. Policyholders who wish to maintain the same amount of coverage must purchase whole life insurance prior to their 65th and 70th birthdays to replace the coverage that will be lost when the Modified Life insurance is reduced.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on November 12, 2004, at pages 65503–65504.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,284 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 15,400.

Dated: May 10, 2005.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. E5–2592 Filed 5–23–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0079]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501—3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 23, 2005.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0079.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0079'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Employment Questionnaire, VA Forms 21–4140, 21–4140–1.

OMB Control Number: 2900–0079.

Type of Review: Reinstatement, with change, of a previously approved collection for with approval has expired.

Abstract: Claimants who are under the age of 60 and receiving individual unemployability compensation at 100 percent rate are required to complete VA Form 21–4140 and 21–4101–1 certifying that they are still unable to secure or follow a substantially gainful occupation because of a service connected-disability. VA will use the information collected to determine the claimant's continued entitlement to individual unemployability benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on January 31, 2005, at page 4919.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,833 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 130,000.

Dated: May 10, 2005.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. E5–2593 Filed 5–23–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Research Advisory Council will hold a meeting on Monday and Tuesday, June 13–14, 2005, at the Hamilton Crowne Plaza Hotel, 14th & K Streets, NW., Washington, DC. On June 13, the meeting will convene at 1 p.m. and recess at 4:30 p.m. The June 14 session will convene at 8:30 a.m. and conclude by 3 p.m. the meeting is open to the public.

The purpose of the Council is to provide advice to the Secretary of Veterans Affairs on research and development sponsored and/or conducted by the Department of Veterans Affairs to include policies and programs of the Research and Development Office.

The meeting will feature a review of the VA research portfolio and a summary of current budget allocations. The Council will also discuss performance measures designed to perform program evaluations and provide feedback on the direction/focus of VA's research initiatives.

Any member of the public wishing to attend the meeting or wishing further information should contact Ms. Karen Scott, Designated Federal Office, at (202) 254–0200. Oral comments from the public will not be accepted at the meeting. Written statements or comments should be transmitted electronically to *karen.scott@hq.med.va.gov* or mailed to Ms. Scott at Department of Veterans

Affairs, Office of Research and Development (12C), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: May 17, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–10287 Filed 5–23–05; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 70, No. 99

Tuesday, May 24, 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. 34–51671; File No. SR–Amex–2005–033]

Self-Regulatory Organizations; American Stock Exchange LCC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend Rule 918—ANTE(a)(4) Regarding Closing Rotations

Correction

In notice document E5–2380 beginning on page 25629 in the issue of Friday, May 13, 2005, make the following correction:

On page 25630, in the second column, under the heading ''*Paper Comments*'', in the second paragraph, in the last line, ''June 6, 2005'' should read ''June 3, 2005''.

[FR Doc. Z5–2380 Filed 5–23–05; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51664; File No. SR–Phlx–2005–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Disclaimer of Warranties by SIG Indices, LLLP and by Standard and Poor's

Correction

In notice document E5–2382 beginning on page 25641 in the issue of Friday, May 13, 2005, make the following correction:

On page 25643, in the first column, in the second line from the top, ''June 6, 2005'' should read ''June 3, 2005''.

[FR Doc. Z5–2382 Filed 5–23–05; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51665; File No. SR–NYSE–2005–23]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Seek Permanent Approval of the Pilot Relating to the Allocation Policy for Trading of Exchange-Traded Funds on an Unlisted Trading Privileges Basis (NYSE Rule 103B)

Correction

In notice document E5–2383 beginning on page 25637 in the issue of Friday, May 13, 2005, make the following correction:

On page 25639, in the third column, under the heading ''*Paper comments*'', in the second paragraph, in the last line, ''June 6, 2005'' should read ''June 3, 2005''.

[FR Doc. Z5–2383 Filed 5–23–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
May 24, 2005

Part II

Central Intelligence Agency

Privacy Act of 1974; Systems of Records and Routine Uses; Notice

CENTRAL INTELLIGENCE AGENCY

Privacy Act of 1974; Systems of Records and Routine Uses

AGENCY: Central Intelligence Agency.

ACTION: Notice of complete reorganization and revision of Privacy Act systems of records notices and the modification and addition of routine uses as defined in 5 U.S.C. 552a(a)(7).

SUMMARY: The Central Intelligence Agency has undertaken and completed an Agency-wide review of its Privacy Act systems of records. As a result of this review, the Agency is publishing a complete set of revised Privacy Act systems of records notices. The Agency has also modified one of its existing routine uses and added seven new routine uses to its ''Statement of General Routine Uses'' for information subject to the Privacy Act. As required by the Privacy Act, the Agency is providing an opportunity for interested persons to submit comments on these notices and routine uses.

DATES: Submit comments to the Central Intelligence Agency on or before July 5, 2005. These revisions will be effective on that date unless comments received result in changes to the Agency's notices or routine uses.

ADDRESSES: Submit comments in writing to the Chief of Information Management Services, Central Intelligence Agency, Washington, DC 20505, or by fax to 703–613–3007.

FOR FURTHER INFORMATION CONTACT: Scott A. Koch, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505 or by telephone, 703–613–1287.

SUPPLEMENTARY INFORMATION: The Central Intelligence Agency has undertaken and completed a zero-based, Agency-wide review of its Privacy Act systems of records. As a result of this review, the Agency determined that its Privacy Act notices required extensive modifications to more accurately describe the records systems currently maintained by the Agency. Rather than making numerous, piecemeal revisions, the Agency decided to draft and republish updated notices for all of its Privacy Act systems of records. By doing so, the Agency hopes to make these notices as clear and accessible to the public as possible. The modified notices reflect several factors: the consolidation of records systems resulting from advances in information technology; the elimination of records systems no longer in use; the combination of previously separate records systems that serve a common purpose and are under common control; the addition of notices for records systems not previously identified as being subject to the Privacy Act; and the addition of notices for newly-created records systems.

In addition, the Agency has modified one of its existing routine uses and added seven new routine uses to its ''Statement of General Routine Uses.'' The modification and addition of the routine uses will clarify and increase the public's knowledge of the circumstances in which the Central Intelligence Agency may disclose information from Privacy Act systems of records. The ability to make the disclosures described in the new routine uses will enhance the Agency's ability to share information essential to the conduct of its national security mission. With the exception of the modification to Routine Use 4 and the addition of Routine Uses 8 through 14, all other provisions of the Agency's published ''Statement of General Routine Uses'' remain unchanged.

Nothing in the revised systems notices or modified or new routine uses indicates any change in the Central Intelligence Agency's authorities or practices regarding the collection and maintenance of information about citizens and lawful permanent residents of the United States, nor do the changes impact any individual's rights to access or to amend their records pursuant to the Privacy Act.

Edmund Cohen,

Chief of Information Management Services.

Central Intelligence Agency

Modification and Additions to the Statement of General Routine Uses for the Central Intelligence Agency

Consistent with the Privacy Act's requirements, the Central Intelligence Agency has modified one of its existing general routine uses and has added seven additional routine uses. The modified routine use and the additional routine uses described below, apply to, and are incorporated by reference into, each Privacy Act system of records maintained by the Central Intelligence Agency. With the exception of the modification to Routine Use 4 and the addition of Routine Uses 8 through 14 described below, all other provisions of the Agency's published ''Statement of General Routine Uses'' remain unchanged.

Routine Use 4 is amended to read:

4. A record from a system of records maintained by the Central Intelligence Agency may be disclosed, as a routine use, in the course of presenting information or evidence to a court, magistrate, special master, administrative law judge, or administrative board or panel, including disclosures made pursuant to statutes or regulations governing the conduct of such proceedings.

Routine Uses 8 through 14 are added:

8. A record from a system of records maintained by the Central Intelligence Agency may be disclosed, as a routine use, to a Member of Congress or Congressional staffer in response to an inquiry from that Member of Congress or Congressional staffer made at the written request of the constituent who is the subject of the record.

9. A record from a system of records maintained by the Central Intelligence Agency may be disclosed, as a routine use, to the public or to the media for release to the public, to enable the Agency to respond to charges of illegal or improper activity, professional misconduct, or incompetence when such allegations have become publicly known, and the General Counsel determines that such disclosures are necessary to preserve public confidence in the Agency and the integrity of its processes, or to demonstrate the accountability of the Agency and its employees.

10. A record from a system of records maintained by the Central Intelligence Agency may be disclosed, as a routine use, to any Federal agency when documents or other information obtained from that agency are used in compiling the record, and the record is relevant to the official responsibilities of that agency.

11. A record from a system of records maintained by the Central Intelligence Agency may be disclosed, as a routine use, to representatives of the Department of Justice or of any other entity responsible for representing the interests of the Central Intelligence Agency in connection with judicial, administrative or other proceedings. Records may also be disclosed to representatives of the Department of Justice and other U.S. Government entities, to the extent necessary to obtain their advice on any matter within their official responsibilities. Records may also be disclosed to representatives of private entities designated by the Central Intelligence Agency to represent Agency interests, to the extent necessary for the Central Intelligence Agency to obtain advice on any matter.

12. A record from a system of records maintained by the Central Intelligence Agency may be disclosed, as a routine use, to individual Members or staff of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence in

connection with the exercise of the Committees' intelligence oversight and legislative functions, when such disclosures are necessary to a lawful activity of the United States, and the General Counsel of the Central Intelligence Agency determines that such disclosures are otherwise lawful.

13. A record from a system of records maintained by the Central Intelligence Agency may be disclosed, as a routine use, to the President's Foreign Intelligence Advisory Board, the Intelligence Oversight Board, any successor organizations, and any intelligence oversight entities established by the President, when the head of the Central Intelligence Agency determines that disclosure will assist these entities in the performance of their oversight functions.

14. In the event that none of the routine uses listed above is applicable, a record from a system of records maintained by the Central Intelligence Agency may be disclosed, as a routine use, to other appropriate recipients, if such dissemination is necessary to a lawful activity of the United States, and the General Counsel of the Central Intelligence Agency, in consultation with the Department of Justice, determines that such dissemination is lawful.

Privacy Act Systems of Records Notices

CIA–1

SYSTEM NAME:

Financial Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA staff and contract employees, and military and civilian personnel detailed to CIA; and personal services independent contractors, industrial contractors, commercial vendors, and consultants to the CIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains financial accounts and records concerning CIA expenditures. This includes: records relating to financial transactions associated with commercial vendors and contracts; official travel orders, records of funds advanced and transportation furnished, copies of travel claims and accountings, visas, and passports; records concerning claims submitted for financial review, including all financial documentation accumulated in the collection and settlement of amounts due the agency from employees and former employees; records tracking general accounting data, including the status of funds advanced to individuals for official purposes and the procurement of materials and services; records on certifying officers, contracting officers, cash custodians and credit card holders, including authorizing letters and signature cards; and records for the processing of personal property claims and related activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941); the Central Intelligence Agency Retirement Act (50 U.S.C. 2001 *et seq.*).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; provide accounting data to track items such as budget and expenses to allow the CIA to acquire goods and services and provide an accounting infrastructure; travel services; and financial management expertise for fiscal resource utilization and control; and determine whether the commitment and expenditure of CIA funds is authorized, approved, and certified by officials to whom such authority has been delegated.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, social security number, or other CIA identifier. Information may be retrieved from this system of records by utomated or hand search based on extant indices and automated capabilities used in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured area within the CIA accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief Financial Officer, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals to whom records in this system pertain, and other CIA employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–2

SYSTEM NAME:

Training Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA staff and contract employees, other federal employees, CIA personal services independent contractors and industrial contractors to CIA who have completed internal and CIA-sponsored external training courses or programs; and instructors and potential instructors for the CIA off-campus education program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Transcripts of CIA-sponsored training; student and instructor biographic data; course information; and names of CIA employees responsible for approving CIA-sponsored training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; manage training activities for individuals assigned to the CIA; process requests for internal and external training for CIA staff and contract employees, personal services independent contractors, industrial contractors and military and civilian personnel detailed to CIA; update and provide reference for CIA employee training records; and facilitate the process for selecting instructors for the CIA off-campus education program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name and employee number. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief, Training and Development Office, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals covered by this system; students and instructors in CIA internal and CIA-sponsored external training; and training facilities and other educational institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–3

SYSTEM NAME:

Language Program Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA staff and contract employees, and other individuals who have participated in CIA-managed or CIA-sponsored language training and testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data; test scores; training reports from instructors; training requests from sponsoring office(s); and attendance reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; provide information concerning language proficiency of CIA and non-CIA personnel who have taken internal or CIA-sponsored external language training or testing; monitor student performance; and conduct research and compile statistics on a variety of matters related to language learning and testing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in a secured area within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name or social security number. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief, Training and Development Office, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Students and instructors in CIA internal or CIA-sponsored external language training courses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–4

SYSTEM NAME:

CIA Declassification Center (CDC) External Liaison Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED *to* CONFIDENTIAL.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals at U.S. government agencies who serve as points of contact for dealings with the CDC External Referral & Liaison Branch.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic information including name, social security number, position, title/rank, and expertise; locator information including telephone numbers, fax numbers, and addresses (primary, e-mail and pouch); and information related to security clearances and access approvals, including clearances held, current status of clearances, and period of certification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12958 (76 FR 19825).

PURPOSES(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; and maintain a current list of points of contact at U.S. government agencies on EO 12958 declassification issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in secure file servers located within the CIA.

RETRIEVABILITY:

By name, social security number, and agency. Information may be retrieved from this system of records by automated search based on capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Access is restricted to individuals who are certified on an access control list. Additional software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with records control schedules approved by the National Archives and Records Administration.

SYSTEM MANAGERS(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief, External Referral & Liaison Branch/CIA Declassification Center, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register**

(32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.1–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals covered by this system, and points of contact provided by U.S. government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–5

SYSTEM NAME:

Center for the Study of Intelligence (CSI) Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA staff and contract employees, personal services independent contractors to CIA, and current and former employees detailed to the CIA who have participated in an ''oral history'' program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, biographic data and the content of information provided by individuals who have participated in CSI's ''oral history'' program, or worked with CSI.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; and record experiences of current and former CIA associates for use in CSI projects.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Director, Center for the Study of Intelligence, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals covered by this system; and CIA records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–6

SYSTEM NAME:

Manuscript Review Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

System location:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA employees; other authors obligated to submit writings or oral presentations for pre-publication review; and individuals otherwise involved in pre-publication review matters with CIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manuscripts and other writings submitted for pre-publication review; Publication Review Board meeting minutes, official memoranda, bibliographic files and related documents; and Publication Review Board Reference Center documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941); Executive Order 12958 (76 FR 19825); Executive Order 12968 (60 FR 40245); *Snepp* v. *United States*, 444 U.S. 507 (1980).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; to enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; as references for manuscripts, meeting minutes, official memoranda, bibliographic files and related documents which have been submitted for review in compliance with applicable regulations; and to facilitate review of new manuscript submissions of proposed publications or speeches authored or given by present or former employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in a secured area within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chair, Publications Review Board, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Current and former CIA employees and other obligated authors; Publication Review Boards members and staff; and other CIA personnel involved in the publications review process.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–7

SYSTEM NAME:

Security Access Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA employees and other individuals authorized to access CIA buildings and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identification information; building and entrance information; entry or exit data and codes; and credential information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; verify individuals' authorization to access CIA buildings and facilities; create a record of individuals' access to CIA buildings and facilities; facilitate the issuance and retrieval of visitor and temporary badges; and provide statistical data on building and facility access patterns for resource planning purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in a secured area within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, social security number, or other CIA identifier. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Director of Security, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

CIA badge system; after-hours building and facility logs; visitor-no-escort badge record cards; and permits and identification sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–8

SYSTEM NAME:

Security Operations Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including CIA employees, who have contacted or been referred to the CIA's Security Operations Center; individuals, including CIA employees, who have been responsible for or suspected of security incidents, or have witnessed, reported, or investigated security incidents involving CIA information, and/or CIA-controlled property or facilities; individuals who have had restrictions imposed upon their entrance to CIA-controlled property or facilities; and individuals involved in traffic violations on CIA-controlled property or facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identification and event information that includes: biographic information, including name, social security number, and CIA identification information; information on security-related incidents occurring on CIA-controlled property or facilities, including date and place of incidents, subject matter or incident description, arrests and violation information, including court disposition and vehicular information where appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; track events, individuals, and groups of individuals that may pose a threat to the CIA; assist CIA security officials in identifying present and future threats to CIA-controlled property or facilities and CIA personnel; track traffic violations, security incidents, and access control issues; serve as a statistical and management reporting tool; and facilitate court cases or other legal proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Reports regarding accidents and traffic violations may be provided to the individuals involved and their insurance companies to facilitate the resolution of claims. Information on additional routine uses is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in a secured area within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name or other personal identifier. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Director of Security, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register**

(32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals covered by this system of records; members of the general public; CIA employees; and employees of other federal agencies and state and local governments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–9

SYSTEM NAME:

Industrial Security Clearance Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Industrial contractors and commercial vendors; and persons in the private sector associated with the CIA who hold industrial security clearances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data, including name, address, position, and social security number; and security clearance information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941); Executive Order 10450 (5 U.S.C. 7311 note); Executive Order 12958 (78 FR 19825); and Executive Order 12968 (60 FR 40245).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; document security clearance(s) held by industrial contractors, commercial vendors, and persons in the private sector associated with the CIA; and provide a reference to answer inquiries on security clearances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system are used to certify clearances of individuals covered by the system. Information on additional routine uses is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in a secured area within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By individual or company name, and social security number. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Procurement Executive, Office of the Chief Financial Officer, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals who hold or have held security clearances and the organizations with which they are employed or otherwise associated; and certification of clearance from the Center for CIA Security.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–10

SYSTEM NAME:

Parking Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to CONFIDENTIAL.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA employees and any other individuals requiring parking permits at CIA-controlled facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, office location, grade, badge number, vehicle license number, personal identifying information and relevant medical information of individuals covered in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; and document the allocation and control of parking spaces at CIA-controlled facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in a secured area within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, and vehicle license number. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief of Global Support, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

CIA employees and other individuals requiring parking permits at CIA-controlled facilities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–11

SYSTEM NAME:

Accountable Property Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA staff and contract employees; personal services independent contractors; industrial contractors; military and civilian personnel detailed to CIA; and other individuals who possess CIA accountable property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, signature and office location of individuals covered by this system; and description of accountable property charged to individuals covered by this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; document accountability for CIA nonexpendable property; and track, inventory, audit, and report on accountable property.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in a secured area within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief of Global Support, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals concerned with accountable property, and accountable property officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–12

SYSTEM NAME:

Vehicle Operator Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA staff and contract employees, personal services independent contractors, or industrial contractors who have licenses to drive buses, trucks, and other specialty vehicles as part of their official CIA employment duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data on employees; medical qualification forms; driver test data; registers of permits issued; and accident report records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; document CIA staff and contract employees who are qualified to drive buses, trucks, and other specialty vehicles in the course of their CIA employment duties; and issue official U.S. Government driver's licenses and renewals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured area within the CIA. Electronic records are stored in secure file servers located within the CIA.

RETRIEVABILITY:

By name or driver's permit number. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities used in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief, Transportation Support, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

CIA staff and contract employees, personal services independent contractors, and industrial contractors; and federal, state and local law enforcement agencies as their records relate to competency testing and accident reporting.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted

from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–13

SYSTEM NAME:

Component Human Resources Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA staff and contract employees; military and civilian personnel detailed or assigned to the CIA; applicants for employment with the CIA; current and former employees of industrial contractors; and current and former independent contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Memoranda, correspondence and other documents, including personnel soft files and supervisors' working files maintained by Agency offices and components, concerning individuals covered by this system on matters involving: performance appraisals; travel, financial, retirement and claims information; time and attendance, including leave information; performance, conduct, and suitability; education, certification, training, and testing; special qualifications or restrictions; dependency and residence; emergency notifications; medical information, including disabilities and job-related injuries; biographic data; skills assessment data; locator information; cables and dispatches of administrative and operational significance; employee grievances, including equal employment opportunity complaints; employee evaluation panel files; and employee awards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941); the Central Intelligence Agency Retirement Act (50 U.S.C. 2001 *et seq.*).

PURPOSE(S):

Records are created, maintained and used by human resource management officials, supervisory personnel, and other authorized personnel at all levels of the organization on a need-to-know basis. These records, including supervisors' working files, EEO and grievance files, and suitability files, are used to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; supplement official personnel folders (''soft files''); facilitate and expedite processing or procedural requirements related to employee transactions; provide reference to monitor, record, and perform personnel management functions including employee counseling, employee evaluation, assignment, promotion, authorization of training, awards and leave; and provide management with statistical reporting.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in a secured area located in premises controlled by the head of the CIA. Electronic records are stored in secure file-servers located in premises controlled by the head of the CIA.

RETRIEVABILITY:

By name, social security number, CIA employee number, or other personal identifiers. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Component:	Manager:
Office of the Executive Director	Executive Director
Directorate of Intelligence	DI Information Management Officer
Directorate of Operations	Chief, DO Human Resources Staff
Directorate of Science & Technology	Chief, DS&T Administrative Resources
Office of the Chief Financial Officer	Chief Financial Officer
Office of the Chief Information Officer	Chief Information Officer
Office of Global Support	Chief of Global Support
Office of Human Resources	Chief Human Resources Officer
Office of Security	Director of Security
National Intelligence Council	Chairman, National Intelligence Council
Office of Congressional Affairs	Director of Congressional Affairs
Office of the DDCI for Community Management	Executive Director for IC Affairs
Office of General Counsel	General Counsel
Office of Inspector General	Inspector General
Office of Public Affairs	Director of Public Affairs
Additional DCI Area Components:	DCI Information Management Officer

Address: Central Intelligence Agency, Washington, DC 20505

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals covered by the system; educational institutions and private organizations; CIA employees; and other federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–14

SYSTEM NAME:

Information Release Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who make information release requests to CIA under provisions of the Freedom of Information Act (FOIA), Privacy Act (PA), and Executive Order 12958 (EO); individuals who make special search requests and other related individuals; and individuals who are the subject of FOIA/PA/EO and special search requests and other related individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

FOIA/PA/EO requests and processing files including correspondence and supporting documents; documents responsive to FOIA/PA/EO and special search requests; duplicate files maintained by Directorate Information Review Officers (IROs) and component focal points; weekly reports of FOIA/PA/EO case activity and status; and indices related to special searches.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941); Executive Order 12958 (76 FR 19825); the Freedom of Information Act (5 U.S.C. 552); the Privacy Act (5 U.S.C. 552a); the President John F. Kennedy Assassination Records Collection Act of 1992 (44 U.S.C. 2107 note); the Nazi War Crimes Disclosure Act (5 U.S.C. 552 note); the Japanese Imperial Government Records Disclosure Act (5 U.S.C. 552 note).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; support the review, redaction, and release of CIA records pursuant to federal statutes and Executive Orders; formulate responses to FOIA/PA/EO and special search requests; provide reference in processing cases under administrative appeal and civil litigation; provide documentation for referral to other federal agencies for their review pursuant to Executive Order 12958, and the third agency rule; and generate external reports as required by federal statutes and internal reports for use by CIA officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, case number, and full text search. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief of Information Management Services, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or

disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals who make FOIA/PA/EO and special search requests, and related individuals; and CIA components that provide information in response to FOIA/PA/EO and special search requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–15

SYSTEM NAME:

Guest Speaker Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals under consideration for guest speaker engagements, training courses and other presentations; such individuals may include members of the academic and business world as well as present and former senior CIA and other government officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data including academic credentials; publicly available information, including publications authored by the potential speaker; correspondence; and administrative records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; to enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; and for curriculum development and selection of speakers for training courses and special presentations. Biographic data may be used as part of the official file for personal services contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in a secured area within the CIA. Electronic records are stored in secure file servers located within the CIA.

RETRIEVABILITY:

By name. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief Information Officer, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals covered by this system; CIA employees; academic institutions and private organizations; libraries and commercial databases; and federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–16

SYSTEM NAME:

Employee Clinical and Psychiatric Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA staff and contract employees and their dependents; military and civilian employees detailed to CIA and their dependents; retired or separated CIA employees and their dependents; and physicians who provide services to any of the categories of individuals listed above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Physical examinations; laboratory data; X-rays; private physician reports; reports of on-the-job injuries and illnesses; results of psychiatric screening and testing; reports of psychiatric interviews; records of immunizations; records on individuals covered by this system receiving Agency counseling; other medical material relating to environmental health, safety training, and preventative medicine; and biographic information on physicians covered by this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; to enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; to maintain a complete and accurate medical record of all CIA employees, their dependents, military and civilian employees detailed to CIA, and retired or separated employees; to respond to requirements relating to safety and environmental issues and to CIA safety and environmental compliance training; to evaluate suitability for assignment, travel, fitness-for-duty, health maintenance and in reviewing applications for medical disability retirement; to track the safety and health status of CIA employees, components, sites, and operations; and to refer individuals for specialty medical assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record from this system of records may be disclosed, as a routine use, to the Office of Personnel Management in the case of an employee who applies for medical disability, and to the Department of Labor in the case of an employee who applies for Worker's Compensation benefits. Information on additional routine uses is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in a secured area within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, chart number, or other identifying information. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief, Medical Services Office, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals supply their medical history; physicians supply their biographic information; and additional sources may include routine medical processing and reports from private physicians or medical facilities when written permission is granted by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–17

SYSTEM NAME:

Applicant Clinical and Psychiatric Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment with CIA

CATEGORIES OF RECORDS IN THE SYSTEM:

Physical examinations and related medical material; laboratory data; results of psychiatric screening and testing; and reports of psychiatric interviews.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; to enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; to maintain a complete and accurate medical file on all individuals applying for CIA employment; to evaluate the medical suitability of applicants; to serve as a basis for the Employee Clinical and Psychiatric Record once an applicant is hired by the CIA; and to generate statistical reports on applicants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in a secured area within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, chart number, or other identifying information. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief, Medical Services Office, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Applicants who supply their medical history; additional sources may include routine medical processing and reports from private physicians or medical facilities when written permission is granted by the applicant.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–18

SYSTEM NAME:

Psychological Testing Data Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment with the CIA; CIA staff or contract employees and their dependents; military and civilian personnel detailed to the CIA; and retired or separated CIA staff or contract employees and their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Psychological testing records and assessment reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; to enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; to track individual test results which aid CIA management and advisory personnel, who have a need-to-know, in decision making; to produce research reports of aggregate data for appropriate officials and components of the CIA; and to examine the relationship between test scores and other variables of interest such as job performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in a secured area within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, or other identifying information. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief, Medical Services Office, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for

appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals who have completed a variety of psychological tests and interview sessions with CIA medical officers; and individuals involved in the assessment of test data.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–19

SYSTEM NAME:

Agency Human Resources Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA staff and contract employees; military and civilian personnel detailed to the CIA; personal services independent contractors; applicants in process for CIA employment; candidates for CIA awards; participants, and beneficiaries designated by deceased CIA employees who were participants, in the CIA's authorized retirement systems and retirement savings programs; and certain OSS veterans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data including records on education, military service data, insurance, medical and retirement status and locator information on individuals covered by this system; employment information including records on applicant tracking, job matching, seasonal and cooperative employment programs, and information on those separating from CIA employment; personnel information including records on employment history, leave, time and attendance, fitness and performance appraisal reports, awards, travel, training, job injury, worker's compensation records and security clearance information; CIA personnel information including records on position and job title information, qualifications and skills assessments, authorized personnel staffing data, levels, and patterns; financial information relating to payroll and authorized retirement and retirement savings accounts, including authorized or required payroll deductions or contributions for federal, state and local taxes, other tax documentation, and retirement, insurance and leave entitlements; banking instructions for dissemination of salary paychecks; contracts relating to contract employees and independent contractors; and financial disclosure forms submitted pursuant to the Ethics in Government Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941); the Central Intelligence Agency Retirement Act (50 U.S.C. 2001 *et seq.*).

PURPOSE(S):

To serve as the central human resources management system for the CIA. Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; perform centralized personnel functions such as employment, separation of employment, payroll, position and personnel staffing, and general employee transactions; support the general administration of systems dependent on personnel data such as insurance, medical and health care, and retirement and retirement savings; compute salary, attendance, leave, benefits and entitlements for payroll and its dependent systems including insurance, medical and health care, and authorized retirement and retirement savings systems; track applicant and employee biographic and demographic data for use in employee location tracking, and statistical reports; compile statistical reports for CIA management on strength, distribution and utilization of staffing, average grades and salaries, minorities, projected retirements, profiles of CIA skills and qualifications, comparative rates on promotions, separations, new employees, reasons for separations; provide information and statistics for heads of Career Services to assist them in administering their career development and evaluation programs, including promotion rates and headroom, performance appraisal report ratings, qualifications, changes in their Career Services; assess staffing patterns, grade and salary data for office heads required for staffing and budget projections; provide information and statistics for components responsible for administering recruitment, hospitalization, insurance, and authorized retirement and retirement savings programs; and provide records of employee transactions to responsible CIA officials and to the employees themselves.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system concerning CIA retirees is routinely disseminated to the Office of Personnel Management. Information concerning work-related injuries of CIA employees is routinely provided to the Department of Labor in connection with Worker's Compensation claims. Information on additional routine uses is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, social security number, CIA employee number, or other personal identifiers. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief Human Resources Officer, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals covered by this system; educational institutions; physicians and medical practitioners; CIA employees; and other federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–20

SYSTEM NAME:

Official Personnel Files.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA staff and contract employees; and military and civilian personnel detailed to the CIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and employment history statements; employment contracts; personnel actions; performance appraisal reports; awards and commendations; biographic profiles and data; retirement status and exit processing information; training and travel records; correspondence; and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941); the Central Intelligence Agency Retirement Act (50 U.S.C. 2001 *et seq.*).

PURPOSE(S):

Records in this system are used by human resource management personnel and other authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; administer routine personnel transactions including: personnel assignments; performance evaluations; promotions; adverse actions; counseling; retirement determinations of qualifications; separations; medical or insurance claims; and statistical reports; decide on the rights, benefits, entitlements and utilization of CIA employees; provide a data source for production of summary descriptive statistics and analytical studies related to human resource management issues; support resource metrics; locate specific individuals for personnel research or other personnel management functions; and verify employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be transmitted to another U.S. Government agency relative to employment considerations by that agency, and to the Office of Personnel Management (OPM) relative to OPM's administration of retirement benefits for individuals covered by this system. Information on additional routine uses is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured area(s) within the CIA. Electronic records are stored in secure file-servers located with the CIA.

RETRIEVABILITY:

By name, social security number, or other personal identifier. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief Human Resources Officer, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals covered by this system; educational institutions and private organizations; physicians and medical practitioners; CIA employees; and other federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–21

SYSTEM NAME:

Applicant Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment with the CIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records concerning the applicant, including: biographic data; medical and employment history statements; educational transcripts; and personal references, and records relating to employment processing, including: interview reports; test results; correspondence; review comments; and general processing records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records are used by CIA human resources management officials and other authorized personnel to: Ensure process integrity; to enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; to review an applicant's qualifications; for security background investigations; for suitability determinations; for medical screening; and to determine whether employment with the CIA will be offered.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, social security number, or other personal identifiers. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief, Recruitment Center, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

CIA applicants; applicant references; educational institutions and private organizations; physicians and medical practitioners; CIA employees; and other federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–22

SYSTEM NAME:

Personnel Security Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for CIA employment; CIA staff and contract employees; personal services independent contractors and industrial contractors; military and civilian personnel detailed to the CIA; individuals of security interest to CIA; persons of, or contemplated for, substantive affiliation with, or service to, the CIA; persons on whom the CIA has conducted or is conducting an investigation; and federal, civilian, and military personnel with whom the CIA conducts liaison.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data (including name, sex, date and place of birth, social security

number, and completed security questionnaires); authorizations for the release of financial, travel, employment, housing, educational, and other information; summaries or reports of information obtained from other CIA records such as personnel, medical, or counterintelligence records; financial disclosure forms submitted by CIA personnel; travel data on individuals covered by this system; correspondence pertaining to an individual's suitability for CIA assignment or affiliation, and the individual's security eligibility for access to classified information, projects, or facilities; investigative reports, investigative information, and data pertaining to actual or purported compromises of classified or otherwise protected information; appraisals that summarize investigative results and provide the decision or rationale for determining whether an individual should receive access to classified information, projects, or facilities, or is suitable for CIA affiliation or assignment; documentation of, or relating to, interim or final actions relating to issues of security, discipline, or the grant, denial, suspension, or revocation of a CIA security clearance, access approval, or security approval; and secrecy agreements executed by individuals covered by this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941); Executive Order 10450 (5 U.S.C. 7311 note); Executive Order 12958 (76 FR 19825); and Executive Order 12968 (60 FR 40245).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; to document personnel security and suitability decisions; assist with security eligibility determinations and employment or assignment suitability decisions in accordance with applicable statutes, Executive Orders, Director of Central Intelligence Directives, CIA regulations, and other applicable law; record information regarding security eligibility determinations and employment or assignment suitability decisions concerning individuals who are under consideration for affiliation or continued affiliation with the CIA, or access or continued access to classified or otherwise protected CIA information, projects, or facilities; verify individual security clearances or access approvals; and record information relevant to investigations into possible violations of CIA rules and regulations, including the possible loss or compromise of classified or protected CIA information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system are used to provide information, including biographic information and records of security breaches, to other federal agencies involved in national security matters in the following circumstances: to respond to national agency checks; to certify security clearances and access approvals; and to provide information relevant to espionage investigations. Information on additional routine uses is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in a secured area within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, social security number, or other CIA identifier. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are safeguarded by combination lock security containers, or are stored within a vaulted area. Access is restricted to individuals who are certified on an ''Access List.'' The Access List is validated at least annually and circulated to responsible Agency officials so that they can ensure that records are accessed only for official purposes.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Director of Security, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals covered by this system of records; personal and business references provided by the individual or developed during the course of an investigation; educational institutions and private organizations; federal, state, and local government entities; public sources such as newspapers and periodicals, consumer reporting agencies, financial, travel, educational, employment-related, and other commercial sources; and classified and unclassified reporting on investigations and investigative materials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–23

SYSTEM NAME:

Intelligence Community Security Clearance and Access Approval Repository.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. government employees, military personnel, personal services independent contractors and industrial contractors to U.S government programs who possess security clearances and security access approvals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data (including name, date and place of birth, social security number, and employer); and information relating to security clearances and security access approvals, including clearances and access approvals held, current status of clearances and access approvals, and date of background investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941); Executive Order 10450 (5 U.S.C. 7311 note); Executive Order 12958 (76 FR 19825); and Executive Order 12968 (60 FR 40245).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; and to verify individual security clearances or security access approvals throughout the Intelligence Community in order to control access to classified and compartmented materials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system are provided to Intelligence Community agencies and relevant government contractors to certify individuals' security clearances and access approvals. Information on additional routine uses is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in secured areas controlled by the head of the CIA. Electronic records are stored in secure file-servers located in premises controlled by the head of the CIA.

RETRIEVABILITY:

By name or social security number. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business.

SAFEGUARDS:

Records and servers are stored within a vaulted area. Access is restricted to individuals with appropriate clearances and a ''need to know,'' as certified by an Access Control List.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Director of Security, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals covered by this system of records; U.S. government agencies; and current and former employers of individuals covered by this system of records, including both government and private sector organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–24

SYSTEM NAME:

Polygraph Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for CIA employment; CIA staff and contract employees; personal services independent contractors and industrial contractors; military and civilian personnel detailed to the CIA; individuals of security interest to CIA; persons of, or contemplated for, substantive affiliation with, or service to, the CIA; and persons on whom the CIA has conducted or is conducting an investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Polygraph reports; polygraph charts; polygraph tapes; and notes from polygraph interviews or activities related to polygraph interviews.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941); Executive Order 10450 (5 U.S.C. 7311 note); Executive Order 12958 (76 FR 19825); Executive Order 12968 (60 FR 40245).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; document polygraph results; assist with security eligibility determinations and employment or assignment suitability decisions in accordance with applicable statutes, Executive Orders, Director of Central Intelligence Directives, CIA regulations, and other applicable law; and to assist with investigations into possible violations of CIA rules and regulations, including the possible loss or compromise of classified or protected CIA information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in a secured area within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, social security number, or other CIA identifier. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Director of Security, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals covered by this system of records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–25

SYSTEM NAME:

Office of the Director Action Center Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who send correspondence to, or receive correspondence from, the Office of the Director; and individuals who are the subject of correspondence to or from the Office of the Director.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and documents addressed to, received by, or originated in the Office of the Director concerning: matters of policy, operations, and security within the purview of the head of the CIA; Congressional inquiries; and inquiries from the members of the general public.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; document the activities and policy decisions of the head of the CIA; and serve as reference material for business areas within the purview of the Office of the Director.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Correspondence contained in this system of records may be provided to U.S. Government agencies, other than the CIA, when it is determined that such other agencies can more appropriately handle the matters addressed in the correspondence. Information on additional routine uses is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal

course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief, DAC, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

U.S. Government records; publicly available information from the media, libraries, and commercial databases; and Executive branch and Congressional officials and staff members, and members of the general public who send correspondence to, or receive correspondence from, the Office of the Director of Central Intelligence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–26

SYSTEM NAME:

Office of General Counsel Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA staff and contract employees, personal services independent contractors, employees of industrial contractors, military and civilian personnel detailed or assigned to the CIA; applicants for employment with the CIA; current and former employees and contractors of U.S. Government agencies; individuals in contact with the CIA, including individuals whose inquiries concerning the CIA or the Intelligence Community (IC) are forwarded to the Office of General Counsel for response; attorneys in private practice who hold CIA security clearances or access approvals; individuals in government, academia, the business community, or other elements of the private sector with expertise on matters of interest to the Office of General Counsel; and individuals who may be involved in matters which implicate the CIA's and/or the IC's legal authorities, responsibilities, and obligations, including but not limited to administrative claimants, grievants, parties in litigation, witnesses, targets or potential targets of investigations or intelligence collection, and individuals who are interviewed by, or provide information to the CIA or the IC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Legal documents, including but not limited to pleadings, subpoenas, motions, affidavits, declarations, briefs, litigation reports, and legal opinions; biographic information for private attorneys, including Social Security Number, date and place of birth, education, law firm (if any), office addresses, fax and telephone numbers, bar memberships, legal specialties and/or areas of practice, names of CIA-affiliated clients, and date and type of security clearance and/or access approval pending or granted; crimes reports filed with the U.S. Department of Justice or other appropriate law enforcement agencies concerning individuals covered by this system of records; public and confidential Financial Disclosure Reports required by the Office of Government Ethics; internal CIA documents and cables concerning individuals covered by this system of records; and correspondence with members of the public, members of the U.S. Congress, Congressional staff, and federal, state, local, international and foreign agencies, courts and administrative tribunals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; provide legal advice and representation to the Central Intelligence Agency and the Director of Central Intelligence; provide factual information necessary for the preparation of legal documents, including pleadings, subpoenas, motions, affidavits, declarations, briefs, legal opinions, litigation reports prepared for the Department of Justice, and reports to law enforcement agencies; provide a historical record of all private attorneys who have received security clearances and/or access approvals to receive and discuss U.S. Government information necessary to their representation of CIA-affiliated clients, and record the nature, scope and duration of private attorneys' legal representations of CIA-affiliated clients; and maintain a record of federal, state, local, international or foreign litigation, administrative claims, and other legal matters in which CIA is a party or has an interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name or other personal identifier. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

General Counsel, Central Intelligence Agency, Washington, DC 20505

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals covered by this system; publicly available information; CIA records; and federal, state and local government agencies and courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–27

SYSTEM NAME:

Office of Equal Employment Opportunity (OEEO) Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CIA staff and contract employees, personal services independent contractors, industrial contractors, and military and civilian personnel detailed to the CIA; and applicants for employment with the CIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to EEO complaints, including: Data collected by an EEO Investigator which bears on charges of discrimination brought by a complainant; sworn affidavits from the complainant, the alleged discriminating officer(s), and other individuals as appropriate; other documents or statistical evidence considered pertinent to the case which assists the CIA in making a decision; requests made by individuals or offices for reasonable accommodations, and the products or services provided in response to such requests; and information regarding individuals who apply for retirement on the basis of medical disabilities, and other individuals with medical disabilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941); Executive Order 11478, as amended by Executive Order 13097 (63 FR 30097) and Executive Order 13152 (65 FR 26115); Equal Employment Opportunity Act of 1972 (42 U.S.C. 2000e *et seq.*); Age Discrimination in Employment Act (29 U.S.C. 633a); the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; process EEO complaints; provide information for review by the Equal Employment Opportunity Commission; provide information for federal court review; track requests and provide reasonable accommodations through the provision of products and services to individuals who make requests for such accommodations; and track applications for retirement on the basis of medical disabilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, social security number, or other CIA identifier. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records

Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Director, Office of Equal Employment Opportunity, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals covered by this system; applicants for employment with the CIA; individuals who provide information during the investigation of EEO complaints; and medical and psychiatric personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–28

SYSTEM NAME:

Congressional Liaison Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members of the U.S. Congress and Congressional staff; individuals whose inquiries relating to CIA matters are forwarded by members of the U.S. Congress or Congressional staff to CIA for response, and CIA employees wishing to contact members of Congress or Congressional staff on official matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and other documents between CIA's Office of Congressional Affairs, members of Congress, Congressional staff, constituents, and other CIA offices and/or U.S. Government entities regarding inquiries made by constituents or others and sent to the CIA for response; and memoranda, correspondence, position papers and other documents used to support CIA's liaison with members of Congress, staff, and their offices and committees, including memoranda documenting substantive briefings and debriefings, as well as reports provided to the CIA by Congressional personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; document constituent or other inquiries forwarded by members of Congress and staff to the CIA and CIA's responses to those inquiries; coordinate and prepare memoranda and position papers reflecting CIA's views on proposed legislation; facilitate Congressional briefings by maintaining a record of CIA's positions on issues of interest to particular members of Congress and staff; and provide guidance to employees on Congressional matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system may be disclosed to Congress. Information on additional routine uses is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Director of Congressional Affairs, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed

as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Current and former members of the U.S. Congress and their staffs; CIA employees; individuals whose inquiries relating to CIA matters are forwarded by members or staff of the U.S. Congress to the CIA for response.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–29

SYSTEM NAME:

Public Affairs Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the general public who have written to the CIA to inquire about CIA activities; CIA personnel who have reported media contacts; and media representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Media coverage, including newspaper and magazine articles, which mentions the CIA; correspondence between media representatives and the Office of Public Affairs; memoranda of conversations between the Office of Public Affairs and media representatives; correspondence from the general public regarding CIA, and CIA responses; internal CIA memoranda concerning the subject matter of this records system; and names of CIA personnel who have reported contacts with media representatives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; provide a record of significant media coverage of the CIA; provide a record of contact with media representatives by the Office of Public Affairs; maintain a record of correspondence between members of the general public who raise questions about CIA activities; and maintain a record of CIA personnel media contacts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in secured areas within the CIA. Electronic records are stored in secure file servers located within the CIA.

RETRIEVABILITY:

By name. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Director of Public Affairs, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Publicly available information from the media, libraries and commercial databases; CIA records concerning CIA activities and the subject matter of media contacts; and individuals covered by this system of records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–30

SYSTEM NAME:

Inspector General Research Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA personnel; and other individuals whose names appear in documents assembled primarily from other CIA records systems by the Inspector General in relation to Executive branch commission and Congressional committee reviews conducted between 1972 and 1976 concerning Agency activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

CIA documents that are pertinent to Executive branch commission and Congressional committee reviews of CIA activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; and for reference use in connection with Executive branch and Congressional committee reviews of CIA activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, social security number, or other CIA identifier. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Inspector General, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

CIA employees; CIA records; and records of Executive branch commissions and Congressional committees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–31

SYSTEM NAME:

Inspector General Investigation and Interview Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CIA staff and contract employees, personal services independent contractors, industrial contractors, persons with other contractual relationships, or other relationships with the CIA, persons who are interviewed by or provide information to the Office of the Inspector General, persons involved with or knowledgeable about matters being investigated by the Office of Inspector General, and persons who have filed grievances with the Office of Inspector General or CIA components.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of interviews, signed statements, correspondence, reports of investigations, forms, cables, internal CIA memoranda, prior criminal records of individuals covered by the system, and other materials relating to employee grievances and other matters of interest to or inspected by the Office of Inspector General.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; and maintain a detailed record of the investigative activities of the CIA Office of Inspector General, including investigations of grievances, allegations of misconduct by CIA personnel; and to provide information to CIA management regarding personnel matters and to assist in the evaluation of current and proposed programs, policies and activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Records in this system are used and disclosed as necessary by members of the Office of Inspector General in the investigation of matters of interest or concern to the head of the CIA, Inspector General, and senior Agency officials, including grievances and allegations of misconduct by Agency employees, and to provide information to Agency management regarding personnel matters, and for evaluating current and proposed programs, policies and activities, selected assignments, and requests for awards or promotions.

b. Records in this system that indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program, or by rule, regulation or order pursuant thereto, or that indicate a violation or potential violation of a contractual obligation, may be disclosed to the appropriate agency, whether federal, state, local, foreign, or international, charged with the responsibility for investigating or prosecuting such violation, enforcing or implementing such statute, rule, regulation, or order, or with enforcing such contract.

c. Records in the system may be disclosed to a federal, state, local, foreign, or international agency, or to an individual or organization, when necessary to elicit information relevant to an Office of Inspector General investigation, inquiry, decision, or recommendation.

d. Records in the system may be disclosed to a federal, state, local, foreign, or international agency when requested in connection with the assignment, hiring, or retention of an individual, the issuance or revocation of a security clearance, letting of a contract, or any authorized inquiry or investigation to the extent that the information is relevant to the requesting agency's decision on the matter.

e. Records in the system may be disclosed to any federal agency when documents, witness statements, or other information obtained from that agency are used in compiling the system record, or when the record is relevant to the official responsibilities of that agency.

f. Unclassified records in the system, or unclassified portions thereof, including information identifying individuals covered by the system, may be disclosed to the public when the matter under investigation has become public knowledge or the Inspector General determines that such disclosure is necessary to preserve confidence in the integrity of the Inspector General process, or is necessary to demonstrate the accountability of CIA employees, officers, or individuals covered by the system, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

g. Records in the system pertaining to an employee grievance may be disclosed to any party to that grievance except for records that disclose the identity of a non-party who requested confidentiality and provided a statement during the grievance process.

h. Records in the system may be disclosed in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures in the course of settlement negotiations, or pursuant to statutes or regulations governing the conduct of such proceedings.

i. Records in the system may be disclosed to representatives of the Department of Justice or of any other agency that is responsible for representing Agency interests in connection with judicial, administrative or other proceedings. Records may also be disclosed to the Department of Justice to the extent necessary to obtain its advice on any matter relevant to an Office of Inspector General investigation.

j. Records in the system may be disclosed to the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, or other congressional committees, or the staffs thereof, in connection with their oversight and legislative functions.

k. Records in the system may be disclosed to the President's Foreign Intelligence Advisory Board, and the Intelligence Oversight Board, and any successor organizations, when requested by those entities, or when the Inspector General determines that disclosure will assist in the performance of their oversight functions.

Information on additional routine uses is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured areas within CIA facilities. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, social security number, or other CIA identifier. Information may be retrieved from this system of records by automated or hand search based on extant indices, and by automated means utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Inspector General, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

CIA records; CIA staff and contract employees, personal services independent contractors, industrial contractors, and military and civilian detailees to CIA; federal, state, and local officials; foreign governments; private citizens, including U.S. citizens and foreign nationals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–32

SYSTEM NAME:

Office of the Deputy Director of Central Intelligence (DDCI) for Community Management Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who visit, contact, have employment, contractual, or other relationships with, or otherwise participate in the activities of, the Office of the DDCI for Community Management or the Intelligence Community; individuals who are of foreign intelligence, counterintelligence, or security interest to the Intelligence Community, including individuals identified as being involved in activities related to intelligence matters; and individuals in government, academia, the business community, or other elements of the private sector with expertise on matters of intelligence interest to the Office of the DDCI for Community Management, or other elements of the Intelligence Community.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: information relating to the management and oversight of intelligence requirements, analysis, reporting and operations, including acquisitions; biographic and other information about individuals of intelligence interest; information on individuals and events of interest to the Intelligence Community; information identifying source documents and their recipients; and biographic and other information, including security clearances, access approvals, and employment and training records, about individuals who visit, contact, have employment, contractual or other relationships with, or otherwise participate in, the activities of the Office of the DDCI for Community Management

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941); Executive Order 12958 (76 FR 19825).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the Director of Central Intelligence to carry out their lawful and authorized responsibilities; provide classified and unclassified information to the Director of Central Intelligence, CIA and other appropriate Intelligence Community and U.S. Government officers, employees, detailees, or contractors for the conduct of authorized activities; and assist the Director of Central Intelligence with his Intelligence Community responsibilities, including resources management, program assessment and evaluation, policy formulation, and collection requirements management, and the protection of intelligence sources and methods.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed to U.S. Government organizations, personnel and contractors: in order to facilitate security, employment, or contractual decisions; and as necessary for the protection of intelligence sources and methods, intelligence oversight and management, and in support of intelligence operations, analysis and reporting. Additionally, records from this system are used to prepare periodic statistical reports for U.S. Government officials related to the control and dissemination of classified information. Information on additional routine uses is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in a secured area located in premises controlled by the Director of Central Intelligence (DCI). Electronic records are stored in secure file-servers located in premises controlled by the DCI.

RETRIEVABILITY:

By name, social security number, or other identifier. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director for Intelligence Community Affairs, Office of the DDCI for Community Management, c/o Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals covered by this system; U.S. Government officers, employees, agencies, organizations and contractors; publicly available information from the media, libraries and commercial databases; unclassified reporting; classified intelligence reporting and source documents; investigative reports; and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–33

SYSTEM NAME:

National Intelligence Council (NIC) Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have employment, detailee, liaison, or contractual relationships with the National Intelligence Council (NIC) or Intelligence Community agencies, including personal services independent contractors and industrial contractors; individuals in academia and the private sector with expertise on matters of intelligence interest to the NIC; and individuals who are of foreign intelligence, counterintelligence, or security interest to the NIC, including individuals identified as being involved in activities related to intelligence matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include administrative and contact information; documents relating to intelligence requirements, analysis, reporting and operations; National Intelligence Council operational records; biographic information about individuals of intelligence interest; publicly-available information on individuals and events of interest to the NIC; other policy and operational data based on foreign intelligence, counterintelligence and security reporting.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941); Executive Order 12958 (76 FR 19825).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the Director of Central Intelligence to carry out their lawful and authorized responsibilities; provide classified and unclassified information within the CIA and to appropriate Intelligence Community and U.S. Government officials for the conduct of authorized activities; and assist the Director of Central Intelligence and the Intelligence Community by evaluating the adequacy of intelligence support to U.S. policymakers and other senior intelligence consumers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed to other U.S. Government organizations in order to facilitate any security, employment, or contractual decisions. Records also may be disclosed to other U.S. Government organizations as necessary for the protection of intelligence sources and methods and in support of intelligence operations, analysis and reporting. Information on additional routine uses is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in a secured area located in premises controlled by the Director of Central Intelligence (DCI). Electronic records are stored in secure file-servers located in premises controlled by the DCI.

RETRIEVABILITY:

By name, social security number, or other identifier. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chairman, National Intelligence Council, c/o Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals covered by this system; U.S. Government employees, agencies and organizations; publicly-available information from the media, libraries and commercial databases; classified reporting and intelligence source documents; and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–34

SYSTEM NAME:

Arms Control Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have employment, detailee, liaison, or contractual relationships with the Center for Weapons Intelligence, Nonproliferation and Arms Control (WINPAC), including personal services independent contractors and industrial contractors; individuals who visit, contact, or

otherwise participate in the activities of WINPAC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include administrative, biographic and contact information; publicly available information on events of interest to the arms control community; classified reporting on events of interest to the arms control community; documents identifying classified source documents and their recipients.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941); Executive Order 12958 (76 FR 19825).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity, enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; and provide classified and unclassified information to appropriate CIA and Intelligence Community officials for the conduct of authorized activities, including support to the negotiation and assessment of arms control agreements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed to other U.S. Government organizations in order to facilitate any security, employment, or contractual decisions by those organizations. Records also may be disclosed to other U.S. Government organizations as necessary for the protection of intelligence sources and methods and in support of intelligence operations, analysis and reporting. Information on additional routine uses is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in secured areas within premises controlled by the head of the CIA. Electronic records are stored in secure file-servers within premises controlled by the head of the CIA.

RETRIEVABILITY:

By name, social security number, or other identifier. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business.

SAFEGUARDS:

Records are stored in a secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Director, WINPAC, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals who are the subject of records in this system; U.S. Government employees, agencies and organizations; publicly available information obtained from the media, libraries and commercial databases; unclassified and classified reporting and intelligence source documents; and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–35

SYSTEM NAME:

Directorate of Science & Technology (DS&T) Private Sector Contact Information.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals in the private sector who work or have worked on CIA personal services or industrial contracts; individuals about which there is publicly-available information identifying a scientific, technical or related expertise of interest to CIA; and CIA staff and contract employees, and other individuals affiliated with CIA who work on CIA projects with private sector experts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic information, including areas of expertise.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; provide reference information; and facilitate communication by CIA with private sector experts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name or other CIA identifier. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Director, DS&T Administrative Resources Center, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals who are the subject of records in the system; and publicly available information obtained from the media, libraries and commercial databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–36

SYSTEM NAME:

Alumni Communications Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former CIA employees who voluntarily contact the Alumni Communications Port to offer comments, insights or suggestions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data (including name, contact information such as address or phone number, and Social Security Number or CIA identifier); and correspondence and memoranda regarding the content of conversations with former employees and any resulting actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; verify the identities of individuals contacting the Port; continue communications with individuals who contact the Port; and record a summary of the conversations and any resulting actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in a secured area within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, social security number, or other CIA identifier. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Director, DS&T Investment Program Office, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the

notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals who voluntarily contact the Alumni Communications Port; and CIA employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–37

SYSTEM NAME:

Directorate of Operations Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are of foreign intelligence or foreign counterintelligence interest to the CIA, either because of their actual, apparent, or potential association with foreign intelligence or foreign counterintelligence activities, or because they are of actual or potential use to the CIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents recording the operational activities of the Directorate of Operations (DO) of the Central Intelligence Agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity, enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities, and maintain a record of the operational activities of the Directorate of Operations of the Central Intelligence Agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be provided to selected federal agencies, including the Federal Bureau of Investigation, military departments and, through established liaison channels, to selected foreign government agencies, as necessary for the conduct of foreign intelligence and counterintelligence operations by the CIA and other U.S. Government entities authorized to conduct such operations. Information on additional routine uses is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, social security number, or other identifier. Information may be retrieved from this system of records by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Chief, DO Information Management Staff, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Foreign intelligence and counterintelligence sources; U.S. Government agencies; CIA predecessor organizations; publicly available information; and state and local agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–38

SYSTEM NAME:

Academic and Business Contact Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the academic community, members of scientific and other professional organizations, U.S. Government officials, employees of private sector organizations, and other individuals who have expertise in, or access to information on, subjects of intelligence interest; and individuals who have served as, or are considered potential advisers, consultants, or personal services independent contractors to the CIA on matters of intelligence interest.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic information including names, contact information, professional credentials and areas of interest and expertise of individuals covered under this system of records; history of CIA association, if any, of individuals covered under this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity, enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities, and maintain a record of persons inside and outside the U.S. Government of current or potential utility as advisors or consultants to the CIA in performing its mission to produce intelligence analyses on matters of national security concern.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, social security number, or other CIA identifier. Information may be retrieved from this system of records by automated or hand searches based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Directorate of Intelligence Information Management Officer, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification procedures section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals who are the subject of records in this system; U.S. Government employees; publicly available information obtained from the media, libraries and commercial databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–39

SYSTEM NAME:

Customer Relations Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former intelligence customers including U.S. policymakers, U.S. Government personnel, and other authorized recipients of CIA intelligence products.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic information including names, addresses, contact information, security clearances and access approvals, and subjects of intelligence interest to individuals covered by this system of records; documents containing comments and feedback from individuals covered by this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry out their lawful and authorized responsibilities; maintain dissemination lists for CIA finished intelligence products, in order to ensure proper dissemination of classified and unclassified products; maintain a record of disseminations; maintain a list of topics of interest to particular intelligence customers; and document customer feedback on particular products.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, social security number, or other CIA identifier. Information may be retrieved from this system of records by automated or hand searches based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Directorate of Intelligence Information Management Officer, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

Individuals who are the subjects of records in this system; CIA personnel; other U.S. Government personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–40

SYSTEM NAME:

Research System Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals of foreign intelligence or counterintelligence interest to the CIA, including individuals associated with international terrorism, international organized crime, or international narcotics trafficking activities; and individuals who have written on the general topic of intelligence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Classified intelligence reporting, including reports from other U.S. Government agencies and foreign government information; and publicly available information from the media, libraries and commercial databases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity; enable the CIA and the head of the CIA to carry our their lawful and authorized responsibilities; provide a repository of classified and unclassified information on topics of foreign intelligence and counterintelligence interest to the CIA; assist the CIA's Directorate of Intelligence to fulfill its mission of providing timely, accurate, and objective intelligence analysis on the full range of national security threats and foreign policy issues facing the United States; and provide a reference file for publicly available publications pertaining to intelligence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, social security number, or other CIA identifier. Information may be retrieved from this system of records by automated or hand searches based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

Directorate of Intelligence Information Management Officer, Central Intelligence Agency, Washington, DC 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information

about them should direct their inquiries to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Identification requirements are specified in the CIA rules published in the **Federal Register** (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Regulations for access to individual records or for appealing an initial determination by CIA concerning the access to records are published in the **Federal Register** (32 CFR 1901.11–45).

CONTESTING RECORD PROCEDURE:

Requests from individuals to correct or amend records should be addressed as indicated in the notification section above. CIA's regulations regarding requests for amendments to, or disputing the contents of individual records or for appealing an initial determination by CIA concerning these matters are published in the **Federal Register** (32 CFR 1901.21–23, 32 CFR 1901.42).

RECORD SOURCE CATEGORIES:

CIA staff and contract employees, personal services independent contractors, and industrial contractors; U.S. Government agencies; publicly available information from the media, libraries and commercial databases; and foreign intelligence and counterintelligence sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

CIA–41

SYSTEM NAME:

Intelligence Analysis Records.

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, DC 20505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals of foreign intelligence or counterintelligence interest to the CIA, including individuals associated with international terrorism, international organized crime, or international narcotics trafficking activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Intelligence reports and other information that supports the analytic mission of the CIA's Directorate of Intelligence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended (50 U.S.C. 403 *et seq.*); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); Executive Order 12333 (46 FR 59941).

PURPOSE(S):

Records in this system are used by authorized personnel to: Ensure process integrity, enable the CIA and the head of the CIA to carry our their lawful and authorized responsibilities; and assist the CIA's Directorate of Intelligence to fulfill its mission of providing timely, accurate, and objective intelligence analysis on the full range of national security threats and foreign policy issues facing the United States, including key foreign countries, regional conflicts, and issues that transcend national boundaries such as terrorism, weapons proliferation, and narcotics trafficking.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information is set forth in the ''CIA Statement of General Routine Uses,'' which is incorporated herein by reference.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in secured areas within the CIA. Electronic records are stored in secure file-servers located within the CIA.

RETRIEVABILITY:

By name, social security number, or other identifier. Information may be retrieved from this system of records by automated or hand searches based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, all searches of this system of records will be performed in CIA offices by CIA personnel.

SAFEGUARDS:

Records are stored in secured areas accessed only by authorized persons. Software access controls are also in place.

RETENTION AND DISPOSAL:

All records are maintained and disposed of in accordance with Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS (THIS INCORPORATES BY REFERENCE ANY CIA SUCCESSOR IN FUNCTION TO THE SYSTEM MANAGER(S) SET FORTH HEREIN):

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RECORD SOURCE CATEGORIES:

CIA staff and contract employees, personal services independent contractors, and industrial contractors; U.S. Government agencies; publicly available information from the media, libraries and commercial databases; and foreign intelligence and counterintelligence sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain records contained within this system of records may be exempted from certain provisions of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j)(1), (k), and (d)(5).

[FR Doc. 05–10038 Filed 5–23–05; 8:45 am]

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Federal Register

Tuesday,
May 24, 2005

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1
Dual Consolidated Loss Regulations; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102144–04]

RIN 1545–BD10

Dual Consolidated Loss Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rule making and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 1503(d) of the Internal Revenue Code (Code) regarding dual consolidated losses. Section 1503(d) generally provides that a dual consolidated loss of a dual resident corporation cannot reduce the taxable income of any other member of the affiliated group unless, to the extent provided in regulations, such loss does not offset the income of any foreign corporation. Similar rules apply to losses of separate units of domestic corporations. The proposed regulations address various dual consolidated loss issues, including exceptions to the general prohibition against using a dual consolidated loss to reduce the taxable income of any other member of the affiliated group.

DATES: Written and electronic comments and outlines of topics to be discussed at the public hearing scheduled for September 7, 2005, at 10 a.m., must be received by August 22, 2005.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–102144–04), room 5203, Internal Revenue Service, P.O. Box 7604, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–102144–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS and REG–102144–04). The public hearing will be held in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kathryn T. Holman, (202) 622–3840 (not a toll-free number); concerning submissions and the hearing, Robin Jones, (202) 622–3521 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224. Comments on the collection of information should be received by July 25, 2005. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in these proposed regulations are in §§ (1.1503(d)–1(b)(14), 1.1503(d)–1(c)(1), 1.1503(d)–2(d), 1.1503(d)–4(c)(2), 1.1503(d)–4(d), 1.1503(d)–4(e)(2), 1.1503(d)–4(f)(2), 1.1503(d)–4(g), 1.1503(d)–4(h) and 1.1503(d)–4(i). The various information is required. First, it notifies the IRS when the taxpayer asserts that it had reasonable cause for failing to comply with certain filing requirements under the regulations. Second, it indicates when the taxpayer attempts to rebut the amount of presumed tainted income. Finally, it provides the IRS various information regarding exceptions to the domestic use limitation, including domestic use elections, domestic use agreements, triggering events and recapture.

The collection of information is in certain cases required and in certain cases voluntary. The likely respondents will be domestic corporations with foreign operations that generate losses.

Estimated total annual reporting and/or recordkeeping burden: 2,665 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 1.5 hours.

Estimated number of respondents and/or recordkeepers: 1,765.

Estimated annual frequency of responses: Annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The United States taxes the worldwide income of domestic corporations. A domestic corporation is a corporation created or organized in the United States or under the law of the United States or of any State. The United States allows certain domestic corporations to file consolidated returns with other affiliated domestic corporations. When two or more domestic corporations file a consolidated return, losses that one corporation incurs generally may reduce or eliminate tax on income that another corporation earns.

Some countries use criteria other than place of incorporation or organization to determine whether corporations are residents for tax purposes. For example, some countries treat corporations as residents for tax purposes if they are managed or controlled in that country. If one of these countries determines a corporation to be a resident, the corporation is generally subject to income tax of that foreign country on a residence basis. As a result, if such a corporation is a domestic corporation for U.S. tax purposes, it is a dual resident corporation and is subject to the income tax of both the foreign country and the United States on a residence basis.

Prior to the Tax Reform Act of 1986, if a corporation was a resident of both a foreign country and the United States, and the foreign country permitted the losses of the corporation to be used to offset the income of another person (for example, as a result of consolidation), then the dual resident corporation could use any losses it generated twice: once to offset income that was subject to U.S. tax, but not foreign tax, and a second time to offset income subject to foreign tax, but not U.S. tax (double-dip).

Congress was concerned that this double-dip of a single economic loss could result in an undue tax advantage to certain foreign investors that made investments in domestic corporations, and could create an undue incentive for certain foreign corporations to acquire domestic corporations and for domestic corporations to acquire foreign rather than domestic assets. Staff of Joint Committee on Taxation, 99th Cong., 2nd Sess., General Explanation of the Tax Reform Act of 1986, at 1064–1065 (1987). Through such double-dipping, worldwide economic income could be rendered partially or fully exempt from current taxation. Moreover, even if the foreign income against which the loss was used would eventually be subject to U.S. tax (upon a repatriation of earnings), there were timing benefits of double dipping that the statute was intended to prevent. Congress responded to this concern by enacting section 1503(d) as part of the Tax Reform Act of 1986.

Section 1503(d) provides that a dual consolidated loss of a corporation cannot reduce the taxable income of any other member of the corporation's affiliated group. The statute defines a dual consolidated loss as a net operating loss of a domestic corporation that is subject to an income tax of a foreign country on its income without regard to the source of its income, or is subject to tax on a residence basis. The statute authorizes the issuance of regulations permitting the use of a dual consolidated loss to offset the income of a domestic affiliate if the loss does not offset the income of a foreign corporation under foreign law.

Section 1503(d) further states that, to the extent provided in regulations, similar rules apply to any loss of a *separate unit* of a domestic corporation as if such unit where a wholly owned subsidiary of the corporation. Although the statute does not define the term separate unit, the legislative history to the provision refers to the loss of any separate and clearly identifiable unit of a trade or business of a taxpayer and cites as an example a foreign branch of a domestic corporation. See H.R. Rep. No. 795, 100th Cong., 2d Sess. July 26, 1988) at 293.

The IRS and Treasury issued temporary regulations under section 1503(d) in 1989 (TD 8261, 1989–2 C.B. 220). The temporary regulations generally provided that, unless one of three limited exceptions applied, a dual consolidated loss of a dual resident corporation could not offset the income of any other member of the dual resident corporation's affiliated group. The temporary regulations contained similar rules for losses incurred by separate units.

In response to comments that the temporary regulations were unnecessarily restrictive, the IRS and Treasury issued final regulations under section 1503(d) in 1992 (TD 8434, 1992–2 C.B. 240). These final regulations were updated and amended over the next 11 years (current regulations). The current regulations apply the section 1503(d) limitation more narrowly than the temporary regulations. The current regulations adopt an *actual use* standard for permitting a dual consolidated loss to offset income of members of the affiliated group. This standard, which applies to both dual resident corporations and separate units, requires taxpayers to certify that no portion of the dual consolidated loss has been or will be used to offset the income of any other person under the income tax laws of a foreign country. If such a certification is made and a subsequent *triggering event* occurs, the dual consolidated loss must be recaptured in the year of the event (plus an applicable interest charge).

This document proposes amendments to the current regulations under section 1503(d). Conforming amendments are also proposed to related regulations under sections 1502 and 6043.

Overview

In general, the proposed regulations address three fundamental concerns that arise in connection with the current regulations. First, the IRS and Treasury believe that the scope of application of the current regulations should be modified. For example, the current regulations may apply to certain structures where there is little likelihood of a double-dip. Moreover, the IRS and Treasury understand that some taxpayers have taken the position that the current regulations do not apply to certain structures that provide taxpayers the benefits of the type of double-dip that section 1503(d) is intended to deny. Accordingly, the proposed regulations are designed to minimize these cases of potential over- and under-application.

Second, the IRS and Treasury recognize that there are many unresolved issues that arise when applying the current regulations, particularly in light of the adoption of the entity classification regulations under §§ 301.7701–1 through 301.7701–3. Thus, the proposed regulations modernize the dual consolidated loss regime to take into account the entity classification regulations and to resolve the related issues so that the rules can be applied by taxpayers and the Commissioner with greater certainty.

Finally, the IRS and Treasury believe that, in many cases, the current regulations are administratively burdensome to both taxpayers and the Commissioner. Accordingly, the proposed regulations reduce, to the extent possible, the administrative burden imposed on taxpayers and the Commissioner.

Explanation of Provisions

A. Structure of the Proposed Regulations

The proposed regulations are set forth in six sections. Section 1.1503(d)–1 contains definitions and special rules for filings. Section 1.1503(d)–2 sets forth operating rules, which include the general rule that prohibits the domestic use of a dual consolidated loss (subject to certain exceptions discussed below), a rule that limits the use of dual consolidated losses following certain transactions, an anti-avoidance provision that prevents dual consolidated losses from offsetting income from assets acquired in certain nonrecognition transactions or contributions to capital, and rules for computing foreign tax credit limitations. Section 1.1503(d)–3 contains special rules for accounting for dual consolidated losses. These special rules determine the amount of a dual consolidated loss, determine the effect of a dual consolidated loss on domestic affiliates, and provide special basis adjustments. Section 1.1503(d)–4 provides exceptions to the general rule that prohibits the domestic use of a dual consolidated loss, including a domestic use election. Section 1.1503(d)–5 contains examples that illustrate the application of the proposed regulations. Finally, § 1.1503(d)–6 contains the proposed effective date of the proposed regulations.

In addition to the proposed regulatory amendments under section 1503(d), the proposed regulations also include conforming proposed amendments to § 1.1502–21 and § 1.6043–4T.

B. Definitions and Special Rules for Filings Under Section 1503(d)—§ 1.1503(d)–1

1. Treatment of a Separate Unit as a Domestic Corporation and a Dual Resident Corporation

Section 1.1503–2(c)(3) and (4) of the current regulations defines a separate unit of a domestic corporation as a foreign branch, within the meaning of § 1.367(a)-6T(g), (foreign branch separate unit) and an interest in a partnership, trust or hybrid entity. The

current regulations also provide that any separate unit of a domestic corporation is treated as a separate domestic corporation for purposes of applying the dual consolidated loss rules. Section 1.1503–2(c)(2). In addition, the current regulations provide that, unless otherwise indicated, any reference to a dual resident corporation refers also to a separate unit. As a result of these rules, certain provisions of the current regulations only refer to dual resident corporations, and therefore apply to separate units because they are treated as domestic corporations and dual resident corporations. However, other provisions of the current regulations refer to both dual resident corporations and separate units (for example, see § 1.1503–2(g)(2)(iii)(A)).

The IRS and Treasury believe that, in certain cases, treating separate units as domestic corporations creates uncertainty in applying the current regulations. This may occur, for example, as a result of certain rules applying to separate units because they are treated as domestic corporations or dual resident corporations, while other rules apply explicitly to separate units themselves. Accordingly, the proposed regulations do not contain a general rule that treats separate units as domestic corporations or dual resident corporations for all purposes of applying the dual consolidated loss regulations. Instead, the proposed regulations explicitly refer to dual resident corporations and separate units where appropriate, treat separate units as domestic corporations only for limited purposes, and modify the operative rules where necessary to take into account differences between dual resident corporations and separate units.

2. Application of Section 1503(d) to S Corporations

Section 1.1503–2(c)(2) of the current regulations provides that an S corporation, as defined in section 1361, is not a dual resident corporation. The preamble to the current regulations explains that S corporations are so excluded because an S corporation cannot have a domestic corporation as one of its shareholders. The current regulations do not, however, explicitly exclude separate units owned by an S corporation from the definition of a dual resident corporation. As a result, the current regulations can be read to provide that an S corporation, although it cannot itself be a dual resident corporation, could own a separate unit that would be a dual resident corporation.

The IRS and Treasury believe that such a result is inappropriate because an S corporation cannot have a domestic corporation as one of its shareholders and generally is not taxable at the entity level. Accordingly, the proposed regulations provide that for purposes of the dual consolidated loss rules, an S corporation is not treated as a domestic corporation. This modification clarifies that the dual consolidated loss regulations do not apply to the S corporation itself, or to foreign branches or interests in certain flow-through entities owned by an S corporation.

The IRS and Treasury request comments as to whether regulated investment companies (as defined in section 851) or real estate investment trusts (as defined in section 856) should be similarly excluded from the application of the dual consolidated loss rules.

3. Losses of a Foreign Insurance Company Treated as a Domestic Corporation

Section 953(d) generally provides that a foreign corporation that would qualify to be taxed as an insurance company if it were a domestic corporation may, under certain circumstances, elect to be treated as a domestic corporation. Section 953(d)(3) provides that if a corporation elects to be treated as a domestic corporation pursuant to section 953(d) and is treated as a member of an affiliated group, any loss of such corporation is treated as a dual consolidated loss for purposes of section 1503(d), without regard to section 1503(d)(2)(B) (grant of regulatory authority to exclude losses which do not offset the income of foreign corporations from the definition of a dual consolidated loss). Therefore, losses of such corporations are treated as dual consolidated losses regardless of whether the corporation is subject to an income tax of a foreign country on its worldwide income or on a residence basis.

The current regulations do not address the application of section 953(d)(3). However, the definition of a dual resident corporation contained in the proposed regulations includes a foreign insurance company that makes an election to be treated as a domestic corporation pursuant to section 953(d) and is a member of an affiliated group, regardless of how such entity is taxed by the foreign country.

4. Definition of a Separate Unit

(a) Interests in Non-Hybrid Entity Partnerships and Interests in Non-Hybrid Entity Grantor Trusts

Section 1.1503–2(c)(4) of the current regulations defines a separate unit to include an interest in a hybrid entity (hybrid entity separate unit). The current regulations define a hybrid entity as an entity that is not taxable as an association for U.S. income tax purposes, but is subject to income tax in a foreign jurisdiction as a corporation (or otherwise at the entity level) either on its worldwide income or on a residence basis. This definition includes an interest in such an entity that is treated for U.S. tax purposes as a partnership (hybrid entity partnership) or as a grantor trust (hybrid entity grantor trust). An interest in an entity that is treated as a partnership or a grantor trust for both U.S. and foreign tax purposes (non-hybrid entity partnership and non-hybrid entity grantor trust, respectively) also is treated as a separate unit under the current regulations. § 1.1503–2(c)(3)(i).

The current regulations also apply to a separate unit owned indirectly through a partnership or grantor trust. Thus, for example, if a partnership owns a foreign branch within the meaning of § 1.367(a)-6T(g), a domestic corporate partner's interest in such partnership, and its indirect interest in a portion of the foreign branch owned through the partnership, each constitutes a separate unit.

Under the current regulations, an interest in a non-hybrid entity partnership or a non-hybrid entity grantor trust is also treated as a separate unit, regardless of whether the partnership or grantor trust has any nexus with a foreign jurisdiction. This rule can result in the application of the dual consolidated loss rules when there may be little opportunity for a double-dip. For example, if two domestic corporations each own 50 percent of a domestic partnership that generates losses attributable to activities conducted solely in the United States, the corporate partners would be technically subject to the dual consolidated loss rules and therefore would not be allowed to offset their income with such losses, unless an exception applied. In such a case, however, it may be unlikely that the losses would be available to offset income of another person under the income tax laws of a foreign country.

The IRS and Treasury believe that including an interest in a non-hybrid entity partnership and an interest in a non-hybrid entity grantor trust in the

definition of a separate unit may not be necessary and is administratively burdensome. In such cases, it may be unlikely that deductions and losses solely attributable to activities of the partnership or grantor trust, that do not rise to the level of a taxable presence in a foreign jurisdiction, can be used to offset income of another person under the income tax laws of a foreign country. As a result, the proposed regulations eliminate from the definition of a separate unit an interest in a non-hybrid entity partnership and an interest in a non-hybrid entity grantor trust. It should be noted, however, that the proposed regulations retain the rule contained in the current regulations that a domestic corporation can own a separate unit indirectly through both hybrid entity and non-hybrid entity partnerships, and through both hybrid entity and non-hybrid entity grantor trusts.

(b) Separate Unit Combination Rule

Section 1.1503–2(c)(3)(ii) of the current regulations provides that if two or more foreign branches located in the same foreign country are owned by a single domestic corporation and the losses of each branch are made available to offset the income of the other branches under the tax laws of the foreign country, then the branches are treated as one separate unit. The combination rule in the current regulations does not apply to interests in hybrid entity separate units or to dual resident corporations.

Although a disregarded entity is treated as a branch of its owner for various purposes of the Code, the current regulations distinguish a hybrid entity separate unit that is disregarded as an entity separate from its owner from a foreign branch separate unit. Compare § 1.1503–2(c)(3)(i)(A) and (c)(4); see also § 1.1503–2(g)(2)(vi)(C). Accordingly, the combination rule under the current regulations does not apply to an interest in a hybrid entity separate unit, even if the hybrid entity is disregarded as an entity separate from its owner.

The combination rule in the current regulations also requires the foreign branches to be owned by a single domestic corporation. Thus, for example, the current regulations do not permit the combination of foreign branches owned by different domestic corporations, even if such corporations are members of the same consolidated group. In addition, in some cases the current regulations do not allow the combination of foreign branches that are owned indirectly by a single domestic corporation through other separate units because, as discussed above, such other separate units are generally treated as domestic corporations for purposes of applying the dual consolidated loss regulations. As a result, such foreign branches are not treated as being owned by a single domestic corporation.

The IRS and Treasury believe that the application of the combination rule should not be restricted to foreign branch separate units. In addition, the IRS and Treasury believe that the combination rule should not be limited to those cases where the domestic corporation owns the separate units directly. Therefore, provided certain requirements are satisfied, the proposed regulations adopt a broader combination rule that combines all separate units that are directly or indirectly owned by a single domestic corporation.

In order for separate units to be combined under the proposed regulations, the losses of each separate unit must be made available to offset the income of the other separate units under the tax laws of a single foreign country. In addition, if the separate unit is a foreign branch separate unit, it must be located in the foreign country that allows its losses to be made available to offset income of each separate unit; if the separate unit is a hybrid entity separate unit, the hybrid entity must be subject to tax in the foreign country that allows losses to be made available to each separate unit either on its worldwide income or on a residence basis.

The combination rule in the proposed regulations does not combine separate units owned by different domestic corporations, even if the domestic corporations are included in the same consolidated group. The IRS and Treasury believe this approach is consistent with section 1503(d)(3), which provides that, to the extent provided in regulations, a loss of a separate unit of a domestic corporation is subject to the dual consolidated loss rules as if it were a wholly owned subsidiary of such domestic corporation. In addition, the combination rule contained in the proposed regulations only applies to separate units and therefore does not apply to dual resident corporations.

The IRS and Treasury, however, request comments as to whether there is authority to expand the combination rule and, if so, whether the combination rule should be expanded to include separate units that are owned directly or indirectly by domestic corporations that are members of the same consolidated group. Similarly, comments are requested as to whether the combination rule should be extended to apply to dual resident corporations. Further, the IRS and Treasury request comments on the application of the operative provisions of the proposed regulations to combined separate units owned by different domestic corporations (for example, the SRLY limitation under § 1.1503(d)-3(c)).

5. Exception to the Definition of a Dual Consolidated Loss

Section 1.1503–2(c)(5)(ii)(A) of the current regulations provides a very limited exception to the definition of a dual consolidated loss where the income tax laws of a foreign country do not permit the dual resident corporation to either: (1) Use its losses, expenses, or deductions to offset the income of any other person in the same taxable year; or (2) carry over or carry back its losses, expenses, or deductions to be used, by any means, to offset the income of any other person in other taxable years. This exception only applies in rare and unusual cases where the income tax laws of the foreign country do not allow any portion of the dual consolidated loss to be used to offset income of another person under any circumstances.

The IRS and Treasury understand that some taxpayers have improperly interpreted this provision in a manner inconsistent with the policies of the dual consolidated loss rules. As a result, the proposed regulations eliminate this exception to the definition of a dual consolidated loss. As discussed below, however, the proposed regulations contain a new exception to the general rule restricting the use of a dual consolidated loss to offset income of a domestic affiliate. In general, this new exception applies when there is no possibility that any portion of the dual consolidated loss can be double-dipped, and operates in a manner that is similar to the manner in which the exception to the definition of a dual consolidated loss contained in the current regulations operates.

6. Partnership Special Allocations

Section 1.1503–2(c)(5)(iii) of the current regulations reserves on the treatment of dual consolidated losses of separate units that are partnership interests, including interests in hybrid entities. The preamble to the current regulations explains that the reservation was principally the result of concerns regarding partnership special allocations.

The proposed regulations no longer reserve on the treatment of separate units that are partnership interests. However, the IRS will continue to challenge structures that attempt to use special allocations in a manner that is

inconsistent with the principles of section 1503(d).

7. Domestic Use of a Dual Consolidated Loss

Section 1.1503–2(b)(1) of the current regulations states that, except as otherwise provided, a dual consolidated loss cannot offset the taxable income of any domestic affiliate, regardless of whether the loss offsets income of another person under the income tax laws of a foreign country, and regardless of whether the income that the loss may offset in the foreign country is, has been, or will be subject to tax in the United States. Section 1.1503–2(c)(13) defines the term domestic affiliate to mean any member of an affiliated group, without regard to exceptions contained in section 1504(b) (other than section 1504(b)(3)) relating to includible corporations.

The proposed regulations retain the general prohibition against using a dual consolidated loss to offset income of domestic affiliates contained in the current regulations, with modifications, and refer to such usage as a *domestic use* of a dual consolidated loss. This general prohibition is subject to a number of exceptions, discussed below. In addition, because the proposed regulations do not treat separate units as domestic corporations and dual resident corporations (other than for limited purposes) the proposed regulations expand the definition of a domestic affiliate to include separate units. This expanded definition is necessary for purposes of applying the domestic use limitation rule.

8. Foreign use of a dual consolidated loss

(a) General Rule

Section 1.1503–2T(g)(2)(i) of the current regulations provides that, in order to elect relief from the general limitation on the use of a dual consolidated loss to offset income of a domestic affiliate with respect to a dual consolidated loss ((g)(2)(i) election), the taxpayer must, among other things, certify that no portion of the losses, expenses, or deductions taken into account in computing the dual consolidated loss has been, or will be, used to offset the income of any other person under the income tax laws of a foreign country. If, contrary to this certification, there is such a *use,* the dual consolidated loss subject to the (g)(2)(i) election generally must be recaptured and reported as gross income.

The IRS and Treasury understand that issues arise involving the application of the use rule contained in the current regulations. For example, issues may arise where items of income, gain, deduction and loss are treated as being generated or incurred by different persons under U.S. and foreign law. Similarly, issues may arise due to different definitions of a *person* under U.S. and foreign law. These issues have become more prevalent since the adoption of the entity classification regulations under §§ 301.7701–1 through 301.7701–3.

The IRS and Treasury also understand that taxpayers have taken positions under the current regulations regarding the use of a dual consolidated loss that are inconsistent with the policies underlying section 1503(d). On the other hand, the IRS and Treasury believe that, under the current regulations, a use can be deemed to occur in certain cases where there may be little likelihood of the type of double-dip that section 1503(d) was intended to prevent.

For the reasons discussed above, the proposed regulations modify the definition of *use* and provide a rule based on *foreign use.* These modifications are intended to minimize the potential over- and under-application of the dual consolidated loss rules that can occur under the current regulations. Under the proposed regulations, the foreign use definition is intended to minimize the opportunity for a double-dip. However, the new definition is also intended to minimize the situations in which a foreign use will occur in cases where there may be little likelihood of a double-dip.

The proposed regulations provide that a foreign use is deemed to occur only if two conditions are satisfied. The first condition is satisfied if any portion of a loss or deduction taken into account in computing the dual consolidated loss is made available under the income tax laws of a foreign country to offset or reduce, directly or indirectly, any item that is recognized as income or gain under such laws (including items of income or gain generated by the dual resident corporation or separate unit itself), regardless of whether income or gain is actually offset, and regardless of whether such items are recognized under U.S. tax principles. This condition ensures that there will not be a foreign use unless all or a portion of the dual consolidated loss offsets or reduces, or is made available to offset or reduce, income or gain for foreign tax purposes.

The second condition is satisfied if items that are (or could be) offset pursuant to the first condition are considered, under U.S. tax principles, to be items of: (1) A foreign corporation; or (2) a direct or indirect (for example, through a partnership) owner of an interest in a hybrid entity, provided such interest is not a separate unit. This condition is intended to limit a foreign use to situations where the foreign income that is (or could be) offset by the dual consolidated loss is not currently subject to U.S. corporate income tax. In general, if the foreign income that is offset is currently subject to U.S. corporate income tax, there is no double-dip of the dual consolidated loss.

(b) Exception to Foreign Use If No Dilution of an Interest in a Separate Unit

Section 1.1503–2(c)(15) of the current regulations employs a so-called *actual use* standard for determining whether there has been a use of a dual consolidated loss to offset the income of another person under the laws of a foreign country. Although referred to as an *actual use* standard, this rule provides that a use is considered to occur in the year in which a loss, expense or deduction taken into account in computing the dual consolidated loss is made available for such an offset, unless an exception applies. The fact that the other person does not have sufficient income in that year to benefit from such an offset is not taken into account.

The *available* component of the actual use standard was adopted because of the administrative complexity that would result from having a use occur only when income is actually offset. For example, if in the year that a portion of the dual consolidated loss is made available to be used by another person, the other person itself generates a loss (or has a loss carryover), then in many cases the portion of the dual consolidated loss would become part of the loss carryover. Such loss therefore would be available to be carried forward or carried back to offset income in different taxable years. Under this approach, the portion of the loss carryforward or carryback that was taken into account in computing the dual consolidated loss would need to be identified and tracked, which would require detailed ordering rules for determining when such losses were used. Timing and base differences between the U.S. and foreign jurisdiction would further complicate such an approach.

Because of the administrative complexities discussed above, the foreign use definition contained in the proposed regulations retains the available for use standard. However, because the available for use standard is

retained, there are many cases in which a foreign use of a dual consolidated loss attributable to interests in hybrid entity partnerships and hybrid entity grantor trusts, and separate units owned indirectly through partnerships and grantor trusts, occurs, even though no portion of any item of deduction or loss comprising the dual consolidated loss is double-dipped. In the case of interests in hybrid entity partnerships and hybrid entity grantor trusts, a portion of the dual consolidated loss attributable to an interest in such entity in many cases would be made available to offset income or gain of a direct or indirect owner of an interest in such hybrid entity, provided such interest is not a separate unit. This typically would occur because under foreign law the hybrid entity is taxed as a corporation (or otherwise at the entity level) and its net losses may be carried forward or carried back. A similar result may occur in the case of a separate unit owned indirectly through a non-hybrid entity partnership or a non-hybrid entity grantor trust because of timing and base differences between the laws of the United States and the foreign jurisdiction.

The IRS and Treasury believe this is an inappropriate result in many cases. For example, the IRS and Treasury believe that if there is no dilution of the domestic owner's interest in the separate unit, it is unlikely that any portion of the dual consolidated loss attributable to such separate unit can be put to a foreign use (other than through an election to consolidate or similar method, discussed below). Therefore, the proposed regulations include three new exceptions to the definition of a foreign use where there is no dilution of an interest in a separate unit. The new exceptions to foreign use apply to dual consolidated losses attributable to two types of separate units: (1) Interests in hybrid entity partnerships and interests in hybrid entity grantor trusts; and (2) separate units owned indirectly through partnerships and grantor trusts.

The first exception to foreign use provides that, in general, no foreign use shall be considered to occur with respect to a dual consolidated loss attributable to an interest in a hybrid entity partnership or a hybrid entity grantor trust, solely because an item of deduction or loss taken into account in computing such dual consolidated loss is made available, under the income tax laws of a foreign country, to offset or reduce, directly or indirectly, any item that is recognized as income or gain under such laws and is considered under U.S. tax principles to be an item of the direct or indirect owner of an interest in such hybrid entity that is not a separate unit.

The second exception to foreign use provides that, in general, no foreign use shall be considered to occur with respect to a dual consolidated loss attributable to or taken into account by a separate unit owned indirectly through a partnership or grantor trust solely because an item of deduction or loss taken into account in computing such dual consolidated loss is made available, under the income tax laws of a foreign country, to offset or reduce, directly or indirectly, any item that is recognized as income or gain under such laws and is considered under U.S. tax principles to be an item of a direct or indirect owner of an interest in such partnership or trust.

Finally, the proposed regulations provide a similar exception for combined separate units that include individual separate units to which one of the other dilution exceptions would apply, but for the separate unit combination rule.

The new exceptions to foreign use are subject to certain limitations, however. First, the exceptions will not apply if there has been a dilution of the interest in the separate unit. That is, the exception will not apply if during any taxable year the domestic owner's percentage interest in the separate unit, as compared to its interest in the separate unit as of the last day of the taxable year in which such dual consolidated loss was incurred, is reduced as a result of another person acquiring through sale, exchange, contribution or other means an interest in such partnership or grantor trust, unless the taxpayer demonstrates, to the satisfaction of the Commissioner, that the other person that acquired the interest in the partnership or grantor trust was a domestic corporation. The exceptions to foreign use should not apply when a person (other than a domestic corporation) acquires an interest in the separate unit because the dilution would typically result in an actual foreign use.

Second, the exceptions do not apply if the availability does not arise solely from the ownership in such partnership or trust and the allocation of the item of deduction or loss, or the offsetting by such deduction or loss, of an item of income or gain of the partnership or trust. For example, the exception does not apply in the case where the item of loss or deduction is made available through a foreign consolidation regime.

The IRS and Treasury request comments on the issues discussed above in connection with the availability component of the foreign use definition. Comments are specifically requested as to whether the dilution rules are appropriate and, if so, whether a *de minimis* exception should be provided.

9. Mirror Legislation Rule

Section 1.1503–2(c)(15)(iv) of the current regulations contains a *mirror legislation rule* that addresses legislation enacted by foreign jurisdictions that operates in a manner similar to the dual consolidated loss rules. This rule was designed to prevent the revenue gain resulting from the disallowance of the double-dip benefit of a dual consolidated loss from inuring solely to the foreign jurisdiction (to the detriment of the United States). Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986, at 1065–66 (J. Comm. Print 1987).

Congress recognized that mirror legislation in a foreign jurisdiction, in conjunction with a mirror legislation rule such as that contained in the current regulations, could result in the disallowance of a dual consolidated loss in both the United States and in the foreign jurisdiction. In such a case, Congress intended that Treasury pursue with the appropriate authorities in the foreign jurisdiction a bilateral agreement that would allow the use of the loss of a dual resident corporation to offset income of an affiliate in only one country. Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986, at 1066. The mirror rule was specifically held to be valid by the Court of Appeals for the Federal Circuit. *British Car Auctions, Inc.* v. *United States,* 35 Fed. Cl. 123 (1996), *aff'd without op.,* 116 F.3d 1497 (Fed. Cir. 1997).

The mirror legislation rule contained in the current regulations provides that if the laws of a foreign country deny the use of a loss of a dual resident corporation (or separate unit) to offset the income of another person because the dual resident corporation (or separate unit) is also subject to tax by another country on its worldwide income or on a residence basis, the loss is deemed to be used against the income of another person in such foreign country such that no (g)(2)(i) election can be made with respect to such loss. This rule is intended to prevent the foreign jurisdiction from enacting legislation that gives taxpayers no choice but to use the dual consolidated loss to offset income in the United States. This result is contrary to the general policy underlying the structure of the current regulations that provides taxpayers the choice of using the dual consolidated loss to either offset income

in the United States or income in the foreign jurisdiction (but not both).

As a result of the consistency rule (discussed below), the deemed use of a dual consolidated loss pursuant to the mirror legislation rule may also restrict the ability to use other dual consolidated losses to offset the income of domestic affiliates, even if such losses are not subject to the mirror legislation.

Subsequent to the issuance of the current regulations, several foreign jurisdictions enacted various forms of mirror legislation that, absent the mirror legislation rule, would have the effect of forcing certain taxpayers to use dual consolidated losses to offset income of domestic affiliates.

Given the relevant legislative history and *British Car Auctions,* the IRS and Treasury believe that the mirror legislation rule remains necessary. This is particularly true in light of the prevalence of mirror legislation in foreign jurisdictions. As a result, the proposed regulations retain the mirror legislation rule. The proposed regulations modify the mirror legislation rule, however, to address its proper application with respect to mirror legislation enacted subsequent to the issuance of the current regulations, and to modify its application to better take into account the policies underlying the consistency rule.

In general, the mirror legislation rule contained in the proposed regulations applies when the opportunity for a foreign use is denied because: (1) The loss is incurred by a dual resident corporation that is subject to income taxation by another country on its worldwide income or on a residence basis; (2) the loss may be available to offset income other than income of the dual resident corporation or separate unit under the laws of another country; or (3) the deductibility of any portion of a loss or deduction taken into account in computing the dual consolidated loss depends on whether such amount is deductible under the laws of another country.

The IRS and Treasury understand that there may be uncertainty as to the application of the mirror legislation rule in a given case when the mirror legislation is limited in its application. Mirror legislation may or may not apply to a particular dual resident corporation or separate unit depending on various factors, including the type of entity or structure that generates the loss, the ownership of the operation or entity that generates the loss, the manner in which the operation or entity is taxed in another jurisdiction, or the ability of the losses to be deducted in another jurisdiction. As a result, the proposed regulations clarify that the mere existence of mirror legislation, regardless of whether it applies to the particular dual resident corporation, may not result in a deemed foreign use. For example, see § 1.1503(d)–5(c) *Example 23.*

The proposed regulations also clarify that the absence of an affiliate in the foreign jurisdiction, or the failure to make an election to enable a foreign use, does not prevent the opportunity for a foreign use. Thus, for example, the mirror legislation rule may apply even if there are no affiliates of the dual resident corporation in the foreign jurisdiction or, even where there is such an affiliate, no election is made to consolidate.

As discussed below, the consistency rule is intended to promote uniformity and reduce administrative burdens. The IRS and Treasury believe that these concerns may not be significant, however, where there is only a deemed foreign use of a dual consolidated loss as a result of the mirror legislation rule. Accordingly, the mirror legislation rule contained in the proposed regulations provides that a deemed foreign use is not treated as a foreign use for purposes of applying the consistency rule.

10. Reasonable Cause Exception

The current regulations require various filings to be included on a timely filed tax return. In addition, taxpayers that fail to include such filings on a timely filed tax return must request an extension of time to file under § 301.9100–3.

The IRS and Treasury believe that requiring taxpayers to request relief for an extension of time to file under § 301.9100–3 results in an unnecessary administrative burden on both taxpayers and the Commissioner. The IRS and Treasury believe that a reasonable cause standard, similar to that used in other international provisions of the Code (such as sections 367(a) and 6038B), is a more appropriate and less burdensome means for taxpayers to cure compliance defects under section 1503(d). As a result, the proposed regulations adopt a reasonable cause standard. Moreover, extensions of time under § 301.9100–3 will not be granted for filings under these proposed regulations. See § 301.9100–1(d).

Under the reasonable cause standard, if a person that is permitted or required to file an election, agreement, statement, rebuttal, computation, or other information under the regulations fails to make such a filing in a timely manner, such person shall be considered to have satisfied the timeliness requirement with respect to such filing if the person is able to demonstrate, to the satisfaction of the Director of Field Operations having jurisdiction of the taxpayer's tax return for the taxable year, that such failure was due to reasonable cause and not willful neglect. Once the person becomes aware of the failure, the person must make this demonstration and comply by attaching all the necessary filings to an amended tax return (that amends the tax return to which the filings should have been attached), and including a written statement explaining the reasons for the failure to comply.

In determining whether the taxpayer has reasonable cause, the Director of Field Operations shall consider whether the taxpayer acted reasonably and in good faith. Whether the taxpayer acted reasonably and in good faith will be determined after considering all the facts and circumstances. The Director of Field Operations shall notify the person in writing within 120 days of the filing if it is determined that the failure to comply was not due to reasonable cause, or if additional time will be needed to make such determination.

C. Operating Rules—§ 1.1503(d)–2

1. Application of Rules to Multiple Tiers of Separate Units

Section 1.1503–2(b)(3) of the current regulations provides that if a separate unit of a domestic corporation is owned indirectly through another separate unit, limitations on the dual consolidated losses of the separate units apply as if the upper-tier separate unit were a subsidiary of the domestic corporation, and the lower-tier separate unit were a lower-tier subsidiary. In light of changes made to other provisions of the proposed regulations, this rule is no longer necessary. As a result, the proposed regulations do not contain this provision.

2. Tainted Income

Section 1.1503–2(e) of the current regulations prevents the dual consolidated loss of a dual resident corporation that ceases being a dual resident corporation from offsetting tainted income of such corporation. Subject to certain exceptions, tainted income is defined as income derived from assets that are acquired by a dual resident corporation in a nonrecognition transaction, or as a contribution to capital, at any time during the three taxable years immediately preceding the tax year in which the corporation ceases to be a dual resident corporation, or at any time thereafter. The current regulations also contain a rule that,

absent proof to the contrary, presumes an amount of income generated during a taxable year as being tainted income. Such amount is the corporation's taxable income for the year multiplied by a fraction, the numerator of which is the fair market value of the tainted assets at the end of the year, and the denominator of which is the fair market value of the total assets owned by each domestic corporation at the end of each year.

The tainted income rule is intended to prevent taxpayers from obtaining a double-dip with respect to a dual consolidated loss by stuffing assets into a dual resident corporation after, or in certain cases before, it terminates its status as a dual resident corporation. A double-dip may be obtained in such case because the income that offsets the dual consolidated loss generally would not be subject to tax in the foreign jurisdiction after the dual resident status of the corporation terminates.

The proposed regulations retain the tainted income rule, subject to the following modifications. The proposed regulations clarify that tainted income includes both income or gain recognized on the sale or other disposition of tainted assets and income derived as a result of holding tainted assets. The proposed regulations also modify the rule defining the amount of income presumed to be tainted income. The proposed regulations clarify that the presumptive rule only applies to income derived as a result of holding tainted assets; income or gain recognized on the sale or other disposition of tainted assets should be readily determinable such that the presumptive rule need not apply. The proposed regulations also provide that the numerator in the presumptive income fraction is the fair market value of tainted assets determined at the time such assets were acquired by the corporation, as opposed to being determined at the end of the taxable year. The IRS and Treasury believe that this approach is more administrable because value should be more readily determinable on the acquisition date. In addition, this approach does not require tainted assets to be traced over time.

D. Special Rules for Accounting for Dual Consolidated Losses—§ 1.1503(d)–3

1. Items Attributable to a Separate Unit

(a) Overview

Section 1.1503–2(d)(1)(ii) of the current regulations provides a rule for determining whether a separate unit has a dual consolidated loss. Under this rule, the separate unit must compute its taxable income as if it were a separate domestic corporation that is a dual resident corporation, using only those items of income, expense, deduction, and loss that are *otherwise attributable to* such separate unit.

The current regulations do not provide any guidance for determining the items of income, gain, deduction and loss that are otherwise attributable to a separate unit. The IRS and Treasury understand that the absence of such guidance has resulted in considerable uncertainty. For example, commentators have questioned whether all or any portion of the interest expense of a domestic owner is attributable to a separate unit.

It is also unclear the extent to which a separate unit is treated as a separate domestic corporation under this rule. For example, commentators have questioned whether a transaction between a separate unit and its owner that is generally disregarded for federal tax purposes (for example, interest paid by a disregarded entity on an obligation held by its owner) can create an item of income, gain, deduction or loss for purposes of calculating a dual consolidated loss.

Commentators have also questioned whether each separate unit in a tiered separate unit structure (that is, where one separate unit owns another separate unit) must separately determine whether it has a dual consolidated loss, or whether such separate units are combined for this purpose.

The proposed regulations provide more definitive rules for determining the amount of a dual consolidated loss (or income) of a separate unit. These rules apply solely for purposes of section 1503(d) and, therefore, do not apply for other purposes of the Code (for example, section 987). The proposed regulations first provide general rules that apply for purposes of calculating dual consolidated losses (or income) for both foreign branch separate units and hybrid entity separate units. The proposed regulations provide additional rules for calculating the dual consolidated losses (or income) of foreign branch separate units, hybrid entity separate units, and separate units owned indirectly through other separate units, non-hybrid entity partnerships, or non-hybrid entity grantor trusts. Finally, the proposed regulations provide special rules that apply to tiered separate units, combined separate units, dispositions of separate units, and the treatment of certain income inclusions on stock.

(b) General Rules

The proposed regulations clarify that only existing tax accounting items of income, gain, deduction and loss (translated into U.S. dollars) should be taken into account for purposes of calculating the dual consolidated loss of a separate unit. In other words, treating a separate unit as a separate domestic corporation does not cause items that are disregarded for U.S. tax purposes (for example, interest paid by a disregarded entity on an obligation held by its owner) to be regarded for purposes of calculating a separate unit's dual consolidated loss.

The proposed regulations also clarify that in the case of tiered separate units, each separate unit must calculate its own dual consolidated loss and no item of income, gain, deduction and loss may be taken into account in determining the taxable income or loss of more than one separate unit. Similarly, the proposed regulations clarify that items of one separate unit cannot offset or otherwise be taken into account by another separate unit for purposes of calculating a dual consolidated loss (unless the separate unit combination rule applies). These rules ensure that the dual consolidated loss calculation is computed separately for each separate unit, which is necessary to prevent deductions and losses from being double-dipped.

(c) Foreign Branch Separate Unit

The proposed regulations provide that the asset use and business activities principles of section 864(c) apply for purposes of determining the items of income, gain, deduction (other than interest) and loss that are taken into account in determining the taxable income or loss of a foreign branch separate unit. For this purpose, the trading safe harbors of section 864(b) do not apply for purposes of determining whether a trade or business exists within a foreign country or whether income may be treated as effectively connected to a foreign branch separate unit. In addition, the limitations on effectively connected treatment of foreign source related-party income under section 864(c)(4)(D) do not apply.

The proposed regulations further provide that the principles of § 1.882–5, as modified, apply for purposes of determining the items of interest expense that are taken into account in determining the taxable income or loss of a foreign branch separate unit. The rules provide that a taxpayer must use U.S. tax principles to determine both the classification and amounts of the assets and liabilities when the actual worldwide ratio is used. The valuation of assets must be determined under the same methodology the taxpayer uses under § 1.861–9T(g) for purposes of

allocating and apportioning interest expense under section 864(e). Further, and solely for these purposes, the domestic owner of the foreign branch separate unit is treated as a foreign corporation, the foreign branch separate unit is treated as a trade or business within the United States, and assets other than those of the foreign branch separate unit are treated as assets that are not U.S. assets. Accordingly, only the interest expense of the domestic owner of the foreign branch separate unit is subject to allocation for purposes of computing the dual consolidated loss. The IRS and Treasury believe that the application of these principles will better harmonize the borrowing rate and effective interest costs that both the United States and the foreign country take into account in determining the dual consolidated loss, as compared to the use of § 1.861–9T.

The IRS and Treasury believe that taking items into account in determining the taxable income or loss of a foreign branch separate unit under these standards is administrable because of the existing guidance provided under these provisions. In addition, the IRS and Treasury believe that this approach furthers the policy underlying section 1503(d) because it serves as a reasonable approximation of the items that the foreign jurisdiction may recognize as being taken into account in determining the taxable income or loss of a branch or permanent establishment of a non-resident corporation in such jurisdiction. Nevertheless, the IRS and Treasury solicit comments on these provisions and whether other administrable approaches (that approximate the items taken into account by the foreign jurisdiction) should be considered.

(d) Hybrid Entity

The proposed regulations provide rules for attributing items of income, gain, deduction and loss to a hybrid entity. These rules are necessary to determine the items that are attributable to an interest in a hybrid entity that constitutes a separate unit.

The proposed regulations provide that, in general, the items of income, gain, deduction and loss that are attributable to a hybrid entity are those items that are properly reflected on its books and records, as adjusted to conform to U.S. tax principles. The principles of § 1.988–4(b)(2) apply for purposes of making this determination. These principles generally provide that the determination is a question of fact and must be consistently applied. These principles also provide that the Commissioner may allocate items of income, gain, deduction and loss between the domestic corporation (and intervening entities, if any) that own the hybrid entity separate unit, and the hybrid entity separate unit, if such items are not properly reflected on the books and records of the hybrid entity.

The proposed regulations also provide that if a hybrid entity owns an interest in either a non-hybrid entity partnership or a non-hybrid entity grantor trust, items of income, gain, deduction and loss that are properly reflected on the books and records of such partnership or grantor trust (under the principles of § 1.988–4(b)(2), as adjusted to conform to U.S. tax principles), are treated as being properly reflected on the books and records of the hybrid entity. However, such items are treated as being properly reflected on the books and records of the hybrid entity only to the extent they are taken into account by the hybrid entity under principles of subchapter K, chapter 1 of the Code, or the principles of subpart E, subchapter J, chapter 1 of the Code, as the case may be.

The IRS and Treasury believe that attributing items to a hybrid entity under this standard is administrable because it is generally consistent with the accounting treatment of the items. The IRS and Treasury also believe that this standard furthers the policy underlying section 1503(d) because the items that are properly reflected on the books and records of the hybrid entity (as adjusted to conform to U.S. tax principles) represent the best approximation of items that the foreign jurisdiction would recognize as being attributable to the entity. For example, it is likely that a foreign jurisdiction would recognize and take into account as being attributable to a hybrid entity the interest expense properly reflected on the books and records of the hybrid entity; however, it is unlikely that a foreign jurisdiction would recognize, and take into account as being attributable to a hybrid entity, interest expense of a domestic corporation that owns an interest in the hybrid entity.

(e) Interest in a Disregarded Hybrid Entity

The proposed regulations provide that, except to the extent otherwise provided under special rules (discussed below), items that are attributable to an interest in a hybrid entity that is disregarded as an entity separate from its owner are those items that are attributable to such hybrid entity itself.

(f) Interests in Hybrid Entity Partnerships, Interests in Hybrid Entity Grantor Trusts, and Separate Units Owned Indirectly Through Partnerships and Grantor Trusts

The proposed regulations provide rules for determining the extent to which: (1) Items of income, gain, deduction and loss that are attributable to a hybrid entity that is a partnership are attributable to an interest in such hybrid entity partnership; and (2) items of income, gain, deduction and loss of a separate unit that is owned indirectly through a partnership are taken into account by a partner in such partnership. These items are taken into account to the extent they are includible in the partner's distributive share of the partnership income, gain, deduction or loss, as determined under the rules and principles of subchapter K, chapter 1 of the Code.

The proposed regulations also provide rules for determining the extent to which: (1) Items of income, gain, deduction and loss attributable to a hybrid entity that is a grantor trust are attributable to an interest in such hybrid entity grantor trust; and (2) the items of income, gain, deduction and loss of a separate unit owned indirectly through a grantor trust are taken into account by an owner of such grantor trust. These items are taken into account to the extent they are attributable to trust property that the holder of the trust interest is treated as owning under the rules and principles of subpart E, subchapter J, chapter 1 of the Code.

(g) Allocation of Items Between Certain Indirectly Owned Separate Units

The proposed regulations provide special rules for allocating items of income, gain, deduction and loss to foreign branch separate units that are owned, directly or indirectly (other than through a hybrid entity separate unit) by hybrid entities. In such a case, only items that are attributable to the hybrid entity that owns such separate unit (and intervening entities, if any, that are not themselves separate units) are taken into account.

This rule is intended to minimize the items taken into account by a foreign branch separate unit that the foreign jurisdiction would not recognize as being so taken into account. This may occur in these cases because the foreign jurisdiction taxes the hybrid entity as a corporation (or otherwise at the entity level) and therefore likely would not take into account items of its owner. For example, if a domestic corporation indirectly owns a Country X foreign branch separate unit through a Country

Y hybrid entity, Country X likely would take into account items of the Country Y hybrid entity as being items of the Country X branch. It is unlikely, however, that Country X would take into account items of the domestic corporation as items of the Country X branch because Country X views the owner of the Country X branch (the Country Y hybrid entity) as a corporation. Therefore, only the items of income, gain, deduction and loss of the Country Y hybrid entity (and not items of the domestic corporation) should be taken into account for purposes of determining the dual consolidated loss of the Country X branch.

The proposed regulations also provide that only income and assets of such hybrid entity are taken into account for purposes of applying the principles of section 864(c) and § 1.882–5, as modified, in determining the items taken into account by the foreign branch separate unit; thus, other income and assets of the domestic owner, for example, are not taken into account for these purposes. This rule is also intended to ensure that the principles under these provisions are applied in a way that best approximates the items that the foreign jurisdiction would recognize as being taken into account by a taxable presence in such jurisdiction.

Finally, the proposed regulations provide that items generally attributable to an interest in a hybrid entity are not taken into account to the extent they are taken into account by a foreign branch separate unit owned, directly or indirectly (other than through a hybrid entity separate unit), by the hybrid entity. This rule prevents two or more separate units from taking into account the same item of income, gain, deduction or loss under different rules.

(h) Combined Separate Units

As discussed above, the proposed regulations combine separate units owned, directly or indirectly, by a single domestic corporation, provided certain requirements are satisfied. Because different rules may apply for purposes of attributing items to individual separate units that may be combined into a single separate unit, special rules are necessary to attribute items to combined separate units.

The proposed regulations provide that in the case of a combined separate unit, items are first attributable to, or otherwise taken into account by, the individual separate units composing the combined separate unit, without regard to the combination rule. The combined separate unit then takes into account all of the items attributable to, or taken into account by, the individual separate units that compose such combined separate unit.

(i) Gain or Loss Recognized on Dispositions of Separate Units

The current regulations do not indicate whether items of income, gain, deduction and loss recognized on the sale or disposition of a separate unit, or of an interest in a partnership or grantor trust through which a separate unit is indirectly owned, is attributable to or taken into account by such separate unit for purposes of calculating the dual consolidated loss of the separate unit for the year of the sale (or for purposes of reducing the amount of recapture as a result of a triggering event).

The IRS and Treasury believe that it is appropriate to take into account items of income, gain, deduction and loss recognized on these dispositions. Thus, the proposed regulations provide that items of income, gain, deduction and loss recognized on the disposition of a separate unit (or an interest in a partnership or grantor trust that directly or indirectly owns a separate unit), are attributable to or taken into account by the separate unit to the extent of the gain or loss that would have been recognized had such separate unit sold all its assets in a taxable exchange, immediately before the disposition of the separate unit, for an amount equal to their fair market value. The proposed regulations clarify that for this purpose items of income and gain include loss recapture income or gain under section 367(a)(3)(C) or 904(f)(3).

The proposed regulations also address situations where more than one separate unit is disposed of in the same transaction and items of income, gain, deduction and loss recognized on such disposition are attributable to more than one separate unit. In such a case, items of income, gain, deduction and loss are attributable to or taken into account by each such separate unit based on the gain or loss that would have been recognized by each separate unit if it had sold all of its assets in a taxable exchange, immediately before the disposition of the separate unit, for an amount equal to their fair market value.

(j) Income Inclusion on Stock

The current regulations do not indicate whether an amount included in income arising from the ownership of stock in a foreign corporation (income inclusion) is attributable to or taken into account by a separate unit that owns the stock that gave rise to the income inclusion. For example, if a domestic corporation has a section 951(a) inclusion attributable to stock of a controlled foreign corporation that is owned by a hybrid entity separate unit, it is not clear under the current regulations whether such income inclusion is taken into account for purposes of calculating the dual consolidated loss of the hybrid entity separate unit.

The IRS and Treasury believe that, solely for purposes of applying the dual consolidated loss rules, it is appropriate to treat income inclusions arising from the ownership of stock in the same manner that dividend income is treated. Accordingly, the proposed regulations provide that income inclusions are taken into account for purposes of calculating the dual consolidated loss of a separate unit if an actual dividend from such foreign corporation would have been so taken into account.

(k) Section 987 Gain or Loss

Section 987 provides that if a taxpayer has one or more qualified business units with a functional currency other than the dollar, the taxpayer must make proper adjustments to take into account foreign currency gain or loss on certain transfers of property between such qualified business units.

In 1991, the IRS and Treasury issued proposed regulations under section 987 that included rules for determining the amount of foreign currency gain or loss recognized on certain transfers of property between qualified business units. On April 3, 2000, the IRS and Treasury issued Notice 2000–20 (2000–14 I.R.B. 851) announcing that the IRS and Treasury intend to review and possibly replace the proposed regulations issued under section 987. The IRS and Treasury have opened a regulations project under section 987 and expect to issue new section 987 regulations in the future.

The current regulations do not provide specific rules that indicate whether section 987 gains or losses of a domestic owner are attributable to, or taken into account by, a separate unit for purposes of calculating the separate unit's dual consolidated loss. Because the IRS and Treasury have an open regulations project under section 987 and expect to issue new regulations under section 987, the IRS and Treasury do not believe it is appropriate to address this issue in the proposed regulations. The IRS and Treasury request comments on whether section 987 gains and losses of a domestic owner should be attributable to, or taken into account by, a separate unit, particularly with respect to section 987 gains and losses attributable to, or taken into account by, separate units owned indirectly through hybrid entity separate units.

2. Effect of a Dual Consolidated Loss

Section 1.1503–2(d)(2) of the current regulations provides that if a dual resident corporation has a dual consolidated loss that is subject to the general rule restricting it from offsetting the income of a domestic affiliate, the consolidated group of which the dual resident corporation is a member must compute its taxable income without taking into account the items of income, gain, deduction or loss taken into account in computing the dual consolidated loss. The current regulations contain a similar rule for separate units.

These rules do not exclude only the dual consolidated loss in computing taxable income, but instead provide that none of the gross tax accounting items that compose the dual consolidated loss are taken into account. While this approach has the same effect on net income as would excluding only the dual consolidated loss, removing all gross items of income, gain, deduction and loss may have a distortive effect on other federal tax calculations.

The IRS and Treasury believe that this distortive effect will be minimized if only the dual consolidated loss itself is not taken into account. Accordingly, the proposed regulations provide that only a pro rata portion of each item of deduction and loss taken into account in computing the dual consolidated loss are excluded in computing taxable income. In addition, to the extent that a dual consolidated loss is carried over or carried back and, subject to § 1.1502–21(c) (as modified in the proposed regulations), is made available to offset income generated by the dual resident corporation or separate unit, the proposed regulations treat items composing the dual consolidated loss as being used on a pro rata basis.

3. Basis Adjustments

Section 1.1503–2(d)(3) of the current regulations contains special basis adjustment rules that override the normal investment adjustment rules under § 1.1502–32 for stock of affiliated dual resident corporations or affiliated domestic owners owned by other members of the consolidated group. These rules provide that stock basis is reduced by a dual consolidated loss, even though such loss is subject to the general limitation on the use of a dual consolidated loss to offset income of a domestic affiliate. To avoid reducing the stock basis a second time for the same dual consolidated loss, the rules also provide that no negative adjustment shall be made for the amount of dual consolidated loss subject to the general limitation that is subsequently absorbed in a carryover or carryback year. Finally, the rules provide that there is no basis increase for recapture income recognized as a result of a triggering event. Similar rules apply to separate units arising from ownership of an interest in a partnership. These special basis adjustment rules are generally intended to prevent an indirect deduction of a dual consolidated loss.

The proposed regulations retain the special stock basis adjustment rules, as modified, to prevent the indirect use of a dual consolidated loss. In addition, the proposed regulations retain the rules addressing the effect of a dual consolidated loss on a partner's adjusted basis in its partnership interest in cases where the partnership interest is a separate unit, or a separate unit is owned indirectly through a partnership. These rules require the partner to adjust its basis in accordance with the principles of section 705, subject to certain modifications.

The IRS and Treasury recognize that these rules may lead to harsh results, particularly in light of the fact that the indirect use of the dual consolidated loss would only arise through the disposition of the stock of a dual resident corporation (or a partnership interest) that may not occur for many years after the dual consolidated loss is incurred. In addition, upon such subsequent disposition the resulting deduction or loss would generally be capital in nature, and the definition of a dual consolidated loss excludes capital losses incurred by the dual resident corporation or separate unit. As a result, the IRS and Treasury request comments regarding concerns over these types of indirect uses and whether the special basis rules should be retained. These comments should consider whether the policies underlying section 1503(d) require basis adjustment rules that differ from other basis adjustment rules that apply to non-capital, non-deductible expenses (for example, rules under sections 705 and 1367, and § 1.1502–32(b))

E. Exceptions to the Domestic Use Limitation Rule—§ 1.1503(d)–4

1. No Possibility of Foreign Use

The proposed regulations provide a new exception to the general rule prohibiting the domestic use of a dual consolidated loss. To qualify under this exception, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must: (1) Demonstrate, to the satisfaction of the Commissioner, that there can be no foreign use of the dual consolidated loss at any time; and (2) prepare a statement and attach it to its tax return for the taxable year in which the dual consolidated loss is incurred. This statement must include an analysis, in reasonable detail and specificity, supported with an official or certified English translation of the relevant provisions of foreign law, of the treatment of the losses and deductions composing the dual consolidated loss, and the reasons supporting the conclusion that there cannot be a foreign use of the dual consolidated loss by any means at any time.

This exception is intended to replace the exception to the definition of a dual consolidated loss contained in § 1.1503–2(c)(5)(ii)(A) of the current regulations. Thus, under the proposed regulations the question of foreign use is not relevant to the definition of a dual consolidated loss; the issue will instead be whether an exception to the domestic use limitation applies. Consistent with the exception to the definition of a dual consolidated loss contained in the current regulations, the IRS and Treasury believe that this new exception to the domestic use limitation rule contained in the proposed regulations will apply only in rare and unusual circumstances due to the definition of foreign use and general principles of foreign law. For example, if the foreign jurisdiction recognizes any item of deduction or loss composing the dual consolidated loss (regardless of whether recognized currently or deferred, for example, by being reflected in the basis of assets), and such item is available for foreign use through a form of consolidation, carryover or carryback, or a transaction (for example, a merger, basis carryover transaction, or entity classification election), then the exception will not apply.

2. Domestic Use Election and Agreement

As discussed above, the current regulations provide an exception to the general rule prohibiting the use of a dual consolidated loss to offset the income of a domestic affiliate if a (g)(2)(i) election is made. Under this exception, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must enter into an agreement ((g)(2)(i) agreement) certifying, among other things, that no portion of the deductions or losses taken into account in computing the dual consolidated loss have been, or will be, used to offset the income of any other person under the income tax laws of a foreign country.

The proposed regulations retain this elective exception, with modifications,

and refer to it as a *domestic use election.* In addition, the proposed regulations refer to the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as the case may be, that makes a domestic use election as an *elector.* In order to elect relief under this exception, the proposed regulations require the elector to enter into a domestic use agreement, which is similar to the (g)(2)(i) agreement required by the current regulations.

3. Certification Period

Under the current regulations, a (g)(2)(i) agreement generally provides that if there is a triggering event during the 15-year period following the year in which the dual consolidated loss was incurred (certification period), the taxpayer must recapture and report as income the amount of the dual consolidated loss, and pay an interest charge. See § 1.1503–2(g)(2)(iii)(A).

Commentators have questioned whether under the current regulations the 15-year certification period applies only to the use triggering event, or whether it applies to all triggering events. These commentators note that, under this interpretation, triggering events other than use could occur after the expiration of the certification period. The IRS and Treasury believe that the certification period applies to all triggering events. Accordingly, the proposed regulations clarify that all triggering events are subject to the certification period and, therefore, a triggering event cannot occur after the expiration of the certification period.

The IRS and Treasury also believe that a 15-year certification period is not required to deter and monitor double-dipping of losses and deductions. Moreover, the IRS and Treasury believe that requiring taxpayers to comply with the dual consolidated loss regulations, including the need to monitor potential triggering events and to comply with the various filing requirements, for a 15-year period is unnecessarily burdensome to both taxpayers and the Commissioner. As a result, the proposed regulations reduce the certification period from 15 years to seven years with respect to a domestic use election.

4. Consistency Rule

Section 1.1503–2(g)(2)(ii) of the current regulations contains a consistency rule. Under this rule, if any losses, expenses, or deductions taken into account in computing the dual consolidated loss of a dual resident corporation or separate unit are used to offset the income of another person under the laws of a single foreign country while the dual resident corporation or separate unit is owned by the domestic owner or member of the consolidated group, the losses, expenses, or deductions taken into account in computing the dual consolidated losses of other dual resident corporations or separate units owned by the same consolidated group (or other separate units owned by the unaffiliated domestic owner of the first separate unit) in that year are deemed to offset income of another person in the same foreign country. This rule only applies, however, if such losses, expenses, or deductions are recognized in the foreign country in the same taxable year. Moreover, this rule does not apply if, under foreign law, the other dual resident corporation or separate unit cannot use its losses, expenses, or deductions to offset income of another person in such taxable year.

The consistency rule is intended to ensure that a consolidated group or domestic owner treats uniformly all dual consolidated losses of dual resident corporations or separate units that it owns that are available for use in a foreign country in a given year. The rule is also intended to minimize the administrative burden associated with identifying the items of loss or deduction of a particular dual consolidated loss that are used to offset income of another person under the income tax laws of a foreign country.

Commentators have questioned the need for the consistency rule, noting that it can lead to harsh results.

The IRS and Treasury believe that, despite concerns raised by commentators, the consistency rule continues to be necessary to promote the uniform treatment of dual consolidated losses of dual resident corporations and separate units owned by the consolidated group or domestic owner, and to minimize administrative burdens. As a result, the proposed regulations retain the consistency rule, as modified.

In addition, the proposed regulations clarify that the consistency rule only applies to a dual consolidated loss that is subject to a domestic use agreement (other than a new domestic use agreement). In other words, the proposed regulations clarify that the consistency rule does not apply to a foreign use of a dual consolidated loss that occurs subsequent to a triggering event that terminates the domestic use agreement filed with respect to such dual consolidated loss.

5. Restrictions on Domestic Use Elections

The current regulations do not explicitly address situations where a triggering event (discussed below) with respect to a dual consolidated loss occurs in the year in which the dual consolidated loss is incurred. The proposed regulations, however, make clear that a domestic use election cannot be made for a dual consolidated loss incurred in the same year in which a triggering event with respect to such loss occurs.

The current regulations also do not explicitly address the application of section 953(d)(3) (limiting losses of foreign insurance companies that elect to be treated as domestic corporations). The proposed regulations, however, provide that a foreign insurance company that has elected to be treated as a domestic corporation pursuant to section 953(d) may not make a domestic use election. This rule is consistent with section 953(d)(3), which broadly prohibits regulatory exceptions to the general prohibition on the domestic use of dual consolidated losses in such cases.

6. Triggering Events

(a) In General

Section 1.1503–2(g)(2)(iii) of the current regulations provides rules relating to certain events which require the recapture of previously allowed dual consolidated losses. Under these rules, if a consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as the case may be, makes a (g)(2)(i) election, the dual resident corporation or separate unit must recapture, and the consolidated group, unaffiliated dual resident corporation or unaffiliated domestic owner must report as income the amount of the dual consolidated loss (and pay an interest charge) if a triggering event occurs during the certification period. Taxpayers may, however, rebut these triggering events upon making certain showings to the satisfaction of the Commissioner.

The proposed regulations generally retain the triggering event rules contained in the proposed regulations, as modified, if a taxpayer makes a domestic use election.

(b) *Carryover of Losses, Deductions, and Basis*

Under the current regulations, certain asset transfers by a dual resident corporation that result, under the laws of a foreign country, in a carryover of losses, expenses, or deductions are triggering events. The current

regulations contain a similar rule for such transfers by separate units. See § 1.1503–2(g)(2)(iii)(A)(*4*) and (*5*).

The proposed regulations retain these triggering events, as modified, and combine them into a single triggering event. The proposed regulations also clarify that certain asset transfers that result in the carryover of basis in assets under the laws of a foreign country also qualify as triggering events. This is the case because asset basis generally will, at some point in the future, be converted into a loss or deduction as a result of the depreciation, amortization or disposition of the asset. Accordingly, under foreign law, a transaction that results in the carryover of asset basis generally has the same effect as a transaction that results in the carryover of losses or deductions and therefore should be treated similarly.

(c) Disposition by a Separate Unit or Dual Resident Corporation of an Interest in a Separate Unit or Stock of a Dual Resident Corporation

The current regulations provide that certain sales or other dispositions of 50 percent or more of the assets of a separate unit or dual resident corporation are deemed to be triggering events. See § 1.1503–2(g)(2)(iii)(A)(*4*) and (*5*). For this purpose, an interest in a separate unit and stock of a dual resident corporation are treated as assets of the separate unit or dual resident corporation. One commentator stated that, as a result of this rule, the disposition of an interest in one separate unit by another separate unit may inappropriately result in a triggering event for both separate units. Accordingly, the commentator suggested that the disposition of the interest in the lower-tier separate unit should not result in a triggering event with respect to dual consolidated losses of the separate unit that disposed of such interest.

The IRS and Treasury believe that the disposition of an interest in a lower-tier separate unit (or the shares of a dual resident corporation) by an upper-tier separate unit (or dual resident corporation) typically will not result in the carryover of the dual consolidated loss of the upper-tier separate unit (or dual resident corporation) under the laws of the foreign jurisdiction such that it could be put to a foreign use. Therefore, the proposed regulations provide that for purposes of determining whether 50 percent or more of the separate unit's or dual resident corporation's assets is disposed of, an interest in a separate unit and the stock of a dual resident corporation shall not be treated as assets of the separate unit or dual resident corporation making such disposition. The IRS and Treasury request comments as to other assets the disposition of which should be excluded from the 50 percent test under this triggering event.

(d) Fifty Percent Threshold for Asset Transfer Triggering Events

Section 1.1503–2(g)(2)(iii)(A)(*7*) of the current regulations provides that a triggering event occurs if, within a 12-month period, the domestic owner of a separate unit disposes of 50 percent or more (by voting power or value) of the interest in the separate unit that was owned by the domestic owner on the last day of the taxable year in which the dual consolidated loss was incurred. As noted above, the current regulations also provide that a triggering event occurs if a domestic owner of a separate unit transfers assets of the separate unit in a transaction that results, under the laws of a foreign country, in a carryover of the separate unit's losses, expenses, or deductions. Section 1.1503–2(g)(2)(iii)(A)(*5*). Moreover, the current regulations deem such an asset transfer to be a triggering event if 50 percent or more of the separate unit's assets (measured by fair market value at the time of transfer) are disposed of within a 12-month period.

One commentator noted that the two triggering events discussed above operate differently in that any transfer of assets of a separate unit may constitute a triggering event, while the transfer of an interest in a separate unit constitutes a triggering event only if a 50 percent threshold is met.

The IRS and Treasury believe that these two triggering events should operate in a consistent manner. As a result, the proposed regulations provide that both the asset transfer triggering event and the separate unit interest transfer triggering event occur only if a 50 percent threshold is satisfied. It should be noted, however, that transfers of assets of a dual resident corporation or separate unit, and transfers of interests of separate units, in many cases will subsequently result in a foreign use triggering event, even though the 50 percent threshold for the asset transfer triggering event and the separate unit interest transfer triggering event are not satisfied. For example, if a domestic owner of an interest in a hybrid entity separate unit transfers 25 percent of its interest in the hybrid entity separate unit to a foreign corporation, all or a portion of a dual consolidated loss attributable to such separate unit in a prior year may be available to offset subsequent income of the owner of the transferred interest (that is not a separate unit after such transfer because it is held by a foreign corporation) and therefore may result in a foreign use triggering event.

(e) S Corporation Conversion

Under the current regulations, if either an affiliated dual resident corporation or an affiliated domestic owner that has filed a (g)(2)(i) agreement with respect to a dual consolidated loss elects to be an S corporation pursuant to section 1362(a), such election results in a triggering event because it terminates the consolidated group and the affiliated dual resident corporation or affiliated domestic owner ceases to be a member of a consolidated group. See § 1.1503–2(g)(2)(iii)(A)(*2*). The current regulations do not, however, address an election to be an S corporation by either an unaffiliated dual resident corporation or an unaffiliated domestic owner that has made a (g)(2)(i) election.

The IRS and Treasury believe that the election by an unaffiliated dual resident corporation or unaffiliated domestic owner to be an S corporation should be treated in the same manner as an election by an affiliated dual resident corporation or affiliated domestic owner that is a member of a consolidated group. Accordingly, the proposed regulations add as a new triggering event the election of either an unaffiliated dual resident corporation or unaffiliated domestic owner to be an S corporation.

(f) Consolidated Group Remains in Existence

As stated above, and subject to exceptions, the current regulations provide that a triggering event occurs with respect to a dual consolidated loss of an affiliated dual resident corporation or affiliated domestic owner if such dual resident corporation or affiliated domestic owner ceases to be a member of the consolidated group of which it was a member when the dual consolidated loss was incurred. The current regulations also provide that an affiliated dual resident corporation or affiliated domestic owner is considered to cease to be a member of a consolidated group if the consolidated group ceases to exist (group termination triggering event) because, for example, the common parent is no longer in existence. Section 1.1503–2(g)(2)(iii)(A)(*2*).

One commentator stated that language contained in Revenue Procedure 2000–42 (2000–2 C.B. 394) may imply that there is a group termination triggering event if the common parent of a consolidated group that made a (g)(2)(i) election ceases to exist, or is a party to

a reverse acquisition, even though the consolidated group remains in existence. This interpretation is contrary to the principles underlying the triggering events. Accordingly, the proposed regulations clarify that such transactions do not constitute group termination triggering events. See § 1.1503(d)–5(c) *Example 47.*

7. Rebuttal of Triggering Events

Under the current regulations, taxpayers may rebut all but two of the triggering events such that there is no dual consolidated loss recapture (or related interest charge) as a result of a putative triggering event. In general, under the current regulations, a triggering event is rebutted if the taxpayer demonstrates to the satisfaction of the Commissioner that, depending on the triggering event, either: (1) The losses, expenses or deductions of the dual resident corporation (or separate unit) cannot be used to offset income of another person under the laws of a foreign country or; (2) the transfer of assets did not result in a carryover under foreign law of the losses, expenses, or deductions of the dual resident corporation (or separate unit) to the transferee of the assets. See § 1.1503–2(g)(2)(iii)(A)(*2*) through (*7*). The policies underpinning the dual consolidated loss rules do not require recapture or an interest charge in such cases because there is no opportunity for any portion of the dual consolidated loss to be used to offset income of any other person under the income tax laws of a foreign country.

The rebuttal rules impose a standard of proof on taxpayers that in many cases is difficult and burdensome to meet, even though there may be little likelihood that any portion of the dual consolidated loss could be used to offset the income of any other person under the income tax laws of a foreign country. For example, demonstrating that no portion of the dual consolidated loss can be used by another person as a result of typical loss carryover transactions under foreign law may not satisfy the burden if there is some potential that any portion of losses or deductions composing the dual consolidated loss could be so used as a result of a transaction that is rare, commercially impractical, or not reasonably foreseeable. In addition, because there are often significant differences between U.S. and foreign law, ruling out the various types of transactions that under U.S. law would allow all or a portion of the dual consolidated loss to be used by another person also may not be sufficient to rebut a triggering event.

Commentators have noted that under the current regulations it may not be possible to rebut certain triggering events if the tax basis of a single asset carries over to another person under foreign law, even though as a result of the transaction recognized losses and accrued deductions generally do not carry over to another person under foreign law. This is the case because the person that receives the carryover asset basis may at some point in the future enjoy the benefit of a loss or deduction as a result of the depreciation, amortization or disposition of the asset. As a result, the carryover of a nominal amount of asset tax basis causes the entire dual consolidated loss to be recaptured. Similar issues arise in connection with assumptions of liabilities that, for example, result in deductions for U.S. tax purposes on an accrual basis, but are deductible under the laws of the foreign jurisdiction at a later time when paid. This result is consistent with the *all or nothing* principle, discussed below.

The IRS and Treasury recognize that in some of these cases the use of a portion of a dual consolidated loss may be denied in both the United States and the foreign jurisdiction. Further, commentators have stated that denying a loss or deduction from offsetting income in both the United States and the foreign jurisdiction generally is inconsistent with the principles underlying section 1503(d) because the statute's purpose is to prevent the use of the same loss or deduction to offset income in multiple jurisdictions.

The proposed regulations retain the rebuttal standard contained in the current regulations, with modifications. Taxpayers may rebut a triggering event under the proposed regulations if it can be demonstrated, to the satisfaction of the Commissioner, that there can be no foreign use of the dual consolidated loss. In addition, unlike the current regulations that have different standards for different triggering events, the proposed regulations apply the same standard to all triggering events (other than a foreign use triggering event, which cannot be rebutted).

The IRS and Treasury believe that when the proposed regulations are finalized the number of transactions undertaken by taxpayers that result in triggering events will be significantly reduced, as compared to the current regulations, because of the significant reduction in the term of the certification period. Nevertheless, the IRS and Treasury believe that the current rebuttal standard may exceed that required to address adequately the concern that all or a portion of a dual consolidated loss could be put to a foreign use. Moreover, the IRS and Treasury believe that more definitive and administrable rebuttal rules should be provided to assist taxpayers and the Commissioner in determining whether the triggering event has been rebutted, and to minimize situations where there is recapture of a dual consolidated loss even though it may be unlikely that a significant portion of the dual consolidated loss could be put to a foreign use. Therefore, it is anticipated that, prior to the finalization of these proposed regulations, a revenue procedure will be issued that will provide safe harbors whereby triggering events will be deemed to be rebutted if the taxpayer satisfies various conditions. The revenue procedure may be issued in proposed form and then made final contemporaneously with these regulations.

It is anticipated that the conditions contained in the revenue procedure would include the requirement that taxpayers demonstrate, to the satisfaction of the Commissioner, that there can be no foreign use of any significant portion of the dual consolidated loss as a result of certain enumerated transactions. It is also anticipated that the revenue procedure will address, and in some cases provide relief for, transactions that result in a *de minimis* carry over of asset basis under foreign law and are difficult or impossible to rebut under the current regulations. Finally, the revenue procedure may provide relief for triggering events resulting from the assumption of liabilities in connection with the acquisition of a trade or business as a result of liabilities incurred in the ordinary course of business being deductible at different times under U.S. law and the law of the foreign jurisdiction.

The IRS and Treasury request comments regarding the transactions that should be included in the revenue procedure, approaches to address basis carryover transactions and liabilities assumed in the ordinary course of business, and other ways to minimize the administrative burden associated with rebutting the triggering events, while ensuring that there is little or no likelihood that a significant portion of the dual consolidated loss can be put to a foreign use.

8. Triggering Event Exception for Acquisition by an Unaffiliated Domestic Corporation or a New Consolidated Group

Section 1.1503–2(g)(2)(iv)(B)(*1*) of the current regulations provides that if certain requirements are satisfied, the

following events do not constitute triggering events: (1) An affiliated dual resident corporation or affiliated domestic owner becomes an unaffiliated domestic corporation or a member of a new consolidated group (unless such transaction also qualifies under another exception); (2) assets of a dual resident corporation or a separate unit are acquired by an unaffiliated domestic corporation or a member of a new consolidated group; or (3) a domestic owner of a separate unit transfers its interest in the separate unit to an unaffiliated domestic corporation or to a member of a new consolidated group.

The first requirement necessary for this exception to apply is that the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner that made the (g)(2)(i) election, and the unaffiliated domestic corporation or new consolidated group must enter into a closing agreement with the IRS providing that both parties will be jointly and severally liable for the total amount of the recapture of the dual consolidated loss and interest charge upon a subsequent triggering event. Second, the unaffiliated domestic corporation or new consolidated group must agree to treat any potential recapture as unrealized built-in gain for purposes of section 384, subject to any applicable exceptions thereunder. Finally, the unaffiliated domestic corporation or new consolidated group must file with its timely filed income tax return for the year in which the event occurs a (g)(2)(i) agreement (new (g)(2)(i) agreement), whereby it assumes the same obligations with respect to the dual consolidated loss as the corporation or consolidated group that filed the original (g)(2)(i) agreement with respect to that loss.

On July 30, 2003, the IRS and Treasury issued final regulations (2003 regulations), published in the **Federal Register** at 68 FR 44616, that limited the need for closing agreements to avoid triggering events to only those three transactions described above. The preamble to the 2003 regulations explained that in certain cases the requirement for a closing agreement resulted in an unnecessary administrative burden because the several liability imposed by § 1.1502–6, in conjunction with the original (g)(2)(i) agreement and a new (g)(2)(i) agreement, provided for liability sufficiently comparable to that imposed under a closing agreement. Accordingly, the 2003 regulations provided that if a new (g)(2)(i) agreement is filed by the unaffiliated domestic corporation or new consolidated group, a closing agreement is not required in the following two instances: (1) An unaffiliated dual resident corporation or unaffiliated domestic owner that filed a (g)(2)(i) agreement becomes a member of a consolidated group; and (2) a consolidated group that filed a (g)(2)(i) agreement ceases to exist as a result of a transaction described in § 1.1502–13(j)(5)(i) (unless a member of the terminating group, or successor-in-interest of such member, is not a member of the surviving group immediately after the terminating group ceases to exist).

The preamble to the 2003 regulations noted that the IRS and Treasury were continuing to consider other alternatives to further reduce the administrative and compliance burdens under section 1503(d). After further consideration, the IRS and Treasury believe that, as a result of various requirements contained in the proposed regulations, there are sufficient protections, independent of a closing agreement, in all cases in which a closing agreement is otherwise required under the current regulations. As a result, the proposed regulations eliminate the closing agreement requirement contained in the current regulations and provide an exception to triggering events in all such cases (subsequent elector events) if: (1) The unaffiliated domestic corporation or new consolidated group (subsequent elector) enters into a domestic use agreement (new domestic use agreement); and (2) the corporation or consolidated group that filed the original domestic use agreement (original elector) files a statement with its tax return for the year of the event.

Pursuant to the new domestic use agreement, the subsequent elector must: (1) Agree to assume the same obligations with respect to the dual consolidated loss as the original elector had pursuant to its domestic use agreement; (2) agree to treat any potential recapture of the dual consolidated loss at issue as unrealized built-in gain pursuant to section 384, subject to any applicable exceptions thereunder; (3) agree to be subject to the successor elector rules, discussed below; and (4) identify the original elector (and subsequent electors, if any). Pursuant to the statement filed by the original elector, the original elector must agree to be subject to the subsequent elector rules and must identify the subsequent elector.

9. Triggering Event Exception—Private Letter Ruling and Closing Agreement Option

Under the current regulations, only specific triggering events can qualify for an exception as a result of the parties entering into a closing agreement. Therefore, the IRS will not consider entering into a closing agreement in other circumstances, even though the government's interests may be adequately protected in such circumstances such that recapture may not be necessary.

Although the proposed regulations eliminate the need for a closing agreement to qualify for an exception to triggering events, discussed above, the IRS and Treasury are considering whether in limited cases it may be appropriate for the Commissioner, in its sole discretion and subject to the taxpayer satisfying conditions specified by the Commissioner, to enter into closing agreements with taxpayers such that certain other events would not be triggering events. Comments are requested as to the specific and limited types of triggering events that may be suitable for this exception, taking into account the policies underlying section 1503(d), administrative burdens, and the general interests of the U.S. government.

10. Annual Certification Reporting Requirement

Section 1.1503–2T(g)(2)(vi)(B) of the current regulations provides that if a (g)(2)(i) election is made with respect to a dual consolidated loss of a dual resident corporation or a hybrid entity separate unit, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as the case may be, must file with its tax return an annual certification during the certification period. This filing certifies that the losses or deductions that make up the dual consolidated loss have not been used to offset the income of another person under the tax laws of a foreign country. The filing also warrants that arrangements have been made to ensure that there will be no such use of the dual consolidated loss and that the taxpayer will be informed if any such use were to occur. The current regulations do not, however, require annual certifications for dual consolidated losses of foreign branch separate units.

The IRS and Treasury believe that annual certifications of dual consolidated losses improve taxpayer compliance with the dual consolidated loss rules and are beneficial to the Commissioner in monitoring such compliance. The IRS and Treasury also believe that foreign branch separate units, hybrid entity separate units, and dual resident corporations should, to the extent possible, be treated consistently to reduce complexity. As a result, the proposed regulations expand

the annual certification requirement to include dual consolidated losses of foreign branch separate units. However, the reduction in the certification period from 15 years to seven years should substantially reduce the overall compliance burden of this requirement.

11. Amount of Recapture

As stated above, under the current regulations a triggering event (other than a foreign use) generally can be rebutted only if no portion of the dual consolidated loss can be used by (or carries over to) another person under foreign law. *See* § 1.503–2(g)(2)(iii)(A)(*2*) through (*7*). Thus, if even a *de minimis* portion of the dual consolidated loss can be used by (or carries over to) another person, the triggering event cannot be rebutted. Similarly, § 1.1503–2(g)(2)(vii)(A) of the current regulations provides that if a triggering event occurs, the entire dual consolidated loss subject to the (g)(2)(i) agreement (reduced by income earned subsequently by the dual resident corporation or separate unit) is recaptured and reported as income, regardless of the amount of the dual consolidated loss used by the other person. Thus, even a *de minimis* foreign use will cause the entire amount of the dual consolidated loss to be recaptured and reported as income.

This so-called *all or nothing* principle is included in the current regulations primarily due to administrative concerns. In many cases, the exact amount of the dual consolidated loss that is used by another person cannot be readily determined. This inability is due, in part, to differences between U.S. and foreign law. For example, there may be temporary and permanent differences in the treatment of items of income, gain, deduction and loss. There may also be differences in loss carryover provisions. These concerns are exacerbated by the principle that certain deductions are fungible and, therefore, cannot easily be traced to a particular loss incurred in a particular year.

Commentators have noted that in some cases the *all or nothing* principle results in a disallowance of deductions in both the United States and the foreign jurisdiction. Nevertheless, the IRS and Treasury believe that making a precise determination as to the amount of the dual consolidated loss put to a foreign use would require the Commissioner and taxpayers to analyze foreign law in great detail and, in some cases, compare the treatment of items under foreign law with their treatment under U.S. law. Such an analysis, however, is inconsistent with the principle underlying the regulations that, to the extent possible, the Commissioner and taxpayers should not be required to analyze foreign law. Moreover, departing from the *all or nothing* principle would likely require detailed ordering, stacking, and tracing rules to determine the amount and nature of dual consolidated losses that are recaptured upon a use. Such rules would add considerable complexity to the regulations. As a result, the proposed regulations retain the *all or nothing* rule contained in the current regulations. However, the IRS and Treasury request comments regarding administrable alternatives to the *all or nothing* rule that would not involve substantial analyses of foreign law. For example, comments are requested as to whether a pro rata recapture rule with respect to dispositions of separate units would be consistent with the general framework of the proposed regulations and would be administrable.

12. Subsequent Elector Rules

Neither the current regulations nor Rev. Proc. 2000–42 (2000–2 C.B. 394) explicitly address the consequences resulting from a triggering event (to which no exception applies) with respect to a dual consolidated loss that was not recaptured due to an earlier triggering event as a result of the parties entering into a closing agreement. In such a case, both parties are jointly and severally liable for the total amount of the recapture of the dual consolidated loss and interest charge resulting from such a subsequent triggering event. However, it is unclear which taxpayer must report the recapture income (and related interest charge) on its tax return upon the subsequent triggering event. In addition, there is little or no procedural guidance outlining how, pursuant to a closing agreement, the IRS would collect recapture tax and the related interest charge from the parties to the closing agreement.

Accordingly, the proposed regulations contain rules regarding subsequent electors. These rules apply when, subsequent to an event that is not a triggering event because the unaffiliated domestic corporation or new consolidated group enters into a new domestic use agreement and satisfies other requirements (excepted event), a triggering event occurs, and no exception applies to such event (subsequent triggering event). The proposed regulations also provide rules that apply in the case of multiple subsequent electors (when subsequent to an excepted event, another excepted event occurs).

The proposed regulations first provide that, except to the extent provided under the subsequent elector rules, the original elector (and in the case of multiple excepted events, any prior subsequent elector) is not subject to the general recapture and interest charge rules provided under the regulations. As a result, only the subsequent elector that owns the dual resident corporation or separate unit at the time of the subsequent triggering event is subject to the general recapture and interest charge rules.

The proposed regulations also provide that, upon a subsequent triggering event to which no exception applies, the subsequent elector must calculate the recapture tax amount with respect to the dual consolidated loss subject to the new domestic use agreement and include it, along with an identification of the dual consolidated losses at issue and the original elector, on a statement attached to its tax return. The subsequent elector calculates the recapture tax amount based on a *with and without* calculation. The recapture tax amount equals the excess (if any) of the income tax liability of the subsequent elector for the taxable year of the subsequent triggering event, over the income tax liability of the subsequent elector for such taxable year computed by excluding the amount of recapture and related interest charge with respect to the dual consolidated losses at issue.

In addition, the proposed regulations provide rules regarding tax assessment and collection procedures. The proposed regulations provide that an assessment identifying an income tax liability of the subsequent elector is considered an assessment of the recapture tax amount where such amount is part of the income tax liability being assessed and the recapture tax amount is reflected in the statement attached to the subsequent elector's tax return. The recapture tax amount is considered to be properly assessed as an income tax liability of the original elector, and each prior subsequent elector, if any, on the same date the income tax liability of the subsequent elector was properly assessed. This liability is joint and several.

The proposed regulations also provide procedures pursuant to which any unpaid balance of the recapture tax amount may be collected from the original elector and the prior subsequent elector, if any. Such amounts may be collected from the original elector, and/or any prior subsequent elector, if each of the following conditions is satisfied: (1) The Commissioner has properly assessed the recapture amount; (2) the Commissioner has issued a notice and

demand for payment of the recapture tax amount to the subsequent elector; (3) the subsequent elector has failed to pay all of the recapture tax amount by the date specified in such notice and demand; and (4) the Commissioner has issued a notice and demand for payment of the unpaid portion of the recapture tax amount to the original elector and prior subsequent electors, if any. If the subsequent elector's income tax liability for a taxable period includes a recapture amount, and if such income tax liability is satisfied in part by payment, credit, or offset, such amount shall be allocated first to that portion of the income tax liability that is not attributable to the recapture tax amount, and then to that portion of the income tax liability that is attributable to the recapture tax amount.

Finally, the proposed regulations contain rules regarding the refund of an income tax liability that includes a recapture tax amount.

13. Character and Source of Recapture Income

Section 1.1503–2(g)(2)(vii)(D) of the current regulations provides that recapture income is treated as ordinary income having the same source and falling within the same separate category under section 904 as the dual consolidated loss being recaptured. The current regulations do not, however, provide an explicit rule to identify the items that compose the dual consolidated loss. As a result, it is unclear under the current regulations how to determine the source and separate category of recapture income. In addition, the current regulations do not explicitly state how the recapture income is treated for purposes of the Code other than section 904.

The proposed regulations clarify that the character (to the extent consistent with the recapture income being ordinary income in all cases) and source of the recapture income is determined based on the character and source of a pro rata portion of the deductions that were taken into account in calculating the dual consolidated loss. As discussed above, the dual consolidated loss is composed of a pro rata portion of all items of deduction and loss that are taken into account in computing such dual consolidated loss. Moreover, the proposed regulations clarify that the determination of the character and source of such income is not limited to section 904, but applies for all purposes of the Code (for example, section 856(c)(2) and (3)).

Under the proposed regulations, the character and source of losses and deductions composing the dual consolidated loss should be identified during the year in which they are incurred, rather than the year in which they are ultimately used to offset income or gain. This approach attempts to simplify the rules and make them more administrable, rather than providing comprehensive stacking, ordering, and tracing rules that track the ultimate use of such items, which would be complex.

14. Failure To Comply With Recapture Provisions

Under the current regulations, if the taxpayer fails to comply with the recapture provisions upon the occurrence of a triggering event, the dual resident corporation or separate unit that incurred the dual consolidated loss (or successor-in-interest) is not eligible to enter into a (g)(2)(i) agreement with respect to any dual consolidated losses incurred in the five taxable years beginning with the taxable year in which recapture is required. The current regulations contain two exceptions to this rule that apply unless the triggering event is an actual use of the dual consolidated loss. Under the first exception, the rule does not apply if the failure to comply is due to reasonable cause. Under the second exception, the rule does not apply if the taxpayer unsuccessfully attempted to rebut the triggering event by timely filing a rebuttal statement with its tax return.

This provision is intended to encourage taxpayers to carefully monitor potential triggering events and properly comply with the recapture provisions upon the occurrence of a triggering event.

The IRS and Treasury believe that the failure to comply penalty contained in the current regulations often does not operate in a manner that encourages compliance with the dual consolidated loss regulations. For example, if a taxpayer sells a dual resident corporation to a third party that is treated as a triggering event, but the taxpayer fails to comply with the recapture rules, the rule contained in the current regulations prevents the purchaser of the dual resident corporation from entering into a (g)(2)(i) agreement with respect to dual consolidated losses of the dual resident corporation for five years; it does not adversely affect the taxpayer that failed to properly comply with the recapture provisions. As a result, the proposed regulations do not include this penalty provision.

Although the proposed regulations do not retain this penalty provision, the Commissioner may consider applying other applicable penalty provisions in appropriate circumstances; for example, the Commissioner may consider applying the accuracy-related penalty of section 6662. In addition, the IRS and Treasury will continue to consider whether a penalty provision, similar to the one contained in the current regulations, is appropriate, especially in cases of repeated non-compliance.

F. Effective Date—§ 1.1503(d)–6

The proposed regulations are proposed to apply to dual consolidated losses incurred in taxable years beginning after the date that these proposed regulations are published as final regulations in the **Federal Register**.

The IRS and Treasury request comments on the application of the regulations, including comments as to whether the proposed regulations, when finalized, should contain an election that would allow taxpayers to apply all or a portion of the regulations retroactively. In addition, comments are requested as to possible transition rules that may apply, including the application of the proposed regulations, when finalized, to existing (g)(2)(i) agreements.

Effect on Other Documents

When these proposed regulations are adopted as final regulations, Rev. Proc. 2000–42 (2000–2 C.B. 394), will be obsolete with respect to dual consolidated losses incurred in taxable years beginning after the date that these proposed regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rule making is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that also have a foreign affiliate, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

A public hearing has been scheduled for September 7, 2005, at 10 a.m., in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors must enter at the main entrance, located at 1111 Constitution Avenue, NW. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments and an outline of the topic to be discussed and time to be devoted to each topic (preferably a signed original and eight (8) copies) by August 22, 2005. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Kathryn T. Holman of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

§ 1.1503(d) also issued under 26 U.S.C. 953(d) and 26 U.S.C. 1502.

Par. 2. In § 1.1502–21, paragraph (c)(2)(v) is amended by removing the language ''§ 1.1503–2'' and adding ''§§ 1.1503(d)–1 through 1.1503(d)–6'' in its place.

Par. 3. New §§ 1.1503(d)–0 through 1.1503(d)–6 are added to read as follows:

§ 1.1503(d)–0 Table of contents.

This section lists the captions contained in §§ 1.1503(d)–1 through 1.1503(d)–6.

§ 1.1503(d)–1 Definitions and special rules for filings under section 1503(d).

(a) In general.
(b) Definitions.
(1) Domestic corporation.
(2) Dual resident corporation.
(3) Hybrid entity.
(4) Separate unit.
(i) In general.
(ii) Separate unit combination rule.
(iii) Indirectly.
(5) Dual consolidated loss.
(6) Subject to tax.
(7) Foreign country.
(8) Consolidated group.
(9) Domestic owner.
(10) Affiliated dual resident corporation and affiliated domestic owner.
(11) Unaffiliated dual resident corporation, unaffiliated domestic corporation, and unaffiliated domestic owner.
(12) Domestic affiliate.
(13) Domestic use.
(14) Foreign use.
(i) In general.
(ii) Available for use.
(iii) Exceptions.
(A) No election to enable foreign use.
(B) Presumed use where no foreign country rule for determining use.
(C) No dilution of an interest in a separate unit.
(*1*) General rules.
(*i*) Interest in a hybrid entity partnership or hybrid entity grantor trust.
(*ii*) Indirectly owned separate units.
(*iii*) Combined separate unit.
(*2*) Exceptions.
(*i*) Dilution of an interest in a separate unit.
(*ii*) Consolidation and other prohibited uses.
(iv) Ordering rules for determining the foreign use of losses.
(v) Mirror legislation rule.
(15) Grantor trust.
(c) Special rules for filings under section 1503(d).
(1) Reasonable cause exception.
(2) Signature requirement.

§ 1.1503(d)–2 Operating rules.

(a) In general.
(b) Limitation on domestic use of a dual consolidated loss.
(c) Elimination of a dual consolidated loss after certain transactions.
(1) General rules.
(i) Dual resident corporation.
(ii) Separate unit.
(A) General rule.
(B) Combined separate unit.
(2) Exceptions.
(i) Certain section 368(a)(1)(F) reorganizations.
(ii) Acquisition of a dual resident corporation by another dual resident corporation.
(iii) Acquisition of a separate unit by a domestic corporation.
(d) Special rule denying the use of a dual consolidated loss to offset tainted income.
(1) In general.
(2) Tainted income.
(i) Definition.
(ii) Income presumed to be derived from holding tainted assets.
(3) Tainted assets defined.
(4) Exceptions.
(e) Computation of foreign tax credit limitation.

§ 1.1503(d)–3 Special rules for accounting for dual consolidated losses.

(a) In general.
(b) Determination of amount of dual consolidated loss.
(1) Affiliated dual resident corporation.
(2) Separate unit.
(i) General rules.
(ii) Foreign branch separate unit.
(A) In general.
(B) Principles of § 1.882–5.
(iii) Hybrid entity.
(A) General rule.
(B) Interest in a non-hybrid partnership and a non-hybrid grantor trust.
(iv) Interest in a disregarded hybrid entity.
(v) Items attributable to an interest in a hybrid entity partnership and a separate unit owned indirectly through a partnership.
(vi) Items attributable to an interest in a hybrid entity grantor trust and a separate unit owned indirectly through a grantor trust.
(vii) Special rules.
(A) Allocation of items between certain tiered separate units.
(B) Combined separate unit.
(C) Gain or loss on the direct or indirect disposition of a separate unit.
(D) Income inclusion on stock.
(3) Foreign tax treatment disregarded.
(4) Items generated or incurred while a dual resident corporation or a separate unit.
(c) Effect of a dual consolidated loss on a domestic affiliate.
(1) Dual resident corporation.
(2) Separate unit.
(3) SRLY limitation.
(4) Items of a dual consolidated loss used in other taxable years.
(d) Special basis adjustments.
(1) Affiliated dual resident corporation or affiliated domestic owner.
(i) Dual consolidated loss subject to domestic use limitation.
(ii) Dual consolidated loss absorbed in carryover or carryback year.
(iii) Recapture income.
(2) Interests in hybrid entities that are partnerships or interests in partnerships through which a separate unit is owned indirectly.
(i) Scope.
(ii) Determination of basis of partner's interest.
(A) Dual consolidated loss subject to domestic use limitation.
(B) Dual consolidated loss absorbed in carryover or carryback year.
(C) Recapture income.
(3) Examples.

§ 1.1503(d)–4 Exceptions to the domestic use limitation rule.

(a) In general.
(b) Elective agreement in place between the United States and a foreign country.
(c) No possibility of foreign use.
(1) In general.
(2) Statement.
(d) Domestic use election.
(1) In general.
(2) Consistency rule.
(3) Restrictions on domestic use election.
(i) Triggering event in year of dual consolidated loss.
(ii) Losses of a foreign insurance company treated as a domestic corporation.
(e) Triggering events requiring the recapture of a dual consolidated loss.
(1) Events.
(i) Foreign use.
(ii) Disaffiliation.
(iii) Affiliation.
(iv) Transfer of assets.
(v) Transfer of an interest in a separate unit.
(vi) Conversion to a foreign corporation.
(vii) Conversion to an S corporation.
(viii) Failure to certify.
(2) Rebuttal.
(f) Exceptions.
(1) Acquisition by a member of the consolidated group.
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(i) Subsequent elector events.
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(iii) Requirements.
(A) New domestic use agreement.
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(3) Subsequent triggering events.
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(h) Recapture of dual consolidated loss and interest charge.
(1) Presumptive rules.
(i) Amount of recapture.
(ii) Interest charge.
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(i) Amount of recapture.
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(i) In general.
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(iii) Recapture tax amount and required statement.
(A) In general.
(B) Recapture tax amount.
(iv) Tax assessment and collection procedures.
(A) In general.
(1) Subsequent elector.
(2) Original elector and prior subsequent electors.
(B) Collection from original elector and prior subsequent electors; joint and several liability.
(C) Allocation of partial payments of tax.
(D) Refund.
(v) Definition of income tax liability.
(vi) Example.
(4) Computation of taxable income in year of recapture.
(i) Presumptive rule.
(ii) Rebuttal of presumptive rule.
(5) Character and source of recapture income.
(6) Reconstituted net operating loss.
(i) Termination of domestic use agreement and annual certifications.
(1) Rebuttal of triggering event.
(2) Exception to triggering event.
(3) Recapture of dual consolidated loss.
(4) Termination of ability for foreign use.
(i) In general.
(ii) Statement.

§ 1.1503(d)–5 Examples.

(a) In general.
(b) Presumed facts for examples.
(c) Examples.

§ 1.1503(d)–6 Effective date.

§ 1.1503(d)–1 Definitions and special rules for filings under section 1503(d).

(a) *In general.* This section and §§ 1.1503(d)–2 through 1.1503(d)–6 provide general rules concerning the determination and use of dual consolidated losses pursuant to section 1503(d). This section provides definitions that apply for purposes of this section and §§ 1.1503(d)–2 through 1.1503(d)–6. This section also provides a reasonable cause exception and a signature requirement for filings under this section and §§ 1.1503(d)–2 through 1.1503(d)–4.

(b) *Definitions.* The following definitions apply for purposes of this section and §§ 1.1503(d)–2 through 1.1503(d)–6:

(1) *Domestic corporation.* The term *domestic corporation* means an entity classified as a domestic corporation under section 7701(a)(3) and (4) or otherwise treated as a domestic corporation by the Internal Revenue Code, including, but not limited to, sections 269B, 953(d), and 1504(d). However, solely for purposes of Section 1503(d), the term domestic corporation does not include an S corporation, as defined in section 1361.

(2) *Dual resident corporation.* The term *dual resident corporation* means a domestic corporation that is subject to an income tax of a foreign country on its worldwide income or on a residence basis. A corporation is taxed on a residence basis if it is taxed as a resident under the laws of the foreign country. The term *dual resident corporation* also means a foreign insurance company that makes an election to be treated as a domestic corporation pursuant to section 953(d) and is treated as a member of an affiliated group for purposes of chapter 6, even if such company is not subject to an income tax of a foreign country on its worldwide income or on a residence basis. *See* section 953(d)(3).

(3) *Hybrid entity.* The *term hybrid entity* means an entity that is not taxable as an association for U.S. income tax purposes but is subject to an income tax of a foreign country as a corporation (or otherwise at the entity level) either on its worldwide income or on a residence basis.

(4) *Separate unit*—(i) *In general.* The term *separate unit* means either of the following that is owned, directly or indirectly, by a domestic corporation—

(A) A foreign branch, as defined in § 1.367(a)–6T(g) (foreign branch separate unit); or

(B) An interest in a hybrid entity (hybrid entity separate unit).

(ii) *Separate unit combination rule.* If two or more separate units (individual separate units) are owned, directly or indirectly, by a single domestic corporation, and the losses of each individual separate unit are made available to offset the income of the other individual separate units under the income tax laws of a single foreign country, then such individual separate units shall be treated as one separate unit (combined separate unit), provided that—

(A) If the individual separate unit is a foreign branch separate unit, it is located in such foreign country; and

(B) If the individual separate unit is a hybrid entity separate unit, the hybrid entity (an interest in which is the hybrid entity separate unit) is subject to an income tax of such foreign country either on its worldwide income or on a residence basis. *See* § 1.1503(d)–5(c) *Example 1.*

(iii) *Indirectly.* The term *indirectly*, when used in reference to ownership of a separate unit, means ownership through a separate unit, through an entity classified as a partnership under §§ 301.7701–1 through –3 of this chapter, or through a grantor trust (as defined in paragraph (b)(15) of this section), regardless of whether the partnership or grantor trust is a U.S. person.

(5) *Dual consolidated loss.* The term *dual consolidated loss* means—

(i) In the case of a dual resident corporation, the net operating loss (as defined in section 172(c) and the regulations thereunder) incurred in a year in which the corporation is a dual resident corporation; and

(ii) In the case of a separate unit, the net loss attributable to, or taken into account by, the separate unit under § 1.1503(d)–3(b)(2).

(6) *Subject to tax.* For purposes of determining whether a domestic corporation or hybrid entity is subject to an income tax of a foreign country on its income, the fact that it has no actual income tax liability to the foreign

country for a particular taxable year shall not be taken into account.

(7) *Foreign country.* The term *foreign country* includes any possession of the United States.

(8) *Consolidated group.* The term *consolidated group* means a consolidated group, as defined in § 1.1502–1(h), that includes either a dual resident corporation or a domestic owner.

(9) *Domestic owner.* The term *domestic owner* means a domestic corporation that owns, directly or indirectly, one or more separate units.

(10) *Affiliated dual resident corporation and affiliated domestic owner.* The terms *affiliated dual resident corporation* and *affiliated domestic owner* mean a dual resident corporation and a domestic owner, respectively, that is a member of a consolidated group.

(11) *Unaffiliated dual resident corporation, unaffiliated domestic corporation, and unaffiliated domestic owner.* The terms *unaffiliated dual resident corporation, unaffiliated domestic corporation,* and *unaffiliated domestic owner* mean a dual resident corporation, domestic corporation, and domestic owner, respectively, that is not a member of a consolidated group.

(12) *Domestic affiliate.* The term *domestic affiliate* means—

(i) A member of an affiliated group, without regard to the exceptions contained in section 1504(b) (other than section 1504(b)(3)) relating to includible corporations;

(ii) A domestic owner; or

(iii) A separate unit.

(13) *Domestic use.* A *domestic use* of a dual consolidated loss shall be deemed to occur when the dual consolidated loss is made available to offset, directly or indirectly, the taxable income of any domestic affiliate of the dual resident corporation or separate unit (that incurred the dual consolidated loss) in the taxable year in which the dual consolidated loss is recognized, or in any other taxable year, regardless of whether the dual consolidated loss offsets income under the income tax laws of a foreign country and regardless of whether any income that the dual consolidated loss may offset in the foreign country is, has been, or will be subject to tax in the United States. A domestic use shall be deemed to occur in the year the dual consolidated loss is included in the computation of the taxable income of a consolidated group or an unaffiliated domestic owner, even if no tax benefit results from such inclusion in that year. See § 1.1503(d)–5(c) *Examples 2* through *5.*

(14) *Foreign use*—(i) *In general.* A *foreign use* of a dual consolidated loss shall be deemed to occur when any portion of a loss or deduction taken into account in computing the dual consolidated loss is made available under the income tax laws of a foreign country to offset or reduce, directly or indirectly, any item that is recognized as income or gain under such laws and that is considered under U.S. tax principles to be an item of—

(A) A foreign corporation as defined in section 7701(a)(3) and (a)(5); or

(B) A direct or indirect owner of an interest in a hybrid entity, provided such interest is not a separate unit. *See* § 1.1503(d)–5(c) *Examples 6* through *11.*

(ii) *Available for use.* A foreign use shall be deemed to occur in the year in which any portion of a loss or deduction taken into account in computing the dual consolidated loss is made available for an offset described in paragraph (b)(14)(i) of this section, regardless of whether it actually offsets or reduces any items of income or gain under the income tax laws of the foreign country in such year and regardless of whether any of the items that may be so offset or reduced are regarded as income under U.S. tax principles.

(iii) *Exceptions*—(A) *No election to enable foreign use.* Where the laws of a foreign country provide an election that would enable a foreign use, a foreign use shall be considered to occur only if the election is made.

(B) *Presumed use where no foreign country rule for determining use.* If the losses or deductions composing the dual consolidated loss are made available under the laws of a foreign country both to offset income that would constitute a foreign use and to offset income that would not constitute a foreign use, and the laws of the foreign country do not provide applicable rules for determining which income is offset by the losses or deductions, then for purposes of paragraph (b)(14) of this section, the losses or deductions shall be deemed to be made available to offset income that does not constitute a foreign use, to the extent of such income, before being considered to be made available to offset the income that does constitute a foreign use. *See* § 1.1503(d)–5(c) *Examples 12* and *14.*

(C) *No dilution of an interest in a separate unit*—(*1*) *General rules*—(*i*) *Interest in a hybrid entity partnership or hybrid entity grantor trust.* Except as provided in paragraph (b)(14)(iii)(C)(*2*) of this section, no foreign use shall be considered to occur with respect to a dual consolidated loss attributable to an interest in a hybrid entity partnership or a hybrid entity grantor trust, solely because an item of deduction or loss taken into account in computing such dual consolidated loss is made available, under the income tax laws of a foreign country, to offset or reduce, directly or indirectly, any item that is recognized as income or gain under such laws and, that is considered under U.S. tax principles, to be an item of the direct or indirect owner of an interest in such hybrid entity that is not a separate unit. *See* § 1.1503(d)–5(c) *Examples 8* and *14* through *16.*

(ii) *Indirectly owned separate units.* Except as provided in paragraph (b)(14)(iii)(C)(*2*) of this section, no foreign use shall be considered to occur with respect to a dual consolidated loss attributable to or taken into account by a separate unit owned indirectly through a partnership or grantor trust solely because an item of deduction or loss taken into account in computing such dual consolidated loss is made available, under the income tax laws of a foreign country, to offset or reduce, directly or indirectly, any item that is recognized as income or gain under such laws, and that is considered under U.S. tax principles, to be an item of a direct or indirect owner of an interest in such partnership or trust. *See* § 1.1503(d)–5(c) *Examples 17* and *18.*

(iii) *Combined separate unit.* This paragraph (b)(14)(iii)(C)(*1*)(*iii*) applies to a dual consolidated loss attributable to or taken into account by a combined separate unit that includes an individual separate unit to which paragraph (b)(14)(iii)(C)(*1*)(*i*) or (*ii*) of this section would apply, but for the application of the separate unit combination rule provided under § 1.1503(d)–1(b)(4)(ii). Except as provided in paragraph (b)(14)(iii)(C)(*2*) of this section, paragraph (b)(14)(iii)(C)(*1*)(*i*) or (*ii*), as applicable, shall apply to the portion of the dual consolidated loss of such combined separate unit that is attributable, as provided under § 1.1503(d)–3(b)(2)(vii)(*B*)(*1*), to the individual separate unit (otherwise described in paragraph (b)(14)(iii)(C)(*1*)(*i*) or (*ii*) of this section) that is a component of the combined separate unit. *See* § 1.1503(d)–5(c) *Example 19.*

(2) *Exceptions*—(*i*) *Dilution of an interest in a separate unit.* Paragraph (b)(14)(iii)(*C*)(*1*) of this section shall not apply with respect to any item of deduction or loss that is taken into account in computing a dual consolidated loss attributable to or taken into account by a separate unit if during any taxable year the domestic owner's percentage interest in such separate unit, as compared to its interest in the separate unit as of the last day of the

taxable year in which such dual consolidated loss was incurred, is reduced as a result of another person acquiring through sale, exchange, contribution or other means, an interest in the partnership or grantor trust. The previous sentence shall not apply, however, if the unaffiliated domestic owner or consolidated group, as the case may be, demonstrates, to the satisfaction of the Commissioner, that the other person that acquired the interest in the partnership or grantor trust was a domestic corporation. Such demonstration must be made on a statement that is attached to, and filed by the due date (including extensions) of, its U.S. income tax return for the taxable year in which the ownership interest of the domestic owner is reduced. *See* § 1.1503(d)–5(c) *Examples 14* through *16* and *19*.

(ii) *Consolidation and other prohibited uses.* Paragraph (b)(14)(iii)(C)(*1*) of this section shall not apply if the availability described in such section does not arise solely from the ownership in such partnership or grantor trust and the allocation of the item of deduction or loss, or the offsetting by such deduction or loss, of an item of income or gain of the partnership or trust. For example, paragraph (b)(14)(iii)(C)(*1*) of this section shall not apply in the case where the item of loss or deduction is made available through a foreign consolidation regime. *See* § 1.1503(d)–5(c) *Examples 17* and *18*.

(iv) *Ordering rules for determining the foreign use of losses.* If the laws of a foreign country provide for the foreign use of a dual consolidated loss, but do not provide applicable rules for determining the order in which such losses are used in a taxable year, the following rules shall govern—

(A) Any net loss, or net income, that the dual resident corporation or separate unit has in a taxable year shall first be used to offset net income, or loss, recognized by its affiliates in the same taxable year before any carryover of its losses is considered to be used to offset any income from the taxable year;

(B) If under the laws of the foreign country the dual resident corporation or separate unit has losses from different taxable years, it shall be deemed to use first the losses from the earliest taxable year from which a loss may be carried forward or back for foreign law purposes; and

(C) Where different losses or deductions (for example, capital losses and ordinary losses) of a dual resident corporation or separate unit incurred in the same taxable year are available for foreign use, the different losses shall be deemed to be used on a pro rata basis. *See* § 1.1503(d)–5(c) *Example 13.*

(v) *Mirror legislation rule.* Except to the extent § 1.1503(d)–4(b) applies, and other than for purposes of the consistency rule under § 1.1503(d)–4(d)(2), a foreign use shall be deemed to occur if and when the income tax laws of a foreign country deny any opportunity for the foreign use of the dual consolidated loss for any of the following reasons—

(A) The loss is incurred by a dual resident corporation or separate unit that is subject to income taxation by another country on its worldwide income or on a residence basis;

(B) The loss may be available to offset income (other than income of the dual resident corporation or separate unit) under the laws of another country; or

(C) The deductibility of any portion of a loss or deduction taken into account in computing the dual consolidated loss depends on whether such amount is deductible under the laws of another country. *See* § 1.1503(d)–5(c) *Examples 20* through *23*.

(15) *Grantor trust.* The term *grantor trust* means a trust, any portion of which is treated as being owned by the grantor or another person under subpart E of subchapter J of this chapter.

(c) *Special rules for filings under section 1503(d)*—(1) *Reasonable cause exception.* If a person that is permitted or required to file an election, agreement, statement, rebuttal, computation, or other information under the provisions of this section or §§ 1.1503(d)–2 through 1.1503(d)–4 and that fails to make such filing in a timely manner, shall be considered to have satisfied the timeliness requirement with respect to such filing if the person is able to demonstrate, to the Director of Field operations having jurisdiction of the taxpayer's tax return for the taxable year, that such failure was due to reasonable cause and not willful neglect. The previous sentence shall only apply if, once the person becomes aware of the failure, the person attaches all documents that should have been filed previously, as well as a written statement setting forth the reasons for the failure to timely comply, to an amended income tax return that amends the return to which the documents should have been attached under the rules of this section or §§ 1.1503(d)–2 through 1.1503(d)–4. In determining whether the taxpayer has reasonable cause, the Director of Field Operations shall consider whether the taxpayer acted reasonably and in good faith. Whether the taxpayer acted reasonably and in good faith will be determined after considering all the facts and circumstances. The Director of Field Operations shall notify the person in writing within 120 days of the filing if it is determined that the failure to comply was not due to reasonable cause, or if additional time will be needed to make such determination.

(2) *Signature requirement.* When an election, agreement, statement, rebuttal, computation, or other information is required under this section or §§ 1.1503(d)–2 through 1.1503(d)–4 to be attached to and filed by the due date (including extensions) of a U.S. tax return and signed under penalties of perjury by the person who signs the return, the attachment and filing of an unsigned copy is considered to satisfy such requirement, provided the taxpayer retains the original in its records in the manner specified by § 1.6001–1(e).

§ 1.1503(d)–2 Operating rules.

(a) *In general.* This section provides operating rules relating to dual consolidated losses, including a general rule prohibiting the domestic use of a dual consolidated loss, a rule that eliminates a dual consolidated loss following certain transactions, an anti-abuse rule for tainted income, and rules for computing foreign tax credit limitations.

(b) *Limitation on domestic use of a dual consolidated loss.* Except as provided in § 1.1503(d)–4, the domestic use of a dual consolidated loss is not permitted. *See* § 1.1503(d)–5(c) *Examples 2* through *4* and *5*.

(c) *Elimination of a dual consolidated loss after certain transactions*—(1) *General rules*—(i) *Dual resident corporation.* Except as provided in paragraph (c)(2) of this section, a dual consolidated loss of a dual resident corporation shall not carry over to another corporation in a transaction described in section 381(a) and, as a result, shall be eliminated. *See* § 1.1503(d)–5(c) *Example 24.*

(ii) *Separate unit*—(A) *General rule.* Except as provided in paragraph (c)(2) of this section, a dual consolidated loss of a separate unit shall not carry over as a result of a transaction in which the separate unit ceases to be a separate unit of its domestic owner (for example, as a result of a termination, dissolution, liquidation, sale or other disposition of the separate unit) and, as a result, shall be eliminated.

(B) *Combined separate unit.* This paragraph (c)(1)(ii)(B) applies to an individual separate unit that is a component of a combined separate unit that would, but for the separate unit combination rule, cease to be a separate unit of its domestic owner. In such a

case, and except as provided in paragraph (c)(2) of this section, the portion of the dual consolidated loss of the combined separate unit that is attributable to, or taken into account by, as provided under § 1.1503(d)–3(b)(2)(vii)(B)(*1*), such individual separate unit shall not carry over and, as a result, shall be eliminated.

(2) *Exceptions*—(i) *Certain section 368(a)(1)(F) reorganizations*. Paragraph (c)(1)(i) of this section shall not apply to a reorganization described in section 368(a)(1)(F) in which the resulting corporation is a domestic corporation.

(ii) *Acquisition of a dual resident corporation by another dual resident corporation*. If a dual resident corporation transfers its assets to another dual resident corporation in a transaction described in section 381(a), and the transferee corporation is a resident of (or is taxed on its worldwide income by) the same foreign country of which the transferor was a resident (or was taxed on its worldwide income), then income generated by the transferee may be offset by the carryover dual consolidated losses of the transferor, subject to the limitations of § 1.1503(d)–3(c) applied as if the transferee generated the dual consolidated loss. Dual consolidated losses of the transferor may not, however, be used to offset income of separate units owned by the transferee because such separate units constitute domestic affiliates of the transferee as provided under § 1.1503(d)–1(b)(12)(iii).

(iii) *Acquisition of a separate unit by a domestic corporation*. If a domestic owner transfers ownership of a separate unit to a domestic corporation in a transaction described in section 381(a), and the transferee is a domestic owner of the separate unit immediately following the transfer, then income generated by the separate unit following the transfer may be offset by the carryover dual consolidated losses of the separate unit, subject to the limitations of § 1.1503(d)–3(c) applied as if the separate unit of the transferee generated the dual consolidated loss. In addition, if a domestic owner transfers ownership of a separate unit to a domestic corporation in a transaction described in section 381(a), the transferee is a domestic owner of the separate unit immediately following the transfer, and the transferred separate unit is combined with another separate unit of the transferee immediately after the transfer as provided under § 1.1503(d)–1(b)(4)(ii), then income generated by the combined separate unit may be offset by the carryover dual consolidated losses of the transferred separate unit, subject to the limitations of § 1.1503(d)–3(c) applied as if the combined separate unit of the transferee generated the dual consolidated loss. See § 1.1503(d)–5(c) *Example 25*.

(d) *Special rule denying the use of a dual consolidated loss to offset tainted income*—(1) *In general*. Dual consolidated losses incurred by a dual resident corporation shall not be used to offset income it earns after it ceases to be a dual resident corporation to the extent that such income is tainted income.

(2) *Tainted income*—(i) *Definition*. For purposes of paragraph (d)(1) of this section, the term *tainted income* means—

(A) Income or gain recognized on the sale or other disposition of tainted assets; and

(B) Income derived as a result of holding tainted assets.

(ii) *Income presumed to be derived from holding tainted assets*. In the absence of evidence establishing the actual amount of income that is attributable to holding tainted assets, the portion of a corporation's income in a particular taxable year that is treated as tainted income derived as a result of holding tainted assets shall be an amount equal to the corporation's taxable income for the year (other than income described in paragraph (d)(2)(i)(A) of this section) multiplied by a fraction, the numerator of which is the fair market value of all tainted assets acquired by the corporation (determined at the time such assets were so acquired) and the denominator of which is the fair market value of the total assets owned by the corporation at the end of such taxable year. To establish the actual amount of income that is attributable to holding tainted assets, documentation must be attached to, and filed by the due date (including extensions) of, the domestic corporation's tax return or the consolidated tax return of an affiliated group of which it is a member, as the case may be, for the taxable year in which the income is generated. See § 1.1503(d)–5(c) *Example 26*.

(3) *Tainted assets defined*. For purposes of paragraph (d)(2) of this section, tainted assets are any assets acquired by a domestic corporation in a nonrecognition transaction, as defined in section 7701(a)(45), or any assets otherwise transferred to the corporation as a contribution to capital, at any time during the three taxable years immediately preceding the taxable year in which the corporation ceases to be a dual resident corporation or at any time thereafter.

(4) *Exceptions*. Income derived from assets acquired by a domestic corporation shall not be subject to the limitation described in paragraph (d)(1) of this section, if—

(i) For the taxable year in which the assets were acquired, the corporation did not have a dual consolidated loss (or a carryforward of a dual consolidated loss to such year); or

(ii) The assets were acquired as replacement property in the ordinary course of business.

(e) *Computation of foreign tax credit limitation*. If a dual resident corporation or separate unit is subject to § 1.1503(d)–3(c) (addressing the effect of a dual consolidated loss on a domestic affiliate), the consolidated group or unaffiliated domestic owner shall compute its foreign tax credit limitation by applying the limitations of § 1.1503(d)–3(c). Thus, the items constituting the dual consolidated loss are not taken into account until the year in which such items are absorbed.

§ 1.1503(d)–3 Special rules for accounting for dual consolidated losses.

(a) *In general*. This section provides special rules for determining the amount of income or loss of a dual resident corporation or separate unit for purposes of section 1503(d). In addition, this section provides rules for determining the effect of a dual consolidated loss on domestic affiliates and for making special basis adjustments.

(b) *Determination of amount of dual consolidated loss*—(1) *Affiliated dual resident corporation*. For purposes of determining whether an affiliated dual resident corporation has a dual consolidated loss for the taxable year, the dual resident corporation shall compute its taxable income (or loss) in accordance with the rules set forth in the regulations under section 1502 governing the computation of consolidated taxable income, taking into account only the dual resident corporation's items of income, gain, deduction, and loss for the year. However, for purposes of this computation, the following items shall not be taken into account—

(i) Any net capital loss of the dual resident corporation; and

(ii) Any carryover or carryback losses.

(2) *Separate unit*—(i) *General rules*. Paragraph (b)(2) of this section applies for purposes of determining whether a separate unit has a dual consolidated loss for the taxable year. The taxable income (or loss) in U.S. dollars of a separate unit shall be computed as if it were a separate domestic corporation and a dual resident corporation in accordance with the provisions of paragraph (b)(1) of this section, using only those existing items of income,

gain, deduction, and loss (translated into U.S. dollars) that are attributable to or taken into account by such separate unit. Treating a separate unit as a separate domestic corporation of the domestic owner under this paragraph shall not cause items of income, gain, deduction and loss that are otherwise disregarded for U.S. Federal tax purposes to be regarded for purposes of calculating a dual consolidated loss. Paragraph (b)(2) of this section shall apply separately to each separate unit and an item of income, gain, deduction, or loss shall not be considered attributable to or taken into account by more than one separate unit. Items of income, gain, deduction, and loss of one separate unit shall not offset items of income, gain, deduction, and loss, or otherwise be taken into account by, another separate unit for purposes of calculating a dual consolidated loss. But see the separate unit combination rule in § 1.1503(d)–1(b)(4)(ii). See also § 1.1503(d)–5(c) *Example 27*.

(ii) *Foreign branch separate unit*—(A) *In general*. For purposes of determining the items of income, gain, deduction (other than interest), and loss that are taken into account in determining the taxable income or loss of a foreign branch separate unit, the principles of section 864(c)(2) and (c)(4) as set forth in § 1.864–4(c) and § 1.864–6 shall apply. The principles apply without regard to limitations imposed on the effectively connected treatment of income, gain or loss under the trade or business safe harbors in section 864(b) and the limitations for treating foreign source income as effectively connected under section 864(c)(4)(D). For purposes of determining the interest expense that is taken into account in determining the taxable income or loss of a foreign branch separate unit, the principles of § 1.882–5, subject to paragraph (b)(2)(ii)(B) of this section, shall apply. When applying the principles of section 864(c) and § 1.882–5 (subject to paragraph (b)(2)(ii)(B) of this section), the domestic corporation that owns, directly or indirectly, the foreign branch separate unit shall be treated as a foreign corporation, the foreign branch separate unit shall be treated as a trade or business within the United States, and the other assets of the domestic corporation shall be treated as assets that are not U.S. assets.

(B) *Principles of § 1.882–5*. For purposes of paragraph (b)(2)(ii)(A) of this section, the principles of § 1.882–5 shall be applied subject to the following:

(*1*) Except as otherwise provided in this section, only the assets, liabilities and interest expense of the domestic owner shall be taken into account in the § 1.882–5 formula;

(*2*) Except as provided under paragraph (b)(2)(ii)(B)(3) of this section, a taxpayer may use the alternative tax book value method under § 1.861–9T(i) for purposes of determining the value of its U.S. assets pursuant to § 1.882–5(b)(2) and its worldwide assets pursuant to § 1.882–5(c)(2);

(*3*) For purposes of determining the value of a U.S. asset pursuant to § 1.882–5(b)(2), and worldwide assets pursuant to § 1.882–5(c)(2), the taxpayer must use the same methodology under § 1.861–9T(g) (that is, tax book value, alternative tax book value, or fair market value) that the taxpayer uses for purposes of allocating and apportioning interest expense for the taxable year under section 864(e);

(*4*) Asset values shall be determined pursuant to § 1.861–9T(g)(2); and

(*5*) For purposes of determining the step-two U.S. connected liabilities, the amounts of worldwide assets and liabilities under § 1.882–5(c)(2)(iii) and (iv), must be determined in accordance with U.S. tax principles rather than substantially in accordance with U.S. tax principles.

(iii) *Hybrid entity*—(A) *General rule*. The items of income, gain, deduction and loss attributable to a hybrid entity are those items that are properly reflected on its books and records under the principles of § 1.988–4(b)(2), to the extent consistent with U.S. tax principles. See § 1.1503(d)–5(c) *Example 28*.

(B) *Interest in a non-hybrid partnership and a non-hybrid grantor trust*. If a hybrid entity owns, directly or indirectly (other than through a hybrid entity separate unit), an interest in either a partnership that is not a hybrid entity or a grantor trust that is not a hybrid entity, items of income, gain, deduction or loss that are properly reflected on the books and records of such partnership or grantor trust (under the principles of § 1.988–4(b)(2), to the extent consistent with U.S. tax principles), to the extent provided under paragraphs (b)(2)(v) or (b)(2)(vi) of this section, respectively, shall be treated as being properly reflected on the books and records of the hybrid entity for purposes of paragraph (b)(2)(iii)(A) of this section. See § 1.1503(d)–5(c) *Example 30*.

(iv) *Interest in a disregarded hybrid entity*. Except as provided in paragraph (b)(2)(vii) of this section, for purposes of determining the items of income, gain, deduction and loss that are attributable to an interest in a hybrid entity that is disregarded as an entity separate from its owner (for example, as a result of an election made pursuant to § 301.7701–3(c) of this chapter), those items described in paragraph (b)(2)(iii) of this section shall be taken into account. See § 1.1503(d)–5(c) *Example 30*.

(v) *Items attributable to an interest in a hybrid entity partnership and a separate unit owned indirectly through a partnership*—(A) This paragraph (b)(2)(v) applies for purposes of determining—

(*1*) The extent to which the items of income, gain, deduction and loss attributable to a hybrid entity that is a partnership (as provided in paragraph (b)(2)(iii) of this section) are attributable to an interest in such hybrid entity partnership; and

(*2*) The extent to which items of income, gain, deduction and loss of a separate unit that is owned indirectly through a partnership are taken into account by a partner in such partnership.

(B) Items of income, gain, deduction and loss are taken into account by the owner of such interest, or separate unit, to the extent such items are includible in the owner's distributive share of the partnership income, gain, deduction and loss, as determined under the rules and principles of subchapter K of this chapter. See § 1.1503(d)–5(c) *Example 30*.

(vi) *Items attributable to an interest in a hybrid entity grantor trust and a separate unit owned indirectly through a grantor trust*—(A) This paragraph (b)(2)(vi) applies for purposes of determining—

(*1*) The extent to which items of income, gain, deduction and loss attributable to a hybrid entity that is a grantor trust (as provided in paragraph (b)(2)(iii) of this section) are attributable to an interest in such grantor trust; and

(*2*) The extent to which the items of income, gain, deduction and loss of a separate unit owned indirectly through a grantor trust are taken into account by an owner of such grantor trust.

(B) Items of income, gain, deduction and loss are taken into account to the extent such items are attributable to trust property that the holder of the trust interest is treated as owning under the rules and principles of subpart E of subchapter J of this chapter.

(vii) *Special rules*. The following special rules shall apply for purposes of attributing items under paragraphs (b)(2)(i) through (vi) of this section:

(A) *Allocation of items between certain tiered separate units*—(*1*) When a hybrid entity owns, directly or indirectly (other than through a hybrid entity separate unit), a foreign branch separate unit, for purposes of determining items of income, gain,

deduction and loss that are taken into account in determining the taxable income or loss of such foreign branch separate unit, only items of income, gain, deduction and loss that are attributable to the hybrid entity as provided in paragraph (b)(2)(iii) of this section (and intervening entities, if any, that are not themselves separate units) shall be taken into account. Items of the hybrid entity (including assets and liabilities) are taken into account for purposes of determining the taxable income or loss of the foreign branch separate unit pursuant to paragraph (b)(2)(ii) of this section. See § 1.1503(d)–5(c) *Example 30*.

(*2*) For purposes of determining items of income, gain, deduction and loss that are attributable to an interest in the hybrid entity described in paragraph (b)(2)(vii)(A)(*1*) of this section, the items attributable to the hybrid entity in paragraph (b)(2)(iii) of this section shall not be taken into account to the extent they are also taken into account in determining, under the rules of paragraph (b)(2)(ii) of this section, the taxable income or loss of a foreign branch separate unit that is owned, directly or indirectly (other than through a hybrid entity separate unit), by the hybrid entity separate unit. See § 1.1503(d)–5(c) *Example 30*.

(B) *Combined separate unit*. If two or more separate units defined in § 1.1503(d)–1(b)(4)(i) are treated as one combined separate unit pursuant to § 1.1503(d)–1(b)(4)(ii), the items of income, gain, deduction and loss that are attributable to or taken into account in determining the taxable income of the combined separate unit shall be determined as follows—

(*1*) Items of income, gain, deduction and loss are first attributed to, or taken into account by, each individual separate unit, as defined in § 1.1503(d)–1(b)(4)(i) without regard to § 1.1503(d)–1(b)(4)(ii), pursuant to the rules of paragraph (b)(2) of this section; and

(*2*) The combined separate unit then takes into account all of the items of income, gain, deduction and loss attributable to, or taken into account by, the individual separate units pursuant to paragraph (b)(2)(vii)(B)(*1*) of this section. See § 1.1503(d)–5(c) *Example 30*.

(C) *Gain or loss on the direct or indirect disposition of a separate unit*. For purposes of calculating a dual consolidated loss of a separate unit, items of income or gain (including loss recapture income or gain under section 367(a)(3)(C) or 904(f)(3)), deduction and loss recognized on the sale, exchange or other disposition of a separate unit (or an interest in a partnership or grantor trust that owns, directly or indirectly, a separate unit), are attributable to or taken into account by the separate unit to the extent of the gain or loss that would have been recognized had such separate unit sold all its assets in a taxable exchange, immediately before the disposition of the separate unit, for an amount equal to their fair market value. If, as a result of the sale, exchange or other disposition of a separate unit (or interest in a partnership or grantor trust) more than one separate unit is, directly or indirectly, disposed of, items of income, gain, deduction, and loss recognized on such disposition are attributable to or taken into account by each such separate unit (under the rules of this paragraph (b)(2)(vii)(C)) based on the gain or loss that would have been recognized by each separate unit if it had sold all of its assets in a taxable exchange, immediately before the disposition of the separate unit, for an amount equal to their fair market value. See § 1.1503(d)–5(c) *Examples 31* through *34*.

(D) *Income inclusion on stock*. Any amount included in income of a U.S. person arising from ownership of stock in a foreign corporation (for example, under section 951) through a separate unit shall be taken into account for purposes of calculating the dual consolidated loss of the separate unit if an actual dividend from such foreign corporation would have been so taken into account. See § 1.1503(d)–5(c) *Example 29*.

(3) *Foreign tax treatment disregarded*. The fact that a particular item taken into account in computing a dual resident corporation's net operating loss, or a separate unit's loss, is not taken into account in computing income subject to a foreign country's income tax shall not cause such item to be excluded from the calculation of the dual consolidated loss.

(4) *Items generated or incurred while a dual resident corporation or a separate unit*. For purposes of determining the amount of the dual consolidated loss of a dual resident corporation or a separate unit for the taxable year, only the items of income, gain, deduction and loss generated or incurred during the period the dual resident corporation or separate unit qualified as such shall be taken into account. The allocation of items to such period shall be made under the principles of § 1.1502–76(b).

(c) *Effect of a dual consolidated loss on a domestic affiliate*. For any taxable year in which a dual resident corporation or separate unit has a dual consolidated loss to which § 1.1503(d)–2(b) applies, the following rules shall apply:

(1) *Dual resident corporation*. If the dual resident corporation is a member of a consolidated group, the group shall compute its consolidated taxable income (or loss) by taking into account the dual resident corporation's items of gross income, gain, deduction, or loss taken into account in computing the dual consolidated loss, other than those items of deduction and loss that compose the dual resident corporation's dual consolidated loss. The dual consolidated loss shall be treated as composed of a pro rata portion of each item of deduction and loss of the dual resident corporation taken into account in calculating the dual consolidated loss. The dual consolidated loss is subject to the limitations on its use contained in paragraph (c)(3) of this section and, subject to such limitation, may be carried over or back for use in other taxable years as a separate net operating loss carryover or carryback of the dual resident corporation arising in the year incurred.

(2) *Separate unit*. The unaffiliated domestic owner of a separate unit, or the consolidated group of an affiliated domestic owner of a separate unit, shall compute its taxable income (or loss) by taking into account the separate unit's items of gross income, gain, deduction and loss taken into account in computing the dual consolidated loss, other than those items of deduction and loss that compose the separate unit's dual consolidated loss. The dual consolidated loss shall be treated as composed of a pro rata portion of each item of deduction and loss of the separate unit taken into account in calculating the dual consolidated loss. The dual consolidated loss is subject to the limitations contained in paragraph (c)(3) of this section as if the separate unit that generated the dual consolidated loss were a separate domestic corporation that filed a consolidated return with its unaffiliated domestic owner or with the consolidated group of its affiliated domestic owner. Subject to such limitation, the dual consolidated loss may be carried over or back for use in other taxable years as a separate net operating loss carryover or carryback of the separate unit arising in the year incurred.

(3) *SRLY limitation*. The dual consolidated loss shall be treated as a loss incurred by the dual resident corporation or separate unit in a separate return limitation year and shall be subject to all of the limitations of § 1.1502–21(c) (SRLY limitation), subject to the following:

(i) Notwithstanding § 1.1502–1(f)(2)(i), the SRLY limitation is applied to any dual consolidated loss of a common parent;

(ii) The SRLY limitation is applied without regard to § 1.1502–21(c)(2) (SRLY subgroup limitation) and 1.1502–21(g) (overlap with section 382);

(iii) For purposes of calculating the general SRLY limitation under § 1.1502–21(c)(1)(i), the calculation of aggregate consolidated taxable income shall only include items of income, gain, deduction or loss generated—

(A) In the case of a dual resident corporation or hybrid entity separate unit, in years in which the dual resident corporation or hybrid entity (whose interest constitutes the separate unit) is resident (or is taxed on its worldwide income) in the same foreign country in which it was resident (or was taxed on its worldwide income) during the year in which the dual consolidated loss was generated; and

(B) In the case of a foreign branch separate unit, items of income, gain, deduction or loss generated in years in which the foreign branch qualified as a separate unit; and

(iv) For purposes of calculating the general SRLY limitation under § 1.1502–21(c)(1)(i), the calculation of aggregate consolidated taxable income shall not include any amount included in income pursuant to § 1.1503(d)–4(h) (relating to the recapture of a dual consolidated loss).

(4) *Items of a dual consolidated loss used in other taxable years.* A pro rata portion of each item of deduction or loss that composes the dual consolidated loss shall be considered to be used when the dual consolidated loss is used in other taxable years. See § 1.1503(d)–5(c) *Example 35*.

(d) *Special basis adjustments*—(1) *Affiliated dual resident corporation or affiliated domestic owner.* If a dual resident corporation or domestic owner is a member of a consolidated group, each other member owning stock in the dual resident corporation or domestic owner shall adjust the basis of the stock in accordance with the principles of § 1.1502–32(b), subject to the following:

(i) *Dual consolidated loss subject to domestic use limitation.* There shall be a negative adjustment under § 1.1502–32(b)(2) for any amount of a dual consolidated loss of the dual resident corporation (or, in the case of a domestic owner, of separate units of such domestic owner) that is not absorbed as a result of the application of §§ 1.1503(d)–2(b) and 3(c).

(ii) *Dual consolidated loss absorbed in carryover or carryback year.* There shall be no negative adjustment under § 1.1502–32(b)(2) for the amount of a dual consolidated loss of the dual resident corporation (or, in the case of a domestic owner, of separate units of such domestic owner) subject to §§ 1.1503(d)–2(b) and 1.1503(d)–3(c) that is absorbed in a carryover or carryback taxable year.

(iii) *Recapture income.* There shall be no positive adjustment under § 1.1502–32(b)(2) for any amount included in income by the dual resident corporation or domestic owner pursuant to § 1.1503(d)–4(h).

(2) *Interests in hybrid entities that are partnerships or interests in partnerships through which a separate unit is owned indirectly*—(i) *Scope.* This paragraph (d)(2) applies for purposes of determining the adjusted basis of an interest in:

(A) A hybrid entity that is a partnership; and

(B) A partnership through which a domestic owner indirectly owns a separate unit.

(ii) *Determination of basis of partner's interest.* The adjusted basis of an interest in a hybrid entity that is a partnership, or a partnership through which a domestic owner indirectly owns a separate unit, shall be adjusted in accordance with section 705 of this chapter, except as otherwise provided in this paragraph (d)(2)(ii).

(A) *Dual consolidated loss subject to domestic use limitation.* The adjusted basis shall be decreased for any amount of the dual consolidated loss that is not absorbed as a result of the application of §§ 1.1503(d)–2(b) and 1.1503(d)–3(c).

(B) *Dual consolidated loss absorbed in carryover or carryback year.* The adjusted basis shall not be decreased for the amount of a dual consolidated loss subject to §§ 1.1503(d)–2(b) and 1.1503(d)–3(c) that is absorbed in a carryover or carryback taxable year.

(C) *Recapture income.* The adjusted basis shall not be increased for any amount included in income pursuant to § 1.1503(d)–4(h).

(3) *Examples.* See § 1.1503(d)–5(c) *Examples 36* and *37*.

§ 1.1503(d)–4 Exceptions to the domestic use limitation rule.

(a) *In general.* This section provides certain exceptions to the domestic use limitation rule of § 1.1503(d)–2(b).

(b) *Elective agreement in place between the United States and a foreign country.* The domestic use limitation rule of § 1.1503(d)–2(b) shall not apply to a dual consolidated loss to the extent the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as the case may be, elects to deduct the loss in the United States pursuant to an agreement entered into between the United States and a foreign country that puts into place an elective procedure through which losses offset income in only one country.

(c) *No possibility of foreign use*—(1) *In general.* The domestic use limitation rule of § 1.1503(d)–2(b) shall not apply to a dual consolidated loss if the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as the case may be—

(i) Demonstrates, to the satisfaction of the Commissioner, that no foreign use of the dual consolidated loss occurred in the year in which it was incurred, and no such use can occur in any other year by any means; and

(ii) Prepares a statement described in paragraph (c)(2) of this section that is attached to, and filed by the due date (including extensions) of, its U.S. income tax return for the taxable year in which the dual consolidated loss is incurred. See § 1.1503(d)–5(c) *Examples 38* through *40*.

(2) *Statement.* The statement described in this section must be signed under penalties of perjury by the person who signs the tax return. The statement must be labeled No Possibility of Foreign Use of Dual Consolidated Loss Statement at the top of the page and must include the following items, in paragraphs labeled to correspond with the items set forth in paragraphs (c)(2)(i) through (iv) of this section:

(i) A statement that the document is submitted under the provisions of § 1.1503(d)–4(c);

(ii) The name, address, tax identification number, and place and date of incorporation of the dual resident corporation, and the country or countries that tax the dual resident corporation on its worldwide income or on a residence basis, or, in the case of a separate unit, identification of the separate unit, including the name under which it conducts business, its principal activity, and the country in which its principal place of business is located;

(iii) A statement of the amount of the dual consolidated loss at issue; and

(iv) An analysis, in reasonable detail and specificity, supported with official or certified English translations of the relevant provisions of foreign law, of the treatment of the losses and deductions composing the dual consolidated loss under the laws of the foreign jurisdiction and the reasons supporting the conclusion that no foreign use of the dual consolidated loss occurred in the year in which it was incurred, and no such use can occur in any other year by any means.

(d) *Domestic use election*—(1) *In general.* The domestic use limitation rule of § 1.1503(d)–2(b) shall not apply to a dual consolidated loss if an election to be bound by the provisions of this paragraph (d) of this section (domestic use election) is made by the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as the case may be (elector). In order to elect relief under this paragraph (d) of this section, an agreement described in this paragraph (d)(1) of this section (domestic use agreement) must be attached to, and filed by the due date (including extensions) of, the U.S. income tax return of the elector for the taxable year in which the dual consolidated loss is incurred. The domestic use agreement must be signed under penalties of perjury by the person who signs the return. If dual consolidated losses of more than one dual resident corporation or separate unit are subject to the rules of this paragraph (d) which requires the filing of domestic use agreements by the same elector, the agreements may be combined in a single document, but the information required by paragraphs (d)(1)(ii) and (iv) of this section must be provided separately with respect to each dual consolidated loss. The domestic use agreement must be labeled Domestic Use Election and Agreement at the top of the page and must include the following items, in paragraphs labeled to correspond with the following:

(i) A statement that the document submitted is an election and an agreement under the provisions of § 1.1503(d)–4(d);

(ii) The name, address, tax identification number, and place and date of incorporation of the dual resident corporation, and the country or countries that tax the dual resident corporation on its worldwide income or on a residence basis, or, in the case of a separate unit, identification of the separate unit, including the name under which it conducts business, its principal activity, and the country in which its principal place of business is located;

(iii) An agreement by the elector to comply with all of the provisions of paragraphs (d) through (h) of this section, as applicable;

(iv) A statement of the amount of the dual consolidated loss covered by the agreement;

(v) A certification that there has not been, and will not be, a foreign use of the dual consolidated loss in any taxable year up to and including the seventh taxable year following the year in which the dual consolidated loss that is the subject of the agreement filed under paragraph (d) of this section was incurred (certification period);

(vi) A certification that arrangements have been made to ensure that there will be no foreign use of the dual consolidated loss during the certification period, and that the elector will be informed of any such foreign use of the dual consolidated loss during such period;

(vii) If applicable, a notification that an excepted triggering event under paragraph (f)(2)(i) of this section has occurred with respect to the dual consolidated loss within the taxable year covered by the elector's tax return and providing the name, taxpayer identification number, and address of the subsequent elector (within the meaning of paragraph (f)(2)(iii)(A) of this section) that will be filing future certifications with respect to such dual consolidated loss.

(2) *Consistency rule.* If under the laws of a particular foreign country there is a foreign use of a dual consolidated loss of a dual resident corporation or separate unit that is subject to a domestic use agreement (but not a new domestic use agreement, defined in paragraph (f)(2)(iii)(A) of this paragraph), then a foreign use shall be deemed to occur for the following other dual consolidated losses (if any), but only if the income tax laws of the foreign country permit a foreign use of such other dual consolidated losses in the same taxable year—

(i) Any dual consolidated loss of a dual resident corporation that is a member of the same consolidated group of which the first dual resident corporation or domestic owner is a member, if any deduction or loss taken into account in computing such dual consolidated loss is recognized under the income tax laws of such foreign country in the same taxable year; and

(ii) Any dual consolidated loss of a separate unit that is owned directly or indirectly by the same domestic owner that owns the first separate unit, or that is owned directly or indirectly by any member of the same consolidated group of which the first dual resident corporation or domestic owner is a member, if any deduction or loss taken into account in computing such dual consolidated loss is recognized under the income tax laws of such foreign country in the same taxable year. See § 1.1503(d)–5(c) *Examples 41* and *42*.

(3) *Restrictions on domestic use election*—(i) *Triggering event in year of dual consolidated loss.* Except as otherwise provided in this section, if an event described in paragraphs (e)(1)(i) through (vii) of this section occurs during the year in which a dual resident corporation or separate unit incurs a dual consolidated loss (including a dual consolidated loss resulting, in whole or in part, from the occurrence of the triggering event itself), the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as the case may be, may not make a domestic use election with respect to the dual consolidated loss and such loss therefore is subject to the domestic use limitation rule of § 1.1503(d)–2(b). See § 1.1503(d)–5(c) *Example 32*. See also § 1.1503(d)–2(c) for rules that eliminate a dual consolidated loss after certain transactions.

(ii) *Losses of a foreign insurance company treated as a domestic corporation.* A foreign insurance company that has elected to be treated as a domestic corporation pursuant to section 953(d) may not make a domestic use election. See section 953(d)(3).

(e) *Triggering events requiring the recapture of a dual consolidated loss*—(1) *Events.* The elector must agree that, except as provided under paragraphs (e)(2) and (f) of this section, if there is a triggering event described in this paragraph (e) during the certification period, the elector will recapture and report as income the amount of the dual consolidated loss as provided in paragraph (h) of this section on its tax return for the taxable year in which the triggering event occurs (or, when the triggering event is a foreign use of the dual consolidated loss, the taxable year that includes the last day of the foreign tax year during which such use occurs). In addition, the elector must pay any applicable interest charge required by paragraph (h) of this section. For purposes of this section, except as provided under paragraphs (e)(2) and (f) of this section, any of the following events shall constitute a triggering event:

(i) *Foreign use.* A foreign use of the dual consolidated loss (including a deemed foreign use pursuant to the mirror legislation rule set forth in § 1.1503(d)–1(b)(13)(ii)(D) or the consistency rule set forth in paragraph (d)(2) of this section).

(ii) *Disaffiliation.* An affiliated dual resident corporation or affiliated domestic owner ceases to be a member of the consolidated group that made the domestic use election. For purposes of this paragraph (e)(1)(ii), a dual resident corporation or domestic owner shall be considered to cease to be a member of the consolidated group if it is no longer a member of the group within the meaning of § 1.1502–1(b), or if the group ceases to exist (for example, when the group no longer files a consolidated

return). See § 1.1503(d)–5(c) *Example 47*.

(iii) *Affiliation.* An unaffiliated dual resident corporation or unaffiliated domestic owner becomes a member of a consolidated group. Any consequences resulting from this triggering event (for example, recapture of a dual consolidated loss) shall be taken into account in the tax return of the unaffiliated dual resident corporation or unaffiliated domestic owner for the taxable year that ends immediately before the taxable year in which the unaffiliated dual resident corporation or unaffiliated domestic owner becomes a member of the consolidated group.

(iv) *Transfer of assets.* Fifty percent or more of the dual resident corporation's or separate unit's gross assets (measured by the fair market value of the assets at the time of such transfer (or for multiple transactions, at the time of the first transfer)) are sold or otherwise disposed of in either a single transaction or a series of transactions within a twelve-month period. For purposes of this paragraph, the interest in a separate unit and the shares of a dual resident corporation shall not be treated as assets of a dual resident corporation or a separate unit.

(v) *Transfer of an interest in a separate unit.* Fifty percent or more of the interest in a separate unit (measured by voting power or value) owned directly or indirectly by the domestic owner on the last day of the taxable year in which the dual consolidated loss was incurred is sold or otherwise disposed of either in a single transaction or a series of transactions within a twelve-month period.

(vi) *Conversion to a foreign corporation.* An unaffiliated dual resident corporation, unaffiliated domestic owner, or hybrid entity an interest in which is a separate unit, becomes a foreign corporation by means of a transaction (for example, a reorganization, or an election to be classified as a corporation under § 301.7701–3(c) of this chapter) that, for foreign tax purposes, is not treated as involving a transfer of assets (and carryover of losses) to a new entity.

(vii) *Conversion to an S corporation.* An unaffiliated dual resident corporation or unaffiliated domestic owner elects to be an S corporation pursuant to section 1362(a).

(viii) *Failure to certify.* The elector fails to file a certification required under paragraph (g) of this section.

(2) *Rebuttal.* An event described in paragraphs (e)(1)(ii) through (viii) of this section shall not constitute a triggering event if the elector demonstrates, to the satisfaction of the Commissioner, that there can be no foreign use of the dual consolidated loss at any time during the remaining certification period. The elector must prepare a statement, labeled Rebuttal of Triggering Event at the top of the page, that indicates that it is submitted under the provisions of this section § 1.1503(d)–4(e)(2). The statement must set forth an analysis, in reasonable detail and specificity, supported with official or certified English translations of the relevant provisions of foreign law, of the treatment of the losses and deductions composing the dual consolidated loss under the facts of the event in question. The statement must be attached to, and filed by the due date (including extensions) of, the elector's income tax return for the taxable year in which the presumed triggering event occurs. See § 1.1503(d)–5(c) *Examples 43* through *45*.

(f) *Exceptions*—(1) *Acquisition by a member of the consolidated group.* The following events shall not constitute triggering events, requiring the recapture of the dual consolidated loss under paragraph (h) of this section—

(i) An affiliated dual resident corporation or affiliated domestic owner ceases to be a member of a consolidated group solely by reason of a transaction in which a member of the same consolidated group succeeds to the tax attributes of the dual resident corporation or domestic owner under the provisions of section 381.

(ii) Assets of an affiliated dual resident corporation or assets of a separate unit owned by an affiliated domestic owner are acquired in any other transaction by—

(A) One or more members of its consolidated group; or

(B) A partnership, a grantor trust, or a hybrid entity, but only if 100 percent of such entity's interests are owned, directly or indirectly, by such affiliated dual resident corporation or affiliated domestic owner, as the case may be, or by members of its consolidated group.

(iii) Assets of a separate unit are acquired in any other transaction by its domestic owner or by a hybrid entity or grantor trust, but only if 100 percent of such entity's interest is owned by the domestic owner.

(iv) The interest of a hybrid entity separate unit, or an indirectly owned separate unit, owned by an affiliated domestic owner, is transferred to—

(A) A member of its consolidated group; or

(B) A partnership, a grantor trust, or a hybrid entity, but only if 100 percent of such entity's interests are owned, directly or indirectly, by such affiliated domestic owner, or by members of its consolidated group.

(2) *Acquisition by an unaffiliated domestic corporation or a new consolidated group*—(i) *Subsequent elector events.* If all the requirements of paragraph (f)(2)(iii) of this section are met, the following events shall not constitute triggering events requiring the recapture of the dual consolidated loss under paragraph (h) of this section—

(A) An affiliated dual resident corporation or affiliated domestic owner becomes an unaffiliated domestic corporation or a member of a new consolidated group (other than in a transaction described in paragraph (f)(2)(ii)(B) of this section);

(B) Assets of a dual resident corporation or a separate unit are acquired by—

(*1*) An unaffiliated domestic corporation;

(*2*) One or more members of a new consolidated group; or

(*3*) A partnership, a grantor trust, or a hybrid entity, but only if 100 percent of such entity's interests are owned, directly or indirectly, by members of a new consolidated group.

(C) The interest of a hybrid entity separate unit, or an indirectly owned separate unit, owned by a domestic owner is transferred to—

(*1*) An unaffiliated domestic corporation;

(*2*) One or more members of a new consolidated group; or

(*3*) A partnership, a grantor trust, or a hybrid entity, but only if 100 percent of such entity's interests is owned, directly or indirectly, by members of a new consolidated group.

(ii) *Non-subsequent elector events.* If the requirements of paragraph (f)(2)(iii)(A) of this section are met, the following events also shall not constitute triggering events requiring the recapture of the dual consolidated loss under paragraph (h) of this section—

(A) An unaffiliated dual resident corporation or unaffiliated domestic owner becomes a member of a consolidated group; or

(B) A consolidated group that filed a domestic use agreement ceases to exist as a result of a transaction described in § 1.1502–13(j)(5)(i) (other than a transaction in which any member of the terminating group, or the successor-in-interest of such member, is not a member of the surviving group immediately after the terminating group ceases to exist). See § 1.1503(d)–5(c) *Example 46*.

(iii) *Requirements*—(A) *New domestic use agreement.* The unaffiliated domestic corporation or new consolidated group (subsequent elector)

must file an agreement described in paragraph (d)(1) of this section (new domestic use agreement). The new domestic use agreement must be labeled New Domestic Use Agreement at the top of the page, and must be attached to and filed by the due date (including extensions) of, the subsequent elector's income tax return for the taxable year in which the event described in paragraph (f)(2)(i) or (f)(2)(ii) of this section occurs. The new domestic use agreement must be signed under penalties of perjury by the person who signs the return and must include the following items—

(*1*) A statement that the document submitted is an election and agreement under the provisions of § 1.1503(d)–4(f)(2);

(*2*) An agreement to assume the same obligations with respect to the dual consolidated loss as the corporation or consolidated group that filed the original domestic use agreement (original elector) with respect to that loss;

(*3*) An agreement to treat any potential recapture amount under paragraph (h) of this section with respect to the dual consolidated loss as unrealized built-in gain for purposes of section 384(a), subject to any applicable exceptions thereunder;

(*4*) An agreement to be subject to the successor elector rules as provided in paragraph (h)(3) of this section; and

(*5*) The name, U.S. taxpayer identification number, and address of the original elector and prior subsequent electors with respect to the dual consolidated losses, if any.

(B) *Statement filed by original elector.* The original elector must file a statement that is attached to and filed by the due date (including extensions) of its income tax return for the taxable year in which the event described in paragraph (f)(2)(i) of this section occurs. The statement must be labeled Original Elector Statement at the top of the page, must be signed under penalties of perjury by the person who signs the tax return, and must include the following items—

(*1*) A statement that the document submitted is an election and agreement under the provisions of § 1.1503(d)–4(f)(2);

(*2*) An agreement to be subject to the successor elector rules as provided in paragraph (h)(3) of this section; and

(*3*) The name, U.S. taxpayer identification number, and address of the subsequent elector.

(3) *Subsequent triggering events.* Any triggering event described in paragraph (e) of this section that occurs subsequent to one of the transactions described in paragraph (f)(1) or (2) of this section, and that itself does not fall within the exceptions provided in paragraph (f)(1) or (2) of this section, shall require recapture under paragraph (h) of this section.

(g) *Annual certification reporting requirement.* Except as provided in paragraph (i) of this section, the elector must file a certification, labeled Certification of Dual Consolidated Loss at the top of the page, that is attached to, and filed by the due date (including extensions) of, its income tax return for each taxable year during the certification period. The certification must certify that there has been no foreign use of such dual consolidated loss. The certification must identify the dual consolidated loss to which it pertains by setting forth the elector's year in which the loss was incurred and the amount of such loss. In addition, the certification must warrant that arrangements have been made to ensure that there will be no foreign use of the dual consolidated loss and that the elector will be informed of any such foreign use. If dual consolidated losses of more than one taxable year are subject to the rules of this paragraph (g) of this section, the certification for those years may be combined in a single document but each dual consolidated loss must be separately identified.

(h) *Recapture of dual consolidated loss and interest charge*—(1) *Presumptive rules*—(i) *Amount of recapture.* Except as otherwise provided in this section, upon the occurrence of a triggering event described in paragraph (e)(1) of this section that falls outside the exceptions provided in paragraph (f)(1) or (2) of this section, the dual resident corporation or separate unit shall recapture, and the elector shall report, as gross income the total amount of the dual consolidated loss to which the triggering event applies on its income tax return for the taxable year in which the triggering event occurs (or, when the triggering event is a foreign use of the dual consolidated loss, the taxable year that includes the last day of the foreign tax year during which such foreign use occurs).

(ii) *Interest charge.* In connection with the recapture, the elector shall pay an interest charge. Except as otherwise provided in this section, such interest shall be determined under the rules of section 6601(a) as if the additional tax owed as a result of the recapture had accrued and been due and owing for the taxable year in which the losses or deductions taken into account in computing the dual consolidated loss gave rise to a tax benefit for U.S. income tax purposes. For purposes of this paragraph (h)(1)(ii), a tax benefit shall be considered to have arisen in a taxable year in which such losses or deductions reduced U.S. taxable income. *See* § 1.1503(d)–5(c) *Example 51.*

(2) *Reduction of presumptive recapture amount and presumptive interest charge*—(i) *Amount of recapture.* The amount of dual consolidated loss that must be recaptured under paragraph (h) of this section may be reduced if the elector demonstrates, to the satisfaction of the Commissioner, the offset permitted by this paragraph (h)(2)(i). The reduction in the amount of recapture is the amount by which the dual consolidated loss would have offset other taxable income reported on a timely filed U.S. income tax return for any taxable year up to and including the taxable year of the triggering event if such loss had been subject to the restrictions of § 1.1503(d)–2(b) (and therefore subject to the limitation under § 1.1503(d)–3(c)(3)). In the case of a separate unit, the prior sentence is applied as if the separate unit were a separate domestic corporation that filed a consolidated return with its unaffiliated domestic owner or with the consolidated group of its affiliated domestic owner. For purposes of determining the reduction in the amount of recapture pursuant to this paragraph, the rules under § 1.1503(d)–3(b) shall apply. Any reduction to recapture pursuant to this paragraph that is attributable to income generated in taxable years prior to the year in which the dual consolidated loss was generated, subject to the restrictions of § 1.1503(d)–2(b) (and therefore subject to the limitation under § 1.1503(d)–3(c)(3)), shall be permitted only if the elector demonstrates to the satisfaction of the Commissioner that the dual resident corporation or separate unit, as the case may be, qualified as such (with respect to the same foreign country in which the dual consolidated loss was generated) in the taxable years such income was generated. An elector utilizing this rebuttal rule must prepare a separate accounting showing that the income for each year that offsets the dual resident corporation or separate unit's recapture amount is attributable only to the dual resident corporation or separate unit. The separate accounting must be signed under penalties of perjury by the person who signs the elector's tax return, must be labeled Reduction of Recapture Amount at the top of the page, and must indicate that it is submitted under the provisions of paragraph (h)(2)(i) of this section. The accounting must be attached to, and filed by the due date (including extensions) of, the elector's income tax

return for the taxable year in which the triggering event occurs.

(ii) *Interest charge.* The interest charge imposed under this section may be appropriately reduced if the elector demonstrates, to the satisfaction of the Commissioner, that the net interest owed would have been less than that provided in paragraph (h)(1)(ii) of this section if the elector had filed an amended return for the taxable year in which the loss was incurred, and for any other affected taxable years up to and including the taxable year of recapture, treating the dual consolidated loss as a loss subject to the restrictions of § 1.1503(d)–2(b) (and therefore subject to the limitations under § 1.1503(d)–3(c)(3)). In the case of a separate unit, the prior sentence is applied as if the separate unit were a separate domestic corporation that filed a consolidated return with its unaffiliated domestic owner. An elector utilizing this rebuttal rule must prepare a computation demonstrating the reduction in the net interest owed as a result of treating the dual consolidated loss as a loss subject to the restrictions of § 1.1503(d)–2(b) (and therefore subject to the limitations under § 1.1503(d)–3(c)(3)). The computation must be labeled Reduction of Interest Charge at the top of the page and must indicate that it is submitted under the provisions of paragraph (h)(2)(ii) of this section. The computation must be signed under penalties of perjury by the person who signs the elector's tax return, and must be attached to, and filed by the due date (including extensions) of, the elector's income tax return for the taxable year in which the triggering event occurs. See § 1.1503(d)–5(c) *Examples 51* and *52.*

(3) *Rules regarding subsequent electors*—(i) *In general.* The rules of this paragraph (h)(3) apply when, subsequent to an event described in paragraph (e)(1) of this section with respect to which the requirements of paragraph (f)(2)(i) of this section were met (excepted event), a triggering event under paragraph (e) of this section occurs, and no exception applies to such triggering event under paragraph (f) of this section (subsequent triggering event).

(ii) *Original elector and prior subsequent electors not subject to recapture or interest charge*—(A) Except to the extent provided in paragraph (h)(3) of this section, neither the original elector nor any prior subsequent elector shall be subject to the rules of paragraph (h) of this section with respect to dual consolidated losses subject to the original domestic use agreement.

(B) In the case of a dual consolidated loss with respect to which multiple excepted events have occurred, only the subsequent elector that owns the dual resident corporation or separate unit at the time of the subsequent triggering event shall be subject to the recapture rules of paragraph (h) of this section. For purposes of paragraph (h) of this section, the term *prior subsequent elector* refers to all other subsequent electors.

(iii) *Recapture tax amount and required statement*—(A) *In general.* If a subsequent triggering event occurs, the subsequent elector must prepare a statement that computes the recapture tax amount, as provided under paragraph (h)(3)(iii)(B) of this section, with respect to the dual consolidated loss subject to the new domestic use agreement. This statement must be attached to, and filed by the due date (including extensions) of, the subsequent elector's income tax return for the taxable year in which the subsequent triggering event occurs. The statement must be signed under penalties of perjury by the person who signs the return. The statement must be labeled Statement Identifying Secondary Liability at the top and, in addition to the calculation of the recapture tax amount, must include the following items, in paragraphs labeled to correspond with the items set forth in paragraphs (h)(3)(iii)(A)(*1*) through (*3*) of this section:

(*1*) A statement that the document is submitted under the provisions of § 1.1503(d)–4(h)(3)(iii);

(*2*) A statement identifying the amount of the dual consolidated losses at issue and the taxable year in which they were used;

(*3*) The name, address, and tax identification number of the original elector and all prior subsequent electors.

(B) *Recapture tax amount.* The *recapture tax amount* equals the excess (if any) of—

(*1*) The income tax liability of the subsequent elector for the taxable year of the subsequent triggering event; over

(*2*) The income tax liability of the subsequent elector for the taxable year of the subsequent triggering event, computed by excluding the amount of recapture and related interest charge with respect to the dual consolidated losses that are recaptured as a result of the subsequent triggering event, as provided under paragraphs (h)(1) and (h)(2) of this section.

(iv) *Tax assessment and collection procedures*—(A) *In general*—(1) *Subsequent elector.* An assessment identifying an income tax liability of the subsequent elector is considered an assessment of the recapture tax amount where the recapture tax amount is part of the income tax liability being assessed and the recapture tax amount is reflected in a statement attached to the subsequent elector's income tax return as provided under paragraph (h)(3)(iii) of this section.

(*2*) *Original elector and prior subsequent electors.* The assessment of the recapture tax amount as set forth in paragraph (h)(3)(iv)(A)(1) of this section shall be considered as having been properly assessed as an income tax liability of the original elector and of each prior subsequent elector, if any. The date of such assessment shall be the date the income tax liability of the subsequent elector was properly assessed. The Commissioner may collect all or a portion of such recapture tax amount from the original elector and/or the prior subsequent electors under the circumstances set forth in paragraph (h)(3)(iv)(B) of this section.

(B) *Collection from original elector and prior subsequent electors; joint and several liability.* If the subsequent elector does not pay in full any of the income tax liability that includes a recapture tax amount, the Commissioner may collect that portion of the unpaid balance of such income tax liability attributable to the recapture tax amount in full or in part from the original elector and/or from any prior subsequent elector, provided that the following conditions are satisfied with respect to such elector—

(*1*) The Commissioner properly has assessed the recapture tax amount pursuant to paragraph (h)(3)(iv)(A)(*1*) of this section;

(*2*) The Commissioner has issued a notice and demand for payment of the recapture tax amount to the subsequent elector in accordance with § 301.6303–1 of this chapter;

(*3*) The subsequent elector has failed to pay all of the recapture tax amount by the date specified in such notice and demand; and

(*4*) The Commissioner has issued a notice and demand for payment of the unpaid portion of the recapture tax amount to the original elector, or prior subsequent elector (as the case may be), in accordance with § 301.6303–1 of this chapter. The liability imposed under this paragraph (h)(3)(iv)(B) on the original elector and each prior subsequent elector shall be joint and several.

(C) *Allocation of partial payments of tax.* If the subsequent elector's income tax liability for a taxable period includes a recapture tax amount, and if such income tax liability is satisfied in part by payment, credit, or offset, such

payment, credit or offset shall be allocated first to that portion of the income tax liability that is not attributable to the recapture tax amount, and then to that portion of the income tax liability that is attributable to the recapture tax amount.

(D) *Refund.* If the Commissioner makes a refund of any income tax liability that includes a recapture tax amount, the Commissioner shall allocate and pay the refund to each elector who paid a portion of such income tax liability as follows:

(*1*) The Commissioner shall first determine the total amount of recapture tax paid by and/or collected from the original elector and from any prior subsequent elector(s). The Commissioner shall then allocate and pay such refund to the original elector and prior subsequent elector(s), with each such elector receiving an amount of such refund on a pro rata basis, not to exceed the amount of recapture tax paid by and/or collected from such elector.

(*2*) The Commissioner shall pay any balance of such refund, if any, to the subsequent elector.

(v) *Definition of income tax liability.* Solely for purposes of paragraph (h)(3) of this section, the term *income tax liability* means the income tax liability imposed on a domestic corporation under Title 26 of the United States Code for a taxable year, including additions to tax, additional amounts, penalties, and any interest charge related to such income tax liability.

(vi) *Example.* See § 1.1503(d)–5(c) *Example 49.*

(4) *Computation of taxable income in year of recapture*—(i) *Presumptive rule.* Except to the extent provided in paragraph (h)(4)(ii) of this section, for purposes of computing the taxable income for the year of recapture, no current, carryover or carryback losses of the dual resident corporation or separate unit, of other members of the consolidated group, or of the domestic owner that are not attributable to the separate unit, may offset and absorb the recapture amount.

(ii) *Rebuttal of presumptive rule.* The recapture amount included in gross income may be offset and absorbed by that portion of the elector's (consolidated or separate) net operating loss carryover that is attributable to the dual consolidated loss being recaptured, if the elector demonstrates, to the satisfaction of the Commissioner, the amount of such portion of the carryover. An elector utilizing this rebuttal rule must prepare a computation demonstrating the amount of net operating loss carryover that, under paragraph (h)(4)(ii) of section, may absorb the recapture amount included in gross income. Such computation must be signed under penalties of perjury and attached to and filed by the due date (including extensions) of, the income tax return for the taxable year in which the triggering event occurs.

(5) *Character and source of recapture income.* The amount recaptured under paragraph (h) of this section shall be treated as ordinary income. Except as provided in the prior sentence, such income shall be treated, as applicable, as income from the same source, having the same character, and falling within the same separate category, for all purposes of the Internal Revenue Code, including sections 856(c)(2) and (3), 904(d), and 907, to which the items of deduction or loss composing the dual consolidated loss were allocated and apportioned, as provided under sections 861(b), 862(b), 863(a), 864(e), 865 and the regulations thereunder. See § 1.1503(d)–5(c) *Example 50.*

(6) *Reconstituted net operating loss.* Commencing in the taxable year immediately following the year in which the dual consolidated loss is recaptured, the dual resident corporation or separate unit (but only if such separate unit is owned, directly or indirectly, by a domestic corporation) shall be treated as having a net operating loss in an amount equal to the amount actually recaptured under paragraph (h) of this section. This reconstituted net operating loss shall be subject to the restrictions of § 1.1503(d)–2(b) (and therefore, the restrictions of § 1.1503(d)–3(c)(3)), without regard to the exceptions contained in paragraphs (b) through (d) of this section. The net operating loss shall be available only for carryover, under section 172(b), to taxable years following the taxable year of recapture. For purposes of determining the remaining carryover period, the loss shall be treated as if it had been recognized in the taxable year in which the dual consolidated loss that is the basis of the recapture amount was incurred. See § 1.1503(d)–5(c) *Example 52.*

(i) *Termination of domestic use agreement and annual certifications*—(1) *Rebuttal of triggering event.* If, pursuant to paragraph (e)(2) of this section, an elector is able to rebut the presumption of a triggering event described in paragraphs (e)(1)(ii) through (ix) of this section, including complying with the related reporting requirements, then the domestic use agreement filed with respect to any dual consolidated losses that would have been recaptured as a result of the event, but for the rebuttal, shall terminate and have no further effect. See § 1.1503(d)–5(c) *Example 43.*

(2) *Exception to triggering event.* If an event described in paragraph (e)(1) of this section is not a triggering event as a result of the application of paragraph (f)(2)(i) or (ii) of this section, then the domestic use agreement filed with respect to any dual consolidated losses that would have been recaptured as a result of the event, but for the application of paragraph (f)(2)(i) or (f)(2)(ii) of this section, shall terminate and have no further effect. See § 1.1503(d)–5(c) *Examples 46* and *49.*

(3) *Recapture of dual consolidated loss.* If a dual consolidated loss is recaptured pursuant to paragraph (h) of this section, then the domestic use agreement filed with respect to such recaptured dual consolidated loss shall terminate and have no further effect. See § 1.1503(d)–5(c) *Examples 49* through *52.*

(4) *Termination of ability for foreign use*—(i) *In general.* A domestic use agreement filed with respect to a dual consolidated loss shall terminate and have no further effect as of the end of a taxable year if the elector—

(A) Demonstrates, to the satisfaction of the Commissioner, that as of the end of such taxable year no foreign use of the dual consolidated loss can occur in any year by any means; and

(B) Prepares a statement described in paragraph (i)(4)(ii) of this section that is attached to, and filed by the due date (including extensions) of, its U.S. income tax return for such taxable year.

(ii) *Statement.* The statement described in this paragraph (i)(4)(ii) must be signed under penalties of perjury by the person who signs the return. The statement must be labeled Termination of Ability for Foreign Use at the top of the page and must include the following items, in paragraphs labeled to correspond with the following:

(A) A statement that the document is submitted under the provisions of § 1.1503(d)–4(i)(4).

(B) The name, address, tax identification number, and place and date of incorporation of the dual resident corporation, and the country or countries that tax the dual resident corporation on its worldwide income or on a residence basis, or, in the case of a separate unit, identification of the separate unit, including the name under which it conducts business, its principal activity, and the country in which its principal place of business is located.

(C) A statement of the amount of the dual consolidated loss at issue and the year in which such dual consolidated loss was incurred.

(D) An analysis, in reasonable detail and specificity, supported with official or certified English translations of the relevant provisions of foreign law, of the treatment of the losses and deductions composing the dual consolidated loss under the laws of the foreign jurisdiction and the reasons supporting the conclusion that no foreign use of the dual consolidated loss can occur in any year by any means.

§ 1.1503(d)–5 Examples.

(a) *In general.* This section provides examples that illustrate the application of §§ 1.1503(d)–1 through 1.1503(d)–4. This section also provides facts that are presumed for such examples.

(b) *Presumed facts for examples.* For purposes of the examples in this section, unless otherwise indicated, the following facts are presumed:

(1) Each entity has only a single class of equity outstanding, all of which is held by a single owner.

(2) P, a domestic corporation and the common parent of the P consolidated group, owns S, a domestic corporation and a member of the P consolidated group.

(3) DRC_X, a domestic corporation, is subject to Country X tax on its worldwide income or on a residence basis, and is a dual resident corporation.

(4) $DE1_X$ and $DE2_X$ are both Country X entities, subject to Country X tax on their worldwide income or on a residence basis, and disregarded as entities separate from their owners for U.S. tax purposes. $DE3_Y$ is a Country Y entity, subject to Country Y tax on its worldwide income or on a residence basis, and disregarded as an entity separate from its owner for U.S. tax purposes. The interests in $DE1_X$, $DE2_X$, and $DE3_Y$ constitute hybrid entity separate units.

(5) FB_X is a foreign branch, as defined in § 1.367(a)–6T(g), and is a Country X foreign branch separate unit.

(6) Neither the assets nor the activities of an entity constitutes a foreign branch separate unit.

(7) FS_X is a Country X entity that is subject to Country X tax on its worldwide income or on a residence basis and is classified as a foreign corporation for U.S. tax purposes.

(8) The applicable foreign jurisdiction has a consolidation regime that—

(i) Includes as members of a consolidated group any commonly controlled branches and permanent establishments in such jurisdiction, and entities that are subject to tax in such jurisdiction on their worldwide income or on a residence basis; and

(ii) Allows the losses of members of consolidated groups to offset income of other members.

(9) There is no mirror legislation, within the meaning of § 1.1503(d)–1(b)(14)(v), in the applicable foreign jurisdiction.

(10) There is no elective agreement described in § 1.1503(d)–4(b) between the United States and the applicable foreign jurisdiction.

(11) If a domestic use election, within the meaning of § 1.1503(d)–4(d), is made, all the necessary filings related to such election are properly completed on a timely basis.

(12) If there is a triggering event requiring recapture of a dual consolidated loss, the amount of recapture is not reduced pursuant to § 1.1503(d)–4(h)(2).

(c) *Examples.* The following examples illustrate the application of §§ 1.1503(d)–1 through 1.1503(d)–4:

Example 1. Separate unit combination rule. (i) *Facts.* P owns $DE3_Y$ which, in turn, owns $DE1_X$. $DE1_X$ owns FB_X. Domestic partnership PRS, owned 50% by P and 50% by an unrelated foreign person, conducts operations in Country X that constitute a foreign branch within the meaning of § 1.367(a)–6T(g). S owns $DE2_X$.

(ii) *Result.* Pursuant to § 1.1503(d)–1(b)(4)(ii), the interest in $DE1_X$, FB_X, and P's share of the Country X branch owned by PRS, which is owned by P indirectly through its interest in PRS, are combined and treated as one separate unit owned by P. P's interest in $DE3_Y$, however, is another separate unit because it is subject to tax in Country Y, rather than Country X. S's interest in $DE2_X$ also is another separate unit because it is owned by S, a different domestic corporation.

Example 2. Domestic use limitation—foreign branch separate unit. (i) *Facts.* P conducts operations in Country X that constitute a permanent establishment under the Country X income tax laws. In Year 1, P's Country X permanent establishment has a loss, as determined under § 1.1503(d)–3(b)(2).

(ii) *Result.* Under § 1.1503(d)–1(b)(4)(i) and § 1.367(a)–6T(g)(1), P's Country X permanent establishment constitutes a foreign branch separate unit. Therefore, the Year 1 loss of the foreign branch separate unit constitutes a dual consolidated loss pursuant to § 1.1503(d)–1(b)(5)(ii). The dual consolidated loss rules apply even though there is no affiliate of the foreign branch separate unit in Country X because it is still possible that all or a portion of the dual consolidated loss can be put to a foreign use. For example, there may be a foreign use with respect to an affiliate acquired in a year subsequent to the year in which the dual consolidated loss was generated. Accordingly, unless an exception under § 1.1503(d)–4 applies (such as a domestic use election), the Year 1 dual consolidated loss of P's Country X permanent establishment is subject to the domestic use limitation rule of § 1.1503(d)–2(b). As a result, the Year 1 dual consolidated loss cannot offset income of P that is not from its Country X foreign branch separate unit, or income from any other domestic affiliate of such foreign branch separate unit.

Example 3. Domestic use limitation—no foreign consolidation regime. (i) *Facts.* The facts are the same as in *Example 2*, except that Country X does not have a consolidation regime that includes as members of consolidated groups Country X branches or permanent establishments.

(ii) *Result.* The result is the same as *Example 2.* The dual consolidated loss rules apply even in the absence of a consolidation regime in the foreign country because it is possible that all or a portion of a dual consolidated loss can be put to a foreign use by other means, such as through an acquisition or similar transaction.

Example 4. Domestic use limitation—foreign branch separate unit owned through a partnership. (i) *Facts.* P and S organize a partnership, PRS_X, under the laws of Country X. PRS_X is treated as a partnership for both U.S. and Country X income tax purposes. PRS_X owns FB_X. PRS_X earns U.S. source income that is unconnected with its FB_X branch operations and such income, therefore, is not subject to tax by Country X.

(ii) *Result.* Under § 1.1503(d)–1(b)(4)(i), P's and S's shares of FB_X owned indirectly through their interests in PRS_X are foreign branch separate units. Unless an exception under § 1.1503(d)–4 applies, any dual consolidated loss incurred by FB_X cannot offset income of P or S (other than income attributable to FB_X), including their distributive share of the U.S. source income earned through their interests in PRS_X, or income of any other domestic affiliates of FB_X.

Example 5. Domestic use limitation—interest in hybrid entity partnership and indirectly owned foreign branch separate unit. (i) *Facts.* HPS_X is a Country X entity that is subject to Country X tax on its worldwide income. HPS_X is classified as a partnership for U.S. tax purposes. P, S, and F_X, an unrelated Country X corporation, are the sole partners of HPS_X. For U.S. tax purposes, P, S, and F_X each has an equal interest in each item of HPS_X's profit or loss. HPS_X conduct operations in Country Y that, if carried on by a U.S. person, would constitute a foreign branch within the meaning of § 1.367(a)–6T(g).

(ii) *Result.* Under § 1.1503(d)–1(b)(4)(i), the partnership interests in HPS_X held by P and S are hybrid entity separate units. In addition, P's and S's share of the Country Y branch owned indirectly through their interests in HPS_X are foreign branch separate units. Unless an exception under § 1.1503(d)–4 applies, dual consolidated losses attributable to P's and S's interests in HPS_X can only be used to offset income attributable to their respective interests in HPS_X (other than income of HPS_X's Country Y foreign branch separate unit). Similarly, dual consolidated losses of P's and S's interests in the Country Y branch of HPS_X can only be used to offset income attributable to their respective interests in the Country Y branch.

Example 6. Foreign use—general rule. (i) *Facts.* P owns $DE1_X$. $DE1_X$ owns FS_X. In Year

1, $DE1_X$ incurs a $100x net operating loss for both U.S. and Country X tax purposes. The 100_x$ Year 1 loss of $DE1_X$ is attributable to P's interest in $DE1_X$ and is a dual consolidated loss. FS_X earns $200x of income in Year 1 for Country X tax purposes. $DE1_X$ and FS_X file a Country X consolidated tax return. For Country X purposes, the Year 1 $100x loss of $DE1_X$ is used to offset $100x of Year 1 income generated by FS_X.

(ii) *Result.* $DE1_X$'s $100x loss offsets FS_X's income under the laws of Country X. In addition, under U.S. tax principles, such income is an item of FS_X, a foreign corporation. As a result, under § 1.1503(d)–1(b)(14)(i), there has been a foreign use of the Year 1 dual consolidated loss attributable to P's interest in $DE1_X$. Therefore, P cannot make a domestic use election with respect to the Year 1 dual consolidated loss of $DE1_X$ as provided under § 1.1503(d)–4(d)(3)(i), and such loss will be subject to the domestic use limitation rule of § 1.1503(d)–2(b). The result would be the same even if FS_X, under Country X laws, had no income against which the dual consolidated loss of $DE1_X$ could be offset (unless FS_X's ability to use the loss under Country X laws require an election, and no such election is made).

Example 7. Foreign use—foreign reverse hybrid structure. (i) *Facts.* P owns $DE1_X$. $DE1_X$ owns 99% and S owns 1% of FRH_X, a Country X partnership that elected to be treated as a corporation for U.S. tax purposes. FRH_X conducts an active business in Country X. The 99% interest in FRH_X is the only asset owned by $DE1_X$. $DE1_X$'s sole item of income, gain, deduction, or loss in Year 1 for purposes of calculating a dual consolidated loss attributable to P's interest in $DE1_X$ is interest expense incurred on a loan from an unrelated party. $DE1_X$'s Year 1 interest expense constitutes a dual consolidated loss. In Year 1, for Country X income tax purposes, $DE1_X$ took into account its distributive share of income generated by FRH_X and offset such income with its interest expense.

(ii) *Result.* In year 1, the dual consolidated loss attributable to P's interest in $DE1_X$, offsets income recognized in Country X and under U.S. tax principles the income is considered to be income of FRH_X, a foreign corporation. Accordingly, pursuant to § 1.1503(d)–1(b)(14)(i), there is a foreign use of the dual consolidated loss. Therefore, P cannot make a domestic use election with respect to $DE1_X$'s Year 1 dual consolidated loss, as provided under § 1.1503(d)–4(d)(3)(i), and such loss will be subject to the domestic use limitation rule of § 1.1503(d)–2(b).

Example 8. Foreign use—inapplicability of no dilution exception to foreign reverse hybrid structure. (i) *Facts.* The facts are the same as in *Example 7,* except as follows. Instead of owning $DE1_X$, P owns 75% of HPS_X, a Country X entity subject to Country X tax on its worldwide income. F_X, an unrelated foreign corporation, owns the remaining 25% of HPS_X. HPS_X is classified as a partnership for U.S. income tax purposes. HPS_X owns 99% and S owns 1% of FRH_X. HPS_X incurs the Year 1 interest expense and P's interest in HPS_X, therefore, has a dual consolidated loss in Year 1.

(ii) *Result.* In year 1, the dual consolidated loss attributable to P's interest in HPS_X offsets income recognized under Country X law and under U.S. tax principles the income is considered to be income of FRH_X, a foreign corporation. Accordingly, pursuant to § 1.1503(d)–1(b)(14)(i), there is a foreign use of the dual consolidated loss. In addition, the exception to foreign use under § 1.1503(d)–1(b)(14)(iii)(C)(*1*)(*i*) does not apply because the foreign use is not solely the result of the dual consolidated loss being made available under Country X laws to offset an item of income or gain recognized under Country X laws that is considered, under U.S. tax principles, to be an item of F_X. Instead, the income that is offset is, under U.S. tax principles, income of FRH_X, a foreign corporation. Therefore, P cannot make a domestic use election with respect to the Year 1 dual consolidated loss attributable to its interest in HPS_X, and such loss will be subject to the domestic use limitation rule of § 1.1503(d)–2(b).

Example 9. Foreign use—dual resident corporation with hybrid entity joint venture. (i) *Facts.* P owns DRC_X, a member of the P consolidated group. DRC_X owns 80% of HPS_X, a Country X entity that is subject to Country X tax on its worldwide income. HPS_X is classified as a partnership for U.S. tax purposes. F_X, an unrelated foreign corporation, owns the remaining 20% of HPS_X. In Year 1, DRC_X generates a $100x net operating loss. Also in Year 1, HPS_X generates $100x of income for Country X tax purposes. DRC_X and HPS_X file a consolidated tax return for Country X tax purposes, and HPS_X offsets its $100x of income with the $100x loss generated by DRC_X.

(ii) *Result.* The $100x Year 1 net operating loss incurred by DRC_X is a dual consolidated loss. In addition, HPS_X is a hybrid entity and DRC_X's interest in HPS_X is a hybrid entity separate unit; however, there is no dual consolidated loss attributable to such separate unit in Year 1. DRC $_X$'s Year 1 dual consolidated loss offsets $100x of income for Country X purposes, and $20x of such amount is (under U.S. tax principles) income of F_X, which owns an interest in HPS_X that is not a separate unit. As a result, pursuant to § 1.1503(d)–1(b)(14)(i), there is a foreign use of the Year 1 dual consolidated loss of DRC_X, and P cannot make a domestic use election with respect to such loss pursuant to § 1.1503(d)–4(d)(3)(i). Therefore, such loss will be subject to the domestic use limitation rule of § 1.1503(d)–2(b).

Example 10. Foreign use—foreign parent corporation. (i) *Facts.* F1 and F2, nonresident alien individuals, each own 50% of FP_X, a Country X entity that is subject to Country X tax on its worldwide income. FP_X is classified as a corporation for U.S. tax purposes. FP_X owns DRC_X. DRC_X is the parent of a consolidated group that includes as a member DS, a domestic corporation. In Year 1, DRC_X generates a dual consolidated loss of $100x and, for Country X tax purposes, FP_X generates $100x of income. In Year 1, FP_X elects to consolidate with DRC_X, and the $100x Year 1 loss of DRC_X is used to offset the income of FP_X under the laws of Country X. For U.S. tax purposes, the items of FP_X do not constitute items of income in Year 1.

(ii) *Result.* The Year 1 dual consolidated loss of DRC_X offsets the income of FP_X under the laws of Country X. Pursuant to § 1.1503(d)–1(b)(14)(i), the offset constitutes a foreign use because the items constituting such income are considered under U.S. tax principles to be items of a foreign corporation. This is the case even though the United States does not recognize such items as income in Year 1. Therefore, DRC_X cannot make a domestic use election with respect to its Year 1 dual consolidated loss pursuant to § 1.1503(d)–4(d)(3)(i). As a result, such loss will be subject to the domestic use limitation rule of § 1.1503(d)–2(b).

Example 11. Foreign use—parent hybrid entity. (i) *Facts.* The facts are the same as *Example 10,* except that FPX is classified as a partnership for U.S. tax purposes.

(ii) *Result.* The dual consolidated loss of DRC_X offsets the income of FP_X under the laws of Country X. Pursuant to § 1.1503(d)–1(b)(14)(i), such offset constitutes a foreign use because the items constituting such income are considered under U.S. tax principles to be items of F1 and F2, the owners of interests in FP_X (a hybrid entity), that are not separate units. Therefore, DRC_X cannot make a domestic use election with respect to its Year 1 dual consolidated loss pursuant to § 1.1503(d)–4(d)(3)(i). As a result, such loss will be subject to the domestic use limitation rule of § 1.1503(d)–2(b). The result would be the same if F1 and F2 owned their interests in FP_X indirectly through another partnership.

Example 12. No foreign use—absence of foreign loss allocation rules. (i) *Facts.* P owns $DE1_X$ and DRC_X. DRC_X is a member of the P consolidated group and owns FS_X. In Year 1, DRC_X incurs a $200x net operating loss for both U.S. and Country X tax purposes, while $DE1_X$ recognizes $200x of income in Year 1 under the tax laws of each country. The $200x loss of DRC_X is a dual consolidated loss. FS_X also earns $200x of income in Year 1 for Country X tax purposes. DRC_X, $DE1_X$, and FS_X file a Country X consolidated tax return. However, Country X has no applicable rules for determining which income is offset by DRC_X's Year 1 $200x loss.

(ii) *Result.* Under § 1.1503(d)–1(b)(14)(iii)(B), DRC_X's $200x loss shall be treated as having been made available to offset $DE1_X$'s $200x of income. $DE1_X$ is not, under U.S. tax principles, a foreign corporation, and there is no interest in $DE1_X$ that is not a separate unit. As a result, DRC_X's loss being made available to offset the income of $DE1_X$ is not considered a foreign use of such loss. Therefore, P can make a domestic use election with respect to DRC_X's Year 1 dual consolidated loss.

Example 13. No foreign use—absence of foreign loss usage ordering rules. (i) *Facts.* (A) P owns DRC_X, a member of the P consolidated group. DRC_X owns FS_X. Under the Country X consolidation regime, a consolidated group may elect in any given year to use all or a portion of the losses of one consolidated group member to offset income of other consolidated group members. If no such election is made in a year in which losses are generated by a consolidated member, such losses carry forward and are available, at the election of the consolidated group, to offset income of

consolidated group members in subsequent tax years. Country X law does not provide ordering rules for determining when a loss from a particular tax year is used because, under Country X law, losses never expire. Similarly, Country X law does not provide ordering rules for determining when a particular type of loss (for example, capital or ordinary) is used. The United States and Country X recognize the same items of income, gain, deduction and loss in each year. In addition, neither DRC_X nor FS_X has items of income or loss for the taxable year other than those stated below.

(B) In Year 1, DRC_X incurs a capital loss of $80x which, under § 1.1503(d)–3(b)(1), is not a dual consolidated loss. DRC_X also incurs a net operating loss of $80x in Year 1. FS_X generates $60x of capital gain in Year 1 which, for Country X purposes, can be offset by capital losses and net operating losses. DRC_X elects to use $60x of its total Year 1 loss of $160x to offset the $60x of capital gain generated by FS_X in Year 1; the remaining $100x of Year 1 loss carries forward. In Year 2, DRC_X incurs a net operating loss of $100x, while FS_X incurs a net operating loss of $50x. DRC_X's $100x loss is a dual consolidated loss. Because DRC_X does not elect under the laws of Country X to use all or a portion of its Year 2 net operating loss of $100x to offset the income of other members of the Country X consolidated group, P is permitted to make (and in fact does make) a domestic use election with respect to the Year 2 dual consolidated loss of DRC_X. In Year 3, DRC_X has a net operating loss of $10x and FS_X generates $60x of capital gains. Country X law permits, upon an election, FS_X's $60x of capital gain generated in Year 3 to be offset by losses (including carryover losses from prior years) of other group members. Accordingly, in Year 3, DRC_X elects to use $60x of its accumulated losses to offset the $60x of Year 3 capital gain generated by FS_X.

(ii) *Result.* (A) DRC_X's $80x Year 1 net operating loss is a dual consolidated loss. Under the ordering rules of § 1.1503(d)–1(b)(14)(iv)(C), a pro rata amount of DRC_X's Year 1 net operating loss ($30x) and capital loss ($30x) is considered to be used to offset FS_X's Year 1 $60x capital gain. As a result, P will not be able to make a domestic use election with respect to DRC_X's Year 1 $80x dual consolidated loss.

(B) DRC_X's $10x Year 3 net operating loss is also a dual consolidated loss. Under the ordering rules of § 1.1503(d)–1(b)(14)(iv)(A), such loss is considered to be used to offset $10x of FS_X's Year 3 $60x capital gain. Consequently, P will not be able to make a domestic use election with respect to such loss. Under the ordering rules of § 1.1503(d)–1(b)(14)(iv)(B), $50x of loss carryover from Year 1 will be considered to offset the remaining $50x of Year 3 income because the income is deemed to have been offset by losses from the earliest taxable year from which a loss can be carried forward or back for foreign law purposes. Thus, none of DRC_X's $100x Year 2 net operating loss will be deemed to offset FS_X's remaining $50x of Year 3 income. As a result, such offset will not constitute a foreign use of DRC_X's Year 2 dual consolidated loss.

Example 14. No foreign use—no dilution of an interest in a separate unit. (i) *Facts.* (A) P owns 50% of HPS_X, a Country X entity subject to Country X tax on its worldwide income. F_X, an unrelated foreign corporation, owns the remaining 50% of HPS_X. HPS_X is classified as a partnership for U.S. income tax purposes.

(B) The United States and Country X recognize the same items of income, gain, deduction and loss in Years 1 and 2. In Year 1, HPS_X incurs a loss of $100x. Under § 1.1503(d)–1(b)(4)(i)(B), P's interest in HPS_X is a separate unit and P's interest in HPS_X has a dual consolidated loss of $50x in Year 1. P makes a domestic use election with respect to such dual consolidated loss. In Year 2, HPS_X generates $50x of income. Under Country X income tax laws, the $100x of Year 1 loss incurred by HPS_X is carried forward and offsets the $50x of income generated by HPS_X in Year 2; the remaining $50x of loss is carried forward and is available to offset income generated by HPS_X in subsequent years. P and F_X maintain their 50% ownership interests in HPS_X throughout Years 1 and 2.

(ii) *Result.* In Year 2, under the laws of Country X, the $100x of Year 1 loss, which includes the $50x dual consolidated loss attributable to P's interest in HPS_X, is made available to offset income of HPS_X. Such income would be attributable to P's interest in HPS_X, which is a separate unit. Such income would also be income of F_X, an owner of an interest in HPS_X, which is not a separate unit. Under § 1.1503(d)–1(b)(14)(iii)(B), because Country X does not have applicable rules for determining which Year 2 income of HPS_X is offset by the $100x loss carried forward from year 1, the $50x dual consolidated loss is deemed to first have been made available to offset the $25x of income attributable to P's interest in HPS_X. However, because only $25x of income is attributable to P's interest in HPS_X, a portion of the remaining $25x of the dual consolidated loss is made available (under U.S. tax principles) to offset income of F_X. As a result, a portion of the $50x dual consolidated loss is made available to offset income of the owner of an interest in a hybrid entity that is not a separate unit and, under the general rule of § 1.1503(d)–1(b)(14)(i), there would be a foreign use of P's $50x Year 1 dual consolidated loss (there would also be a foreign use in this case because F_X is a foreign corporation). However, pursuant to the exception to foreign use under § 1.1503(d)–1(b)(14)(iii)(C)(1)(*i*), there is no foreign use of the Year 1 dual consolidated loss in Year 2. In addition, the exceptions under § 1.1503(d)–1(b)(14)(iii)(C)(*2*) do not apply because P's interest in HPS_X as of the end of Year 1 has not been reduced, and the portion of the $50x dual consolidated loss was made available for a foreign use in Year 2 solely as a result of F_X's ownership in HPS_X and by the offsetting of income attributable to HPS_X, the partnership in which F_X holds an interest. Therefore, there is no foreign use of the Year 1 dual consolidated loss in Year 2. The result would be the same if F_X owned its interest in HPS_X indirectly through a partnership.

Example 15. Foreign use—dilution of an interest in a separate unit. (i) *Facts.* The facts are the same as *Example 14,* except that at the beginning of Year 2, F_X contributes cash to HPS_X in exchange for additional equity of HPS_X. As a result of the contribution, F_X's interest in HPS_X increases from 50% to 60%, and P's interest in HPS_X decreases from 50% to 40%.

(ii) *Result.* At the beginning of Year 2, P's interest in HPS_X has been reduced as a result of a person other than a domestic corporation acquiring an interest in HPS_X. Accordingly, pursuant to § 1.1503(d)–1(b)(14)(iii)(C)(*2*)(i), the exception to foreign use provided under § 1.1503(d)–1(b)(14)(iii)(C)(*1*)(*i*) does not apply. Therefore, in Year 2 there is a foreign use of the $50x Year 1 dual consolidated loss attributable to P's interest in HPS_X. Such foreign use constitutes a triggering event and the $50x Year 1 dual consolidated loss is recaptured.

Example 16. No foreign use—dilution by a domestic corporation. (i) *Facts.* The facts are the same as *Example 14,* except that at the beginning of Year 2, instead of F_X contributing cash to HPS_X, S purchases 20% of P's interest in HPS_X. As a result of the purchase, P's interest in HPS_X decreases from 50% to 40%.

(ii) *Result.* At the beginning of Year 2, P's interest in HPS_X has been reduced as a result of a person acquiring an interest in HPS_X. Accordingly, § 1.1503(d)–1(b)(14)(iii)(C)(*1*)(*i*) generally does not apply, and there would be a foreign use of the $50x Year 1 dual consolidated loss attributable to P's interest in HPS_X. However, if P demonstrates, to the satisfaction of the Commissioner, that S is a domestic corporation in a statement attached to, and filed by the due date (including extensions) of P's U.S. income tax return for the taxable year in which the ownership interest of P was reduced, the exception to foreign use under § 1.1503–1(b)(14)(iii)(C)(*1*)(*i*) will apply. In such a case, there will be no foreign use of the $50x Year 1 dual consolidated loss attributable to P's interest in HPS_X. The result would be the same if S were unrelated to P, or if S acquired its interest in HPS_X through the contribution of property to HPS_X in exchange for equity (rather than as a purchase of a portion of P's interest).

Example 17. Foreign use—foreign consolidation. (i) *Facts.* (A) P and F_X, an unrelated Country X corporation, organize HPS_Y. P owns 20% of HPS_Y and F_X owns 80% of HPS_Y. HPS_Y is classified as a partnership for U.S. income tax purposes and is a Country Y entity subject to Country Y tax on its worldwide income. HPS_Y conducts operations in Country X that, if carried on by a U.S. person, would constitute a foreign branch within the meaning of § 1.367(a)–6T(g).

(B) In Year 1, the Country X branch of HPS_Y has a loss of $100x as determined under § 1.1503(d)–3(b)(2). Under § 1.1503(d)–1(b)(4)(i), P's interest in HPS_Y is a separate unit, and P's indirect interest in a portion of the Country X branch of HPS_Y is also a separate unit. As a result, P has a dual consolidated loss of $20x in Year 1 attributable to its interest in the Country X branch owned indirectly through HPS_Y.

HPS_Y conducts no other activities in Year 1 and has no other items of income, gain, deduction or loss. Accordingly, there is no dual consolidated loss attributable to P's interest in HPS_Y. Under Country X income tax laws, F_X elects to consolidate with the Country X branch of HPS_Y. As a result, the $100x Year 1 loss of the Country X branch of HPS_Y is available to offset the income of F_X under the laws of Country X through consolidation.

(ii) *Result.* Pursuant to § 1.1503(d)–1(b)(14)(iii)(C)(*1*)(*ii*), P's Year 1 $20x dual consolidated loss attributable to its indirect ownership of the Country X branch of HPS_Y would not generally be considered to be made available, under the laws of Country X, to reduce or offset an item of income or gain that is considered under U.S. tax principles to be income of F_X. However, F_X elected to consolidate with the Country X branch under Country X law such that the $20x dual consolidated loss attributable to P's interest in such separate unit is available to offset income under the laws of Country X as described in § 1.1503(d)–1(b)(14)(iii)(C)(*2*)(*ii*). As a result, the exception under § 1.1503(d)–1(b)(14)(iii)(C)(*1*)(*ii*) shall not apply and there is a foreign use of the $20x Year 1 dual consolidated loss attributable to P's interest in the Country X branch of HPS_Y.

Example 18. No foreign use—no election to consolidate under foreign law. (i) *Facts.* The facts are the same as in *Example 17*, except that F_X does not elect under Country X law to consolidate with the Country X branch of HPS_Y.

(ii) *Result.* Because F_X does not elect to consolidate under foreign law, P's dual consolidated loss of $20x is not made available to offset F_X's income, other than as a result of F_X's ownership of HPS_Y. Accordingly, because there has been no dilution of P's interest in the Country X branch of HPS_Y, there has been no foreign use of P's $20x Year 1 dual consolidated loss pursuant § 1.1503(d)–1(b)(14)(iii)(C)(*1*)(*ii*).

Example 19. No foreign use—combination rule. (i) *Facts.* (A) P and F_X, an unrelated foreign corporation, form PRS_X. P and F_X each own 50 percent of PRS_X throughout Years 1 and 2. PRS_X is treated as a partnership for both U.S. and Country X income tax purposes. PRS_X owns DE_Y. DE_Y is a Country Y entity subject to Country Y tax on its worldwide income and disregarded as an entity separate from its owner for U.S. tax purposes. PRS_X does not have any items of income, gain, deduction, or loss from sources other than DE_Y. P also owns FB_Y, a Country Y foreign branch separate unit. Pursuant to Country Y law, the losses of DE_Y are available to offset the income of FB_Y, and vice versa. Under § 1.1503(d)–1(b)(4)(i), P's interest in DE_Y, owned indirectly through PRS_X, is a hybrid entity separate unit. In addition, under § 1.1503(d)–1(b)(4)(ii), FB_Y and P's indirect interest in DE_Y are treated as a combined separate unit.

(B) The United States and Country Y recognize the same items of income, gain, deduction and loss in Years 1 and 2. In year 1, DE_Y incurs a $100x loss and FB_Y incurs a $200x loss. Under § 1.1503(d)–3(b)(vii)(B), the dual consolidated loss attributable to P's combined separate unit is $250x ($50x loss attributable to P's indirect interest in DE_Y plus $200x loss of FB_Y). In Year 2, DE_Y generates no income or loss.

(ii) *Result.* Under Country Y law, the $100x of Year 1 loss incurred by DE_Y is carried forward and is available to offset income of DE_Y in Year 2. As a result, a portion of such loss will be available to offset income of DE_Y that is attributable to P's interest in DE_Y owned indirectly through PRS_X. A portion of such loss will also be available to offset income of DE_Y that is attributable to F_X's indirect ownership of DE_Y. Accordingly, under § 1.1503(d)–1(b)(14)(i), there would be a foreign use of a portion of P's $250x Year 1 dual consolidated loss because it is available to offset an item of income of the owner of an interest in a hybrid entity, which is not a separate unit (there would also be a foreign use in this case because F_X is a foreign corporation). However, under § 1.1503(d)–1(b)(14)(iii)(C)(*1*)(*ii*) and (*iii*), and because there has been no dilution of P's interest in DE_Y (and no consolidation of DE_Y), no foreign use occurs as a result of the carryforward.

Example 20. Mirror legislation rule—dual resident corporation. (i) *Facts.* P owns DRC_X, a member of the P consolidated group. DRC_X owns FS_X. In Year 1, DRC_X generates a $100x net operating loss that is a dual consolidated loss. To prevent corporations like DRC_X from offsetting losses both against income of affiliates in Country X and against income of foreign affiliates under the tax laws of another country, Country X mirror legislation prevents a corporation that is subject to the income tax of another country on its worldwide income or on a residence basis from using the Country X form of consolidation. Accordingly, the Country X mirror legislation prevents the loss of DRC_X from being made available to offset income of FS_X.

(ii) *Result.* Under § 1.1503(d)–1(b)(14)(v), because the losses of DRC_X are subject to Country X's mirror legislation, there shall, other than for purposes of the consistency rule under § 1.1503(d)–4(d)(2), be a deemed foreign use of DRC_X's Year 1 dual consolidated loss. Therefore, P will not be able to make a domestic use election with respect to DRC_X's Year 1 dual consolidated loss pursuant to § 1.1503(d)–4(d)(3)(i).

Example 21. Mirror legislation rule—standalone foreign branch separate unit. (i) *Facts.* P owns FB_X. In Year 1, FB_X incurs a dual consolidated loss of $100x. Under Country X tax laws, FB_X also generates a loss. Country X enacted mirror legislation to prevent Country X branches of nonresident corporations from offsetting losses both against income of Country X affiliates and against other income of its owner (or foreign affiliate thereof) under the tax laws of another country. The Country X mirror legislation prevents a Country X branch of a nonresident corporation from offsetting its losses against the income of Country X affiliates if such losses may be deductible against income (other than income of the Country X branch) under the laws of another country.

(ii) *Result.* Under § 1.1503(d)–1(b)(14)(v), because the losses of FB_X are subject to Country X's mirror legislation, there shall, other than for purposes of the consistency rule under § 1.1503(d)–4(d)(2), be a deemed foreign use of FB_X's Year 1 dual consolidated loss. This is the result even though P has no Country X affiliates. Therefore, P cannot make a domestic use election with respect to the Year 1 dual consolidated loss of FB_X pursuant to § 1.1503(d)–4(d)(3)(i).

Example 22. Mirror legislation rule—absence of election to file consolidated return under local law. (i) *Facts.* The facts are the same as in *Example 21*, except that P also owns FS_X and no election is made under Country X law to consolidate FB_X and FS_X.

(ii) *Result.* The result is the same as *Example 21*, even though FB_X has a Country X affiliate and no election is made under Country X law to consolidate FB_X and FS_X.

Example 23. Mirror legislation rule—inapplicability to particular dual resident corporation or separate unit. (i) *Facts.* The facts are the same as in *Example 21*, except as follows. Rather than conducting operations in Country X through a foreign branch, P owns $DE1_X$. In Year 1, $DE1_X$ incurs a loss of $100x and also generates a loss for Country X tax purposes. The $100x Year 1 loss of $DE1_X$ is a dual consolidated loss attributable to P's interest in $DE1_X$.

(ii) *Result.* The Country X mirror legislation only applies to Country X branches owned by non-resident corporations and therefore does not apply to losses generated by $DE1_X$. Thus, if $DE1_X$ had a Country X affiliate, it would be permitted under the laws of Country X to use its loss to offset income of such affiliate, notwithstanding the Country X mirror legislation. As a result, the mirror legislation rule under § 1.1503(d)–1(b)(14)(v) does not apply with respect to the Year 1 dual consolidated loss of P's interest in $DE1_X$. Therefore, a domestic use election can be made with respect to such loss (provided the conditions for such an election are otherwise satisfied).

Example 24. Dual consolidated loss limitation after section 381 transaction—disposition of assets and subsequent liquidation of dual resident corporation. (i) *Facts.* P owns DRC_X, a member of the P consolidated group. In Year 1, DRC_X incurs a dual consolidated loss and P does not make a domestic use election with respect to such loss. Under § 1.1503(d)–2(b), DRC_X's Year 1 dual consolidated loss may not be used to offset the income of P or S (or the income of any other domestic affiliate of DRC_X) on the group's consolidated U.S. income tax return. At the beginning of Year 2, DRC_X sells all of its assets and discontinues its business operations. DRC_X is then liquidated into P pursuant to section 332.

(ii) *Result.* Typically, under section 381, P would succeed to, and be permitted to utilize, DRC_X's net operating loss carryover. However, § 1.1503(d)–2(c)(1)(i) prohibits the dual consolidated loss of DRC_X from carrying over to P. Therefore, DRC_X's Year 1 net operating loss carryover is eliminated.

Example 25. Dual consolidated loss limitation after section 381 transaction—liquidation of dual resident corporation. (i) *Facts.* The facts are the same as in *Example 24*, except as follows. DRC_X's activities

constitute a foreign branch within the meaning of § 1.367(a)–6T(g) and therefore are a foreign branch separate unit. In addition, DRC_X's foreign branch separate unit incurs the Year 1 dual consolidated loss, rather than DRC_X itself. Finally, DRC_X does not sell its assets and, following the liquidation of DRC_X, P continues to operate DRC_X's business as a foreign branch separate unit.

(ii) *Result.* Pursuant to § 1.1503(d)–2(c)(2)(iii), DRC_X's Year 1 loss carryover is available to offset P's income generated by the foreign branch separate unit previously owned by DRC_X (and now owned by P), subject to the limitations of § 1.1503(d)–3(c) applied as if the separate unit of P generated the dual consolidated loss.

Example 26. Tainted income. (i) *Facts.* P owns 100% of DRC_Z, a domestic corporation that is included as a member of the P consolidated group. The P consolidated group uses the calendar year as its taxable year. During Year 1, DRC_Z was managed and controlled in Country Z and therefore was subject to tax as a resident of Country Z and was a dual resident corporation. In Year 1, DRC_Z generated a dual consolidated loss of $200x, and P did not make a domestic use election with respect to such loss. As a result, such loss is subject to the domestic use limitation rule of § 1.1503(d)–2(b). At the end of Year 1, DRC_Z moved its management and control from Country Z to the United States and therefore ceased being a dual resident corporation. At the beginning of Year 2, P transferred asset A, a non-depreciable asset, to DRC_Z in exchange for common stock in a transaction that qualified for nonrecognition under section 351. At the time of the transfer, P's tax basis in asset A equaled $50x and the fair market value of asset A equaled $100x. The tax basis of asset A in the hands of DRC_Z immediately after the transfer equaled $50x pursuant to section 362. Asset A did not constitute replacement property acquired in the ordinary course of business. DRC_Z did not generate income or gain during Years 2, 3 or 4. On June 30, Year 5, DRC_Z sold asset A to a third party for $100x, its fair market value at the time of the sale, and recognized $50x of income on such sale. In addition to the $50x income generated on the sale of asset A, DRC_Z generated $100x of operating income in Year 5. At the end of Year 5, the fair market value of all the assets of DRC_Z was $400x.

(ii) *Result.* DRC_Z ceased being a dual resident corporation at the end of Year 1. Therefore, its Year 1 dual consolidated loss cannot be offset by tainted income. Asset A is a tainted asset because it was acquired in a nonrecognition transaction after DRC_Z ceased being a dual resident corporation (and was not replacement property acquired in the ordinary course of business). As a result, the $50x of income recognized by DRC_Z on the disposition of asset A is tainted income and cannot be offset by the Year 1 dual consolidated loss of DRC_Z. In addition, absent evidence establishing the actual amount of tainted income, $25x of the $100x Year 5 operating income of DRC_Z (($100x/$400x) × $100x) also is treated as tainted income and cannot be offset by the Year 1 dual consolidated loss of DRC_Z under § 1.1503(d)–2(d)(2)(ii). Therefore, $75x of the $150x Year 5 income of DRC_Z constitutes tainted income and may not be offset by the Year 1 dual consolidated loss of DRC_Z; however, the remaining $75x of Year 5 income of DRC_Z may be offset by such dual consolidated loss.

Example 27. Treatment of disregarded item. (i) *Facts.* P owns $DE1_X$. In Year 1, $DE1_X$ incurs interest expense attributable to a loan made from P to $DE1_X$. $DE1_X$ has no other items of income, gain, deduction, or loss in Year 1. Because $DE1_X$ is disregarded as an entity separate from its owner, however, the interest expense is disregarded for federal tax purposes.

(ii) *Result.* Even though $DE1_X$ is treated as a separate domestic corporation for purposes of determining the amount of dual consolidated loss pursuant to § 1.1503(d)–3(b)(2)(i), such treatment does not cause the interest expense incurred on the loan from P to $DE1_X$ that is disregarded for federal tax purposes to be regarded for purposes of calculating the Year 1 dual consolidated loss, if any, of $DE1_X$. Therefore, P's interest in $DE1_X$ does not have a dual consolidated loss in Year 1.

Example 28. Hybrid entity books and records. (i) *Facts.* P owns $DE1_X$. In Year 1, P incurs interest expense attributable to a loan from a third party. The third party loan and related interest expense are properly recorded on the books and records of P (and not on the books and records of $DE1_X$).

(ii) *Result.* The interest expense on P's loan from the third party is not properly recorded on the books and records of $DE1_X$. No portion of the interest expense on such loan is attributable to $DE1_X$ pursuant to § 1.1503(d)–3(b)(2)(iii) and (iv). Therefore, no portion of the interest expense is taken into account for purposes of calculating the Year 1 dual consolidated loss, if any, attributable to P's interest in $DE1_X$ pursuant to § 1.1503(d)–3(b)(2).

Example 29. Dividend income attributable to a separate unit. (i) *Facts.* P owns $DE1_X$. $DE1_X$ owns $DE3_Y$. $DE3_Y$ owns CFC, a controlled foreign corporation. P's interest in $DE1_X$ would otherwise have a dual consolidated loss of $75x (without regard to Year 1 dividend income or section 78 gross-up received from CFC) in Year 1. In Year 1, CFC distributes $50x to $DE3_Y$ that is taxable as a dividend. $DE3_Y$ distributes the same amount to $DE1_X$. P computes foreign taxes deemed paid on the dividend under section 902 of $25x and includes that amount in gross income under section 78 as a dividend.

(ii) *Result.* The $75x of dividend income ($50x distribution plus $25x section 78 gross-up) is properly recorded on the books and records of $DE3_Y$, as adjusted to conform to U.S. tax principles. Accordingly, for purposes of determining whether the interest in $DE3_Y$ has a dual consolidated loss, the $75x dividend income from CFC is an item of income attributable to $DE3_Y$, a disregarded entity, and therefore is an item attributable to the interest in $DE3_Y$. The distribution of $50x from $DE3_Y$ to $DE1_X$ is generally not regarded for tax purposes and therefore does not give rise to an item that is taken into account for purposes of calculating a dual consolidated loss. As a result, the dual consolidated loss of $75x attributable to P's interest in $DE1_X$ in Year 1 is not reduced by the amount of dividend income attributable to the interest in $DE3_Y$.

Example 30. Items attributable to a combined separate unit. (i) *Facts.* P owns $DE1_X$. $DE1_X$ owns a 50% interest in PRS_Z, a Country Z entity that is classified as a partnership both for Country Z tax purposes and for U.S. tax purposes. F_Z, a Country Z corporation unrelated to P, owns the remaining 50% interest in PRS_Z. PRS_Z conducts operations in Country X that, if owned by a U.S. person, would constitute a foreign branch as defined in § 1.367(a)–6T(g). Therefore, P's share of the Country X branch owned by PRS_Z constitutes a foreign branch separate unit. PRS_Z also owns assets that do not constitute a part of its Country X branch.

(ii) *Result.* (A) Pursuant to § 1.1503(d)–1(b)(4)(ii), P's interest in $DE1_X$, and P's indirect ownership of a portion of the Country X branch of PRS_Z, are combined and treated as one Country X separate unit. Pursuant to § 1.1503(d)–3(b)(2)(vii)(B)(*1*), for purposes of determining P's items of income, gain, deduction and loss taken into account by its combined separate unit, the items of P are first attributed to each separate unit that compose the combined Country X separate unit.

(B) Pursuant to § 1.1503(d)–3(b)(2)(ii)(A), the principles of section 864(c)(2), as modified, apply for purposes of determining P's items of income, gain, deduction (other than interest expense) and loss that are taken into account in determining the taxable income or loss of P's indirect interest in the Country X foreign branch owned by PRS_Z. For purposes of determining interest expense taken into account in determining the taxable income or loss of P's indirect interest in the Country X foreign branch owned by PRS_Z, the principles of § 1.882–5, subject to §1.1503(d)–3(b)(2)(ii)(B), shall apply. For purposes of applying the principles of section 864(c) and § 1.882–5, P is treated as a foreign corporation, the Country X branch of PRS_Z is treated as a trade or business within the United States, and the assets of P (other than those of FB_X) are treated as assets that are not U.S. assets. In addition, pursuant to § 1.1503(d)–3(b)(2)(vii)(A)(*1*), only the items of $DE1_X$ and PRS_Z are taken into account for purposes of this determination.

(C) For purposes of determining the items of income, gain, deduction and loss that are attributable to $DE1_X$ and, therefore, attributable to P's interest in $DE1_X$, only those items that are properly reflected on the books and records of $DE1_X$, as adjusted to conform to U.S. tax principles, are taken into account. For this purpose, $DE1_X$'s distributive share of the items of income, gain, deduction and loss that are properly reflected on the books and records of PRS_Z, as adjusted to conform to U.S. tax principles, are treated as being reflected on the books and records of $DE1_X$, except to the extent such items are taken into account by the Country X branch of PRS_Z, as provided above.

(D) Pursuant to § 1.1503(d)–3(b)(2)(vii)(B)(2), the combined Country X separate unit of P calculates its dual consolidated loss by taking into account all the items of income, gain deduction and loss

that were separately taken into account by P's interest in $DE1_X$ and the Country X branch of PRS_Z owned indirectly by P.

Example 31. Sale of branch by domestic owner. (i) *Facts.* P owns FB_X. FB_X has a $100x dual consolidated loss in Year 1. P makes a domestic use election with respect to such dual consolidated loss. In Year 2, P sells FB_X and recognizes $75x of gain as a result of such sale. The sale is a triggering event of the Year 1 dual consolidated loss under § 1.1503(d)–4(e)(1).

(ii) *Result.* Pursuant to § 1.1503(d)–3(b)(2)(vii)(C), the gain on the sale of FB_X is attributable to FB_X for purposes of calculating the Year 2 dual consolidated loss (if any) of FB_X, and for purposes of determining FB_X's Year 2 taxable income for purposes of rebutting the amount of the Year 1 dual consolidated loss to be recaptured pursuant to § 1.1503(d)–4(h)(2)(i). Assuming FB_X has no other items of income, gain, deduction and loss in Year 2, only $25x of the Year 1 dual consolidated loss must be recaptured.

Example 32. Sale of separate unit by another separate unit. (i) *Facts.* P owns $DE1_X$. $DE1_X$ owns $DE3_Y$. $DE1_X$ sells its interest in $DE3_Y$ at the end of Year 1 to an unrelated third party. The sale resulted in an ordinary loss of $30x. Without regard to the sale of $DE3_Y$, no items of income, gain, deduction or loss are attributable to the interest of $DE3_Y$ in Year 1.

(ii) *Result.* Pursuant to § 1.1503(d)–3(b)(2)(vii)(C), the $30x loss recognized on the sale is attributable to the interest in $DE3_Y$, and not the interest in $DE1_X$. In addition, the loss attributable to the sale creates a Year 1 dual consolidated loss attributable to the interest in $DE3_Y$. Pursuant to § 1.1503(d)–4(d)(3)(i), P cannot make a domestic use election with respect to the Year 1 dual consolidated loss attributable to the interest in $DE3_Y$ because the sale of the interest in $DE3_Y$ is described in § 1.1503(d)–4(e)(1). As a result, although the Year 1 dual consolidated loss would otherwise be subject to the domestic use limitation rule of § 1.1503(d)–2(b), it is eliminated pursuant to § 1.1503(d)–2(c)(1)(ii).

Example 33. Gain and loss on sale of tiered separate units. (i) *Facts.* P owns $DE1_X$. $DE1_X$ owns $DE3_Y$. P sells its interest in $DE1_X$ to an unrelated third party. As a result of this sale, P recognizes $25x of net gain, consisting of $75 of income and $50 of loss. If $DE1_X$ sold its assets in a taxable transaction immediately before the sale of P's interest in $DE1_X$, $DE1_X$ would have recognized $75x of income. In addition, if $DE3_Y$ had sold its assets in a taxable transaction immediately before the sale of P's interest in $DE1_X$, $DE3_Y$ would have recognized a $50x loss.

(ii) *Result.* Pursuant to sect; 1.1503(d)–3(b)(2)(vii)(C), the $75x of income and $50x of loss must be allocated to the interests of $DE1_X$ and $DE3_Y$ based on the amount of gain or loss that would be recognized if such entities sold their assets in a taxable exchange for an amount equal to their fair market value immediately before P sold its interest in $DE1_X$. Therefore, $75x of gain and $50x of loss recognized by P on the sale of its interest $DE1_X$ are attributable to the interests in $DE1_X$ and $DE3_Y$, respectively. As a result, such items will be taken into account in determining whether an interest in either entity has a dual consolidated loss in the year of the sale and for purposes of rebutting the amount of recapture of any dual consolidated loss (for which a domestic use election was made) of $DE1_X$ from a prior year, if any, pursuant to § 1.1503(d)–4(h)(2)(i).

Example 34. Gain on sale of tiered separate units. (i) *Facts.* P owns 75% of HPS_X, a Country X entity subject to Country X tax on its worldwide income. F_X, a an unrelated foreign corporation, owns the remaining 25% of HPS_X. HPS_X is classified as a partnership for U.S. income tax purposes. HPS_X owns operations in Country Y that, if owned by a U.S. person, would constitute a foreign branch within the meaning of § 1.367(a)–6T(g). HPS_X also owns assets that do not constitute a part of its Country Y branch. P's indirect interest in the Country Y branch owned by HPS_X, and P's interest in HPS_X, are each separate units. P sells its interest in HPS_X and recognizes a gain of $150x on such sale. Immediately prior to P's sale of its interest in HPS_X, P's indirect interest in HPS_X's Country Y branch had a net built-in gain of $200x, and P's pro rata portion of HPS_X's other assets had a net built-in gain of $100x.

(ii) *Result.* Pursuant to § 1.1503(d)–3(b)(2)(vii)(C), $100x of the total $150x of gain recognized ($200x/$300x × $150x) is taken into account for purposes of determining the taxable income of P's indirect interest in its share of the Country Y branch owned by HPS_X. Thus, such amount will be taken into account in determining whether it has a dual consolidated loss in the year of the sale and for purposes of rebutting the amount of dual consolidated loss recapture, if any, pursuant to § 1.1503(d)–4(h)(2)(i). Similarly, $50x of such gain ($100x/$300x × $150x) is attributable to P's interest in HPS_X and will be taken into account in determining whether it has a dual consolidated loss in the year of sale, and for purposes of rebutting the amount of recapture, if any, pursuant to § 1.1503(d)–4(h)(2)(i).

Example 35. Effect on domestic affiliate. (i) *Facts.* (A) P owns $DE1_X$. In Years 1 and 2, the items of income, gain, deduction, and loss that are attributable to P's interest in $DE1_X$ for purposes of determining whether such interest has a dual consolidated loss for each year, pursuant to § 1.1503(d)–3(b)(2), are as follows:

Item	Year 1	Year 2
Sales income	$100x	$160x
Salary expense	(75x)	(75x)
Research and experimental expense	(50x)	(50x)
Interest expense	(25x)	(25x)
Income/(dual consolidated loss)	(50x)	10x

(B) P does not make a domestic use election with respect to $DE1_X$'s Year 1 dual consolidated loss. Pursuant to §§ 1.1503(d)–2(b) and 1.1503(d)–3(c)(2), $DE1_X$'s Year 1 dual consolidated loss of $50x is treated as a loss incurred by a separate corporation and is subject to the limitations under § 1.1503(d)–3(c)(3).

(ii) *Result.* (A) P must compute its taxable income for Year 1 without taking into account the $50x dual consolidated loss attributable to P's interest in $DE1_X$. Such amount consists of a pro rata portion of the expenses that were taken into account by $DE1_X$ in calculating its Year 1 dual consolidated loss. Thus, the items of the dual consolidated loss that are not taken into account by P in computing its taxable income are as follows: $25x of salary expense ($75x/$150x × $50x); $16.67x of research and experimental expense ($50x/$150x × $50x); and $8.33x of interest expense ($25x/$150x × $50x). The remaining amounts of each of these items, together with the $100x of sales income, are taken into account by P in computing its taxable income for Year 1 as follows: $50x of salary expense ($75x − $25x); $33.33x of research and experimental expense ($50x − $16.67x); and $16.67x of interest expense ($25x − $8.33x).

(B) Subject to the limitations provided under § 1.1503(d)–3(c)(3), the $50x dual consolidated loss generated by $DE1_X$ in Year 1 is carried forward and is available to offset the $10x of income generated by $DE1_X$ in Year 2. A pro rata portion of each item of deduction or loss included in such dual consolidated loss is considered to be used to offset the $10x of income, as follows: $5x of salary expense ($25x/$50x × $10x); $3.33x of research and experimental expense ($16.67x/$50x × $10x); and $1.67x of interest expense ($8.33x/$50x × $10x). The remaining amount of each item shall continue to be subject to the limitations under § 1.1503(d)–3(c)(3).

Example 36. Basis adjustment rule—year of dual consolidated loss. (i) *Facts.* (A) In addition to S, P owns S1, a domestic corporation. S owns DRC_X and DRC_X, in turn, owns FS_X. S, S1 and DRC_X are each members of the P consolidated group. W and Y are unrelated corporations that are not members of the P consolidated group.

(B) At the beginning of Year 1, P has a basis of $1,000x in the stock of S. S has a $500x basis in the stock of DRC_X.

(C) In Year 1, DRC_X incurs interest expense in the amount of $100x. In addition, DRC_X sells a noncapital asset, u, in which it has a basis of $10x, to S1 for $50x. DRC_X also sells a noncapital asset, v, in which it has a basis of $200x, to S1 for $100x. The sales of u and v are intercompany transactions described in § 1.1502–13. DRC_X also sells a capital asset, z, in which it has a basis of $180x, to Y for $90x. In Year 1, S1 earns $200x of separate taxable income, calculated in accordance with § 1.1502–12, as well as $90x of capital gain from a sale of an asset to W. P and S have no items of income, gain, deduction or loss for Year 1.

(D) In Year 1, DRC_X has a dual consolidated loss of $100x (attributable to its interest expense). The sale of non-capital assets u and v to S1, which are intercompany transactions, are not taken into account in calculating DRC_X's dual consolidated loss. Pursuant to § 1.1503(d)–3(b)(1), DRC_X's $90x capital loss also is not included in the computation of the dual consolidated loss. Instead, DRC_X's capital loss is included in

the computation of the consolidated group's capital gain net income under § 1.1502–22(c) and is used to offset S1's $90x capital gain.

(E) For Country X tax purposes, DRC_X's $100x loss is available to offset the income of FS_X, a foreign corporation, and therefore constitutes a foreign use. As a result, DRC_X is not eligible to make a domestic use election pursuant to § 1.1503(d)–4(d), and the $100x Year 1 dual consolidated loss of DRC_X is subject to the domestic use limitation rule of § 1.1503(d)–2(b).

(ii) *Result.* (A) Because DRC_X has a dual consolidated loss for the year, the consolidated taxable income of the consolidated group is calculated without regard to DRC_X's items of loss or deduction taken into account in computing its dual consolidated loss (that is, the $100x of interest expense). Therefore, the consolidated taxable income of the consolidated group is $200x (the sum of $200x of separate taxable income earned by S1, plus $90x of capital gain earned by S1, minus $90x of capital loss incurred by DRC_X). The $40x gain of DRC_X upon the sale of item u to S1, and the $100x loss of DRC_X upon the sale of item v to S1, are deferred pursuant to § 1.1502–13(c).

(B) Pursuant to § 1.1503(d)–3(d)(1)(i), S must make a negative adjustment under § 1.1502–32(b)(2) to its basis in the stock of DRC_X for the $100x dual consolidated loss incurred by DRC_X. In addition, S must make a negative adjustment under § 1.1502–32(b)(2) in the basis of the DRC_X stock for DRC_X's $90x capital loss because the loss has been absorbed by the consolidated group. Thus, S must make a $190x net negative adjustment to its basis in the stock of DRC_X, reducing its basis from $500x to $310x. As provided in § 1.1502–32(a)(3)(iii), the adjustments in the DRC_X stock made by S are taken into account in determining P's basis in its S stock. Since S has no items of income, gain, deduction or loss for the taxable year, P must only make a negative adjustment to its basis in the stock of S to account for the tiering-up of adjustments for the taxable year pursuant to § 1.1502–32(a)(3)(iii). Thus, P must make a $190x net negative adjustment to its basis in S stock, reducing its basis from $1,000x to $810x.

Example 37. Basis adjustment rule—subsequent income of dual resident corporation. (i) *Facts.* (A) The facts are the same as in *Example 36,* except as follows. In Year 2, S1 sells items u and v to W for no gain or loss. The disposition of items u and v outside of the P consolidated group causes the intercompany gain and loss of DRC_X attributable to u and v to be taken into account pursuant to § 1.1502–13(c). DRC_X also incurs $100x of interest expense in Year 2. In addition, DRC_X sells a noncapital asset, r, in which it has a basis of $100x, to Y for $300x. P and S have no items of income, loss, or deduction for Year 2.

(B) DRC_X has $40x of separate taxable income in Year 2, computed as follows:

Interest Expense	($100x)
Sale of Item v to S1	(100x)
Sale of Item u to S1	40x
Sale of Item r to Y	200x
Net Income/(Loss)	40x

(C) Since DRC_X does not have a dual consolidated loss for Year 2, the group's consolidated taxable income for the year is calculated in accordance with the general rule of § 1.1502–11, and not in accordance with § 1.1503(d)–3(c). In addition, DRC_X is the only member of the consolidated group that has any income or loss for the taxable year. Thus, the consolidated taxable income of the group, computed without regard to DRC_X's dual consolidated loss carryover, is $40x.

(ii) *Result.* (A) As provided under § 1.1503(d)–3(c), the portion of the $100x dual consolidated loss arising in Year 1 that is included in the group's consolidated net operating loss deduction for Year 2 is $40x. Thus, the P group has no consolidated taxable income for the year.

(B) Pursuant to § 1.1503(d)–3(d)(1)(ii), S does not make a negative adjustment to its basis in DRC_X stock for the $40x of Year 1 dual consolidated loss that is absorbed in Year 2. However, pursuant to § 1.1502–32(b), S does make a $40x net positive adjustment to its basis in DRC_X stock, increasing its basis from $310x to $350x. In addition, as provided in § 1.1502–32(a)(3)(iii), the adjustments in the DRC_X stock made by S are taken into account in determining P's basis in its S stock. Since S has no other items of income, gain, deduction or loss for the taxable year, P must only make a positive adjustment to its basis in the stock of S for to account for the tiering-up of adjustments for the taxable year pursuant to § 1.1502–32(a)(3)(iii). Thus, P must make a $40x net positive adjustment to its basis in S stock, increasing its basis from $810x to $850x.

Example 38. Exception to domestic use limitation—no possibility of foreign use because items are not deducted or capitalized under foreign law. (i) *Facts.* P owns $DE1_X$. In Year 1, the sole item of income, gain, deduction or loss attributable to P's interest in $DE1_X$ as provided under § 1.1503(d)–3(b)(2) is $100x of interest expense. For Country X tax purposes, the $100x interest expense attributable to P's interest in $DE1_X$ in Year 1 is treated as a repayment of principal and therefore cannot be deducted (at any time) or capitalized.

(ii) *Result.* The $100x of interest expense attributable to P's interest in $DE1_X$ constitutes a dual consolidated loss. However, because the sole item constituting the dual consolidated loss cannot be deducted or capitalized for Country X tax purposes, P can demonstrate that there can be no foreign use of the dual consolidated loss at any time. As a result, pursuant to § 1.1503(d)–4(c)(1), if P prepares a statement described in § 1.1503(d)–4(c)(2) and attaches it to its timely filed tax return, the Year 1 dual consolidated loss of $DE1_X$ will not be subject to the domestic use limitation rule of § 1.1503(d)–2(b).

Example 39. No exception to domestic use limitation—inability to demonstrate no possibility of foreign use because items are deferred under foreign law. (i) *Facts.* P owns $DE1_X$. In Year 1, the sole items of income, gain, deduction or loss attributable to P's interest in $DE1_X$ as provided under § 1.1503(d)–3(b)(2) are $75x of sales income and $100x of depreciation expense. For Country X tax purposes, $DE1_X$ also generates $75x of sales income in Year 1, but the $100x of depreciation expense is not deductible in Year 1. Instead, for Country X tax purposes the $100x of depreciation expense is deductible in Year 2. P does not make a domestic use election with respect to the Year 1 dual consolidated loss attributable to P's interest in $DE1_X$.

(ii) *Result.* The Year 1 $25x net loss of $DE1_X$ constitutes a dual consolidated loss attributable to P's interest in $DE1_X$. In addition, even though $DE1_X$ has positive income in Year 1 for Country X tax purposes, P cannot demonstrate that there is no possibility of foreign use of its dual consolidated loss as provided under § 1.1503(d)–4(c)(1)(i). P cannot make such a demonstration because the depreciation expense, an item composing the Year 1 dual consolidated loss, is deductible (in a later year) for Country X tax purposes and, therefore, may be available to offset or reduce income for Country X purposes that would constitute a foreign use. For example, if $DE1_X$ elected to be classified as a corporation pursuant to § 301.7701–3(c) of this chapter effective as of the end of Year 1, and the deferred depreciation expense were available for Country X tax purposes to offset Year 2 income of $DE1_X$, an entity treated as a foreign corporation in Year 2 for U.S. tax purposes, there would be a foreign use. P could, however, make a domestic use election pursuant to § 1.1503(d)–4(d) with respect to the Year 1 dual consolidated loss.

Example 40. No exception to domestic use limitation—inability to demonstrate no possibility of foreign use because items are deferred and not deducted or capitalized under foreign law. (i) *Facts.* P owns $DE1_X$. In Year 1, the sole items of income, gain, deduction or loss attributable to P's interest in $DE1_X$ as provided in § 1.1503(d)–3(b)(2) are $75x of sales income, $100x of interest expense and $25x of depreciation expense. For Country X tax purposes, $DE1_X$ generates $75x of sales income in Year 1, but the $100x interest expense is treated as a repayment of principal and therefore cannot be deducted (at any time) or capitalized. In addition, for Country X tax purposes the $25x of depreciation expense is not deductible in Year 1, but is deductible in Year 2.

(ii) *Result.* The Year 1 $50x net loss of $DE1_X$ constitutes a dual consolidated loss attributable to P's interest in $DE1_X$. Even though the $100x interest expense, a nondeductible and noncapital item for Country X tax purposes, exceeds the $50x Year 1 dual consolidated loss of $DE1_X$, P cannot demonstrate that there is no possibility of foreign use of the dual consolidated loss as provided under § 1.1503(d)–4(c)(1)(i). P cannot make such a demonstration because the $25x depreciation expense, an item of deduction or loss composing the Year 1 dual consolidated loss, is deductible under Country X law (in Year 2) and, therefore, may be available to offset or reduce income for Country X purposes that would constitute a foreign use. P could, however, make a domestic use election pursuant to § 1.1503(d)–4(d) with respect to the Year 1 dual consolidated loss.

Example 41. Consistency rule—deemed foreign use. (i) *Facts.* P owns DRC_X, a

member of the P consolidated group, FB_X, and FS_X. In Year 1, DRC_X incurs a dual consolidated loss, which is used to offset the income of FS_X under the Country X form of consolidation. FB_X also incurs a dual consolidated loss in Year 1. However, P elects not to use the FB_X loss on a Country X consolidated return to offset the income of Country X affiliates.

(ii) *Result.* The use of DRC_X's dual consolidated loss to offset the income of FS_X for Country X purposes constitutes a foreign use. Pursuant to § 1.1503(d)–4(d)(2), this foreign use results in a foreign use of the dual consolidated loss of FB_X. Therefore, the dual consolidated loss attributable to FB_X is subject to the domestic use limitation rule of § 1.1503(d)–2(b), and P cannot make a domestic use election with respect to such loss.

Example 42. Consistency rule—no foreign use permitted. (i) *Facts.* The facts are the same as in *Example 41*, except that the income tax laws of Country X do not permit Country X branches of foreign corporations to file consolidated income tax returns with Country X affiliates.

(ii) *Result.* The consistency rule does not apply with respect to the dual consolidated loss of FB_X because the income tax laws of Country X do not permit a foreign use for such dual consolidated loss. Therefore, P may make a domestic use election for the dual consolidated loss attributable to FB_X.

Example 43. Triggering event rebuttal—expiration of losses in foreign country. (i) *Facts.* P owns DRC_X, a member of the P consolidated group. In Year 1, DRC_X incurs a dual consolidated loss of $100x. P makes a domestic use election with respect to DRC_X's Year 1 dual consolidated loss and such loss therefore is included in the computation of the P group's consolidated taxable income. DRC_X has no income or loss in Year 2 through Year 6. In Year 7, P sells the stock of DRC_X to an unrelated party. At the time of the sale of the stock of DRC_X, all of the losses and deductions that were included in the computation of the Year 1 dual consolidated loss of DRC_X had expired for Country X purposes because the laws of Country X only provide for a five year carryover period of such items.

(ii) *Result.* The sale of DRC_X to the unrelated party generally would be a triggering event under § 1.1503(d)–4(e)(1)(ii), which would require the recapture of the Year 1 dual consolidated loss (and an applicable interest charge). However, upon adequate documentation that the losses and deductions have expired for Country X purposes, P can rebut the presumption that a triggering event has occurred pursuant to § 1.1503(d)–4(e)(2). Pursuant to § 1.1503(d)–4(i)(1), if the triggering event presumption is rebutted, the domestic use agreement filed by the P consolidated group with respect to the Year 1 dual consolidated loss of DRC_X is terminated and has no further effect (absent a rebuttal, the domestic use agreement would terminate pursuant to § 1.1503(d)–4(i)(3)).

Example 44. Inability to rebut triggering event—tax basis carryover transaction. (i) *Facts.* (A) P owns $DE1_X$. $DE1_X$'s sole asset is A, which it acquired at the beginning of Year 1 for $100x. $DE1_X$ does not have any liabilities. For U.S. tax purposes, $DE1_X$'s tax basis in A at the beginning of Year 1 is $100x and $DE1_X$'s sole item of income, gain, deduction and loss for Year 1 is a $20x depreciation deduction attributable to A. As a result, $DE1_X$'s Year 1 $20x depreciation deduction constitutes a dual consolidated loss attributable to P's interest in $DE1_X$. P makes a domestic use election with respect to $DE1_X$'s Year 1 dual consolidated loss.

(B) For Country X tax purposes, $DE1_X$ has a $100x tax basis in A at the beginning of Year 1, but A is not a depreciable asset. As a result, $DE1_X$ does not have any items of income, gain, deduction or loss in Year 1 for Country X tax purposes.

(C) At the beginning of Year 2, P sells its interest in $DE1_X$ to F, an unrelated foreign person, for $80x. P's disposition of its interest in $DE1_X$ constitutes a presumptive triggering event under § 1.1503(d)–4(e)(1) requiring the recapture of the $20x dual consolidated loss (plus the applicable interest charge). For Country X tax purposes, $DE1_X$ retains its tax basis of $100x in A following the sale.

(ii) *Result.* The Year 1 dual consolidated loss is a result of the $20x depreciation deduction attributable to A. Although no item of loss or deduction was recognized by $DE1_X$ by the time of the sale for Country X tax purposes, the deduction composing the dual consolidated loss was retained by $DE1_X$ after the sale in the form of tax basis in A. As a result, a portion of the dual consolidated loss may offset income for Country X purposes in a manner that would constitute a foreign use. For example, if $DE1_X$ were to dispose of A, the amount of gain recognized by $DE1_X$ would be reduced and, therefore, an item composing the dual consolidated loss would reduce foreign income of an owner of an interest in a hybrid entity that is not a separate unit. Thus, P cannot demonstrate pursuant to § 1.1503(d)–4(e)(2) that there can be no foreign use of the Year 1 dual consolidated loss following the triggering event and must recapture the Year 1 dual consolidated loss. Pursuant to § 1.1503(d)–4(i)(3), the domestic use agreement filed by the P consolidated group with respect to the Year 1 dual consolidated loss of $DE1_X$ is terminated and has no further effect.

Example 45. Ability to rebut triggering event—taxable asset sale. (i) *Facts.* The facts are the same as *Example 44*, except that instead of P selling its interests in $DE1_X$ to F, $DE1_X$ sells asset A to F for $80x. Such sale constitutes a presumptive triggering event under § 1.1503(d)–4(e)(1). For Country X tax purposes, F's tax basis in A is $80x.

(ii) *Result.* The Year 1 dual consolidated loss attributable to P's interest in $DE1_X$ is a result of the $20x depreciation deduction attributable to A. For Country X tax purposes, however, F's tax basis in A was not determined, in whole or in part, by reference to the basis of A in the hands of $DE1_X$. As a result, the deduction composing the dual consolidated loss will not give rise to an item of deduction or loss in the form of tax basis for Country X purposes (for example, when F disposes of A). Therefore, P may be able to demonstrate pursuant to § 1.1503(d)–4(e)(2) that there can be no foreign use of the Year 1 dual consolidated loss and, thus, may not be required to recapture the Year 1 dual consolidated loss. Pursuant to § 1.1503(d)–4(i)(1), if such a demonstration is made, the domestic use agreement filed by the P consolidated group with respect to the Year 1 dual consolidated loss of $DE1_X$ is terminated pursuant to § 1.1503(d)–4(i)(1) and has no further effect (absent a rebuttal, the domestic use agreement would terminate pursuant to § 1.1503(d)–4(i)(3)).

Example 46. Termination of consolidated group not a triggering event if acquirer files a new domestic use agreement. (i) *Facts.* P owns DRC_X, a member of the P consolidated group. The P consolidated group uses the calendar year as its taxable year. In Year 1, DRC_X incurs a dual consolidated loss and P makes a domestic use election with respect to such loss. No member of the P consolidated group incurs a dual consolidated loss in Year 2. On December 31, Year 2, T, the parent of the T consolidated group acquires all the stock of P, and all the members of the P group, including DRC_X, become members of a consolidated group of which T is the common parent.

(ii) *Result.* (A) Under § 1.1503(d)–4(f)(2)(ii)(B), the acquisition by T of the P consolidated group is not an event described in § 1.1503(d)–4(e)(1) requiring the recapture of the Year 1 dual consolidated loss of DRC_X (and the payment of an interest charge), provided that the T consolidated group files a new domestic use agreement described in § 1.1503(d)–4(f)(2)(iii)(A). If a new domestic use agreement is filed, then pursuant to § 1.1503(d)–4(i)(2), the domestic use agreement filed by the P consolidated group with respect to the Year 1 dual consolidated loss of DRC_X is terminated and has no further effect.

(iii) If a triggering event occurs on December 31, Year 3, the T consolidated group must recapture the dual consolidated loss that DRC_X incurred in Year 1 (and pay an interest charge), as provided in § 1.1503(d)–4(h). Each member of the T consolidated group, including DRC_X and any former members of the P consolidated group, is severally liable for the additional tax (and the interest charge) due upon the recapture of the dual consolidated loss of DRC_X. In addition, pursuant to § 1.1503(d)–4(i)(3), the new domestic use agreement filed by the T group with respect to the Year 1 dual consolidated loss of DRC_X is terminated and has no further effect.

Example 47. No triggering event if consolidated group remains in existence in connection with a reverse acquisition. (i) *Facts.* S owns FB_X. FB_X incurs a dual consolidated loss of $100x in Year 1 and P makes a domestic use election with respect to such loss. At the end of Year 2, P merges into T, the common parent of the T consolidated group, which includes U as a member. The shareholders of P immediately before the merger, as a result of owning stock in P, own 60% of the fair market value of T's stock immediately after the merger.

(ii) *Result.* The P group is treated as continuing in existence under § 1.1502–75(d)(3) with T and U being added as members of the P group, and T taking the place of P as the common parent. The merger of P into T does not constitute a triggering

event with respect to the dual consolidated loss in Year 1 pursuant to § 1.1503(d)–4(e)(1)(ii) because the P consolidated group, which owned FB_X, continues to exist.

Example 48. Triggering event exception—acquisition of assets by domestic owner. (i) *Facts.* P owns $DE1_X$. In Year 1, $DE1_X$ incurs a loss of $100x and, as a result, P's interest in $DE1_X$ has a Year 1 dual consolidated loss of $100x. P makes a domestic use election with respect to the Year 1 dual consolidated loss and such loss therefore is included in the computation of the P group's consolidated taxable income. In Year 3, $DE1_X$ dissolves and surrenders its Country X corporate charter. Pursuant to its dissolution, $DE1_X$ distributes its assets and liabilities to P and the shares of $DE1_X$ are cancelled.

(ii) *Result.* The disposition of the assets of $DE1_X$ (and the disposition of P's interest in $DE1_X$) as a result of the dissolution generally would be a triggering event under § 1.1503(d)–4(e)(1). However, because the assets of $DE1_X$ are acquired by P, its domestic owner, as a result of the dissolution, the dissolution does not constitute a triggering event under § 1.1503(d)–4(f)(1).

Example 49. Subsequent elector rules. (i) *Facts.* P owns DRC_X, a member of the P consolidated group. The P consolidated group uses the calendar year as its taxable year. In Year 1, DRC_X incurs a dual consolidated loss and P makes a domestic use election with respect to such loss. No member of the P consolidated group incurs a dual consolidated loss in Year 2. On December 31, Year 2, T, the parent of the T consolidated group that also uses the calendar year as its taxable year, acquires all the stock of DRC_X for cash.

(ii) *Result.* (A) Under § 1.1503(d)–4(f)(2)(i)(A), the acquisition by T of DRC_X is not an event described in § 1.1503(d)–4(e)(1) requiring the recapture of the Year 1 dual consolidated loss of DRC_X (and the payment of an interest charge), provided: (1) the T consolidated group files a new domestic use agreement described in § 1.1503(d)–4(f)(2)(iii)(A) with respect to the Year 1 dual consolidated loss of DRC_X; and (2) the P consolidated group files a statement described in § 1.1503(d)–4(f)(2)(iii)(B) with respect to the Year 1 dual consolidated loss of DRC_X. If these requirements are satisfied, then pursuant to § 1.1503(d)–4(i)(2) the domestic use agreement filed by the P consolidated group with respect to the Year 1 dual consolidated loss of DRC_X is terminated and has no further effect (if such requirements are not satisfied, the domestic use agreement would terminate pursuant to § 1.1503(d)–4(i)(3).

(B) Assume a triggering event occurs on December 31, Year 3, that requires recapture by the T consolidated group of the dual consolidated loss that DRC_X incurred in Year 1, as well as the payment of an interest charge, as provided in § 1.1503(d)–4(h). In that case, each member of the T consolidated group, including DRC_X, is severally liable for the additional tax (and the interest charge) due upon the recapture of the Year 1 dual consolidated loss of DRC_X. The T consolidated group must prepare a statement that computes the recapture tax amount as provided under § 1.1503(d)–4(h)(3)(iii). Pursuant to § 1.1503(d)–4(h)(3)(iv)(A), the recapture tax amount is assessed as an income tax liability of the T consolidated group and is considered as having been properly assessed as an income tax liability of the P consolidated group. If the T consolidated group does not pay in full the income tax liability attributable to the recapture tax amount, the unpaid balance of such recapture tax amount may be collected from the P consolidated group in accordance with the provisions of § 1.1503(d)–4(h)(3)(iv)(B). Pursuant to § 1.1503(d)–4(i)(3), the new domestic use agreement filed by the T consolidated group is terminated and has no further effect.

Example 50. Character and source of recapture income. (i) *Facts.* (A) P owns $DE1_X$. In Year 1, the items of income, gain, deduction, and loss that are attributable to P's interest in $DE1_X$ for purposes of determining whether such interest has a dual consolidated loss are as follows:

Sales income	$100x
Salary expense	(75x)
Interest expense	(50x)
Dual consolidated loss	(25x)

(B) P makes a domestic use election with respect to the Year 1 dual consolidated loss attributable to P's interest in $DE1_X$ and, thus, the $25x dual consolidated loss is included in the computation of P's taxable income.

(C) Pursuant to § 1.861–8, the $75x of salary expense incurred by $DE1_X$ is allocated and apportioned entirely to foreign source general limitation income. Pursuant to § 1.861–9T, $25x of the $50x interest expense attributable to $DE1_X$ is allocated and apportioned to domestic source income, $15x of such interest expense is allocated and apportioned to foreign source general limitation income, and the remaining $10x of such interest expense is allocated and apportioned to foreign source passive income.

(D) During Year 2, $DE1_X$ generates $5x of income, an amount which the $25x dual consolidated loss generated by $DE1_X$ in Year 1 would have offset if such loss had been subject to the separate return limitation year restrictions as provided under § 1.1503(d)–3(c)(3).

(E) At the beginning of Year 3, $DE1_X$ undergoes a triggering event within the meaning of § 1.1503(d)–4(e)(1). Pursuant to § 1.1503(d)–4(h)(2)(i), P demonstrates, to the satisfaction of the Commissioner, that the $5x generated by $DE1_X$ in Year 2 qualifies to reduce the amount that P must recapture as a result of the triggering event.

(ii) *Result.* P must recapture and report as income $20x ($25x − $5x) of $DE1_X$'s Year 1 dual consolidated loss, plus applicable interest, on its Year 3 tax return. Pursuant to § 1.1503(d)–4(h)(5), the recapture income is treated as ordinary income whose source and character (including section 904 separate limitation character) is determined by reference to the manner in which the recaptured items of expense or loss taken into account in calculating the dual consolidated loss were allocated and apportioned. Accordingly, P's $20x of recapture income is characterized and sourced as follows: $4x of domestic source income (($25x/$125x) x $20x); $14.4x of foreign source general limitation income (($75x+$15x)/$125x)x$20x); and $1.6x of foreign source passive income (($10x/$125x) × $20x). Pursuant to § 1.1503(d)–4(i)(3), the domestic use agreement filed by the P consolidated group with respect to the Year 1 dual consolidated of $DE1_X$ is terminated and has no further effect.

Example 51. Interest charge without recapture. (i) *Facts.* P owns $DE1_X$. In Year 1, a dual consolidated loss of $100x is attributable to P's interest in $DE1_X$. P makes a domestic use election with respect to the Year 1 dual consolidated loss and uses the loss to offset the P group's consolidated taxable income. $DE1_X$ earns income of $100x in Year 2. At the end of Year 2, $DE1_X$ undergoes a triggering event within the meaning of § 1.1503(d)–4(e)(1). P demonstrates, to the satisfaction of the Commissioner, that taking into the limitation of § 1.1503(d)–3(c)(3) (modified SRLY limitation), the Year 1 $100x dual consolidated loss would have been offset by the $100x Year 2 income.

(ii) *Result.* There is no recapture of the Year 1 dual consolidated loss attributable to P's interest in DE1 because it is reduced to zero under § 1.1503(d)–4(h)(2)(i). However, P is liable for one year of interest charge under § 1.1503(d)–4(h)(1)(ii), even though P's recapture amount is zero. Pursuant to § 1.1503(d)–4(i)(3), the domestic use agreement filed by the P consolidated group with respect to the Year 1 dual consolidated of $DE1_X$ is terminated and has no further effect.

Example 52. Reduced recapture and interest charge, and reconstituted dual consolidated loss. (i) *Facts.* P owns DRC_X, a member of the P consolidated group. In Year 1, DRC_X incurs a dual consolidated loss of $100x and P earns $100x. P makes a domestic use election with respect to DRC_X's Year 1 dual consolidated loss. Therefore, the consolidated group is permitted to offset P's $100x of income with DRC_X's $100x loss. In Year 2, DRC_X earns $30x, which is completely offset by a $30x net operating loss incurred by P in Year 2. In Year 3, DRC_X earns income of $25x, while P recognizes no income or loss. In addition, there is a triggering event at the end of Year 3.

(ii) *Result.* (A) Under the presumptive rule of § 1.1503(d)–4(h)(1)(i), DRC_X must recapture $100x. However, the $100x recapture amount may be reduced by the amount by which the dual consolidated loss would have offset other taxable income if it had been subject to the limitation under § 1.1503(d)–3(c)(3), upon adequate documentation of such offset under § 1.1503(d)–4(h)(2)(i).

(B) Although DRC_X earned $30x of income in Year 2, there was no consolidated taxable income in such year. As a result, the $100x of recapture income cannot be reduced by the $30x earned in Year 2, but such amount can be carried forward to subsequent taxable years and be used to the extent of consolidated taxable income generated in such years. In Year 3, DRC_X earns $25x of income and the P consolidated group has $25 of consolidated taxable income in such year.

As a result, the $100x of recapture income can be reduced by the $25x. The $30x generated in Year 2 cannot be used in Year 3 because there is insufficient consolidated taxable income in such year.

(C) Commencing in Year 4, the $75x recapture amount ($100x – $25x) is reconstituted and treated as a loss incurred by DRC_X in a separate return limitation year, subject to the limitation under § 1.1503(d)–2(b) (and therefore subject to the restrictions of § 1.1503(d)–3(c)(3)). The carryover period of the loss, for purposes of section 172(b), will start from Year 1, when the dual consolidated loss was incurred. Pursuant to § 1.1503(d)–4(i)(3), the domestic use agreement filed by the P consolidated group with respect to the Year 1 dual consolidated of $DE1_X$ is terminated and has no further effect.

§ 1.1503(d)–6 Effective date.

Sections 1.1503(d)–1 through 1.1503(d)–5 shall apply to dual consolidated losses incurred in taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

Par. 4. In § 1.6043–4T, paragraph (a)(1)(iii) is amended by removing the language ''§ 1.1503–2(c)(2)'' and adding ''§ 1.1503(d)–1(b)(2)'' in its place.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–10160 Filed 5–19–05; 9:47 am]

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Federal Register

Tuesday,
May 24, 2005

Part IV

Environmental Protection Agency

40 CFR Part 262

Project XL Rulemaking Extension for New York State Public Utilities; Hazardous Waste Management Systems; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[FRL–7916–2]

Project XL Rulemaking Extension for New York State Public Utilities; Hazardous Waste Management Systems; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; change of expiration date.

SUMMARY: EPA is promulgating today the rulemaking extension proposed and published in the **Federal Register** on January 25, 2005 for the Project XL Final Rule for New York State Public Utilities; Hazardous Waste Management Systems (XL Rule) (70 FR 3501). The XL Rule was published as a final rule in the **Federal Register** on Monday, July 12, 1999 and, by its terms, expired, on January 10, 2005. The details of the XL Rule can be found in 64 FR 37636 (July 12, 1999). No further changes are being made to the XL Rule other than the change in expiration date. Because the requirements outlined in the XL Rule do not become effective until New York State adopts equivalent requirements through a State rulemaking and receives EPA authorization for these equivalent State requirements, EPA is extending the XL Rule for a period of 72 months from the effective date of today's rule. To date, the State has not adopted an equivalent rule and thus the XL Project for New York Public State Utilities has not been implemented. The XL Rule must be extended to facilitate completion of the New York State Public Utilities XL Project.

DATES: This rule is effective on May 24, 2005.

ADDRESSES: The docket containing supporting information used in developing this final rule are available for public inspection and copying. The docket can be found online through the EPA's EDOCKET Web site (*http://docket.epa.gov/edkpub/index.jsp*). EDOCKET is EPA's online public docket and comment system designed to expand access to public information. The docket for this rulemaking can be accessed by conducting a search for Docket ID RCRA–2004–0021.

A docket containing public comments and supporting materials from the original final rulemaking is available for public inspection and copying at the EPA Docket Center (EPA/DC), located at EPA West Building, 1301 Constitution Avenue, NW., Room B102, Washington, DC. The EPA/DC is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays (all materials from this docket are available 24 hours a day online through the EDOCKET system with the new rulemaking's Docket ID of RCRA–2004–0021). The public is encouraged to phone in advance to review docket materials at the EPA/DC. Appointments can be scheduled by phoning the Docket Office at (202) 566–2270. Refer to RCRA docket number F–98–NYSP–FFFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region 2, 290 Broadway, New York, NY 10007–1866 during normal business hours. Persons wishing to view the duplicate docket at the New York location are encouraged to contact Mr. Philip Flax in advance, by telephoning (212) 637–4143. Project materials are also available for review on today's action on the World Wide Web at *http://www.epa.gov/ProjectXL.*

FOR FURTHER INFORMATION CONTACT: Mr. Philip Flax, U.S. EPA, Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637–4143.

SUPPLEMENTARY INFORMATION: On July 12, 1999, EPA promulgated subpart I of 40 CFR part 262 (XL Rule) which sets forth the requirements for Project XL for public utilities in New York State. The XL Rule was published as a final rule at 64 FR 37624 (July 12, 1999). The XL Rule expired on January 10, 2005. Accordingly, EPA is amending the expiration date of the XL Rule in 40 CFR 262.90(j). EPA is not modifying any other provisions of the XL Rule.

EPA is amending the expiration date of the XL Rule and providing an additional 72 months from the effective date of today's rulemaking. This rule is effective upon its publication in the **Federal Register** (rather than six months from promulgation) based on EPA's finding that the regulated community does not need six months to come into compliance with this regulation. RCRA section 3010(b)(1), 42 U.S.C. 6930(b)(1). The extension of the expiration date for the XL Rule will enable the New York State Department of Environmental Conservation (NYSDEC) to implement portions of the project requiring regulatory changes. New York State has received authority to administer hazardous waste standards for generators that are equivalent to, or more stringent than, the federal program. Therefore, the requirements outlined in the XL Rule will not take effect in New York State until the State adopts equivalent requirements through a State rulemaking and receives EPA authorization for these equivalent State requirements. EPA will not be the primary regulatory agency responsible for implementing the requirements of the XL Rule. EPA expects this XL Project to result in superior environmental performance in New York State, while providing cost savings to participating Utilities.

EPA received one comment letter in response to the January 25, 2005 proposed rulemaking extension **Federal Register** notice from the Utility Solid Waste Activities Group (USWAG), the Edison Electric Institute (EEI), the American Public Power Association (APPA), the National Rural Electric Cooperative Association (NRECA), and the American Gas Association (AGA) (collectively referred to herein as USWAG). The letter stated that USWAG strongly supports the six-year extension of the XL Rule. The letter reiterated USWAG's belief that the XL Rule will promote more efficient and environmentally sound management of hazardous wastes by allowing participating New York State utilities to consolidate wastes from remote locations at a utility central collection facility (UCCF) without requiring the utility to obtain a hazardous waste permit. USWAG stated that the XL Rule will result in environmental benefits, financial benefits, and reduced paperwork and reporting burdens for both the utilities involved and the New York State Department of Environmental Conservation. No changes have been made to the proposed rulemaking extension based on this comment.

Additional Information

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA hazardous waste program within the state. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law. A state may receive authorization by following the approval process described in 40 CFR part 271. 40 CFR part 271 also describes the overall

standards and requirements for authorization.

After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (*i.e.*, 42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. Although authorized states are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

2. Effect on New York State Authorization

Today's rule is promulgated pursuant to RCRA provisions that predate HSWA. New York State has received authority to administer most of the RCRA program; thus, authorized provisions of the State's hazardous waste program are administered in lieu of the federal program. New York State has received authority to administer hazardous waste standards for generators. As a result, today's rule will not be effective in New York State until the State adopts equivalent requirements as State law and receives EPA authorization for those equivalent State requirements. EPA may not enforce these requirements until it approves the State requirements as a revision to the authorized State program.

Statutory and Executive Order Review

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The 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 in 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 entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

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

Because the annualized cost of this rule will be significantly less than $100 million and will not meet any of the other criteria specified in the Executive Order, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to conduct a Regulatory Flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

This final rule will not impose any requirements on small entities. EPA is extending the Project XL Final Rule for New York State Public Utilities; Hazardous Waste Management Systems (XL Rule) that was published on July 12, 1999, which expired January 10, 2005. No other changes are being made to the XL Rule other than to change the expiration date by providing an additional 72 months from the effective date of today's rulemaking.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and has assigned OMB control number 2010–0026.

EPA is collecting information regarding the locations and amount of waste involved as well as the money saved and what the savings was invested in. EPA plans to use this information to determine whether the XL project is successful. The success of the project will help determine whether it should be extended to other areas of the country. Participation in the project is voluntary; however, if a Utility decides to participate, EPA requires the filing of a report containing pertinent information. These reports will be publicly available. The estimated cost burden of filing the annual report is $10,000 and the estimated length of time to prepare the report is 40 hours. The estimated number of respondents is 15. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA amended the 40 CFR part 9 table of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in the XL Rule. The table lists the CFR citations for EPA's reporting and recordkeeping requirements, and the current OMB control numbers. This listing of OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act and OMB's

implementing regulations at 5 CFR part 1320.

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 one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. As noted above, this final rule is applicable only to New York State Utilities. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this final 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 one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Applicability of Executive Order 13045

The Executive Order, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

F. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not create a mandate on State, local, or tribal governments and does not impose any enforceable duties on these entities. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. The rule does not significantly or uniquely affect the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

H. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 24, 2005.

List of Subjects in 40 CFR Part 262

Environmental protection, Hazardous materials transportation, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

Dated: May 17, 2005.

Stephen L. Johnson,

EPA Administrator.

■ For the reasons set forth in the preamble, part 262 of title 40 of the Code of Federal Regulations is amended as follows:

PART 262—[AMENDED]

■ 1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 9612, 6922–6925, 6937, and 6938.

Subpart I—[Amended]

■ 2. Section 262.90 is amended by revising paragraph (j) to read as follows:

§ 262.90 Project XL for Public Utilities in New York State.

* * * * *

(j) This section will expire on May 24, 2011.

[FR Doc. 05–10196 Filed 5–23–05; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

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LIST OF PUBLIC LAWS

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H.R. 1268/P.L. 109–13

Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (May 11, 2005; 119 Stat. 231)

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