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WHEN: Thursday, September 22, 2005
9:00 a.m.–Noon

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Conference Room, Suite 700
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RESERVATIONS: (202) 741–6008

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Title 3—

The President

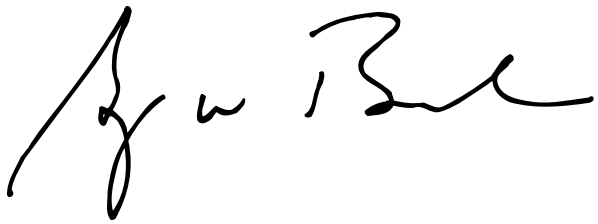
Presidential Determination No. 2005–32 of August 17, 2005

Continuation of U.S. Drug Interdiction Assistance to the Government of Colombia

Memorandum for the Secretary of State[and] the Secretary of Defense

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. 2291–4), I hereby certify, with respect to Colombia, that (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) that country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register** and to notify the Congress of this determination.



THE WHITE HOUSE,
Washington, August 17, 2005.

[FR Doc. 05–17246
Filed 8–26–05; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
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Monday, August 29, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 842

RIN 3206–AK84

Retirement Credit for Certain Government Service Performed Abroad

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comment.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement a section of the Foreign Relations Authorization Act, Fiscal Year 2003 affecting the Federal Employees Retirement System. These regulations describe how individuals who performed certain Government service at a United States diplomatic mission, consular post, or other Foreign Service post abroad after December 31, 1988, and before May 24, 1998, can get retirement credit for that service under the Federal Employees' Retirement System.

DATES: This interim rule is effective August 29, 2005. We must receive your comments by October 28, 2005.

ADDRESSES: You may submit comments, identified by RIN number 3206–AK84, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *combox@opm.gov.* Include RIN number 3206–AK84 in the subject line of the message.
- Mail: Mary Ellen Wilson, Manager, Retirement Group, Office of Personnel Management; 1900 E Street, NW., Washington, DC 20415–3200.
- FAX: (202) 606–0990.

FOR FURTHER INFORMATION CONTACT: Jim Giuseppe, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Section 321 of Public Law 107–228, 116 Stat. 1380, the Foreign Relations Authorization Act, Fiscal Year 2003, allows retirement credit under the Federal Employees' Retirement System (FERS) for certain Government service performed abroad under a temporary appointment. Service performed after December 31, 1988, and before May 24, 1998, under a temporary appointment pursuant to sections 309 and 311 of the Foreign Service Act of 1980, may now be creditable under FERS provided all of the following conditions set out in section 321 are satisfied.

- The service must have been performed at a United States diplomatic mission, consular post (other than a consular agency), or other Foreign Service post abroad.
- The individual who performed the service must have satisfied all eligibility requirements under regulations of the Department of State (as in effect on September 30, 2002) for a family member limited non-career appointment at the time the service was performed. Individuals not employed by the Department of State while performing such service shall be treated as if they were so employed for the purposes of this requirement.
- The service would have been creditable under FERS had it been performed before 1989 and had the appropriate service credit deposit been paid.
- The service cannot otherwise be creditable under FERS or any other retirement system for employees of the United States Government (disregarding title II of the Social Security Act).
- The service must have totaled 90 days or more.
- The individual who performed the service must file an application to pay a deposit for the service no later than 36 months after the effective date of these regulations, and pay the deposit. The deposit equals the amount of FERS employee deductions that would have been withheld from the individual's basic pay had the service been subject to FERS deductions, plus interest. If the individual who performed the service is deceased, any person who is or would be eligible for a survivor annuity under FERS based on the service of the individual can apply for the service credit and pay this deposit.
- The department or agency where the individual performed the service must pay a deposit for the service. The deposit the department or agency owes equals the FERS Government contributions that would have been due had the service been subject to FERS, plus interest.

These provisions allowing FERS service credit for certain Government service performed abroad differ from other FERS provisions that allow service credit for service not subject to FERS retirement deductions in three important respects. First, they specify a specific location where the service must have been performed—at a United States diplomatic mission, consular post, or other Foreign Service post abroad as defined under the Foreign Service Act of 1980. Second, they require the application of Department of State regulations in determining if the service is creditable. And third, they require that Government contributions accompany the deposit that individuals have to pay for the service. The department or agency where the individual performed the service must pay those Government contributions. While individuals may have performed this service at any number of departments or agencies, including the Departments of Defense, Commerce, and Agriculture, and the United States Agency for International Development, we believe that most of the individuals affected by this legislation worked for the Department of State.

Because of these unique service credit provisions, we have established a process for obtaining service credit for certain Government service performed abroad that differs from the normal process used for establishing service credit for other types of civilian service. Where normally the Office of Personnel Management (OPM) determines whether service is creditable for FERS retirement purpose, these regulations recognize that the Department of State is in a better position than OPM to interpret the Foreign Service Act and the Department of State's own regulations to determine if the service is creditable. And where normally the individual applying for service credit for civilian service applies to OPM and pays a deposit to OPM, these regulations require that the individual apply for service credit to the department or agency where the individual performed the service (the Department of State in most cases) and pay the deposit to that

department or agency. The department or agency must then submit the individual's deposit to OPM, along with the Government contributions, so that OPM receives the full payment for the service at the same time.

When the Department of State or other appropriate department or agency responsible for processing the application for service credit under these regulations (hereinafter the employing entity) receives an application from an individual for certain Government service performed abroad, it must determine if the service qualifies for service credit under Section 321 of Public Law 107–228. (If the employing entity is not the Department of State, it may need to consult with the Department of State if there are any questions about whether or not the service is creditable.) The employing entity must then compute the amount of the deposit the individual owes for the service and notify the individual of the amount due. It must also compute the amount of the Government contributions it owes for the service; collect the deposit from the individual; and immediately forward both the individual's deposit and the Government contributions to OPM in a manner prescribed by OPM. If the employing entity finds that the service is not creditable under Section 321 of Public Law 107–228, it must provide the individual with a written decision explaining the reason why the service is not creditable and explaining the individual's rights to appeal the decision to the Merit Systems Protection Board (MSPB).

When the employing entity is not the Department of State, the Department of State must provide whatever assistance is necessary to help the employing entity determine if the service performed abroad is creditable under Section 321 of Public Law 107–228. If the employing entity no longer exists, the Department of State must assume most of the employing entity's duties related to these regulations. The only exception is that the Department of State, when performing these duties for an employing entity that is no longer in existence, does not have to forward the actual Government contributions to OPM. If the Department of State finds that the service is not creditable, it must provide the individual with a written notice that explains the reason why the service is not creditable and explains the individual's rights to appeal to the MSPB.

Individuals eligible to make the deposit must pay the deposit to the appropriate employing entity in one lump sum within 180 days of being notified of the amount of the deposit. The employing entity must then forward the individual's deposit along with the Government deposit and all relevant information relating to the period of service to OPM in a manner prescribed by OPM. If the individual making the deposit is currently receiving a retirement or survivor annuity, OPM will recompute the annuity to include credit for the service and pay the additional annuity resulting from the service credit retroactive to the date the annuity began. If the individual making the deposit is not currently receiving a retirement or survivor annuity, OPM will evaluate whether or not the individual qualifies to begin receiving an annuity with the additional service credit. If an individual becomes eligible to receive an annuity with the additional service credit, OPM will send the individual the appropriate application for benefits. After the individual returns the application, OPM will begin to pay the annuity as of the earliest date that the annuity could commence, subject to the commencing date provisions in chapter 84 of title 5 United States Code.

Therefore, OPM is amending 5 CFR part 842, subpart C, the subpart concerning credit for service. Specifically, subpart C is amended at 5 CFR 842.304 and 842.305.

In § 842.304, paragraph (e) is added outlining the conditions for crediting certain Government service performed abroad.

In § 842.305, paragraph (j) is added outlining how the individual and employer deposits for the service should be processed.

Waiver of Notice of Proposed Rulemaking

Under section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and to make these rules effective in less than 30 days. The processing of deposits for certain Government service performed abroad under these regulations will affect only a relatively limited number of qualifying individuals' retirement eligibility or eligibility for survivor benefits, and the amounts of their retirement or survivor benefits. We recognize that notice and comment may be waived when the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Publication of a general notice of proposed rulemaking in this situation would be contrary to the public interest because it would unnecessarily and unreasonably delay the availability of the potential benefits of Public Law 107–228, and because no individual or group will suffer any detriment, financial or otherwise, because of the application of this regulation without notice and comment. The application of these regulations benefits a specific group of individuals by revising an existing regulatory provision that is contrary to the benefit enacted by the Congress. The application of this regulation before public comment is consistent with the limited interest in this matter by the general public and in which the interest of the affected public, those seeking FERS retirement credit for certain Government service earned while working abroad, would be set back by any unnecessary requirement of advance notice.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Lists of Subjects in 5 CFR Part 842

Air traffic controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ For the reasons stated in the preamble, the Office of Personnel Management amends 5 CFR part 842 as follows:

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

■ 1. The authority citation for part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251, and section 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and section 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.304 and 842.305 also

issued under section 321(f) of Pub. L. 107–228, 116 Stat. 1383, Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under section 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under section 4005 of Pub. L. 101–239, 103 Stat. 2106 and section 7001 of Pub. L. 101–508, 104 Stat. 1388; subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under section 636 of Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under section 226(c)(2) of Public Law 108–176, 117 Stat. 2529.

Subpart C—Credit for Service

■ 2. In § 842.304, add paragraph (e) to read as follows:

§ 842.304 Civilian service.

* * * * *

(e) *Certain Government service performed abroad after December 31, 1988, and before May 24, 1998.* (1) *Definition.* In this section, *certain Government service performed abroad* is service performed at a United States diplomatic mission, consular post (other than a consular agency), or other Foreign Service post abroad under a temporary appointment pursuant to sections 309 and 311 of the Foreign Service Act of 1980 (22 U.S.C. 3949 and 3951).

(2) *Conditions for Creditability.* Service credit is allowed under section 321 of Pub. L. 107–228 for certain Government service performed abroad after December 31, 1988, and before May 24, 1998, provided—

(i) The service in the aggregate totaled 90 days or more;

(ii) The individual performing the service would have satisfied all eligibility requirements under regulations of the Department of State (as in effect on September 30, 2002) for a family member limited noncareer appointment (within the meaning of such regulations, as in effect on September 30, 2002) at the time the service was performed, except that, in applying this paragraph, an individual not employed by the Department of State while performing the service shall be treated as if then so employed;

(iii) The service would have been creditable under FERS had it been performed before 1989 and had the deposit requirements of § 842.305 been met;

(iv) The service is not otherwise creditable under FERS or any other retirement system for employees of the U.S. Government (disregarding title II of the Social Security Act);

(v) The individual applying for the service credit submits a written application to make a deposit with the department or agency where the service was performed, and completes the deposit, in accordance with § 842.305(j); and

(vi) The department or agency where the service was performed remits Government contributions for the service to OPM in accordance with § 842.305(j).

(3) *Departments or agencies no longer in existence.* If the department or agency where the individual performed certain Government service abroad no longer exists, the Department of State must process applications for service credit under this section. Government contributions for the service will not need to be remitted to OPM.

■ 3. In § 842.305, add paragraph (j) to read as follows:

§ 842.305 Deposits for civilian service.

* * * * *

(j) *Certain Government service performed abroad after December 31, 1988, and before May 24, 1998.*

(1) *Eligibility-current and former employees, and retirees.* A current or former employee, or a retiree who performed certain Government service abroad described in § 842.304(e) may make a deposit for such service, in a form prescribed by OPM.

(2) *Eligibility-survivors.* A survivor of a current employee, former employee, or a retiree eligible to make a deposit under paragraph (j)(1) of this section may make a deposit under this section if the current or former employee, or retiree is deceased and the survivor is eligible or would be eligible for a survivor annuity under FERS based on the service of the current or former employee, or retiree.

(3) *Filing of deposit application.* An individual eligible to make a deposit under paragraphs (j)(1) and (2) of this section for service described in § 842.304(e) must submit a written application to make a deposit for such service with the appropriate office in the department or agency where such service was performed. If the department or agency where the service was performed no longer exists, the individual must submit the written application to the appropriate office in the Department of State.

(4) *Time limit for filing application.* An application to make a deposit under this section must be submitted on or before August 29, 2008.

(5) *Amount of deposit.* (i) A deposit under this section must be computed using distinct periods of service. For the purpose of this section, a distinct period of service means a period of service not interrupted by a break in service of more than 3 days. A deposit may be made for any or all distinct periods of service.

(ii) The amount of deposit under this section equals the amount of deductions from basic pay that would have been required under section 8422 of title 5, United States Code, if at the time the service was performed the service had been subject to FERS deductions under that section, plus interest.

(6) *Forms of deposit.* A deposit under this section must be made as a single lump sum within 180 days of being notified of the deposit amount.

(7) *Processing deposit applications and payments.* (i) The department or agency where the service described in § 842.304(e) was performed must process the deposit applications and payments under this section. If the department or agency where the service was performed no longer exists, the Department of State must process the deposit applications and payments under this section.

(ii) Whenever requested, the Department of State must assist the department or agency responsible for processing deposit applications under this section determine whether the application meets the requirements of § 842.304(e).

(iii) Upon receiving a deposit application under this section, the department or agency must determine whether the application meets the requirements of § 842.304(e); compute the deposit, including interest; and advise the applicant of the total amount of deposit due.

(iv) The department or agency must establish a deposit account showing the total amount due.

(v) When it receives an individual's payment for the service, the department or agency must remit the payment to OPM immediately for deposit to the Civil Service Retirement and Disability Fund in accordance with instructions issued by OPM.

(vi) Once a deposit has been paid in full or otherwise closed out, the department or agency must submit the documentation pertaining to the deposit to OPM in accordance with instructions issued by OPM.

(8) *Government contributions.* (i) The department or agency where service described in § 842.304(e) was performed must pay Government contributions for each period of service covered by a deposit under this section.

(ii) The amount of contributions under this section equals the amount of Government contributions which would have been required for the service under section 8423 of title 5, United States

Code, if the service had been covered under chapter 84 of title 5, United States Code, plus interest.

(iii) The department or agency must remit the amount of Government contributions under this section to OPM at the same time it remits the employee deposit for this service to OPM in accordance with instructions issued by OPM.

(9) *Interest.* Interest must be computed as described under paragraphs (2) and (3) of 5 U.S.C. 8334(e). Interest must be computed for each distinct period of service from the midpoint of each distinct period of service. The interest accrues annually on the outstanding deposit and is compounded annually, until the deposit is paid.

(10) *Effect of deposit.* An individual completing a deposit under this section will receive retirement credit for the service covered by the deposit when OPM receives certification that the deposit has been paid in full, and the deposit payment and agency contributions are remitted to the Civil Service Retirement and Disability Fund.

(11) *Appeal rights.* When the department or agency processing an application for deposit under this section determines that the individual is not eligible to make a deposit for a period of service, it must provide the individual with a written decision explaining the reason for the decision and explaining the individual's right to appeal the decision to the Merit Systems Protection Board.

[FR Doc. 05–17053 Filed 8–26–05; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 103

[CIS No. 2245–02 and Docket No. DHS–2004–0021]

RIN 1615–AA88

Adjustment of the Appeal and Motion Fees To Recover Full Costs

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule adjusts the fee for filing appeals of, and motions to reopen or reconsider, any decision under the immigration laws in any type of proceeding other than those described at 8 CFR 1003.1(b), over which the Board of Immigration Appeals (BIA) in the Department of Justice (DOJ) has appellate jurisdiction. The rule also adds a non-substantive modification to the language of the fee regulation in order to enhance clarity.

This rule applies to fees for appeals and motions relating to the types of cases under the jurisdiction of the Administrative Appeals Office (AAO). The AAO is an appellate office of U.S. Citizenship and Immigration Services (USCIS). The BIA remains a component of DOJ, and has appellate jurisdiction over the orders of immigration judges, denials of relative immigrant visa petitions (Form I–130), and decisions involving administrative fines and penalties. This rule does not apply to, or affect in any manner, the fees associated with the BIA. Appeals from denials of all other types of applications, such as Applications for Temporary Protected Status (Form I–821), and petitions, such as Petitions for Amerasian, Widow(er), or Special Immigrant (Form I–360), and any subsequently filed motions, are under the jurisdiction of the AAO.

The fees, deposited into the Immigration Examinations Fee Account (IEFA), are adjusted from $110 to $385 to recover the full costs associated with the processing of an appeal, motion to reopen or motion to reconsider. Federal statutes authorize USCIS to establish and collect fees to recover the full cost of processing immigration benefit applications, rather than supporting these services with tax revenue.

Finally, the rule replaces a reference in the regulations to an obsolete form with a reference to the revised version of that form.

DATES: *Effective Date:* This final rule is effective September 28, 2005.

Compliance Date: Applications mailed, postmarked, or otherwise filed, on or after September 28, 2005 require the new fee.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Director, Office of Budget, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 4th Floor, Washington, DC 20529, telephone (202) 272–1930.

SUPPLEMENTARY INFORMATION:

I. Introduction

USCIS published a proposed rule in the **Federal Register** on November 30, 2004, at 69 FR 69546, to adjust the fees for processing of an appeal, motion to reopen or motion to reconsider. The proposed rule was published with a 30-day comment period, which closed on December 30, 2004. USCIS received 14 comments pertaining to the adjustment of the fees for processing of an appeal or motion to reopen or motion to reconsider.

Comments were received from 13 concerned individuals and one association. All of the relevant comments were carefully considered before preparing this final rule. USCIS' responses to the concerns raised by the commenters primarily are based upon the November 2002 fee review report provided by KMPG Consulting.

The following is a discussion of the comments received for the November 30, 2004 proposed rule and USCIS' response.

II. Summary of Comments

A. Why Is the Fee Increase Necessary?

Eight comments were received expressing dissatisfaction with the size of the fee increase. Three commenters also stated that the increase in appeals and motions of 12% over the last 10 years does not justify the proposed increased fees. USCIS notes, however, that the fee increase is not based upon the 12% increase in the filing of motions and appeals. While the fees for other applications have increased more than threefold during this time, the appeal and motion fee has remained the same.

The increase in fees is necessary so that USCIS can recover the full costs of processing appeals and motions.

Three commenters asserted that the increase in fees should also increase the timeliness and quality of the decisions rendered. Similarly, one commenter suggested that the AAO be added to the USCIS backlog reduction plan, while another indicated support for the proposed increase with the stipulation that the increase be used to fund additional resources for the AAO.

USCIS agrees with commenters that the timeliness and quality of the decisions is important, as are increases in personnel and resources and notes that such considerations were taken into account during the fee review. In response to the commenter's suggestion that the AAO be added to the USCIS backlog reduction plan, we note that the AAO has been a part of the backlog reduction plan since its inception. As indicated in the proposed rule, based on the increase in motion and appeal filings from 1993 to 2002, a fee review was conducted by a consulting firm to determine the fee necessary to ensure that USCIS was able to collect the full cost for processing motions and appeals. According to Office of Management and Budget (OMB) Circular A–25, the ''full

cost'' includes direct and indirect personnel costs, physical overhead, consulting, and other indirect costs (*e.g.*, material and supply costs, utilities, insurance, travel and rents), management and supervisory costs, and the costs of collection, research, and regulation. Included as part of the fee study was a determination of increased staffing necessary to meet the President's 5-year goal of processing immigration benefit applications in 6 months or less, as well as the cost of labor-intensive activities such as legal research, decision writing, and decision review.

Three commenters opposed the proposed fee increase because USCIS provides no recourse to waive fees or refund fees in order to correct an obvious error on the part of USCIS. Examples of obvious errors include an erroneous finding that an appeal or motion was not timely filed or an erroneous finding related to statutory eligibility such as age or marital status. Additionally, one commenter suggested that USCIS waive or refund fees when a decision is reversed on a motion to reconsider due to USCIS error.

In response to these comments, USCIS notes that it does have the authority to reopen a case sua sponte and utilizes this ability in instances where, in its discretion, it determines that there is an obvious error. An applicant may bring such an error to the attention of the AAO, and the AAO may reopen the case on its own motion. In such cases, the applicant does not need to submit any fee for the motion, so that waiver of the fee or refund of the fee is not an issue. In instances where an applicant pays a fee for a motion to reopen or reconsider, without first attempting to resolve the error with the AAO, the AAO may refund the fee if, in its discretion, it determines that there clearly was an error in the AAO's original decision. Service centers and district offices also have procedures in place to issue refunds in certain instances where USCIS error can be demonstrated.

One commenter stated that the administrative costs for processing one particular type of appeal should not be ''anything close to'' $385, because the decisions of the AAO often ''fail to address the issues presented, fail to provide any legal or factual analysis, fail to cite any legal authority, inconsistently apply general principles to identical factual situations, and completely disregard various contractual obligations of the DHS.'' USCIS and the AAO are very careful about the quality of appellate decisions. Decisions are reviewed before issuance to ensure that there are no such failings. Moreover, as indicated above and in the proposed rule, the $385 fee is necessary to maintain USCIS appellate operations without passing costs on to taxpayers.

B. Why Doesn't USCIS Charge a Lower Fee for Motions to Reconsider?

Five comments were received opposing the increase in fees for so-called ''simpler'' appeals and motions to reconsider, while supporting the fee increase for more complex appeals and motions to reopen. USCIS does not accept the premise that there is a standard by which the complexity of appeals can be measured, or that the differences between the two types of motions can be apportioned in order to justify separate fees.

USCIS regulations set forth a uniform appeals process. Appeals are considered on a case-by-case basis. Each case has unique substantive components that impact the ease or complexity of review. A motion to reconsider can, in a particular case, consume more USCIS resources than a motion to reopen. The process, however, is consistent throughout. In each case, the adjudicating office initially reviews each Form I–290B (Notice of Appeal to the AAO) on a case-by-case basis. The adjudicating office then decides the next appropriate step (*i.e.*, forward the matter to AAO for review, re-adjudicate and approve, or re-adjudicate and issue another request for evidence). Depending upon the timeframe and action, additional background checks may also be required.

This procedure does not vary significantly by application or petition type. It is true that in certain cases an application or petition is not forwarded to the AAO for review, but the conclusion that this path would mean a significantly lower administrative cost to USCIS does not necessarily follow. A service center or district office, after the preliminary review of the material provided, must complete many of the same tasks normally completed by the AAO: Data entry, additional review of the record, security checks, and issuance of a decision. These offices may even have to issue an additional Request For Evidence.

A more varied fee structure that accommodated perceived differences in the degree of complexity for appeals would be more difficult to administer and could, itself, increase costs. These increased costs would necessarily be reflected in higher overall fees.

Although there are 66 separate petitions or applications which may underlay the actual appeal or motion, because the processes for an appeal and motion are similar, USCIS and the consulting firm treated them similarly for purposes of the fee review and arrived at a statistically meaningful average processing time due to the fact that the appeals and motion process is singular as set forth in the regulations.

Similarly, despite the fact that the regulations provide different eligibility requirements for the filing of a motion to reopen versus a motion to reconsider, because the process for filing and adjudicating each motion is the same, a separate fee is not warranted. It is common practice with other USCIS applications and petitions to charge one standard application processing fee despite the fact that one application or petition may be used for the adjudication of benefits under several different statutory and/or regulatory provisions and may require the demonstration of various, unique eligibility requirements.

For example, the Form I–485, Application to Register Permanent Residence or Adjust Status, covers not only family as well as employment-based and Diversity Visa adjustment of status, but also adjustment under Registry, the Haitian Refugee Immigration Fairness Act (HRIFA), the Nicaraguan Adjustment and Central American Relief Act (NACARA), the Legal Immigration and Family Equity (LIFE) Act, the Cuban Adjustment Act and others. The Form I–129, Petition for a Nonimmigrant Worker, likewise covers change or extension of nonimmigrant status as well as the beneficiary's eligibility for a variety of classifications of nonimmigrant status. Nonetheless, one application processing fee is charged. One fee will similarly be assessed for the Form I–290B.

Another commenter stated that, despite the statement to the contrary in the proposed rule, the new fee will have a negative impact on small businesses. The commenter challenges the validity of the small business analysis in the proposed rule, and recommends that USCIS ''take into consideration the levels at which small companies are not appealing denials.'' It would be possible for USCIS to examine the percentage of denials for which no appeal is filed, but it would not be practical or cost effective for USCIS to assess the extent to which the fee for the appeal served as the basis for the decision to not file an appeal. The Regulatory Flexibility Act portion of this rule discusses more fully USCIS' perspective on how the appeal fee increase may or may not affect the decision to pursue an appeal. The commenter also recommended that the number of denials of Form I–129, Petition for Nonimmigrant Worker, be included in the analysis of the effect of

this rule on small businesses. That recommendation has been adopted.

Another comment noted that the proposed rule failed to remove reference to the obsolete Form I–290A in all pertinent areas of the regulation. The commenter is incorrect, because the listing for the Form I–290A in 8 CFR 103.7(b) was removed by the Final Rule published April 15, 2004 (69 FR 20527).

Finally, several additional comments were received that were beyond the scope of the proposed rule and, therefore, are not mentioned herein.

Accordingly, this final rule implements the new fees as outlined in the proposed rule, without substantive change. Any applications or petitions mailed, postmarked, or otherwise filed, on or after September 28, 2005 will require the new fee.

III. Fee Adjustments

The fee adjustments, as adopted in this rule, are shown as follows:

Description	Fee
Appeal/Motion Fee	$385.00

IV. Technical Improvements

This rule also clarifies that the fee amount of $385 also applies when an appeal is filed based on the denial of a petition with multiple beneficiaries, provided they are all beneficiaries of the same petition, and therefore affected by the same decision. In so doing, it corrects a transcription error in the Code of Federal Regulations in 1989 that failed to amend the fee amount from $50 to $110 for two or more aliens when the aliens are covered by one decision at the same time that the base fee (for one alien) was raised from $50 to $110, as provided in the final rule dated April 4, 1989 (54 FR 13513). The error resulted in an unintended discrepancy between the base fee, and the fee for two or more aliens when the aliens are covered by one decision. Notwithstanding this transcription error, the form instructions reflected the proper fee amount. Accordingly, affected aliens have been properly charged, and the former Immigration and Naturalization Service as well as USCIS have collected the correct fee since the 1989 amendment. This rule corrects the discrepancy in 8 CFR 103.7(b)(1) and brings this fee as properly amended ($50 to $110) from $110 to $385 so that both fees are now equal as intended.

Finally, this final rule also makes a conforming change to 8 CFR 103.5(a)(1)(iii) to replace an obsolete reference to a withdrawn form, Form I–290A, with a reference to Form I–290B.

Regulatory Flexibility Act

DHS has reviewed this regulation in accordance with 5 U.S.C. 605(b), and by approving it, DHS has determined that this rule will not have a significant economic impact on a substantial number of small entities since a majority of motions and appeals are submitted by individuals and not small entities as that term is defined in 5 U.S.C. 601(6).

DHS acknowledges, however, that some small entities, particularly those filing appeals of and/or motions to reopen or to reconsider denials of business-related petitions, such as the Form I–140, Immigrant Petition for Alien Worker; Form I–526, Immigrant Petition for Alien Entrepreneur; Form I–129, Petition for Nonimmigrant Worker; and Form I–829, Petition for Entrepreneur to Remove Conditions; may be affected by this rule. USCIS does not collect data on the size of the businesses filing appeals or motions related to employment-based petitions, and therefore does not know the precise number of small businesses that may be affected by this rule (as the majority of petitions are filed by individuals). USCIS records indicate that the following numbers of business-related petitions were denied during the Fiscal Year 2003/2004 biennial period:

Form I–140, Immigrant Petition for Alien Worker (35,866 denials)

Form I–526, Immigrant Petition by Alien Entrepreneur (217 denials)

Form I–829, Petition by Entrepreneur to Remove Conditions (174 denials)

Form I–129, Petition for Nonimmigrant Worker (171,154 denials)

Based on these figures, the volume of denied petitions that might be appealed to the USCIS over a two-year period is 207,411. During the fiscal years 2003 and 2004, the AAO received approximately 50,000 appeals.

USCIS is unable to determine how many of these petitioners are small businesses. In the past, some large employers have filed hundreds of petitions in a single year. Therefore, the number of small entities that have filed petitions and subsequently, appeals, is less than 207,411 and 50,000, respectively. Nevertheless, even assuming that all of these petitioners were small entities, economic impact on those businesses would not be substantial within the meaning of the Regulatory Flexibility Act.

According to the Bureau of Labor Statistics, the average wage of a worker in the United States in 2002 was $36,764. Cost to an employer would include benefits, social security, payroll taxes and other items not reflected in the wage itself.

It is reasonable to assume that a small business would be less likely to expend resources pursuing appeals or litigating decisions regarding lower-paid and less skilled immigrant employees. Accordingly, small businesses which choose to file appeals on behalf of immigrant employees are likely to do so only for more skilled, and therefore higher paid, immigrant employees. Such employees, presumably, would be paid in excess of the $36,764 average wage. Thus, the $275 increase in fees imposed by this rule would represent well under one percent of the total annual wage cost of the employee on whose behalf the pleading was filed and would represent an even smaller percentage of the cost of the employee's combined salary and benefits.

Moreover, based upon the appeals received by the AAO, we note that the majority of small businesses impacted by this rule would have more than one employee; in all probability, a minority of those employees would require the filing of one of the pleadings impacted by this rule. The overall economic impact of this rule on affected small businesses would therefore amount to substantially less than one percent of overall payroll and benefit expenses and an even smaller percentage of overall revenues.

Accordingly, the degree of economic impact resulting from this rule would not be deemed significant under the Regulatory Flexibility Act. Therefore, an analysis of the economic impact on a substantial number of small entities under 5 U.S.C. 603 is not required for this rule.

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 million 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.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more, a major increase of costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by DHS to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review. DHS has assessed both the costs and benefits of this rule as required by section 1(b)(6) of Executive Order 12866 and has made a determination that, although increasing the fee to $385 will increase the cost to the individual applicant and/or petitioner, USCIS must establish and collect fees to recover the full costs of processing immigration benefit applications, as required by the authorizing statute, the INA. The implementation of this rule also will provide USCIS with an additional $6.7 million in FY 2005 over the fee revenue that would be collected under the current fee structure. If USCIS does not adjust the current fees to recover the full costs of processing immigration benefit applications, our programs will not be fully funded and we will not be able to process applications in a timely manner. Thus, the backlog will likely increase. The results of the review showed that if the AAO's staffing increased, processing times would likely meet the President's mandate regarding backlog reduction. The revenue increase is based on USCIS costs and projected volumes that were available at the time of this rule.

Executive Order 13132

This rule 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 section 6 of Executive Order 13132, DHS has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995), all Departments are required to submit to OMB, for review and approval, any reporting or record-keeping requirements inherent in a rule. This rule does not impose any new reporting or record-keeping requirements under the Paperwork Reduction Act.

However, it should be noted that USCIS solicited public comments on the change of fees in the proposed rule that was published in the **Federal Register** on November 30, 2004. Because the change to the fees requires a change to Form I–290B, USCIS submitted a change request to OMB indicating the fee change from $110 to $385. OMB has approved changes to this form, consistent with the provisions in this final rule. The fee change is now reflected on USCIS Form I–290B.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

■ Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

■ 2. In § 103.5(a)(1)(iii), the introductory text is revised to read as follows:

§ 103.5 Reopening or reconsideration.

(a) * * *

(1) * * *

(iii) *Filing Requirements*—A motion shall be submitted on Form I–290B and may be accompanied by a brief. It must be:

* * * * *

■ 3. Section 103.7(b)(1) is amended by:

■ a. Revising the entry for the form ''I–290B''; and by

■ b. Revising the fee ''$110'' to read ''$385'' wherever that fee appears in the entry for ''Motion.''

The revision reads as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–290B. For filing an appeal from any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction—$385.00 (the fee will be the same when an appeal is taken from the denial of a petition with one or multiple beneficiaries, provided that they are all covered by the same petition, and therefore, the same decision).

* * * * *

Dated: August 22, 2005.

Michael Chertoff,

Secretary.

[FR Doc. 05–17132 Filed 8–26–05; 8:45 am]

BILLING CODE 4410–10–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH70

List of Approved Spent Fuel Storage Casks: VSC–24 Revision, Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of September 13, 2005, for the direct final rule that was published in the **Federal Register** on June 30, 2005 (70 FR 37647). This direct final rule amended the NRC's regulations to revise the VSC–24 cask system listing to include Amendment No. 5 to Certificate of Compliance (CoC) No. 1007.

EFFECTIVE DATE: The effective date of September 13, 2005, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

SUPPLEMENTARY INFORMATION: On June 30, 2005 (70 FR 37647), the NRC published a direct final rule amending its regulations in 10 CFR Part 72 to

revise the VSC–24 cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 5 to CoC No. 1007. This amendment changes the certificate holder's name from Pacific Sierra Nuclear Associates to BNG Fuel Solutions Corporation. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on September 13, 2005. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 23rd day of August, 2005.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 05–17058 Filed 8–26–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21705; Airspace Docket No. 05–ACE–21]

Modification of Legal Description of the Class E Airspace; Columbia Regional Airport, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which modifies the legal description of the Class E Airspace at Columbia Regional Airport, MO.

DATES: Effective 0901 UTC, October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64216; telephone: (816) 321–2121.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 21, 2005 (70 FR 41950). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that if no adverse notice of intent to submit such an adverse comment was received within the comment period, the regulation would become effective on October 27, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on August 15, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–17060 Filed 8–26–05; 8:45 am]

BILLING CODE 4921–13–M

DEPARTMENT OF STATE

22 CFR Parts 120, 122, 123, 124, 126, and 127

[Public Notice 5176]

Amendments to the International Traffic in Arms Regulations: Port Directors Definition, NATO Definition, Major Non-NATO Ally Definition, Recordkeeping Requirements, Supporting Documentation for Electronic License Applications, Disclosure of Registration Documents

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The definition of ''District Director of Customs'' has been amended to reflect the change in title. Also, references to the Customs Service have been changed to the U.S. Customs and Border Protection. A definition has been added for the ''North Atlantic Treaty Organization'' and another definition for ''major non-NATO ally.'' The recordkeeping requirement has been revised to include maintaining records in an electronic format and reproduction of readable documents. No need for multiple copies of supporting documentation for electronic license applications. Also, registration documents are not releasable to the public.

DATES: *Effective Date:* This rule is effective August 29, 2005.

ADDRESSES: Interested parties are invited to submit written comments to the Department of State:

- E-mail comments may be sent to *DDTCResponseTeam@state.gov* with the subject line: Parts 120, 122, 123, 124, 126 and 127.
- Written comments may be sent to Directorate of Defense Trade Controls, Office of Defense Trade Controls Management, ATTN: Regulatory Change, Parts 120, 122, 123, 124, 126 and 127, SA–1, 12th Floor, Washington, DC 20522–0112.

Persons with access to the Internet may also view this notice by going to the regulations.gov Web site at: *http://www.regulations.gov.* Comments will be accepted at any time.

FOR FURTHER INFORMATION CONTACT: Mary F. Sweeney, Office of Defense Trade Controls Management, Bureau of Political-Military Affairs, Department of State on 202–663–2865.

SUPPLEMENTARY INFORMATION: The definition of ''District Director of Customs'' has been amended to reflect that references to ''District Directors,'' have been replaced with ''Port Directors'' (Sections 123.4, 123.5, 123.6, 123.13, 123.16, 123.17, 123.18, 123.23, 126.4, 126.5, 126.6, and 126.13). Also, references to the ''Bureau of Customs and Border Protection'' and ''U.S. Customs'' have been replaced by ''U.S. Customs and Border Protection'' (Sections 122.5, 123.4, 123.5, 123.6, 123.13, 123.16, 123.17, 123.18, 123.22, 123.23, 123.24, 124.3, 126.4, 126.5, 126.6, 126.13, and 127.4).

The ITAR has been amended by adding two new definitions. There is a definition at 22 CFR 120.31 for the ''North Atlantic Treaty Organization'' and the countries are listed. The other definition is at 22 CFR 120.32 for ''major non-NATO ally.'' Major non-NATO ally means a country that is designated in accordance with § 517 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321k) as a major non-NATO ally for purposes of the Foreign Assistance Act of 1961 and the Arms Export Control Act (22 U.S.C. 2751 *et seq.*) (22 U.S.C. 2403(q)). The countries are listed in 22 CFR 120.32. Also, Taiwan shall be treated as though it were designated a major non-NATO ally (as defined in section 644(q) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(q)) in accordance with section 1206 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Pub. L. 107–228). In complying with Presidential Determination No. 2004–35 of June 3, 2004 and Presidential Determination No. 2004–37 of June 16, 2004, the ITAR is being amended to add Morocco and Pakistan as major non-NATO allies of the United States.

Section 122.3 has been amended to require a registrant renewing its registration to submit the renewal request at least 30 days prior to the expiration date.

Section 122.5 has been amended to include if maintaining records in an electronic format the information must be capable of being reproduced legibly on paper. Also, the stored information if altered must keep track of all changes,

who made them and when they were made.

Section 123.1 has been revised to address if submitting fully electronic license applications that there is no need for multiple copies of supporting documentation.

Section 126.10 regarding disclosure of information has been amended to include that registration documents may not generally be disclosed to the public under Section 38(e) of the Arms Export Control Act.

Section 127.4 has been revised to address the authority of U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers.

Certain references to the ''Office of Defense Trade Controls'' were changed to the ''Directorate of Defense Trade Controls'' (Sections 122.5, 123.1, 123.4, 123.5, 123.16, 126.4, 126.5, 126.6 and 126.13).

Regulatory Analysis and Notices

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1996. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this rule does not have sufficient federalism implications to warrant application of consultation provisions of Executive Orders 12372 and 13132. This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 120

Arms and munitions, Classified information, Exports.

22 CFR Part 122

Arms and munitions, Exports, Reporting and recordkeeping requirements.

22 CFR Parts 123 and 126

Arms and munitions, Exports.

22 CFR Part 124

Arms and munitions, Exports, Technical assistance.

22 CFR Part 127

Arms and munitions, Crime, Exports, Penalties, Seizures and forfeitures.

■ Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, parts 120, 122, 123, 124, 126, and 127 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1–2. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L 105–261, 112 Stat. 1920.

■ 3. Section 120.24 is revised to read as follows:

§ 120.24 Port Directors.

Port Directors of U.S. Customs and Border Protection means the U.S. Customs and Border Protection Port Directors at the U.S. Customs and Border Protection Ports of Entry (other than the port of New York, New York where their title is the Area Directors).

■ 4. Section 120.31 is added to read as follows:

§ 120.31 North Atlantic Treaty Organization.

North Atlantic Treaty Organization (NATO) is comprised of the following member countries: Belgium, Bulgaria, Canada, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, The Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, United Kingdom and the United States.

■ 5. Section 120.32 is added to read as follows:

§ 120.32 Major non-NATO ally.

Major non-NATO ally means a country that is designated in accordance with § 517 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321k) as a major non-NATO ally for purposes of the Foreign Assistance Act of 1961 and the Arms Export Control Act (22 U.S.C. 2751 *et seq.*) (22 U.S.C. 2403(q)). The following countries have been designated as major non-NATO allies: Argentina, Australia, Bahrain, Egypt, Israel, Japan, Jordan, Kuwait, Morocco, New Zealand, Pakistan, the Philippines, Thailand, and Republic of Korea. Taiwan shall be treated as though it were designated a major non-NATO ally (as defined in section 644(q) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(q)) .

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

■ 6. The authority citation for part 122 is revised to read as follows:

Authority: Secs. 2 and 38, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311; 1977 Comp. p. 79, 22 U.S.C. 2651a.

■ 7. Section 122.3 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 122.3 Registration fees.

* * * * *

(b) *Expiration of registration.* A registrant must submit its request for registration renewal at least 30 days prior to the expiration date.

(c) *Lapse in registration.* A registrant who fails to renew a registration and, after an intervening period, seeks to register again must pay registration fees for any part of such intervening period during which the registrant engaged in the business of manufacturing or exporting defense articles or defense services.

■ 8. Section 122.5 is revised to read as follows:

§ 122.5 Maintenance of records by registrants.

(a) A person who is required to register must maintain records concerning the manufacture, acquisition and disposition (to include copies of all documentation on exports using exemptions and applications and licenses and their related documentation), of defense articles; of technical data; the provision of defense services; brokering activities; and information on political contributions, fees, or commissions furnished or obtained, as required by part 130 of this subchapter. Records in an electronic format must be maintained using a process or system capable of reproducing all records on paper. Such records when displayed on a viewer, monitor, or reproduced on paper, must exhibit a high degree of legibility and readability. (For the purpose of this section, ''legible'' and ''legibility'' mean the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. ''Readable'' and ''readability'' means the quality of a group of letters or numerals being recognized as complete words or numbers.) This information must be stored in such a manner that none of it may be altered once it is initially

recorded without recording all changes, who made them, and when they were made. For processes or systems based on the storage of digital images, the process or system must afford accessibility to all digital images in the records being maintained. All records subject to this section must be maintained for a period of five years from the expiration of the license or other approval, to include exports using an exemption (See §123.26 of this subchapter); or, from the date of the transaction (*e.g.* expired licenses or other approvals relevant to the export transaction using an exemption). The Managing Director, Directorate of Defense Trade Controls, and the Director of the Office of Defense Trade Controls Licensing, may prescribe a longer or shorter period in individual cases.

(b) Records maintained under this section shall be available at all times for inspection and copying by the Directorate of Defense Trade Controls or a person designated by the Directorate of Defense Trade Controls (*e.g.* the Diplomatic Security Service) or U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection. Upon such request, the person maintaining the records must furnish the records, the equipment, and if necessary, knowledgeable personnel for locating, reading, and reproducing any record that is required to be maintained in accordance with this section.

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 9–10. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Public Law 105–261, 112 Stat. 1920; Sec 1205(a), Public Law 107–228.

■ 11. Section 123.1 is amended by revising paragraph (c)(2) to read as follows:

§ 123.1 Requirement for export or temporary import licenses.

* * * * *

(c) * * *

(1) * * *

(2) Attachments and supporting technical data or brochures should be submitted in seven collated copies. Two copies of any freight forwarder lists must be submitted. If the request is limited to renewal of a previous license or for the export of spare parts, only two sets of any attachment (including freight forwarder lists) and one copy of the previous license should be submitted. In the case of fully electronic submissions, unless otherwise expressly required by the Directorate of Defense Trade Controls, applicants need not provide multiple copies of supporting documentation and attachments, supporting technical data or brochures, and freight forwarder lists.

* * * * *

■ 12. Section 123.4 is amended by revising paragraphs (a), (a)(2), (b), (d) introductory text, (d)(1)(i), and (d)(2) to read as follows:

§ 123.4 Temporary import license exemptions.

(a) Port Directors of U.S. Customs and Border Protection shall permit the temporary import (and subsequent export) without a license, for a period of up to 4 years, of unclassified U.S.-origin defense items (including any items manufactured abroad pursuant to U.S. Government approval) if the item temporarily imported:

* * * * *

(2) Is to be enhanced, upgraded or incorporated into another item which has already been authorized by the Directorate of Defense Trade Controls for permanent export; or

* * * * *

(b) Port Directors of U.S. Customs and Border Protection shall permit the temporary import (but not the subsequent export) without a license of unclassified defense articles that are to be incorporated into another article, or modified, enhanced, upgraded, altered, improved or serviced in any other manner that changes the basic performance or productivity of the article prior to being returned to the country from which they were shipped or prior to being shipped to a third country. A DSP–5 is required for the reexport of such unclassified defense articles after incorporation into another article, modification, enhancement, upgrading, alteration or improvement.

* * * * *

(d) *Procedures.* To the satisfaction of the Port Director of U.S. Customs and Border Protection, the importer and export must comply with the following procedures:

(1) * * *

(i) File and annotate the applicable U.S. Customs and Border Protection document (*e.g.*, Form CF 3461, 7512, 7501, 7523 or 3311) to read: ''This shipment is being imported in accordance with and under the authority of 22 CFR 123.4(a) (identify subsection),'' and

* * * * *

(2) At the time of export, in accordance with the U.S. Customs and Border Protection procedures, the Directorate of Defense Trade Controls (DDTC) registered and eligible exporter, or an agent acting on the filer's behalf, must electronically file the export information using the Automated Export System (AES), and identify 22 CFR 123.4 as the authority for the export and provide, as requested by U.S. Customs and Border Protection, the entry document number or a copy of the U.S. Customs and Border Protection document under which the article was imported.

■ 13. Section 123.5 is revised to read as follows:

§ 123.5 Temporary export licenses.

(a) The Directorate of Defense Trade Controls may issue a license for the temporary export of unclassified defense articles (DSP–73). Such licenses are valid only if the article will be exported for a period of less than 4 years and will be returned to the United States and transfer of title will not occur during the period of temporary export. Accordingly, articles exported pursuant to a temporary export license may not be sold or otherwise permanently transferred to a foreign person while they are overseas under a temporary export license. A renewal of the license or other written approval must be obtained from the Directorate of Defense Trade Controls if the article is to remain outside the United States beyond the period for which the license is valid.

(b) *Requirements.* Defense articles authorized for temporary export under this section may be shipped only from a port in the United States where a Port Director of U.S. Customs and Border Protection is available, or from a U.S. Post Office (see 39 CFR part 20), as appropriate. The license for temporary export must be presented to the Port Director of U.S. Customs and Border Protection who, upon verification, will endorse the exit column on the reverse side of the license. In some instances of the temporary export of technical data (*e.g.* postal shipments), self-endorsement will be necessary (see § 123.22(b)). The endorsed license for temporary export is to be retained by the licensee. In the case of a military aircraft or vessel exported under its own power, the endorsed license must be carried on board such vessel or aircraft as evidence that it has been duly authorized by the Department of State to leave the United States temporarily.

(c) Any temporary export license for hardware that is used, regardless of whether the hardware was exported directly to the foreign destination or

returned directly from the foreign destination, must be endorsed by the U.S. Customs and Border Protection in accordance with the procedures in § 123.22 of this subchapter.

■ 14. Section 123.6 is revised to read as follows:

§ 123.6 Foreign trade zones and U.S. Customs and Border Protection bonded warehouses.

Foreign trade zones in the United States and U.S. Customs and Border Protection bonded warehouses are considered integral parts of the United States for the purpose of this subchapter. An export license is therefore not required for shipment between the United States and a foreign trade zone or a U.S. Customs and Border Protection bonded warehouse. In the case of classified defense articles, the provisions of the Department of Defense Industrial Security Manual will apply. An export license is required for all shipments of articles on the U.S. Munitions List from foreign trade zones and U.S. Customs and Border Protection bonded warehouses to foreign countries, regardless of how the articles reached the zone or warehouse.

■ 15. Section 123.13 is revised to read as follows:

§ 123.13 Domestic aircraft shipments via a foreign country.

A license is not required for the shipment by air of a defense article from one location in the United States to another location in the United States via a foreign country. The pilot of the aircraft must, however, file a written statement with the Port Director of U.S. Customs and Border Protection at the port of exit in the United States. The original statement must be filed at the time of exit with the Port Director of U.S. Customs and Border Protection. A duplicate must be filed at the port of reentry with the Port Director of U.S. Customs and Border Protection, who will duly endorse it and transmit it to the Port Director of U.S. Customs and Border Protection at the port of exit. The statement will be as follows:

Domestic Shipment Via a Foreign Country of Articles on the U.S. Munitions List

Under penalty according to Federal law, the undersigned certifies and warrants that all the information in this document is true and correct, and that the equipment listed below is being shipped from (U.S. port of exit) via (foreign country) to (U.S. port of entry), which is the final destination in the United States.

Description of Equipment

Quantity _____

Equipment _____

Value _____

Signed _____

Endorsement: U.S. Customs and Border Protection Inspector.

Port of Exit _____

Date _____

Signed _____

Endorsement: U.S. Customs and Border Protection Inspector.

Port of Entry _____

Date _____

■ 16. Section 123.16 is amended by revising paragraphs (a), (b)(1) introductory text, (b)(2) introductory text, (b)(3), (b)(4), (b)(5), (b)(9), and (b)(10) introductory text to read as follows:

§ 123.16 Exemptions of general applicability.

(a) The following exemptions apply to exports of unclassified defense articles for which no approval is needed from the Directorate of Defense Trade Controls. These exemptions do not apply to: Proscribed destinations under § 126.1 of this subchapter; exports for which Congressional notification is required (see § 123.15 of this subchapter); MTCR articles; Significant Military Equipment (SME); and may not be used by persons who are generally ineligible as described in § 120.1(c) of this subchapter. All shipments of defense articles, including those to and from Canada, require a Shipper's Export Declaration (SED) or notification letter. If the export of a defense article is exempt from licensing, the SED must cite the exemption. Refer to § 123.22 for Shipper's Export Declaration and letter notification requirements.

(b) * * *

(1) Port Directors of U.S. Customs and Border Protection shall permit the export without a license of defense hardware being exported in furtherance of a manufacturing license agreement, technical assistance agreement, distribution agreement or an arrangement for distribution of items identified in Category XIII(b)(1), approved in accordance with part 124, provided that:

* * * * *

(2) Port Directors of U.S. Customs and Border Protection shall permit the export of components or spare parts (for exemptions for firearms and ammunition see § 123.17) without a license when the total value does not exceed $500 in a single transaction and:

* * * * *

(3) Port Directors of U.S. Customs and Border Protection shall permit the export without a license, of packing cases specially designed to carry defense articles.

(4) Port Directors of U.S. Customs and Border Protection shall permit the export without a license, of unclassified models or mock-ups of defense articles, provided that such models or mock-ups are nonoperable and do not reveal any technical data in excess of that which is exempted from the licensing requirements of § 125.4(b) of this subchapter and do not contain components covered by the U.S. Munitions List (see § 121.8(b) of this subchapter). Some models or mockups built to scale or constructed of original materials can reveal technical data. U.S. persons who avail themselves of this exemption must provide a written certification to the Port Director of U.S. Customs and Border Protection that these conditions are met. This exemption does not imply that the Directorate of Defense Trade Controls will approve the export of any defense articles for which models or mocks-ups have been exported pursuant to this exemption.

(5) Port Directors of U.S. Customs and Border Protection shall permit the temporary export without a license of unclassified defense articles to any public exhibition, trade show, air show or related event if that article has previously been licensed for a public exhibition, trade show, air show or related event and the license is still valid. U.S. persons who avail themselves of this exemption must provide a written certification to the Port Director of U.S. Customs and Border Protection that these conditions are met.

* * * * *

(9) Port Directors of U.S. Customs and Border Protection shall permit the temporary export without a license by a U.S. person of any unclassified component, part, tool or test equipment to a subsidiary, affiliate or facility owned or controlled by the U.S. person (see § 122.2(c) of this subchapter) if the component, part, tool or test equipment is to be used for manufacture, assembly, testing, production, or modification provided:

(i) The U.S. person is registered with the Directorate of Defense Trade Controls and complies with all requirements set forth in part 122 of this subchapter;

(ii) No defense article exported under this exemption may be sold or transferred without the appropriate license or other approval from the Directorate of Defense Trade Controls.

(10) Port Directors of U.S. Customs and Border Protection shall permit, without a license, the permanent export, and temporary export and return to the

United States, by accredited U.S. institutions of higher learning of articles fabricated only for fundamental research purposes otherwise controlled by Category XV (a) or (e) in § 121.1 of this subchapter when all of the following conditions are met:

* * * * *

■ 17. Section 123.17 is amended by revising paragraphs (a), (b), (c) introductory text, (d) and (e) to read as follows:

§ 123.17 Exports of firearms and ammunition.

(a) Except as provided in § 126.1 of this subchapter, Port Directors of U.S. Customs and Border Protection shall permit the export without a license of components and parts for Category I(a) firearms, except barrels, cylinders, receivers (frames) or complete breech mechanisms when the total value does not exceed $100 wholesale in any transaction.

(b) Port Directors of U.S. Customs and Border Protection shall permit the export without a license of nonautomatic firearms covered by Category I(a) of § 121.1 of this subchapter if they were manufactured in or before 1898, or are replicas of such firearms.

(c) Port Directors of U.S. Customs and Border Protection shall permit U.S. persons to export temporarily from the United States without a license not more than three nonautomatic firearms in Category I(a) of § 121.1 of this subchapter and not more than 1,000 cartridges therefor, provided that:

* * * * *

(d) Port Directors of U.S. Customs and Border Protection shall permit a foreign person to export without a license such firearms in Category I(a) of § 121.1 of this subchapter and ammunition therefor as the foreign person brought into the United States under the provisions of 27 CFR 178.115(d). (The latter provision specifically excludes from the definition of importation the bringing into the United States of firearms and ammunition by certain foreign persons for specified purposes).

(e) Port Directors of U.S. Customs and Border Protection shall permit U.S. persons to export without a license ammunition for nonautomatic firearms referred to in paragraph (a) of this section if the quantity does not exceed 1,000 cartridges (or rounds) in any shipment. The ammunition must also be for personal use and not for resale or other transfer of ownership. The foregoing exemption is also not applicable to the personnel referred to in § 123.18.

■ 18. Section 123.18 is amended by revising paragraphs (a) introductory text, (a)(3), and (b) to read as follows:

§ 123.18 Firearms for personal use of members of the U.S. Armed Forces and civilian employees of the U.S. Government.

* * * * *

(a) Firearms. Port Directors of U.S. Customs and Border Protection shall permit nonautomatic firearms in Category I(a) of § 121.1 of this subchapter and parts therefor to be exported, except by mail, from the United States without a license if:

* * * * *

(3) In the case of other U.S. Government employees, they are for personal use and not for resale or other transfer of ownership, and the Chief of the U.S. Diplomatic Mission or his designee in the country of destination has approved in writing to Department of State the import of the specific types and quantities of firearms into that country. The exporter shall provide a copy of this written statement to the Port Director of U.S. Customs and Border Protection.

(b) Ammunition. Port Directors of U.S. Customs and Border Protection shall permit not more than 1,000 cartridges (or rounds) of ammunition for the firearms referred to in paragraph (a) of this section to be exported (but not mailed) from the United States without a license when the firearms are on the person of the owner or with his baggage or effects, whether accompanied or unaccompanied (but not mailed).

■ 19. Section 123.22 is amended by revising paragraphs (a), (b)(1) introductory text, (b)(2) introductory text, (b)(3)(iii) and (c) to read as follows:

§ 123.22 Filing, retention, and return of export licenses and filing of export information.

(a) Any export, as defined in this subchapter, of a defense article controlled by this subchapter, to include defense articles transiting the United States, requires the electronic reporting of export information. The reporting of the export information shall be to the U.S. Customs and Border Protection using the Automated Export System (AES) or directly to the Directorate of Defense Trade Controls (DDTC). Any license or other approval authorizing the permanent export of hardware must be filed at a U.S. Port before any export. Licenses or other approvals for the permanent export of technical data and defense services shall be retained by the applicant who will send the export information directly to DDTC. Temporary export or temporary import licenses for such items need not be filed with the U.S. Customs and Border Protection, but must be presented to the U.S. Customs and Border Protection for decrementing of the shipment prior to departure and at the time of entry. The U.S. Customs and Border Protection will only decrement a shipment after the export information has been filed correctly using the AES. Before the export of any hardware using an exemption in this subchapter, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically provide export information using the AES (see paragraph (b) of this section). In addition to electronically providing the export information to the U.S. Customs and Border Protection before export, all the mandatory documentation must be presented to the port authorities (*e.g.*, attachments, certifications, proof of AES filing; such as the External Transaction Number (XTN) or Internal Transaction Number (ITN)). Export authorizations shall be filed, retained, decremented or returned to DDTC as follows:

(1) *Filing of licenses and documentation for the permanent export of hardware.* For any permanent export of hardware using a license (*e.g.*, DSP–5, DSP–94) or an exemption in this subchapter, the exporter must, prior to an AES filing, deposit the license and provide any required documentation for the license or the exemption with the U.S. Customs and Border Protection, unless otherwise directed in this subchapter (*e.g.*, § 125.9). If necessary, an export may be made through a port other than the one designated on the license if the exporter complies with the procedures established by the U.S. Customs and Border Protection.

(2) *Presentation and retention by the applicant of temporary licenses and related documentation for the export of unclassified defense articles.* Licenses for the temporary export or temporary import of unclassified defense articles need not be filed with the U.S. Customs and Border Protection, but must be retained by the applicant and presented to the U.S. Customs and Border Protection at the time of temporary import and temporary export. When a defense article is temporarily exported from the United States and moved from one destination authorized on a license to another destination authorized on the same or another temporary license, the applicant, or an agent acting on the applicant's behalf, must ensure that the U.S. Customs and Border Protection decrements both temporary licenses to show the exit and entry of the hardware.

(b) *Filing and reporting of export information*—(1) *Filing of export information with the U.S. Customs and*

Border Protection. Before exporting any hardware controlled by this subchapter, using a license or exemption, the DDTC registered applicant/exporter, or an agent acting on the filer's behalf, must electronically file the export information with the U.S. Customs and Border Protection using the Automated Export System (AES) in accordance with the following timelines:

* * * * *

(2) *Emergency shipments of hardware that cannot meet the pre-departure filing requirements.* U.S. Customs and Border Protection may permit an emergency export of hardware by truck (*e.g.*, departures to Mexico or Canada) or air, by a U.S. registered person, when the exporter is unable to comply with the SED filing timeline in paragraph (b)(1)(i) of this section. The applicant, or an agent acting on the applicant's behalf, in addition to providing the export information electronically using the AES, must provide documentation required by the U.S. Customs and Border Protection and this subchapter. The documentation provided to the U.S. Customs and Border Protection at the port of exit must include the External Transaction Number (XTN) or Internal Transaction Number (ITN) for the shipment and a copy of a notification to DDTC stating that the shipment is urgent and why. The original of the notification must be immediately provided to DDTC. The AES filing of the export information when the export is by air must be at least two hours prior to any departure from the United States; and, when a truck shipment, at the time when the exporter provides the articles to the carrier or at least one hour prior to departure from the United States, when the permanent export of the hardware has been authorized for export:

* * * * *

(3) * * *

(iii) Technical data and defense service exemptions. In any instance when technical data is exported using an exemption in this subchapter (*e.g.*, §§ 125.4(b)(2), 125.4(b)(4), 126.5) from a U.S. port, the exporter is not required to report using AES, but must, effective January 18, 2004, provide the export data electronically to DDTC. A copy of the electronic notification to DDTC must accompany the technical data shipment and be made available to the U.S. Customs and Border Protection upon request.

Note to paragraph (b)(3)(iii): Future changes to the electronic reporting procedure will be amended by publication of a rule in the **Federal Register**. Exporters are reminded to continue maintaining records of all export transactions, including exemption shipments, in accordance with this subchapter.

(c) Return of licenses. All licenses issued by the Directorate of Defense Trade Controls (DDTC) must be returned to the DDTC in accordance with the following:

(1) License filed with the U.S. Customs and Border Protection. The U.S. Customs and Border Protection must return to the DDTC any license when the total value or quantity authorized has been shipped or when the date of expiration is reached, whichever occurs first.

(2) Licenses not filed with the U.S. Customs and Border Protection. Any license that is not filed with the U.S. Customs and Border Protection (*e.g.*, oral or visual technical data releases or temporary import and export licenses retained in accordance with paragraph (a)(2) of this section), must be returned by the applicant to the DDTC no later than 60 days after the license has been expended (*e.g.*, total value or quantity authorized has been shipped) or the date of expiration, whichever occurs first.

■ 20. Section 123.23 is revised to read as follows:

§ 123.23 Monetary value of shipments.

Port Directors of U.S. Customs and Border Protection shall permit the shipment of defense articles identified on any license when the total value of the export does not exceed the aggregate monetary value (not quantity) stated on the license by more than ten percent, provided that the additional monetary value does not make the total value of the license or other approval for the export of any major defense equipment sold under a contract reach $14,000,000 or more, and provided that the additional monetary value does not make defense articles or defense services sold under a contract reach the amount of $50,000,000 or more.

■ 21. Section 123.24 is amended by revising paragraph (a) to read as follows:

§ 123.24 Shipments by U.S. Postal Service.

(a) The export of any defense hardware using a license or exemption in this subchapter by the U.S. Postal Service must be filed with the U.S. Customs and Border Protection using the Automated Export System (AES) and the license must be filed with the U.S. Customs and Border Protection before any hardware is actually sent abroad by mail. The exporter must certify the defense hardware being exported in accordance with this subchapter by clearly marking on the package ''This export is subject to the controls of the ITAR, 22 CFR (identify section for an exemption) or (state license number) and the export has been electronically filed with the U.S. Customs and Border Protection using the Automated Export System (AES).''

* * * * *

■ 22. Section 123.27 is amended by revising paragraph (a)(1) to read as follows:

§ 123.27 Special licensing regime for export to U.S. allies of commercial communications satellite components, systems, parts, accessories, attachments and associated technical data.

(a) * * *

(1) The proposed exports or re-exports concern exclusively one or more countries of the North Atlantic Treaty Organization (see § 120.31 of this subchapter) and/or one or more countries which have been designated in accordance with section 517 of the Foreign Assistance Act of 1961 and with section 1206 of the Foreign Relations Authorization Act, Fiscal Year 2003 as a major non-NATO ally (see § 120.32 of this subchapter).

* * * * *

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

■ 23. The authority citation for part 124 continues to read as follows:

Authority: Secs. 2, 38, and 71, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Public Law 105–261.

■ 24. Section 124.3 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 124.3 Exports of technical data in furtherance of an agreement.

(a) *Unclassified technical data.* The U.S. Customs and Border Protection or U.S. Postal authorities shall permit the export without a license of unclassified technical data if the export is in furtherance of a manufacturing license or technical assistance agreement which has been approved in writing by the Directorate of Defense Trade Controls (DDTC) and the technical data does not exceed the scope or limitations of the relevant agreement. The approval of the DDTC must be obtained for the export of any unclassified technical data that may exceed the terms of the agreement.

(b) *Classified technical data.* The export of classified information in furtherance of an approved manufacturing license or technical assistance agreement which provides for

the transmittal of classified information does not require further approval from the Directorate of Defense Trade Controls when:

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

■ 25. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; Sec. 1225, Public Law 108–375.

■ 26. Section 126.4 is amended by revising paragraphs (a) and (d) to read as follows:

§ 126.4 Shipments by or for United States Government agencies.

(a) A license is not required for the temporary import, or temporary export, of any defense article, including technical data or the performance of a defense service, by or for any agency of the U.S. Government for official use by such an agency, or for carrying out any foreign assistance, cooperative project or sales program authorized by law and subject to control by the President by other means. This exemption applies only when all aspects of a transaction (export, carriage, and delivery abroad) are affected by a United States Government agency or when the export is covered by a United States Government Bill of Lading. This exemption, however, does not apply when a U.S. Government agency acts as a transmittal agent on behalf of a private individual or firm, either as a convenience or in satisfaction of security requirements. The approval of the Directorate of Defense Trade Controls must be obtained before defense articles previously exported pursuant to this exemption are permanently transferred (*e.g.*, property disposal of surplus defense articles overseas) unless the transfer is pursuant to a grant, sale, lease, loan or cooperative project under the Arms Export Control Act or a sale, lease or loan under the Foreign Assistance Act of 1961, as amended, or the defense articles have been rendered useless for military purposes beyond the possibility of restoration.

Note: Special definition. For purposes of this section, defense articles exported abroad for incorporation into a foreign launch vehicle or for use on a foreign launch vehicle or satellite that is to be launched from a foreign country shall be considered a permanent export.

* * * * *

(d) A Shipper's Export Declaration (SED), required under § 123.22 of this subchapter, and a written statement by the exporter certifying that these requirements have been met must be presented at the time of export to the appropriate Port Director of U.S. Customs and Border Protection or Department of Defense transmittal authority. A copy of the SED and the written certification statement shall be provided to the Directorate of Defense Trade Controls immediately following the export.

■ 27. Section 126.5 is amended by revising paragraphs (a), (b) introductory text, (c)(5) and (d) introductory text to read as follows:

§ 126.5 Canadian exemptions.

(a) *Temporary import of defense articles.* Port Director of U.S. Customs and Border Protection and postmasters shall permit the temporary import and return to Canada without a license of any unclassified defense articles (see § 120.6 of this subchapter) that originate in Canada for temporary use in the United States and return to Canada. All other temporary imports shall be in accordance with §§ 123.3 and 123.4 of this subchapter.

(b) *Permanent and temporary export of defense articles.* Except as provided below, the Port Director of U.S. Customs and Border Protection and postmasters shall permit, when for end-use in Canada by Canadian Federal or Provincial governmental authorities acting in an official capacity or by a Canadian-registered person or return to the United States, the permanent and temporary export to Canada without a license of defense articles and related technical data identified in 22 CFR 121.1. The above exemption is subject to the following limitations: Defense articles and related technical data, and defense services identified in paragraphs (b)(1) through (b)(21) of this section and exports that transit third countries. Such limitations also are subject to meeting the requirements of this subchapter, (to include 22 CFR 120.1(c) and (d), parts 122 and 123 (except insofar as exemption from licensing requirements is herein authorized) and § 126.1, and the requirement to obtain non-transfer and use assurances for all significant military equipment. For purposes of this section, ''Canadian-registered person'' is any Canadian national (including Canadian business entities organized under the laws of Canada), dual citizen of Canada and a third country (subject to § 126.1), and permanent resident registered in Canada in accordance with the Canadian Defense Production Act, and such other Canadian Crown Corporations identified by the Department of State in a list of such persons publicly available through the Internet Web site of the Directorate of Defense Trade Controls and by other means. The defense articles, related technical data, and defense services identified in 22 CFR 121.1 continuing to require a license are:

* * * * *

(c) * * *

(5) The U.S. exporter must provide the Directorate of Defense Trade Controls a semi-annual report of all their on-going activities authorized under this section. The report shall include the article(s) being produced; the end user(s) (*i.e.*, name of U.S. or Canadian company); the end item into which the product is to be incorporated; the intended end use of the product (*e.g.*, United States or Canadian Defense contract number and identification of program); the name and address of all the Canadian contractors and subcontractors; and

* * * * *

(d) *Reexports/retransfer.* Reexport/retransfer in Canada to another end user or end use or from Canada to another destination, except the United States, must in all instances have the prior approval of the Directorate of Defense Trade Controls. Unless otherwise exempt in this subchapter, the original exporter is responsible, upon request from a Canadian-registered person, for obtaining or providing reexport/retransfer approval. In any instance when the U.S. exporter is no longer available to the Canadian end user the request for reexport/retransfer may be made directly to Department of State, Directorate of Defense Trade Controls. All requests must include the information in § 123.9(c) of this subchapter. Reexport/retransfer approval is acquired by:

* * * * *

■ 28. Section 126.6 is amended by revising paragraphs (a) introductory text, (c) introductory text, (c)(6)(i), (c)(6)(ii), (c)(7)(ii) and (c)(7)(iv) to read as follows:

§ 126.6 Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program.

(a) A license from the Directorate of Defense Trade Controls is not required if:

* * * * *

(c) Foreign Military Sales Program. A license from the Directorate of Defense Trade Controls is not required if the defense article or technical data or a defense service to be transferred was sold, leased or loaned by the Department of Defense to a foreign country or international organization under the Foreign Military Sales (FMS) Program of the Arms Export Control Act pursuant to an Letter of Offer and Acceptance (LOA) authorizing such transfer which meets the criteria stated below:

* * * * *

(6) * * *

(i) The transfer is made by the relevant foreign diplomatic mission of the purchasing country or its authorized freight forwarder, provided that the freight forwarder is registered with the Directorate of Defense Trade Controls pursuant to part 122 of this subchapter, and

(ii) At the time of shipment, the Port Director of U.S. Customs and Border Protection is provided an original and properly executed DSP–94 accompanied by a copy of the LOA and any other documents required by U.S. Customs and Border Protection in carrying out its responsibilities. The Shippers Export Declaration or, if authorized, the outbound manifest, must be annotated ''This shipment is being exported under the authority of Department of State Form DSP–94. It covers FMS Case [insert case identification], expiration [insert date]. 22 CFR 126.6 applicable. The U.S. Government point of contact is _____, telephone number _____,'' and

* * * * *

(7) * * *

(ii) The U.S. person(s) identified in the contract maintain a registration with the Directorate of Defense Trade Controls for the entire time that the defense service is being provided. In any instance when the U.S. registered person(s) identified in the contract employs a subcontractor, the subcontractor may only use this exemption when registered with DDTC, and when such subcontract meets the above stated requirements, and

* * * * *

(iv) The U.S. person responsible for the transfer reports the initial transfer, citing this section of the ITAR, the FMS case identifier, contract and subcontract number, the foreign country, and the duration of the service being provided to the Directorate of Defense Trade Controls using DDTC's Direct Shipment Verification Program.

■ 29. Section 126.10 is amended by revising paragraph (b) to read as follows:

§ 126.10 Disclosure of information.

* * * * *

(b) *Determinations required by law.* Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778) provides by reference to certain procedures of the Export Administration Act that certain information required by the Department of State in connection with the licensing process may generally not be disclosed to the public unless certain determinations relating to the national interest are made in accordance with the procedures specified in that provision, except that the names of the countries and types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless the President determines that release of such information would be contrary to the national interest. Registration with the Directorate of Defense Trade Controls is required of certain persons, in accordance with Section 38 of the Arms Export Control Act. The requirements and guidance are provided in the ITAR pursuant to parts 122 and 129. Registration is generally a precondition to the issuance of any license or other approvals under this subchapter, to include the use of any exemption. Therefore, information provided to the Department of State to effect registration, as well as that regarding actions taken by the Department of State related to registration, may not generally be disclosed to the public. Determinations required by Section 38(e) shall be made by the Assistant Secretary for Political-Military Affairs.

* * * * *

■ 30. Section 126.13 is amended by revising paragraphs (a) introductory text and (b) to read as follows:

§ 126.13 Required information.

(a) All applications for licenses (DSP–5, DSP–61, DSP–73, and DSP–85), all requests for approval of agreements and amendments thereto under part 124 of this subchapter, all requests for other written authorizations, and all 30-day prior notifications of sales of significant military equipment under § 126.8(c) must include a letter signed by a responsible official empowered by the applicant and addressed to the Directorate of Defense Trade Controls, stating whether:

* * * * *

(b) In addition, all applications for licenses must include, on the application or an addendum sheet, the complete names and addresses of all U.S. consignors and freight forwarders, and all foreign consignees and foreign intermediate consignees involved in the transaction. If there are multiple consignors, consignees or freight forwarders, and all the required information cannot be included on the application form, an addendum sheet and seven copies containing this information must be provided. The addendum sheet must be marked at the top as follows: ''Attachment to Department of State License Form (insert DSP–5, 61, 73, or 85, as appropriate) for Export of (insert commodity) valued at (insert U.S. dollar amount) to (insert country of ultimate destination).'' The Directorate of Defense Trade Controls will impress one copy of the addendum sheet with the Department of State seal and return it to the applicant with each license. The sealed addendum sheet must remain attached to the license as an integral part thereof. Port Directors of U.S. Customs and Border Protection and Department of Defense transmittal authorities will permit only those U.S. consignors or freight forwarders listed on the license or sealed addendum sheet to make shipments under the license, and only to those foreign consignees named on the documents. Applicants should list all freight forwarders who may be involved with shipments under the license to ensure that the list is complete and to avoid the need for amendments to the list after the license has been approved. If there are unusual or extraordinary circumstances that preclude the specific identification of all the U.S. consignors and freight forwarders and all foreign consignees, the applicant must provide a letter of explanation with each application.

* * * * *

PART 127—VIOLATIONS AND PENALTIES

■ 31–32. The authority citation for part 127 is revised to read as follows:

Authority: Secs. 2, 38, and 42, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780.

■ 33. Section 127.4 is revised to read as follows:

§ 127.4 Authority of U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers.

(a) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers may take appropriate action to ensure observance of this subchapter as to the export or the attempted export of any defense article or technical data, including the inspection of loading or unloading of

any vessel, vehicle, or aircraft. This applies whether the export is authorized by license or by written approval issued under this subchapter.

(b) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers have the authority to investigate, detain or seize any export or attempted export of defense articles or technical data contrary to this subchapter.

(c) Upon the presentation to a U.S. Customs and Border Protection Officer of a license or written approval authorizing the export of any defense article, the customs officer may require the production of other relevant documents and information relating to the proposed export. This includes an invoice, order, packing list, shipping document, correspondence, instructions, and the documents otherwise required by the U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement.

Dated: July 25, 2005.

Robert G. Joseph,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 05–17121 Filed 8–26–05; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice: 5177]

RIN: 1400–ZA18

Amendment to the International Traffic in Arms Regulations: Section 126.1(i)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) by modifying the denial policy regarding the Democratic Republic of the Congo (DRC) at 22 CFR 126.1. This action is taken in accordance with UN Security Council Resolution (UNSCR) 1596, unanimously adopted on April 18, 2005, which imposed a nation-wide embargo on arms sales or transfers to any recipient in the DRC. It represents an expansion of the policy issued under UNSCR 1493, which on July 28, 2003, imposed an embargo on the sale of arms, related materials, and defense services in the provinces of North and South Kivu and the Ituri District in the DRC.

DATES: *Effective Date:* This rule is effective on August 29, 2005.

ADDRESSES: Interested parties are invited to submit written comments to the Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Change, Part 126, 12th Floor, SA–1, Washington, DC 20522–0112. E-mail comments may be sent to *DDTCResponseTeam@state.gov* with the subject line: Part 126. Persons with access to the Internet may also view this notice by going to the regulations.gov Web site at: *http://www.regulations.gov.* Comments will be accepted at any time.

FOR FURTHER INFORMATION CONTACT: James Juraska, Office of Defense Trade Controls Policy, Bureau of Political-Military Affairs, Department of State 202–663–2860.

SUPPLEMENTARY INFORMATION: On April 18, 2005, the United Nations Security Council voted unanimously on UN Security Council Resolution (UNSCR) 1596 to expand the embargo of UNSCR 1493 (2003) on the export of arms and related material, as well as defense services, to the Democratic Republic of the Congo (DRC). Additionally, Resolution 1596 imposed a travel ban and an asset freeze on those who violate the expanded arms embargo, and mandated governments in the region to implement measures to monitor aircraft. This final rule amends Section 126.1(i) of the ITAR, 22 CFR 126.1(i), which details the export and sales policy of the United States with respect to the Democratic Republic of the Congo, to reflect the United Nations Security Council's expanded mandate. This amendment to Section 126.1(i) becomes effective upon publication in the **Federal Register**. Please note that, as of April 18, 2005 (prior to the effective date of this final rule), the substance of the measures set forth in UNSCR 1596 entered into effect in accordance with another provision of the ITAR, (Section 126.1(c)), 22 CFR 126.1(c).

It is the policy of the U.S. Government to deny all applications for licenses and other approvals and to suspend all existing licenses and authorizations to export or otherwise transfer defense articles and defense services to any geographic region in the Democratic Republic of the Congo (DRC) except under the circumstances specified below.

UNSCR 1596 established several exemptions under which the embargo would not apply, namely:

(a) Supplies of arms and related materials or technical training and assistance intended solely for the support of or use by units of the army or police of the DRC that operate under the command of the etat-major integre, have completed the process of integration (if operating in the provinces of North or South Kivu or the Ituri district), or are in the process of integration (if operating elsewhere in the DRC),

(b) Supplies of arms and related materials or technical training and assistance intended solely for the support of or use by the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), and

(c) Supplies of non-lethal military equipment and related technical assistance and training intended solely for humanitarian or protective use, as notified in advance to the DRC Committee in accordance with paragraph 8 (e) of Resolution 1533 (2004).

All future shipments of arms and related materials consistent with such exemptions noted in subparagraph (a) above shall only be made to receiving sites as designated by the Government of National Unity and Transition, in coordination with the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), and notified in advance to the DRC Committee.

As previously noted on the Directorate of Defense Trade Controls Web site, *http://www.pmdtc.org*, effective April 18, 2005, no application for the export to the DRC of defense articles or services covered by the ITAR will be approved. Exceptions to this policy will be made (in accordance with the ITAR) on a case-by-case basis for proposed exports that conform to the conditions specified in (a) through (c) above. Any existing license for authorization for the export to any geographic region of the DRC of ITAR-controlled defense articles or services is suspended as of April 18, 2005. Holders of existing licenses and authorizations for such exports to the DRC who wish to request lifting of the suspension must submit documentation in support of an exception for review by the Directorate of Defense Trade Controls (DDTC).

Regulatory Analysis and Notices

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not have substantial direct effects on the States, the relationship

between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this rule does not have sufficient federalism implications to warrant application of consultation provisions of Executive Orders 12372 and 13132. This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

■ Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, part 126 is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; Sec. 1225, Public Law 108–375.

■ 2. Section 126.1 is amended by revising paragraph (i) to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

* * * * *

(i) *Democratic Republic of the Congo.* It is the policy of the United States to deny licenses, other approvals, exports or imports of defense articles and defense services destined for or originating in the Democratic Republic of the Congo except for non-lethal equipment and training (lethal and non-lethal) to the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), the transitional National Unity Government of the Democratic Republic of the Congo and the integrated Congolese national army and police forces, such units operating under the command of the etat-major integre of the Congolese Armed Forces or National Police, and such units in the process of being integrated outside the provinces of North and South Kivu and the Ituri district; and non-lethal equipment for humanitarian or protective use, and related assistance and training, as notified in advance to the UN. An arms embargo exists with respect to any recipient in the Democratic Republic of the Congo.

Robert G. Joseph,
Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 05–17122 Filed 8–26–05; 8:45 am]
BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9223]

RIN 1545–BC20

Value of Life Insurance Contracts When Distributed From a Qualified Retirement Plan

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 402(a) of the Internal Revenue Code regarding the amount includible in a distributee's income when life insurance contracts are distributed by a qualified retirement plan and regarding the treatment of property sold by a qualified retirement plan to a plan participant or beneficiary for less than fair market value. This document also contains final regulations under sections 79 and 83 of the Internal Revenue Code regarding the amounts includible in income when an employee is provided permanent benefits in combination with group-term life insurance or when a life insurance contract is transferred in connection with the performance of services. These regulations will affect administrators of, participants in, and beneficiaries of qualified retirement plans. These regulations will also affect employers who provide permanent benefits in combination with group-term life insurance for their employees and employees who receive those permanent benefits, as well as service recipients who transfer life insurance contracts to service providers in connection with the performance of services, and service providers to whom those life insurance contracts are transferred.

DATES: These regulations are effective August 29, 2005.

FOR FURTHER INFORMATION CONTACT: Concerning the section 79 regulations, Betty Clary at (202) 622–6080; concerning the section 83 regulations, Robert Misner at (202) 622–6030; concerning the section 402 regulations, Bruce Perlin or Linda Marshall at (202) 622–6090 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A. In General

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 402(a) of the Internal Revenue Code (Code) relating to the amount includible in a distributee's income when a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection is distributed by a retirement plan qualified under section 401(a), and relating to the sale of property by a qualified retirement plan to a plan participant or beneficiary for less than the fair market value of the property. This document also contains amendments to the regulations under sections 79 and 83 relating, respectively, to permanent benefits that are provided to employees in combination with group-term life insurance, and to life insurance contracts that are transferred in connection with the performance of services.

Section 402(a) generally provides that any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) is taxable to the distributee in the taxable year of the distributee in which distributed, in accordance with section 72. Distributions from a qualified employees' trust generally are subject to withholding and reporting requirements pursuant to section 3405 and regulations thereunder. Section 1.402(a)–1(a)(1)(iii) provides, in general, that a distribution of property by a section 401(a) plan is taken into account by the distributee at its *fair market value*. Prior to its amendment by this Treasury decision, § 1.402(a)–1(a)(2) (which was originally published in 1956) provided, in general, that upon the distribution of a life insurance contract, the ''entire cash value'' of the contract must be included in the distributee's income.[1] Section 1.402(a)–1(a) did not define *fair market value* or *entire cash value*, and questions have arisen regarding the interaction between these two provisions and regarding whether the term *entire cash value* includes a reduction for surrender charges.

On April 30, 1975, proposed regulations under section 402 regarding the taxation of certain lump sum

[1] Section 1.402(a)–1(a)(2) also provides rules regarding the taxation of the distribution of an annuity contract. In certain cases, the distribution of an annuity contract is not includible in the participant's gross income until distributions are made from the annuity contract.

distributions from qualified plans (the 1975 proposed regulations) were published in the **Federal Register** (40 FR 18798) to reflect changes to section 402 made by the Employee Retirement Income Security Act of 1974 (ERISA) (Public Law 93–406, 88 Stat. 829). Under § 1.402(a)–1(a)(2) of the 1975 proposed regulations, the distribution of an annuity contract must be treated as a lump sum distribution under section 402(e) for purposes of determining the separate tax imposed under section 402(e)(1)(A),[2] even if the distribution of the annuity contract itself is not currently taxable. The 1975 proposed regulations also expanded the situations in which the distribution of a retirement income, endowment, or other life insurance contract is not currently taxable to include the situation where, within 60 days after the distribution of such contract, the contract is treated as a rollover contribution under section 402(a)(5), as in effect after December 31, 1973.

Section 79 generally requires that the cost of group-term life insurance coverage provided by an employer on the life of an employee that is in excess of $50,000 of coverage be included in the income of the employee. Pursuant to § 1.79–1(b), under specified circumstances, group-term life insurance may be combined with other benefits, referred to as permanent benefits. A permanent benefit is defined in § 1.79–0 as an economic value extending beyond one policy year (for example, a paid-up or cash surrender value) that is provided under a life insurance policy. Section 1.79–0 further provides that certain features are not permanent benefits, including: (a) a right to convert (or continue) life insurance after group life insurance coverage terminates, (b) any other feature that provides no economic benefit (other than current insurance protection) to the employee, and (c) a feature under which term life insurance is provided at a level premium for a period of five years or less.

Permanent benefits provided to an employee are subject to taxation under rules described in § 1.79–1(d). Under those rules, the cost of the permanent benefits, reduced by the amount paid for those benefits by the employee, is included in the employee's income. Section 1.79–1(d) provides that the cost of the permanent benefits cannot be less than an amount determined under a formula set forth in the regulations. Prior to its amendment by this Treasury decision, § 1.79–1(d) provided that one of the factors used in the formula for determining the cost of permanent benefits was ''the net level premium reserve at the end of that policy year for all benefits provided to the employee by the policy or, if greater, the cash value of the policy at the end of that policy year.''

Section 83(a) generally provides that when property is transferred to any person in connection with the performance of services, the service provider must include in gross income (as compensation income) the excess of the fair market value of the property over the amount (if any) paid for the property. For this purpose, the fair market value of the property is determined without regard to lapse restrictions and is determined at the first time that the transferee's rights in the property are either transferable or not subject to a substantial risk of forfeiture. Prior to its amendment by this Treasury decision, § 1.83–3(e) generally provided that in the case of ''a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, only the cash surrender value of the contract is considered to be property.''

In TD 9092, published in the **Federal Register** on September 17, 2003 (68 FR 54336), relating to split-dollar life insurance arrangements, § 1.83–3(e) was amended to add the following sentence: ''Notwithstanding the previous sentence, in the case of a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, or any undivided interest therein, that is part of a split-dollar life insurance arrangement (as defined in § 1.61–22(b)(1) or (2)) that is entered into, or materially modified (within the meaning of § 1.61–22(j)(2)), after September 17, 2003, the policy cash value and all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than current life insurance protection, are treated as property for purposes of this section.''

The prohibited transaction provisions of ERISA generally prohibit various transactions between plans covered by Title I of ERISA and certain parties in interest (including plan participants) with respect to such plans. Specifically, unless an exemption from the prohibited transaction rules applies, sections 406(a)(1)(A) and (D) of ERISA provide that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect sale or exchange, or leasing, of any property between the plan and a party in interest; or transfer to, or use by or for the benefit of, a party in interest of any assets of the plan. Accordingly, unless a statutory or administrative exemption is applicable, the prohibited transaction rules are applicable to the sale of a life insurance contract, or annuity contract, by a plan to a party in interest.

Section 4975 of the Code sets forth parallel rules that impose excise taxes on the amount involved with respect to prohibited transactions involving certain plans. The prohibited transaction provisions under section 4975, as well as the exemptions from the application of such rules, generally parallel the prohibited transaction provisions under Title I of ERISA.

Prohibited Transaction Exemption (PTE) 77–8 (1977–2 C.B. 425), subsequently amended and redesignated as Prohibited Transaction Exemption 92–6, was jointly issued in 1977 by the Department of Labor and the IRS to provide an exemption from the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of ERISA and from the taxes imposed by sections 4975(a) and (b) of the Code for certain transactions. Under the exemption set forth in PTE 77–8 and PTE 92–6, an employee benefit plan is permitted to sell individual life insurance contracts and annuities for the cash surrender value of the contracts to certain specified parties, provided conditions are satisfied. Under PTE 77–8 and PTE 92–6, such specified parties are: (1) A plan participant insured under such policies, (2) a relative of such insured participant who is the beneficiary under the contract, (3) an employer any of whose employees are covered by the plan, or (4) another employee benefit plan.

The preamble to PTE 77–8 (citing Rev. Rul. 59–195, 1959–1 C.B. 18) noted that, for Federal income tax purposes, the value of an insurance policy is not the same as, and may exceed, its cash surrender value, and that a purchase of an insurance policy at its cash surrender value may therefore be a purchase of property for less than its fair market value. At the time PTE 77–8 was issued, the regulations under section 402 did not address the consequences of a sale of property by a section 401(a) plan to a plan participant or beneficiary for less than the fair market value of that property. In this regard, the preamble to PTE 77–8 stated that the Federal income tax consequences of such a bargain purchase was required to be determined

[2] The tax imposed under section 402(e)(1)(A), as in effect at the time of the 1975 proposed regulations, generally was based on 10–year averaging of the tax otherwise payable with respect to a lump-sum distribution.

in accordance with generally applicable Federal income tax rules but that any income realized by a participant or relative of such participant upon such a purchase under the conditions of PTE 77–8 would not be deemed a distribution from the plan to such participant for purposes of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code (*i.e.*, sections 401 to 424 relating to qualified pension, profit-sharing, and stock bonus plans).

B. The 2004 Proposed Regulations

In February 2004, the IRS issued proposed amendments to the regulations under section 402(a) (69 FR 7384) to clarify that the requirement that a distribution of property be included in the distributee's income at fair market value is controlling in those situations where the regulations provided for the inclusion of the entire cash value of a retirement income, endowment, or other life insurance contract. The 2004 proposed regulations provided that the fair market value of a life insurance contract is determined taking into account the value of all rights under the contract, including any supplemental agreements thereto and whether or not guaranteed. The proposed regulations also provided that, if a qualified retirement plan transfers property to a plan participant or beneficiary for consideration that is less than the fair market value of the property, the transfer would be treated as a distribution by the plan to the participant or beneficiary to the extent the fair market value of the distributed property exceeds the value of the consideration received. Thus, under the proposed regulations, such a transfer would be treated as a distribution for purposes of applying the plan qualification requirements of section 401(a).

The 2004 proposed regulations also contained proposed amendments to existing regulations under section 83 to clarify that fair market value is also controlling with respect to a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection and thus all of the rights under the contract (including any supplemental agreements thereto and whether or not guaranteed) must be considered in determining that fair market value. The proposed regulations contained proposed amendments to § 1.83–3(e), which generally apply the definition of property for new split-dollar life insurance arrangements to all situations subject to section 83 involving the transfer of life insurance contracts. The proposed regulations also contained proposed amendments to § 1.79–(d) to replace the term ''cash value'' in the formula for determining the cost of permanent benefits with the term ''fair market value.''

C. Determination of Fair Market Value

As noted under the heading *In General,* § 1.402(a)–1(a)(1)(iii) does not define the term *fair market value.* In Rev. Rul. 59–195, the IRS addressed the determination of fair market value of a life insurance contract in situations similar to those in which an employer purchases and pays the premiums on an insurance policy on the life of one of its employees for several years and on which further premiums must be paid, and subsequently sells such policy. The IRS held that the value of such a policy for purposes of computing taxable gain to the employee in the year of purchase should be determined under the method of valuation prescribed in § 25.2512–6 of the Gift Tax Regulations. Under this method, the value of such a policy is not its cash surrender value but the interpolated terminal reserve at the date of sale plus the proportionate part of any premium paid by the employer prior to the date of the sale which is applicable to a period subsequent to the date of the sale. Section 25.2512–6 also provides that if ''because of the unusual nature of the contract such approximation is not reasonably close to the full value, this method may not be used.'' Thus, this method may not be used to determine the fair market value of an insurance policy where the reserve does not reflect the value of all of the relevant features of the policy.

Q&A–10 of Notice 89–25 (1989–1 C.B. 662) described a distribution from a qualified plan of a life insurance policy with a value substantially higher than the cash surrender value stated in the policy. The notice concluded that the practice of using cash surrender value as fair market value is not appropriate where the total policy reserves, including life insurance reserves (if any) computed under section 807(d), together with any reserves for advance premiums, dividend accumulations, etc., represent a much more accurate approximation of the policy's fair market value.

Since Notice 89–25 was issued, life insurance contracts have been marketed that are structured in a manner which results in a temporary period during which neither a contract's reserves nor its cash surrender value represent the fair market value of the contract. For example, some life insurance contracts may provide for large surrender charges and other charges that are not expected to be paid because they are expected to be eliminated or reversed in the future (under the contract or under another contract for which the first contract is exchanged), but this future elimination or reversal is not always reflected in the calculation of the contract's reserve. If such a contract is distributed prior to the elimination or reversal of those charges, both the cash surrender value and the reserve under the contract could significantly understate the fair market value of the contract. Thus, in some cases, it would not be appropriate to use either the net surrender value (*i.e.*, the contract's cash value after reduction for any surrender charges) or, because of the unusual nature of the contract, the contract's reserves to determine the fair market value of the contract. Accordingly, Q&A–10 of Notice 89–25 should not be interpreted to provide that a contract's reserves (including life insurance reserves (if any) computed under section 807(d), together with any reserves for advance premiums, dividend accumulations, etc.) are always an accurate representation of the contract's fair market value.

The IRS and Treasury recognized that taxpayers could have difficulty determining the fair market value of a life insurance contract for which the contract's reserves (including life insurance reserves (if any) computed under section 807(d), together with any reserves for advance premiums, dividend accumulations, etc.) are not an accurate representation of the contract's fair market value. Accordingly, the IRS issued Rev. Proc. 2004–16 (2004–10 I.R.B. 559), which provided interim rules under which the cash value (without reduction for surrender charges) of a life insurance contract distributed from a qualified plan may be treated as the fair market value of that contract, provided that certain requirements are satisfied. This safe harbor for determining fair market value was also available for purposes of sections 79 and 83.

D. Comments and Public Hearing on the 2004 Proposed Regulations and Rev. Proc. 2004–16

The IRS received comments on the 2004 proposed regulations, and a public hearing was held on June 9, 2004. While none of the commentators objected to the proposed amendments to the regulations, a number of commentators raised concerns regarding the safe harbor formula for fair market value set forth in Rev. Proc. 2004–16. Several commentators recommended that final guidance provide more than one safe harbor for determining the fair market value of a policy and asserted that the safe harbor formulas under Rev. Proc.

2004–16 produce a value that is too high and does not reflect market realities. Suggestions were made that the interpolated terminal reserve (ITR) and tax reserve valuation methods under section 807(d) be used as alternatives to the interim safe harbor formula.

Some commentators claimed that the interim safe harbor provided by Rev. Proc. 2004–16 was not usable for all types of life insurance policies. In particular, these commentators asserted that the formulas did not function well for traditional whole life policies. In addition, commentators were concerned about the possible double-counting of certain dividends under the formulas, and the fact that the formulas did not make an explicit adjustment for withdrawals or distributions, nor did they provide for any recognition of the possibility that a surrender charge would apply in the future.

E. Rev. Proc. 2005–25—Safe Harbors for Determining Fair Market Value

After reviewing the comments to the prior guidance, the IRS and Treasury concluded that the safe harbor formulas in Rev. Proc. 2004–16 did not function well for certain types of traditional policies, and also should be revised to reflect a discount for the possibility that a surrender charge would apply in certain situations. Accordingly, Rev. Proc. 2005–25 (2005–17 I.R.B. 962) was issued to modify and supersede Rev. Proc. 2004–16 in order to make adjustments to the safe harbor formulas. These new safe harbor formulas replace the formulas in Rev. Proc. 2004–16 for distributions, sales, and other transfers made on or after February 13, 2004, and for permanent benefits provided on or after February 13, 2004. For all periods, including periods before May 1, 2005, taxpayers may rely on the safe harbors in Rev. Proc. 2005–25. In addition, for periods on or after February 13, 2004, and before May 1, 2005, taxpayers may rely on the safe harbors in Rev. Proc. 2004–16.

Explanation of Provisions

These final regulations retain the rules set forth in the 2004 proposed regulations under section 402(a) providing that the requirement that a distribution of property be included in the distributee's income at fair market value is controlling in those situations where the former regulations provided for the inclusion of the entire cash value of a retirement income, endowment, or other life insurance contract. Thus, these final regulations clarify that, in those cases where a qualified plan distributes a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, the fair market value of such a contract (*i.e.*, the value of all rights under the contract, including any supplemental agreements thereto and whether or not guaranteed) is generally included in the distributee's income, and not merely the entire cash value of the contract. However, these final regulations retain the rules from existing final regulations setting forth the situations under which a distribution of such a contract is not currently includible in income.

These final regulations also set forth a portion of the rules included in the 1975 proposed regulations. Under those rules, the distribution of an annuity contract must be treated as a lump sum distribution for purposes of determining the amount of tax under the 10-year averaging rule of section 402(e) (as in effect prior to the amendment by the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085), even if the distribution of the annuity contract itself is not currently taxable. The distribution of a retirement income, endowment, or other life insurance contract is not taxable in the situation where within 60 days after the distribution of such contract, the contract is treated as a rollover contribution under section 402(a)(5), as in effect after December 31, 1973. Although the final regulations reject the use of the term *entire cash value* as found in the 1975 proposed regulations, no inference should be made that other rules in the 1975 proposed regulations that have not been included in these final regulations have also been rejected.

These final regulations retain the rules provided in the 2004 proposed regulations that, if a qualified plan transfers property to a plan participant or beneficiary for consideration that is less than the fair market value of the property, the transfer is treated as a distribution under the plan to the participant or beneficiary to the extent the fair market value of the distributed property exceeds the value of the consideration. Thus, in contrast to the statement to the contrary in the preamble to PTE 77–8, these regulations provide that any bargain element in the sale is treated as a distribution under section 402(a). In addition, any such bargain element is treated as a distribution under the plan for all other purposes of the Code, including the qualification requirements of section 401(a). Thus, for example, this bargain element is treated as a distribution for purposes of applying the limitations on in-service distributions from certain qualified retirement plans and the limitations of section 415. The rule treating the bargain element in a sale as a distribution from a qualified plan applies to transfers that occur on or after August 29, 2005. For transfers before that date, the bargain element in the sale must be included in the plan participant's income under section 61. However, such a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection occurring before that date is deemed not to give rise to a distribution for purposes of applying the requirements of subchapter D of chapter 1 of subtitle A of the Code.

These final regulations also retain the rules set forth in the 2004 proposed regulations under sections 79 and 83 that clarify that fair market value is also controlling with respect to life insurance contracts under those sections and, thus, that all of the rights under the contract (including any supplemental agreements thereto and whether or not guaranteed) must be considered in determining that fair market value. These final regulations amend § 1.79–1(d) to replace the term *cash value* in the formula for determining the cost of permanent benefits with the term *fair market value*. These final regulations also amend § 1.83–3(e) generally to apply the definition of property for new split-dollar life insurance arrangements to all situations involving the transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection. Section 83(a) requires that the excess of the fair market value of the property over the amount paid for the property be included in income. The purpose of the changes to the regulations is to clarify that, unless specifically excepted from the definition of permanent benefits or fair market value, the value of all features of a life insurance policy providing an economic benefit to a service provider (including, for example, the value of a springing cash value feature) must be included in determining the employee's income.

These final regulations do not affect the relief granted by the provisions of Section IV, paragraph 4 of Notice 2002–8 (2002–1 C.B. 398) to the parties to any insurance contract that is part of a pre-January 28, 2002, split-dollar life insurance arrangement. Also, consistent with the effective date of the final split-dollar life insurance regulations at § 1.61–22(j), these final regulations do not apply to the transfer of a life insurance contract which is part of a split-dollar life insurance arrangement entered into on or before September 17, 2003, and not materially modified after

that date. However, taxpayers are reminded that, in determining the fair market value of property transferred under section 83, lapse restrictions (such as life insurance contract surrender charges) are ignored.

Effective Date

These regulations are effective August 29, 2005. The amendments to § 1.402(a)–1(a) apply to any distribution of a retirement income, endowment, or other life insurance contract occurring on or after February 13, 2004. The amendment to § 1.79–1 is applicable to permanent benefits provided on or after February 13, 2004. The amendment to § 1.83–3(e) is applicable to any transfer occurring on or after February 13, 2004.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, because no collection of information is imposed on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is 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.** In § 1.79–1, paragraph (d)(3) is revised to read as follows:

§ 1.79–1 Group-term life insurance—general rules.

* * * * *

(d) * * *

(3) *Formula for determining deemed death benefit.* The deemed death benefit (DDB) at the end of any policy year for any particular employee is equal to—

R/Y

Where—

R is the net level premium reserve at the end of that policy year for all benefits provided to the employee by the policy or, if greater, the fair market value of the policy at the end of that policy year; and

Y is the net single premium for insurance (the premium for one dollar of paid-up, whole life insurance) at the employee's age at the end of that policy year.

* * * * *

■ **Par. 3.** In § 1.83–3, paragraph (e), the fourth and fifth sentences are revised to read as follows:

§ 1.83–3 Meaning and use of certain terms.

* * * * *

(e) * * * In the case of a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, or any undivided interest therein, the policy cash value and all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed), other than current life insurance protection, are treated as property for purposes of this section. However, in the case of the transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, which was part of a split-dollar arrangement (as defined in § 1.61–22(b)) entered into (as defined in § 1.61–22(j)) on or before September 17, 2003, and which is not materially modified (as defined in § 1.61–22(j)(2)) after September 17, 2003, only the cash surrender value of the contract is considered to be property. * * *

* * * * *

■ **Par. 4.** Section 1.402(a)–1 is amended by:

■ 1. Revising paragraph (a)(1)(iii).

■ 2. Revising paragraph (a)(2).

The revisions read as follows:

§ 1.402(a)–1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).

(a) * * *

(1) * * *

(iii) Except as provided in paragraph (b) of this section, a distribution of property by a trust described in section 401(a) and exempt under section 501(a) shall be taken into account by the distributee at its fair market value. In the case of a distribution of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, or any interest therein, the policy cash value and all other rights under such contract (including any supplemental agreements thereto and whether or not guaranteed) are included in determining the fair market value of the contract. In addition, in the case of a transfer of property that occurs on or after August 29, 2005 where a trust described in section 401(a) and exempt under section 501(a) transfers property to a plan participant or beneficiary in exchange for consideration and where the fair market value of the property transferred exceeds the value of the consideration, then the excess of the fair market value of the property transferred by the trust over the value of the consideration received by the trust is treated as a distribution to the distributee under the plan for all purposes under the Internal Revenue Code. Where such a transfer occurs before that date, the excess of the fair market value of the property transferred by the trust over the value of the consideration received by the trust is includible in the gross income of the participant or beneficiary under section 61. However, such a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection occurring before that date is not treated as a distribution for purposes of applying the requirements of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code.

* * * * *

(2) If a trust described in section 401(a) and exempt under section 501(a) purchases an annuity contract for an employee and distributes it to the employee in a year in which the trust is exempt, and the contract contains a cash surrender value which may be available to an employee by surrendering the contract, such cash surrender value will not be considered income to the employee unless and until the contract is surrendered. For the rule as to nontransferability of annuity contracts issued after 1962, see § 1.401–9(b)(1). For additional requirements regarding distributions of annuity contracts, see, *e.g.*, §§ 1.401(a)–20, Q&A–2, 1.401(a)(31)–1, Q&A–17, and 1.401(a)(9)–6, Q&A–4. However, the distribution of an annuity contract must be treated as a lump sum distribution for purposes of determining the amount of tax under the 10-year averaging rule of section 402(e) (as in effect prior to amendment by the Tax Reform Act of

1986, Public Law 99–514, 100 Stat. 2085). If, however, the contract distributed by such exempt trust is a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, the fair market value of the contract at the time of distribution must be included in the distributee's income in accordance with the provisions of section 402(a), except to the extent that, within 60 days after the distribution of the contract, all or any portion of such value is irrevocably converted into a contract under which no part of any proceeds payable on death at any time would be excludable under section 101(a) (relating to life insurance proceeds), or the contract is treated as a rollover contribution under section 402(c). If the contract distributed by such trust is a transferable annuity contract, or a retirement income, endowment, or other life insurance contract and such contract is not treated as a rollover contribution under section 402(c), then, notwithstanding the preceding sentence, the fair market value of the contract is includible in the distributee's gross income unless, within such 60 days, such contract is made nontransferable.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: August 9, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary for Tax Policy.

[FR Doc. 05–17046 Filed 8–26–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD11–05–023]

Drawbridge Operation Regulations; Petaluma River, Blackpoint, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Blackpoint Railroad Drawbridge across the Petaluma River, mile 0.8, at Blackpoint, CA. This deviation allows the bridge to remain in the closed-to-navigation position for necessary bridge repair.

DATES: This deviation is effective from 6:30 a.m. until 8 p.m. on Monday August 29, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (oan), Eleventh Coast Guard District, Building 50–3, Coast Guard Island, Alameda, CA 94501–5100 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (510) 437–3516. Commander (oan), Eleventh Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437–3516.

SUPPLEMENTARY INFORMATION: The Sonoma-Marin Area Rail Transit District requested to secure the Blackpoint Drawbridge, mile 0.8, Petaluma River, in the closed-to-navigation position on 29 August 2005, during daylight hours for bridge repair. The drawbridge provides unlimited vertical clearance in the full open-to-navigation position, and 7 feet vertical clearance, above Mean High Water, when closed. The drawbridge is normally maintained in the fully open position, except for the crossing of trains or for maintenance, as required by 33 CFR 117.187.

The proposed work was coordinated with waterway users. From 6:30 a.m. to 8 p.m. on Monday, August 29, 2005, the drawspan may be secured in the closed-to-navigation position and need not open for vessels. If safe to do so, a vessel can pass through the bridge during this period. The drawspan will be able to open in an emergency with a one-hour advance notice. The drawspan shall resume normal operations after 8 p.m. on August 29, 2005.

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: August 16, 2005.

Kevin J. Eldridge,

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

[FR Doc. 05–17094 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–04–124]

RIN 1625–AA09

Drawbridge Operation Regulation; Skidaway Bridge (SR 204), Intracoastal Waterway, Mile 592.9, Savannah, Chatham County, GA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations of the Skidaway Bridge (SR 204) across the Intracoastal Waterway, mile 592.9, in Savannah, Georgia. This rule allows the bridge to open on signal, except that from Monday through Friday, not including Federal holidays, the bridge need only open on the hour between 6:31 a.m. and 8:59 a.m. and on the hour and half hour between 4:31 p.m. and 6:29 p.m.

DATES: This rule is effective September 28, 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 (CGD07–04–124) and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Suite 432, Miami, Florida 33131, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Bridge Branch (obr), Seventh Coast Guard District, maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Gwin Tate, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415–6747.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 3, 2004, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Skidaway Bridge (SR 204), Intracoastal Waterway, Mile 592.9, Savannah, Chatham County, GA in the **Federal Register** (69 FR 70209). We received 8 letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

On January 7, 2004, the General Manager of the Landings Association, a residential development with over 8500 residents that comprises approximately

90% of the Skidaway Island population, contacted the Chatham County Department of Public Works regarding traffic problems caused by the current bridge schedule. On April 22, 2004, the Department of Public Works, which operates and maintains the bridge, contacted the Coast Guard and requested assistance in creating a bridge openings schedule to help ease vehicular congestion on the Skidaway Bridge. The Skidaway Bridge is the only roadway between Skidaway Island and the mainland. Its operation is governed by 33 CFR 117.5, which requires the bridge to open on signal. Bridge tender logs indicate that the openings schedule will improve vehicular traffic flow while still meeting the reasonable needs of navigation. During a twelve-month time period, vessel requests for openings remained at or below an average of two per hour, and below three during each restricted opening period in the morning and afternoon.

Discussion of Comments and Changes

This Final Rule is less restrictive than the proposal in the original NPRM. The NPRM provided for weekday closures of the Skidaway Bridge between 6:30 a.m. and 9 a.m., and 4:30 p.m. and 6:30 p.m. This Final Rule allows for openings on each hour between 6:31 a.m. and 8:59 a.m., and openings on each hour and half hour between 4:31 p.m. and 6:29 p.m. This revision enables both boaters and motorists to plan their respective crossings of the Skidaway Bridge pursuant to this Final Rule, thereby improving vehicular traffic flow without unreasonably interfering with vessel traffic.

This Final Rule allows for hourly openings during the designated time period in the morning, and openings each half-hour during the designated time period in the evening. The frequency of scheduled openings in the evening is higher than the frequency in the morning because peak evening vehicular traffic is less concentrated than peak morning vehicular traffic.

The Coast Guard received a total of 8 written comments in response to the NPRM:

(1) Five were in favor of the proposed rule as written.

(2) One commenter recommended that the schedule be altered slightly, opening every half hour during the designated morning and evening time periods.

The Coast Guard agrees that the original schedule proposed in the NPRM was too restrictive in that it did not provide for any openings during the morning and evening time periods. Accordingly, this Final Rule provides for openings pursuant to a schedule, thereby enabling boaters and motorists to plan their trips accordingly. This revision will help reduce vehicular congestion without unreasonably interfering with vessel traffic.

(3) One commenter recommended that the bridge adopt a half hour schedule between 9 a.m. and 4:30 p.m. during the prescribed time period.

Test results indicated a small number of openings during this time period. Because the Coast Guard believes that scheduled openings throughout the day would not help ease vehicular congestion in the vicinity of the Skidaway Bridge, this Final Rule requires openings pursuant to a schedule only during peak hours of vehicular traffic in the morning and evening.

(4) One commenter was unable to determine why a change in the current operating schedule was needed if there were few openings during the designated time periods.

Although the Skidaway Bridge averaged fewer than three openings during the designated periods, putting the bridge on a defined schedule enables motorists to plan their trips accordingly. This should reduce the amount of vehicles waiting at the Skidaway Bridge during openings at times of peak vehicular traffic, thereby helping to ease vehicular congestion. The Coast Guard believes that this Final Rule achieves the most equitable compromise between the needs of boaters and motorists transiting beneath or across the Skidaway Bridge.

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 on vessel traffic that a full Regulatory Evaluation is unnecessary. Boaters may mitigate impact of this Final Rule by planning their passage through the Skidaway Bridge in accordance with scheduled openings. The vehicular traffic crossing this bridge is now in excess of 9,000 vehicles per day. This rule will have a positive impact on vehicular traffic due to its establishment of scheduled bridge openings during the designated time periods.

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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. The Coast Guard offered small businesses, organizations, or governmental jurisdictions that had questions about the rule's provisions or believed the rule would affect them to contact Mr. Gwin Tate, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415–6747.

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 Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates 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 may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 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 (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. In § 117.353, add paragraph (c) to read as follows:

§ 117.353 Atlantic Intracoastal Waterway, Savannah River to St. Marys River.

* * * * *

(c) *Skidaway, SR 204, mile 592.9 near Savannah.* The draw shall open on signal, except that from 6:31 a.m. to 8:59 a.m. Monday through Friday except Federal holidays, the draw need open only on the hour, and from 4:31 p.m. to 6:29 p.m. Monday through Friday except Federal holidays, the draw need open only on the hour and half hour.

* * * * *

Dated: August 9, 2005.

D.B. Peterman,

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

[FR Doc. 05–17095 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–05–033]

RIN 1625–AA00

Safety Zone Regulations, New Tacoma Narrows Bridge Construction Project

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is extending the effective period for a temporary safety zone during preconstruction for the Tacoma Narrows Bridge construction project. The Coast Guard is taking this action to safeguard the public from hazards associated with the transport and construction of the cable wires and cable bands being used to construct the catwalk for the new bridge. Entry into this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: The effective period for the temporary final rule published at 70 FR 45537, August 8, 2005, is extended from August 20, 2005, through September 8, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–05–033 and are available for inspection or copying at Coast Guard Sector Seattle, Waterways Management Division, 1519 Alaskan Way South, Seattle, WA 98134, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jessica Hagen, Waterways Management Division, Coast Guard Sector Seattle, at (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On August 8, 2005, we published a temporary final rule for Tacoma Narrows Bridge entitled ''Safety Zone Regulations, New Tacoma Narrows Bridge Construction Project'' in **Federal Register** (70 FR 45537) under §165.T13–013. This temporary final rule extends the effective period until September 8, 2005.

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) has not been published for this regulation and good cause exists for making it effective without publication of an NPRM in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event.

Discussion of Rule

As of today, the need for a safety zone still exists. The Coast Guard is extending the temporary safety zone regulation on the Tacoma Narrows and adjoining waters, for the Tacoma Narrows Bridge Project through September 8, 2005. The Coast Guard has determined it is necessary to limit access to 250 yards on either side of a line from the approximate position of 47°16′15″ N, 122°33′15″ W, to 47°15′54″ N, 122°32′49″ W, to 47°15′49″ N, 122°32′43″ W, in order to safeguard people and property from hazards associated with this project. These safety hazards include, but are not limited to, hazards to navigation, collisions with the cables, and collisions with work vessels and barges. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his representative. This safety zone will be enforced by Coast Guard personnel. The Captain of the Port may be assisted by other Federal, State, or local agencies.

Regulatory Evaluation

This temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 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 temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by this regulation would encompass a small area that should not impact commercial or recreational traffic. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

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.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this portion of Tacoma Narrows during the time this regulation is in effect. The zone will not have a significant economic impact on a substantial number of small entities due to its short duration and small area. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. 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 Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates 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 temporary rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this temporary rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

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 State, local, or tribal government, in the aggregate, or the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This temporary rule would 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 temporary 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 concern 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. 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.

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 M16475.1D, 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.

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 part 165 of title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

■ 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. Section 165.T13–013 is extended and revised to read as follows: From 5 a.m. to 9 p.m. from August 20 to September 8, 2005, a temporary §165.T13–013 is added to read as follows:

§ 165.T13–013 Safety Zone Regulations, New Tacoma Narrows Bridge Construction Project.

(a) *Location.* The following area is a safety zone: All waters of the Tacoma Narrows, Puget Sound, Washington State, within 250 yards on either side of a line with the points of 47°16′15″ N, 122°33′15″ W, to 47°15′54″ N, 122°32′49″ W, to 47°15′49″ N, 122°32′43″ W. [Datum: NAD 1983]

(b) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in the zone except for those persons involved in the construction of the new Tacoma Narrows Bridge, supporting personnel, or other vessels authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative.

(c) *Enforcement period.* This section will be enforced from 5 a.m. until 9 p.m., Pacific Daylight Time, from August 20 to September 8, 2005, except for Sundays and September 5, 2005.

Dated: August 16, 2005.

Stephen P. Metruck,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 05–17091 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–05–115]

RIN 1625–AA00

Safety Zone; Irish Festival Currach Races, Lake Michigan, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Michigan, in Milwaukee, WI. This zone is intended to restrict vessels from a portion of Lake Michigan during the Irish Festival Currach Races. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with boat races.

DATES: This rule is in effect from 12 p.m. (local) on August 20, 2005 through 6 p.m. (local) on August 21, 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 [CGD09–05–115] and are available for inspection or copying at U.S. Coast Guard Sector Lake Michigan, 2420 S. Lincoln Memorial Dr, Milwaukee, WI 53207 between 7 a.m. (local) and 3:30 p.m. (local), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Chief Harold Millsap, Prevention Department, Sector Lake Michigan, 2420 S. Lincoln Memorial Dr, Milwaukee, WI 53207, (414) 747–7155.

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 an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a boat race. Based on accidents that have occurred in other Captain of the Port zones the Captain of the Port Lake Michigan has determined boat races in close proximity to other watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, alcohol use, and currach races could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the currach races will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the currach races in conjunction with Irish Festival Currach races. The event will occur between 12 p.m. (local) and 6 p.m. (local) on August 20 and 21, 2005.

The safety zone for the Currach races will encompass all waters of Lake Michigan within the following coordinates 43°02′12″ N, 087°53′42″ W; south east to 43°02′07″ N, 087°53′36″ W; then southwest to 43°01′56″ N, 087°53′39″ W, then along the shoreline back to the point of origin. The geographic coordinates are based upon North American Datum 1983 (NAD 83). The Captain of the Port Lake Michigan, or his designated on-scene representative, has the authority to terminate the event.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This proposed 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 proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

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 may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of Lake Michigan in Milwaukee, WI, between 12 p.m. (local) on August 20, 2005 and 6 p.m. (local) on August 21, 2005.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only a six hour period for two days. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Lake Michigan to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates 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 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern 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 proposed 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 procedure; and related management system 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 proposed 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. This event establishes a safety zone; therefore, paragraph (34)(g) of the Instruction applies.

Under figure 2–1, paragraph 34(g) of the Instruction, an ''Environmental Analysis Check List'' and ''categorical exclusion determination'' is not required under this rule.

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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary section 165.T09–115 is added as follows:

§ 165.T09–115 Irish Festival Currach Races, Lake Michigan, Milwaukee, WI.

(a) *Location:* The following area is a temporary safety zone: all waters of Lake Michigan within the following coordinates 43°02′12″ N, 087°53′42″ W; southeast to 43°02′07″ N, 087°53′36″ W; then southwest to 43°01′56″ N, 087°53′39″ W, then along the shoreline back to the point of origin. The geographic coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective period.* This regulation is effective from 12 p.m. (local) until 6 p.m. (local), on August 20 and 21, 2005. This zone will be enforced from 12 p.m. (local) until 6 p.m. (local), on August 20 and 21, 2005.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given to them by the Captain of the Port Lake Michigan or his on-scene representative.

Dated: August 17, 2005.

H.M. Hamilton,

Commander, U.S. Coast Guard, Acting Captain of the Port Lake Michigan.

[FR Doc. 05–17092 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Wildlife

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management actions to protect moose populations in Unit 22 and caribou populations in Unit 9. These actions will provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on June 22, 2005. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2005 regulatory year.

DATES: The closure of the fall subsistence caribou hunting season in parts of Unit 9 is effective August 10, 2005, through September 20, 2005. The closure of the fall subsistence moose hunting season in part of Unit 22A is effective August 15, 2005, through September 30, 2005. The reduced fall subsistence moose hunting season in parts of Unit 22B and 22D is effective August 15, 2005, through September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence

Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Manager, USDA-Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of title VIII of ANILCA on public lands. The Departments administer title VIII through regulations at title 50, part 100 and title 36, part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999 (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2005 hunting seasons, harvest limits, and methods and means were published on June 22, 2005 (70 FR 36268). Because this action relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Game (BOG), manages sport and State subsistence harvest on all lands throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These actions are authorized and in accordance with 50 CFR 100.19(d–e) and 36 CFR 242.19(d–e).

Units 9C and 9E

The Northern Alaska Peninsula Caribou Herd has declined since 1984, from a peak population of 20,000 caribou to an estimated 1,200 caribou in 2005. The exact reasons for the decline of the Northern Alaska Peninsula Caribou Herd are unknown, but are believed to be related to nutritional stress in the herd due to over-grazing of the range south of the Naknek River, disease, predation and poor habitat conditions throughout their entire range. This drastic population decline represents a conservation concern. The Alaska Department of Fish and Game has recently announced that it will not have a hunt in this area.

The Federal Subsistence Board has also closed the fall subsistence caribou hunting season on Federal lands in Units 9C Remainder and Unit 9E on the Alaska Peninsula, effective Aug. 10, 2005.

Unit 22A

The Federal Subsistence Board has closed the fall moose hunting season in the central portion of Unit 22A in Western Alaska, due to low moose numbers in that area. The area affected is that portion of Unit 22A in the Unalakleet drainage and all drainages flowing into Norton Sound north of the Golsovia drainage and south of the Tagoomenik and Shaktoolik River drainages.

Recent moose surveys by the Bureau of Land Management and the Alaska Department of Fish and Game indicated there were approximately 123 moose in the area, substantially below the Alaska Department of Fish and Game's management goal of 600 to 800 moose. Low numbers of yearling moose suggest that few moose are surviving to reproductive age. The combination of low moose density, a declining population trend and low numbers of yearling moose require eliminating the human harvest to allow for conservation of the herd.

The closure aligns Federal subsistence hunting regulations with the State's closure of the moose hunting season in the central portion of Unit 22A.

Unit 22B and 22D

The Federal Subsistence Board has shortened the fall subsistence moose hunting season on Federal lands in Unit 22D and in Unit 22B west of the Darby Mountains in the Nome area. The new season dates are Sept. 1 through Sept. 14. This action is being taken to reduce hunting pressure, due to serious concerns about declines in the moose population in the area. The change establishes a uniform season in all hunt areas adjacent to the Nome road system and is intended to reduce the chances of over harvest. The Board's action follows similar action taken by the Alaska Department of Fish and Game through Emergency Order No. 05–02–05.

The area affected in Unit 22D is within the Kougarok, Kuzitrin and Pilgrim river drainages and west of the Tisuk river drainage and Canyon Creek. The harvest limit in both Unit 22D and 22B west of the Darby Mountains remains 1 bull. The change also requires that hunters must have a State registration permit.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, could adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940, published May 29, 1992), implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999 (64 FR 1276.)

Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as sporting goods dealers. The number of small entities affected is unknown; however, the effects will be seasonally and geographically limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

Bill Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: August 4, 2005.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: August 4, 2005.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 05–17075 Filed 8–26–05; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AB31

Records Center Facility Standards

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This final rule modifies NARA facility standards for records storage facilities that house Federal records to clarify requirements relating to design or certification of multiple story facilities and fire detection and protection systems; to revise certain requirements relating to fire-ratings of roofs, building columns, and fire barrier walls; and to clarify the application of

other requirements. The rule addresses records center industry concerns identified in the 2003 Report to Congress on Costs and Benefits of Federal Regulations. This rule affects commercial records storage facilities that store Federal records and applies to all agencies, including NARA, that establish and operate records centers, and to agencies that contract for the services of commercial records storage facilities.

DATES: This rule is effective September 28, 2005. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of September 28, 2005.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at telephone number 301–837–1477, or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: NARA published a proposed rule on September 7, 2004 (69 FR 54091) outlining proposed changes to our regulations governing facilities that store Federal records (records storage facilities). We received comments from eight Federal agencies, seven private sector records storage facilities, Professional Records and Information Services Management (PRISM) International (a records center industry association), ARMA International (a professional organization for persons in the field of records and information management), the International Code Council (an association dedicated to building safety), and 11 individuals. Fourteen respondents generally supported the proposed rule or had no comments; the remaining respondents had concerns with one or more of the proposed provisions. A detailed discussion of the substantive comments follows.

As we discussed extensively in the 1999 rulemaking and restated in the 2004 proposed rule, Federal records provide essential documentation of the Federal Government's policies and transactions and protect rights of individuals. The Government has an obligation to protect and preserve these records for their entire retention period, even if that retention period is only a few years, as is the case with IRS income tax returns or invoice payments. NARA believes that records storage facilities should be structurally sound, protect against unauthorized access, and protect against fire and water damage to the records, whether the records are temporary or permanent. This rulemaking continues to reflect that belief.

Discussion of Comments

Section 1228.224 (Incorporation by Reference)

We received two comments on this section, which was modified in the proposed rule to add new standards proposed in that rulemaking. One individual commented that NARA should update paragraph (c) to reflect the latest editions of all of the National Fire Protection Association (NFPA) standards cited in the regulation. We did not adopt this comment. The International Code Council (ICC) ICC requested that NARA modify the proposed rule to adopt by reference the 2003 edition of six ICC Codes in lieu of the NFPA Fuel Code and Uniform Mechanical Code. As we explain elsewhere in this Supplementary Information in response to another ICC comment, all jurisdictions have not adopted the ICC Codes in lieu of other voluntary consensus standards. Moreover, the NFPA Fuel Code and Uniform Mechanical Code are American National Standards Institute (ANSI) approved standards, which reflect that ANSI principles of openness and due process have been followed and that a consensus of all interested stakeholder groups has been reached in development of the standards. Not all ICC Codes have that designation. Therefore, we have not adopted this ICC comment.

Section 1228.226 (Definitions)

Two commenters objected to the proposed change to the definition of *records storage area*. One individual stated that our replacement of the term ''fire wall'' with the term ''fire barrier wall'' severely lessens the level of protection provided. The ICC commented that there is a difference in the definitions of ''firewall'' and ''fire barrier wall'' and that NARA should delete the definition of ''fire barrier wall.'' ICC further stated that the problem ICC identified would be resolved by the adoption of the IBC, ICC International Fire Code (IFC) and ICC Existing Buildings Code (IEBC) as a minimum baseline. We did not accept these comments. When NARA published the original 1999 final rule, we changed ''fire wall'' to ''fire barrier wall'' throughout the regulation. At that time, we inadvertently overlooked the reference to ''fire wall'' in the definition of *records storage area*. This change to the definition brings it into conformance with the intent of the regulation.

PRISM requested clarification of the definition of *auxiliary space*, which was not modified in the proposed rule. We confirm that NARA does not consider loading docks (including the adjacent document processing areas) as ''auxiliary spaces,'' and, therefore, this regulation does not require the construction of fire barrier walls between such areas and records storage areas.

Section 1228.228(a) (Roof Requirement)

Two commenters opposed changing § 1228.228(a) to allow roof elements to be constructed with combustible materials if installed in accordance with local building codes and if roof elements are protected by a properly installed, properly maintained automatic sprinkler system. One objector stated that if the sprinkler system is tied to the roof, the loss of the roof would render the sprinkler system useless. The other objector stated that the National Fire Protection Association (NFPA) 232 (2000 ed.), Standard for the Protection of Records, required a non-combustible roof because of a higher level of risk of involvement of the roof in fire in these types of facilities. PRISM, in supporting the provision stated that no basis for concluding that a wood roof has less structural integrity than one with steel members, noting that steel (a noncombustible product) would begin to fail at 1000° F. NARA's fire tests have shown that in an uncontrolled fire the temperature at the roof level can quickly exceed 1000° F. We also note that under the 1999 rule, existing facilities may already obtain a waiver to have wood roof construction under the conditions that the proposed rule would extend to all facilities.

In this final rule, we have modified § 1228.228(a) slightly. To improve clarity, we have separated the provisions of the paragraph into subparagraphs. Paragraph (a) introductory text states the basic requirement for use of non-combustible materials. Paragraph (a)(1) states the conditions under which roof elements constructed with combustible materials are allowed, and we have added a reference to the appropriate NFPA standard for sprinkler systems (NFPA 13, Installation of Sprinkler Systems, 2002 edition) that must be followed. Paragraph (a)(2) restates the steps to be taken to request a waiver for an existing records storage facility with combustible building elements other than the roof to continue to operate until October 1, 2009.

Section 1228.228(b) (Certification—Multi-Story Facilities)

There were two comments that specifically addressed the proposed change to this provision. One comment

suggested that we define ''certify'' in the definitions (§ 1228.226) and not modify the language here or in later sections. The other comment objected to the change, misunderstanding the change to mean that NARA would only be requiring the fire protection engineer and civil/structural engineer to state whether the facility meets the local building code. A third comment, from ARMA International, noted that the role of the professional engineer in the inspection of such facilities is a key to the protection of records and that relying on local building codes will inevitably result in great variances in the levels of protection the records actually receive.

We did not make any changes to this provision. The nature of the activity required under this provision is the same as previously required '' reviews by a licensed fire protection engineer (FPE) and licensed civil/structural engineer that the fire resistance of separating floors is at least 4 hours and that there are no obvious structural weaknesses that would indicate a high potential for structural catastrophic collapse under fire conditions. Our change to paragraph (b) more accurately reflects our intention that the engineer(s) provide a professional opinion under seal. We did not accept the suggestion to define ''certify'' in § 1228.226 because we believe it is better to describe the requirement accurately where it occurs than to define a term that is open to misinterpretation and then use that term in the requirements.

Section 1228.228(d) (Building Code Protection Against Natural Disaster)

The proposed rule modified § 1228.228(d), which requires designing the records center facility to provide protection from building collapse or failure of essential equipment from earthquake hazards, tornadoes, hurricanes and other potential natural disasters. The 1999 rule only cited regional building codes. At the suggestion of PRISM, we added local or state building codes, since these codes may address a specific local common natural disaster that the regional code does not.

We received three comments on this provision. One Federal agency commented that ''* * * ordinarily, Federal agencies are exempt from such requirements [to meet local and state building and fire codes] although they usually meet or exceed such codes. It is difficult to prescribe rules when there are so many state and local variances and I recommend that the Federal exemption continue.'' We did not adopt this comment. Although buildings built on Federal property are exempt from state and local building codes, GSA's policy, as articulated in P100, The Facilities Standards for the Public Buildings Service, is to comply with state and local building codes to the maximum extent practicable. Moreover, the NARA standards apply to commercial facilities that agencies use for the storage of their records.

The International Code Council (ICC) stated that the ICC codes have replaced the three regional model codes that were in existence in 1999 when the original NARA rule was issued. ICC urged that NARA replace references to regional, state and local codes with reference to the ICC model codes. We have added a reference to the ICC model (*i.e.*, national) code, but not removed the references to the other codes. Newly adopted building codes apply to new construction and renovation that take place after the new code is adopted. This regulation covers both existing and new facilities that are covered by a variety of editions of codes. Thus, it would not be appropriate to cite only the ICC codes.

The third commenter, PRISM, believes that the balance struck by NARA will not create undue confusion, and represents a significantly better balance than the previous rule.

Section 1228.228(i) (Storage Shelving)

The proposed rule added racking systems as an acceptable form of records storage shelving and added state and local building code requirements for seismic bracing. We received two comments on this provision. One individual requested that we modify the text to prohibit double or triple stacking boxes on the individual shelves. We did not adopt this comment. The basic requirement in the proposed revision to paragraph (i)(2) provides adequate protection. If a facility's practice is to double or triple stack boxes of records on a shelf, the shelf would have to be rated for 100 or 150 pounds, respectively. NARA is setting performance requirements, not specifying how a storage facility must shelve its records.

The other commenter expressed a concern with racking systems, which are designed to go to heights in excess of 50 feet, and recommended the requirement for seismic bracing should extended to racking, if a facility desires to use this type of shelving. The commenter noted that when these large volumes of records are exposed to water, either during a fire or in the event of an accidental discharge of a sprinkler system, the weight bearing on the racking system is severe. We note that this requirement already existed in the proposed rule and have retained it in this final rule.

Section 1228.228(n)(3) (Requirement for Backup Power Source)

We received a comment from ICC on § 1228.228(n)(3), which was not proposed for revision. ICC stated that the provision, as currently wording, is not mandatory. If a backup power source is determined necessary, NARA should require one. We did not modify this section as the comment was out of scope.

Section 1228.228(n)(4) (Requirement for Positive Air Pressure)

In the 1999 rule, § 1228.228(n)(4) required that all new facilities must be kept under positive air pressure and loading docks must have an air supply and exhaust system that is separate from the remainder of the facility. The proposed rule would limit this provision to new facilities that store permanent Federal records. (It is not practicable to impose this retroactively on existing facilities.) We received two comments opposing the proposed change and one comment supporting the change. One non-Federal records manager and one Federal agency opposed this provision, noting that long-term temporary records would be adversely affected. The records manager proposed that it be required for facilities storing 20-year records. PRISM supported the change, stating that literature shows that other factors, such as the acid in the paper and exposure to UV light prior to being placed in storage, are the principal causes of records degradation.

This final rule retains the proposed rule language limiting the provision to new facilities that store permanent records. While there may be a potential for degradation of records from exposure to exhaust fumes (the reason for positive air pressure), such exposure is not constant. Paper-based records are further protected from direct exposure by their enclosure in folders within closed boxes.

Section 1228.230(a) (Certification—Fire Detection and Protection Systems)

We received one comment from an individual objecting to the change in this paragraph. The commenter stated that it is imperative that the design and protection provided be reviewed and certified by a professional whose primary duties are related to the adequate protection of a facility from the hazards of a fire. Having the individual who designed and/or

installed the system stating it is adequate is akin to ''having the fox guarding the henhouse.''

As we explained in the preamble to the proposed rule, the change made in this provision was to substitute for the word ''certify'' specific information that the licensed FPE must provide in the report furnished under seal. That information will be sufficient for NARA to evaluate whether the facility complies with the requirements in § 1228.230.

Section 1228.230(b) (Interior Walls)

We received three comments from individuals opposing the proposed change to § 1228.230(b) to require that interior walls separating records storage areas from each other and from other storage areas in the building be at least 3-hour fire resistant, instead of requiring 4-hour fire barrier walls. We agree that there is a substantial difference in level of protection from fire between a 3-hour and 4-hour fire barrier wall; however, there is also a substantial difference in cost for records center owners. The data provided by PRISM stated that the cost of a 3-hour wall at 40 feet (the height of the typical commercial records center) is about $560 per linear foot; a 4-hour wall at 40 feet is $865 per linear foot. We have adopted the proposed rule wording in this final rule because we believe that the significant difference in the cost of a 4-hour wall does not justify the enhanced records protection.

Additionally, the ICC commented that because ICC codes define, refer to and contain provisions for fire walls and fire barriers, a reference to the ICC codes would address the safety issue for NARA and the cost issue for the storage industry while maintaining consistency with state and local codes. We respectfully disagree with this comment. ICC did not identify a specific ICC code that addresses records centers. In general, the fire-safety components of building codes are designed to protect the life and safety of occupants, mitigate against the spread of a fire to adjacent structures, and to protect fire fighters, not to limit the loss of valuable contents. NFPA 232 and NARA's regulation supplement the building codes to provide a safety level for the items stored.

Section 1228.230(b) (Compartment Size)

In the preamble to the proposed rule, NARA noted that we did not modify the requirement that no more than 250,000 cubic feet of Federal records be stored in a single records storage area. ARMA commented that:

''Although the proposed rule maintains the maximum volume of 250,000 cu. ft. of Federal records in a single compartment, it says nothing about the total capacity of the compartment. This has the impact of allowing virtually unlimited volumes of records to be stored in a single compartment, as long as no more than 250,000 cu. ft. of Federal records are stored there. While this limits the exposure of the Federal records, it could easily put other consumers at considerably more potential exposure * * *

''Before the rule is finalized, consideration should be given to using NFPA 13 *Installation of Sprinkler Systems* as a basis for calculating the storage capacity of a facility. NFPA 13 indicates that 40,000 sq. ft. is the maximum area covered by one sprinkler system. If one takes this as the maximum size of a compartment and uses the commercial industry standard of storage capacity within square footage, the result is approximately 1 million cubic feet of storage under control of one sprinkler system. This could be considered as the basis for providing some limitation on the loss of records. Such a limitation provides a secondary line of defense if a sprinkler system fails or is compromised.''

NARA appreciates ARMA's concern for the holdings of other organizations, but our authority is limited to Federal records.

Section 1228.230(e) (Fire Resistive Rating of Roof)

We received one comment supporting and three comments opposing the proposed change to paragraph (e). This change deletes the requirement that new facilities must have a roof with a maximum fire-resistive rating of one hour and to allow protection of the roof by an automatic sprinkler system designed, installed, and maintained in accordance with NFPA 13, Standard for the Installation of Sprinkler Systems, as an alternative to the requirement for a minimum fire resistive rating of ½ hour.

PRISM noted that the change brings the provision in line with the modern building codes. One commenter raised a general objection that ''it would be a risk to both our intellectual heritage and to those who live near records centers to weaken the standards for fire-retardance.'' Another individual asked whether NARA researched NFPA 13 to make certain that by allowing roofs with lower fire-resistive ratings, NFPA 13 was not itself rendered non-viable, as it may well have depended on a certain level of fire resistance for the roof. A third individual stated that there is little if any logic behind lowering the fire-resistive rating of the roof from 1 hour to ½ hour.

This final rule retains the proposed rule language. Both the 1999 rule and this revision require a minimum fire-resistive rating of ½ hour for roofs for existing and new facilities. The revision removes a requirement for a *maximum* fire resistive rating of 1 hour for new facilities. We note that NFPA 13, Installation of Sprinkler Systems, 2002 edition, provides for sprinkler systems to protect wood roofs.

Section 1228.230(i) (Building Columns)

We received three comments opposing, for a variety of reasons, the proposed change in the fire resistance requirement for building columns in records storage areas from 2 hours for existing facilities and 4 hours for new facilities to 1 hour or protected in accordance with NFPA 13 for all facilities. One comment noted that the NARA proposal was less stringent than NFPA 232–2000; another asked about the value of the columns having an even lower fire-resistance rating than the walls; and the third suggested that the change would result in a significant lessening of the protection measures for storage of records with no additional benefit.

This final rule retains the proposed rule language. We considered both the commenters' concerns and industry issues with impact of the provision on the records center industry, most of which are small businesses. As we noted in the preamble to the proposed rule, PRISM claimed that the 1999 rule imposes insurmountable costs on most commercial storage facilities, which, in general, use columns (including exposed steel) that are not fire rated. We have concluded, for the reasons stated in the proposed rule at 69 FR 54093, that it is appropriate to proceed with the change.

Section 1228.230(l) (Use of Open Flame Equipment)

We received four comments opposing the proposal to allow open flame oil and gas unit heaters or equipment in storage areas if they are installed and used in accordance with NFPA 54, National Fuel Gas Code and the International Association of Plumbing and Mechanical Officials (IAPMO) Uniform Mechanical Code. Three of the comments expressed fire-safety concerns; one of these comments noted a higher risk to the records in high seismic risk zones where a fuel line might rupture. Installation in accordance with the applicable code will ensure a safe installation. Seismic safety requirements are met by designing the equipment and installation in accordance with the appropriate seismic zones as called for in local building codes, which dictate

design requirements for attachment and bracing of piping.

ICC commented that the National Fuel Gas Code and the Uniform Mechanical Code both cover gas-heating equipment and may not have the same requirements. To require compliance with both documents could create a conflict for the designer, contractor and building owner. In addition, state and local codes would also address such equipment; as do two ICC codes. ICC also suggested that the requirements for positive air pressure and environmental controls conflict with this provision, rendering it moot. ICC believes that reliance on the ICC codes would eliminate such conflicts and provide a baseline upon which NARA could address any unique issues associated with the control of the environment in which Federal records are stored. We did not accept these comments. Both the National Fuel Gas Code and the Uniform Mechanical Code are approved American National Standards (ANSI standards), while the two ICC codes proposed as alternatives are not.

Section 1228.232 (Environmental Controls)

The proposed rule modified paragraphs (b) on non-textual temporary records and (c) on permanent and certain other paper-based records to revise the effective date for new records centers to be the effective date of this final rule instead of January 3, 2000, the effective date set by the 1999 rule. We did not propose to change the substance of the requirements themselves.

We received one comment from an agency on paragraph (b) and a comment from the ICC on paragraph (c). The agency representative stated that the best environment for long term storage of paper records is not the same as the comfort requirements for office space, and recommended revising the wording ''* * * equivalent to that required for office space'' to read ''* * * that will meet the long-term preservation requirements of paper-based permanent records.'' We did not accept this comment. We decided as part of the 1999 rulemaking that it is not reasonable to require more stringent environmental conditions for paper records stored off-site than what they would have in office space.

The ICC commented that the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRE) standards referenced in paragraph (c) had been replaced by more recent editions, and suggested that NARA either reference the newer editions or reference comparable ICC codes. We declined to act on this comment at this final rule stage. Except for extreme circumstances, new versions are not retroactive to existing buildings (until they are substantially modified). Based on the PRISM and small business records center operators' comments, most commercial records centers are existing buildings.

Section 1228.236 (Waivers)

The proposed rule set forth text to amend paragraph (a)(2) to update the effective date of new standards that previously compliant agency records centers must meet. That effective date is the effective date of this final rule. One commenter suggested that this action was creating an unintended loophole for commercial records centers that fell out of compliance with the NARA standards after January 2, 2000. The commenter misinterpreted the paragraph, which applies only to records centers owned or operated by Federal agencies. We have retained this change in the final rule.

This same commenter suggested that NARA should retain the 1999 language ''NARA may grant * * *'' rather than automatically grant waivers. While NARA intends to grant waivers to specific requirements in the NARA regulation in all cases where our review of the waiver request (see § 1228.238) determines that the supporting documentation confirms that the condition(s) for the waiver have been met, the existing §§ 1228.238(a)(2) and (b)(2) clearly show that NARA may deny the waiver request if the conditions are not met to NARA's satisfaction. We have withdrawn the proposed change to the introductory text of § 1228.236(a). It will continue to read: ''(a) *Types of waivers that may be approved.* NARA may approve exceptions to one or more of the standards in this subpart for:''

Section 1228.242(a) (Certifying Fire Safety Detection and Suppression Systems)

The proposed rule modified § 1228.242(a) by adding Southwest Research Institute as a provider of independent live fire testing; removing a requirement for computer modeling as part of the report furnished by a licensed FPE in lieu of live fire testing or use of a NARA-certified system; and providing the specific details required in such a report. We received two comments on this section.

One comment from an individual objected to removing the requirement for computer modeling. The commenter stated ''* * * there is no data that supports the removal of the use of computer modeling as an accurate method of determining the potential loss in the event of a fire. In the absence of the possibility of live testing, computer modeling has proven to be a qualified method for ensuring the adequate protection of a facility.'' We did not accept this comment. As stated in the preamble to the proposed rule: ''While we continue to see the value of computer modeling as a supplement to live fire testing, we acknowledge that the costs of such modeling may not always be justified in the records center environment.'' The new language in revised § 1228.242(a)(3) on the detailed information to be provided by the FPE will allow NARA to evaluate the adequacy of the fire protection.

ICC pointed out that retaining ''or equivalent'' in the listing of organizations that perform independent fire testing raised questions about NARA's basis for determining equivalency and felt that the basis should be part of the rules so that other third parties can understand the criteria under which they will be evaluated. Alternatively, ICC recommended that the text in paragraph (a)(2) be modified to read ''a report of the results of independent fire testing conducted by a testing laboratory deemed as meeting the criteria of International Organization for Standardization (ISO) Standard 17025 by an agency accredited as meeting ISO Guide 65.'' To meet ICC's concerns, we have removed the words ''or equivalent'' from § 1228.242(a)(2). We considered ICC's alternative language, but believe that listing the specific organizations will better serve small businesses who wish to take advantage of this alternative.

Other Provisions of the Proposed Rule

No comments were received on the other proposed rule provisions and they have been adopted without change in this final rule.

Impact on NFPA 232

Three individuals raised concerns with the impact of NARA's regulatory changes on NFPA 232, Standard for the Protection of Records. That standard is independently undergoing review within the NFPA. The individuals expressed concern that the ''weakening'' of the NARA regulation would have a ripple effect on NFPA 232. ARMA noted that the proposed rule is not in compliance with NFPA 232 and is likely to increase the vulnerability of public and private records stored in off-site facilities. ARMA urged NARA to survey other international standards, such as the National Archives of Australia and the British Standards Institute standards, as a point of comparison. We appreciate the comments and concerns

but, as a Federal agency, we must consider the impact of our regulations on the regulated industry as well as the Federal user.

Impact on Small Business

In our initial regulatory flexibility analysis (IRFA) that was published with the proposed rule, we invited comments on the impact on small businesses. We asked small businesses to comment on other alternatives, if any, NARA should consider, as well as the costs and benefits of those alternatives to small business. We received comments from seven companies and from PRISM International supporting the regulation. There comments are discussed in greater depth in the following final regulatory flexibility analysis (FRFA) statement.

Final Regulatory Flexibility Analysis

As required by the 5 U.S.C. 604, NARA has prepared this final regulatory flexibility analysis.

Background

In the proposed rule published on September 7, 2004 (69 FR 54091), NARA stated its belief that the rule will affect small businesses that are records storage providers and provided an initial regulatory flexibility analysis (IRFA) in accordance with the Regulatory Flexibility Act and Executive Order 13272. We specifically invited comments on the IRFA in addition to comments on the proposed rule.

1. Succinct Statement of the Need for and Objectives of the Rule

NARA's records center regulations specify the minimum structural, environmental, property, security, and fire safety standards that a records storage facility must meet when the facility is used for the storage of Federal records. Because Federal records provide essential documentation of the Federal Government's policies and transactions and protect rights of individuals, they must be stored in appropriate space to ensure that they remain available for their scheduled life. The 2003 Report to Congress on Costs and Benefits of Federal Regulations identified the NARA regulations as a candidate for reform because of an identified adverse impact on small businesses.

The objective of this regulation is to clarify the records center facility standards and modify them, where appropriate, to better enable records centers, particularly those that are small businesses, to be able to offer their services to Federal agencies while ensuring the continued appropriate protection of Federal records stored in off-site facilities.

2a. Summary of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

We received 8 comments specifically noting the impact of the proposed rule on small businesses. Seven comments were from records center providers, 5 of which specifically identified themselves as small businesses. The eighth comment was from PRISM International, which identified itself as the not-for-profit trade association representing the records and information management services (RIMS) industry, representing 590 RIMS businesses in the United States, 99 percent of which are small businesses.

All eight comments supported the proposed rule, noting that it would improve their ability to compete equitably for Federal contracts for records storage services. Only one comment specifically commented on the issues raised in the initial regulatory flexibility analysis. That small business strongly favored a relaxed waiver process outlined as alternative 2, noting that it believes the benefits to small businesses of such a process vastly outweigh the minor disadvantage of increased complexity of the Records Center Facility Standards. Alternative 2 was to allow records centers that qualify as small businesses to apply for a waiver from § 1228.228(a)'s requirement for noncombustible roofs, and to have two tiers of requirements in § 1228.230 relating to the fire-resistive rating of building elements. The existing (January 2000) requirements would be retained for NARA records centers, agency records centers, and commercial records centers that are other than small businesses.

No comments provided detailed information on the costs and benefits of the regulation.

2b. Summary of NARA's Assessment of the Issues Raised

The initial regulatory flexibility analysis noted that we rejected alternative 2 because we felt that this approach would merely add an additional step and paperwork for small businesses, and the two-tier approach may be confusing to them. The proposed rule and this final rule allow small businesses to meet the roof requirement without submitting a waiver request. The commenter did not provide any details on the benefits from alternative 2 that would be derived by small businesses.

2c. Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

As noted in the earlier discussion of the comments received on the proposed rule, NARA clarified some provisions but did not accept comments that would have restored the burdensome provisions in the 1999 regulation.

3. Description of the Number of Small Entities to Which the Rule Will Apply and Explanation of Why No Estimate Is Available

The proposed rule will apply to NARA, to Federal agencies that operate their own records centers, and to any individual commercial records center facilities that a Federal agency uses to store its records.

We explained in the initial regulatory flexibility analysis at 69 FR 54096 why we were not able to provide an estimate of the number of small entities to which the rule will apply. We did not obtain any more precise data during the rulemaking that would enable us to develop such an estimate.

4. Description of the Projected Reporting, Record Keeping and Other Compliance Requirements for Small Entities

All reporting requirements are placed on Federal agencies, which must secure NARA approval before moving Federal records to a commercial records center. However, we expect that a substantial portion of the reporting requirements would ''flow down'' to commercial records center operators. To demonstrate compliance with requirements in §§ 1228.228(b) and 1228.230(a) relating to design of facilities with two or more stories and the fire detection and protection system, respectively, the rule offers the records centers an option of obtaining a report under professional seal by a licensed fire protection engineer (both sections) and a licensed civil/structural engineer (§ 1228.228(b)). We received no comment refuting our assumption that documentation requirements relating to multi-story facilities would apply to a relatively small percentage of small business records centers.

If the records center owner has maintained the facility design records, no special professional skills would be necessary to provide documentation to the contracting agency that the facility meets the NARA standards. If the design records are not available, the center would have need for the services of a licensed Fire Protection Engineer to inspect the facility and prepare a report on a one-time basis. We estimate that

the inspection and preparation of a report would take no more than 16 hours total.

All records centers that store Federal records, including commercial records centers operated by small businesses, must comply with the facility requirements in the rule. Certain specific requirements differ for newly constructed facilities and existing facilities. Also, existing facilities have until October 1, 2009, to become compliant with some of these requirements. The facility compliance requirements are found in §§ 1228.228, 1228.230, and 1228.236.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities

NARA's records center regulations specify the minimum structural, environmental, property, security, and fire safety standards that a records storage facility must meet when the facility is used for the storage of Federal records. The objective of this regulation is to clarify the records center facility standards and modify them, where appropriate, to better enable records centers, particularly those that are small businesses, to be able to offer their services to Federal agencies while ensuring the continued appropriate protection of Federal records stored in off-site facilities. As discussed in the preamble to the proposed rule, NARA worked with PRISM International to develop the revised rule. In evaluating the comments received on the proposed rule, NARA carefully considered the impact of those comments on the ability of small business records centers to comply with the regulation.

NARA is authorized, under 44 U.S.C. 2907, to establish, maintain and operate records centers for Federal agencies. NARA is authorized, under 44 U.S.C. 3103, to approve a records center that is maintained and operated by an agency. NARA is also authorized to promulgate standards, procedures, and guidelines to Federal agencies with respect to the storage of their records in commercial records storage facilities. See 44 U.S.C. 2104(a), 2904 and 3102.

NARA considered, but did not adopt the following alternatives to this rule:

1. *No regulation.* One alternative would be to replace the existing regulation with a single requirement that agencies must use a records center that complies with NFPA/ANSI 232–2000, *Standard for the Protection of Records*. This is the voluntary consensus standard that applies to records storage facilities (we note that other NFPA standards apply to other types of warehousing). Office of Management and Budget (OMB) Circular A–119 Circular directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. We rejected this alternative as it would be more stringent with regard to fire protection issues than the existing NARA records center facility standards (which incorporate most but not all of the NFPA 232 provisions), while not including the environmental and pest control portions of our existing regulation. Based on the industry comments made on the draft *2003 Report to Congress on Costs and Benefits of Federal Regulations* and subsequent dialog with PRISM International, we believe that this alternative would not minimize the economic impact on small business records centers that want to provide records storage services for Federal agencies. We are unable to quantify the economic impact of this alternative on small business.

2. *Relax the waiver process for small businesses.* This alternative would (A) allow records centers that qualify as small businesses to apply for a waiver from § 1228.228(a)'s requirement for noncombustible roofs but retain the requirement for records centers that are not small businesses, and (B) reduce the requirements in § 1228.230 relating to the fire-resistive rating of building elements for small businesses only. The existing (January 2000) requirements would be retained for NARA records centers, agency records centers, and commercial records centers that are other than small businesses. We rejected this alternative because it would not provide a distinct advantage to small businesses, given our research that the majority of records centers would qualify as small businesses (see 69 FR 54096).

Other Information Pertaining to This Rule

This final rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. This regulation does not have any federalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Part 1228

Archives and records, Incorporation by reference.

■ For the reasons set forth in the preamble, NARA amends Part 1228 of Title 36 of the CFR as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

■ 1. The authority citation for part 1228 continues to read as follows:

Authority: 44 U.S.C. chs. 21, 29, and 33.

■ 1. Revise paragraph (b) of § 1228.222 to read:

§ 1228.222 What does this subpart cover?

* * * * *

(b) Except where specifically noted, this subpart applies to all records storage facilities. Certain noted provisions apply only to new records storage facilities established or placed in service on or after September 28, 2005.

■ 3. Amend § 1228.224 by revising the entry for ''NFPA 13'' and adding a new entry for ''NFPA 54'' in numerical order in paragraph (c) and adding paragraph (g) to read as follows:

§ 1228.224 Publications incorporated by reference.

* * * * *

(c) * * *

NFPA 13, Standard for Installation of Sprinkler Systems (2002 Edition), IBR approved for §§ 1228.228(a)(1), 1228.230(e), and 1228.230(i)

* * * * *

NFPA 54, National Fuel Gas Code (2002 Edition), IBR approved for § 1228.230

* * * * *

(g) *International Association of Plumbing and Mechanical Officials (IAPMO) standards.* The following IAPMO standard is available from the International Association of Plumbing and Mechanical Officials, 5001 E. Philadelphia Street, Ontario, CA 91761: IAPMO, Uniform Mechanical Code (2003 Edition), IBR approved for § 1228.230.

■ 4. Amend § 1228.226 by revising the definitions of ''Existing records storage facility'', ''New records storage facility'', and ''Records storage area'' to read:

§ 1228.226 Definitions.

* * * * *

Existing records storage facility means any records center or commercial records storage facility used to store records on September 27, 2005, and that has stored records continuously since that date.

* * * * *

New records storage facility means any records center or commercial records storage facility established or converted for use as a records center or commercial records storage facility on or after September 28, 2005.

* * * * *

Records storage area means the area intended for long-term storage of records that is enclosed by four fire barrier walls, the floor, and the ceiling.

* * * * *

■ 5. Amend § 1228.228 by revising paragraphs (a), (b), (d), (g)(1), (h)(1), (i) introductory text, (i)(1), (i)(2), (n)(1), and (n)(4) to read:

§ 1228.228 What are the facility requirements for all records storage facilities?

(a) The facility must be constructed with non-combustible materials and building elements, including walls, columns and floors. There are two exceptions to this requirement:

(1) Roof elements may be constructed with combustible materials if installed in accordance with local building codes and if roof elements are protected by a properly installed, properly maintained wet-pipe automatic sprinkler system, as specified in NFPA 13, Installation of Sprinkler Systems (incorporated by reference, see § 1228.224).

(2) An agency may request a waiver of the requirement specified in paragraph (a) from NARA for an existing records storage facility with combustible building elements to continue to operate until October 1, 2009. In its request for a waiver, the agency must provide documentation that the facility has a fire suppression system specifically designed to mitigate this hazard and that the system meets the requirements of § 1228.230(s). Requests must be submitted to the Director, Space and Security Management Division (NAS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

(b) A facility with two or more stories must be designed or reviewed by a licensed fire protection engineer and civil/structural engineer to avoid catastrophic failure of the structure due to an uncontrolled fire on one of the intermediate floor levels. For new buildings the seals on the construction drawings serve as proof of this review. For existing buildings, this requirement may be demonstrated by a professional letter of opinion under seal by a licensed fire protection engineer that the fire resistance of the separating floor(s) is/(are) at least four hours, and a professional letter of opinion under seal by a licensed civil/structural engineer that there are no obvious structural weaknesses that would indicate a high potential for structural catastrophic collapse under fire conditions.

* * * * *

(d) The facility must be designed in accordance with the applicable national, regional, state, or local building codes (whichever is most stringent) to provide protection from building collapse or failure of essential equipment from earthquake hazards, tornadoes, hurricanes and other potential natural disasters.

* * * * *

(g) * * *

(1) New records storage facilities must meet the requirements in this paragraph (g) beginning on September 28, 2005.

* * * * *

(h) * * *

(1) New records storage facilities must meet the requirements in this paragraph (h) beginning on September 28, 2005.

* * * * *

(i) The following standards apply to records storage shelving and racking systems:

(1) All storage shelving and racking systems must be designed and installed to provide seismic bracing that meets the requirements of the applicable state, regional, and local building code (whichever is most stringent);

(2) Racking systems, steel shelving, or other open-shelf records storage equipment must be braced to prevent collapse under full load. Each racking system or shelving unit must be industrial style shelving rated at least 50 pounds per cubic foot supported by the shelf;

* * * * *

(n) * * *

(1) Do not install mechanical equipment, excluding material handling and conveyance equipment that have operating thermal breakers on the motor, containing motors rated in excess of 1 HP within records storage areas (either floor mounted or suspended from roof support structures).

* * * * *

(4) A facility storing permanent records must be kept under positive air pressure, especially in the area of the loading dock. In addition, to prevent fumes from vehicle exhausts from entering the facility, air intake louvers must not be located in the area of the loading dock, adjacent to parking areas, or in any location where a vehicle engine may be running for any period of time. Loading docks must have an air supply and exhaust system that is separate from the remainder of the facility.

■ 6. Amend § 1228.230 by revising paragraphs (a), (b), (e), (i), (l), and (s) to read:

§ 1228.230 What are the fire safety requirements that apply to records storage facilities?

(a) The fire detection and protection systems must be designed or reviewed by a licensed fire protection engineer. If the system was not designed by a licensed fire protection engineer, the review requirement is met by furnishing a report under the seal of a licensed fire protection engineer that describes the design intent of the fire detection and suppression system, detailing the characteristics of the system, and describing the specific measures beyond the minimum features required by code that have been incorporated to minimize loss. The report should make specific reference to appropriate industry standards used in the design, such as those issued by the National Fire Protection Association, and any testing or modeling or other sources used in the design.

(b) All interior walls separating records storage areas from each other and from other storage areas in the building must be at least three-hour fire barrier walls. A records storage facility may not store more than 250,000 cubic feet total of Federal records in a single records storage area. When Federal records are combined with other records in a single records storage area, only the Federal records will apply toward this limitation.

* * * * *

(e) The fire resistive rating of the roof must be a minimum of ½ hour for all records storage facilities, or must be protected by an automatic sprinkler system designed, installed, and maintained in accordance with NFPA 13 (incorporated by reference, see § 1228.224).

* * * * *

(i) Building columns in the records storage areas must be at least 1-hour fire resistant or protected in accordance with NFPA 13 (incorporated by reference, see § 1228.224).

* * * * *

(l) Open flame (oil or gas) unit heaters or equipment, if used in records storage areas, must be installed or used in the records storage area in accordance with NFPA 54 (incorporated by reference, see § 1228.224), and the IAPMO/ANSI UMC 1–2003, Uniform Mechanical Code (incorporated by reference, see § 1228.224).

* * * * *

(s) All record storage and adjoining areas must be protected by a professionally-designed fire-safety detection and suppression system that is designed to limit the maximum anticipated loss in any single fire event

involving a single ignition and no more than 8 ounces of accelerant to a maximum of 300 cubic feet of records destroyed by fire. Section 1228.242 specifies how to document compliance with this requirement.

■ 7. Amend § 1228.232 by revising the introductory text of paragraph (b) and paragraph (c) to read:

§ 1228.232 What are the requirements for environmental controls for records storage facilities?

* * * * *

(b) *Nontextual temporary records.* Nontextual temporary records, including microforms and audiovisual and electronic records, must be stored in records storage space that is designed to preserve them for their full retention period. New records storage facilities that store nontextual temporary records must meet the requirements in this paragraph (b) beginning on September 28, 2005. Existing records storage facilities that store nontextual temporary records must meet the requirements in this paragraph (b) no later than October 1, 2009. At a minimum, nontextual temporary records must be stored in records storage space that meets the requirements for medium term storage set by the appropriate standard in this paragraph (b). In general, medium term conditions as defined by these standards are those that will ensure the preservation of the materials for at least 10 years with little information degradation or loss. Records may continue to be usable for longer than 10 years when stored under these conditions, but with an increasing risk of information loss or degradation with longer times. If temporary records require retention longer than 10 years, better storage conditions (cooler and drier) than those specified for medium term storage will be needed to maintain the usability of these records. The applicable standards are:

* * * * *

(c) *Paper-based permanent, unscheduled and sample/select records.* Paper-based permanent, unscheduled, and sample/select records must be stored in records storage space that provides 24 hour/365 days per year air conditioning (temperature, humidity, and air exchange) equivalent to that required for office space. See ASHRAE Standard 55–1992, Thermal Environmental Conditions for Human Occupancy, and ASHRAE Standard 62–1989, Ventilation for Acceptable Indoor Air Quality, for specific requirements. New records storage facilities that store paper-based permanent, unscheduled, and/or sample/select records must meet the requirement in this paragraph (c) beginning on September 28, 2005. Existing storage facilities that store paper-based permanent, unscheduled, and/or sample/select records must meet the requirement in this paragraph (c) no later than October 1, 2009.

* * * * *

■ 8. Amend § 1228.236 by revising paragraph (a)(2) to read:

§ 1228.236 How does an agency request a waiver from a requirement in this subpart?

(a) * * *

(2) Existing agency records centers that met the NARA standards in effect prior to January 3, 2000, but do not meet a new standard required to be in place on September 28, 2005; and

* * * * *

■ 9. Amend § 1228.240 by revising paragraph (c) to read as follows:

§ 1228.240 How does an agency request authority to establish or relocate records storage facilities?

* * * * *

(c) *Contents of requests for agency records centers.* Requests for authority to establish or relocate an agency records center, or to use an agency records center operated by another agency, must be submitted in writing to the Director, Space and Security Management Division (NAS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. The request must identify the specific facility and, for requests to establish or relocate the agency's own records center, document compliance with the standards in this subpart. Documentation requirements for § 1228.230(s) are specified in § 1228.242.

* * * * *

■ 10. Amend § 1228.242 by revising paragraphs (a)(2) and (a)(3) to read:

§ 1228.242 What does an agency have to do to certify a fire-safety detection and suppression system?

(a) * * *

(2) A report of the results of independent live fire testing (Factory Mutual, Underwriters Laboratories or Southwest Research Institute); or

(3) A report under seal of a licensed fire protection engineer that:

(i) Describes the design intent of the fire suppression system to limit the maximum anticipated loss in any single fire event involving a single ignition and no more than 8 fluid ounces of petroleum-type hydrocarbon accelerant (such as, for example, heptanes or gasoline) to a maximum of 300 cubic feet of Federal records destroyed by fire. The report need not predict a maximum single event loss at any specific number, but rather should describe the design intent of the fire suppression system. The report may make reasonable engineering and other assumptions such as that the fire department responds within XX minutes (the local fire department's average response time) and promptly commences suppression actions. In addition, any report prepared under this paragraph should assume that the accelerant is saturated in a cotton wick that is 3 inches in diameter and 6 inches long and sealed in a plastic bag and that the fire is started in an aisle at the face of a carton at floor level. Assumptions must be noted in the report;

(ii) Details the characteristics of the system; and

(iii) Describes the specific measures beyond the minimum features required by the applicable building code that have been incorporated to limit destruction of records. The report should make specific references to industry standards used in the design, such as those issued by the National Fire Protection Association, and any testing or modeling or other sources used in the design.

* * * * *

Dated: June 29, 2005.

Allen Weinstein,

Archivist of the United States.

[FR Doc. 05–17097 Filed 8–26–05; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[OAR–2003–0090; FRL–7959–2]

[RIN 2060–AN04]

Extension of the Deferred Effective Date for 8-Hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The EPA is finalizing the extension of the deferred effective date of air quality designations for 14 areas of the country that have entered into Early Action Compacts. Early Action Compact areas have agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (CAA) requires. On April 30, 2004, EPA published an action designating all areas of the country for the 8-hour ozone National Ambient Air Quality Standards

(NAAQS). In the designation rule, EPA deferred the effective date of the nonattainment designation for 14 areas that had entered into Early Action Compacts until September 30, 2005. The EPA is now extending the deferred effective date of the nonattainment designation for all 14 Early Action Compact areas until December 31, 2006.

DATES: This final rule is effective on September 28, 2005.

ADDRESSES: The EPA has established a docket for this action under Docket ID no. OAR–2003–0090 (Early Action Compacts). All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566–1742. In addition, we have placed a copy of the rule and a variety of materials relevant to Early Action Compact areas on EPA's website at *http://www.epa.gov/ttn/naaqs/ozone/eac/*.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Driscoll, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C504–02, Research Triangle Park, NC 27711, phone number (919) 541–1051 or by e-mail at: *driscoll.barbara@epa.gov* or Mr. David Cole, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5565 or by e-mail at: *cole.david@epa.gov*.

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I.What is the Purpose of this Document?

The purpose of this document is to finalize the extension of the deferred effective date of the 8-hour ozone nonattainment designations for 14 participants in Early Action Compacts. The new effective designation date is December 31, 2006.

II. What Action has EPA Taken to Date for Early Action Compact Areas?

This section discusses EPA's actions to date with respect to deferring the effective date of nonattainment designations for certain areas of the country that are participating in the Early Action Compact program. The EPA's April 30, 2004 air quality designation rule (68 FR 70108) provides a description of the compact approach, the requirements for areas participating in the program and the impacts of the program on those areas.

On December 31, 2002, we entered into compacts with 33 communities. To receive the first deferral, these Early Action Compact areas agreed to reduce ground-level ozone pollution earlier than the CAA would require. On December 16, 2003 (68 FR 70108), we published a proposed rule to defer until September 30, 2005, the effective date of designation for Early Action Compact areas that did not meet the 8-hour ozone NAAQS. Fourteen of the 33 compact areas did not meet the 8-hour ozone NAAQS.

The final designation rule published April 30, 2004 (69 FR 23858) as amended June 18, 2004 (69 FR 34080), included the following actions for compact areas: deferred the effective date of nonattainment designation for 14 compact areas until September 30, 2005; detailed the progress compact areas had made toward completing their milestones; described the actions required for compact areas in order to remain eligible for a deferred effective date for a nonattainment designation; detailed EPA's schedule for taking further action to determine whether to further defer the effective date of nonattainment designations; and described the consequences for compact areas that do not meet a milestone.[1]

On June 8, 2005 (70 FR 33409), we proposed to extend the deferred effective date for those same 14 areas from September 30, 2005 to December 31, 2006, and provided an update on the progress the compact areas had been making.

A. What progress are compact areas making toward completing their milestones?

Since the April 2004 designations, two EAC areas that were designated attainment for the 8-hour ozone NAAQS have withdrawn from the compact process.[2]

In this section, we describe the status of the Early Action Compact areas' progress toward meeting their milestones. In general, the remaining 29 compact areas have made progress toward timely completion of their milestones. A compiled list of local measures is found on EPA's website for compact areas at: *http://www.epa.gov/ttn/naaqs/ozone/eac/*. By December 31, 2004, all States with compacts were required to submit to EPA State Implementation Plan (SIP) revisions with locally adopted measures which if

[1] Out of 31 active compact areas, 17 were meeting the 8-hour ozone NAAQS at the time of designation in April 2004 and were designated attainment with an effective date of June 15,2004. This final rule only addresses the 14 areas that were designated in the April 2004 rule as nonattainment with a deferred effective date of September 30, 2005.

[2] Haywood and Putnam Counties, TN decided to withdraw from the compact arrangement.

approved by EPA, are federally enforceable. Notices for each of the proposed SIP revisions were published in the **Federal Register** by the respective EPA Regional Office. For each of the 14 EAC areas with a deferred nonattainment designation date of September 30, 2005, EPA has taken final action approving the SIP revisions as meeting the EAC Protocol and EPA's EAC regulations at 40 CFR 81.300 as indicated in Table 1.

TABLE 1. REGIONAL OFFICES ISSUING FEDERAL REGISTER NOTICES ON EARLY ACTION COMPACT SIP REVISIONS

Regional Offices	States	Date SIP Revision Signed
Makeba Morris, Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187, (215) 814–2187	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	August 9, 2005
Richard A. Schutt, Chief, Regulatory Development Section, EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, 12th Floor, Atlanta, GA 30303, (404) 562–9033	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee	August 15, 2005
Rebecca Weber, Associate Director, Air Programs, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–6656	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	August 12, 2005
Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6005	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming	August 2, 2005

B. What is today's final action for compact areas?

Today, we are extending the deferred effective date of the nonattainment designation for 14 compact areas. In final rulemaking actions taken by the EPA regional offices, as indicated in Table 1, we have concluded that these 14 areas have met all required compact milestones including the December 31, 2004 submission. Because these areas have met these milestones, they are eligible for a further deferral of their nonattainment designation for the 8-hour ozone NAAQS. See 40 CFR 81.300(e)(4)(ii). We are further deferring until December 31, 2006 the effective date of the 8-hour ozone nonattainment designation for the compact area counties listed in Table 2 and are revising 40 CFR part 81 to reflect this extension.

TABLE 2. COMPACT AREAS WHICH QUALIFY FOR A DEFERRED EFFECTIVE DATE OF DECEMBER 31, 2006

NOTE: NAME OF DESIGNATED 8-HOUR OZONE NONATTAINMENT AREA IS IN PARENTHESES.

State	Compact Area (Designated Area)	Counties with designation deferred to December 31, 2006	Counties which are part of compacts and are designated unclassifiable/attainment
EPA Region 3			
VA	Northern Shenandoah Valley Region (Frederick County, VA), adjacent to Washington, DC–MD–VA	Winchester City Frederick County	
VA	Roanoke Area (Roanoke, VA)	Roanoke County Botetourt County Roanoke City Salem City	
MD	Washington County (Washington County Hagerstown, MD), adjacent to Washington, DC–MD–VA	Washington County	
WV	The Eastern Pan Handle Region (Berkeley & Jefferson Counties, WV), Martinsburg area	Berkeley County Jefferson County	
EPA Region 4			
NC	Unifour (Hickory–Morganton–Lenoir, NC)	Catawba County Alexander County Burke County (part) Caldwell County (part)	

TABLE 2. COMPACT AREAS WHICH QUALIFY FOR A DEFERRED EFFECTIVE DATE OF DECEMBER 31, 2006—Continued

NOTE: NAME OF DESIGNATED 8-HOUR OZONE NONATTAINMENT AREA IS IN PARENTHESES.

State	Compact Area (Designated Area)	Counties with designation deferred to December 31, 2006	Counties which are part of compacts and are designated unclassifiable/attainment
NC	Triad (Greensboro–Winston–Salem–High Point, NC)	Randolph County Forsyth County Davie County Alamance County Caswell County Davidson County Guilford County Rockingham County	Surry County Yadkin County Stokes County
NC	Cumberland County (Fayetteville, NC)	Cumberland County	
SC	Appalachian – A (Greenville–Spartanburg–Anderson, SC)	Spartanburg County Greenville County Anderson County	Cherokee County Pickens County Oconee County
SC	Central Midlands – I (Columbia area)	Richland County (part) Lexington County (part)	Newberry County Fairfield County
TN/GA	Chattanooga (Chattanooga, TN–GA)	Hamilton County,TN Meigs County, TN Catoosa County, GA	Marion County, TN Walker County, GA
TN	Nashville (Nashville, TN)	Davidson County Rutherford County Williamson County Wilson County Sumner County	Robertson County Cheatham County Dickson County
TN	Johnson City–Kingsport–Bristol Area (TN portion only)	Sullivan Co, TN Hawkins County, TN	Washington Co, TN Unicoi County, TN Carter County, TN Johnson County, TN
EPA Region 6			
TX	San Antonio	Bexar County Comal County Guadalupe County	Wilson County
EPA Region 8			
CO	Denver (Denver–Boulder–Greeley–Ft. Collins–Love, CO)	Denver County Boulder County (includes part of Rocky Mtn Nat. Park) Jefferson County Douglas County Broomfield Adams County Arapahoe County Larimer County (part) Weld County (part)	

C. What is EPA's schedule for taking further action to further defer the effective date of nonattainment designation for compact areas?

Following promulgation of this extension, we would propose and as appropriate, promulgate a further extension of the deferred effective date until April 15, 2008, for those areas that continue to meet all compact milestones through December 31, 2006. No later than April 15, 2008, we will determine whether the compact areas that received a deferred effective date of April 15, 2008 have attained the 8-hour ozone NAAQS by December 31, 2007, and have met all compact milestones. If the area has not attained the standard, the nonattainment designation will take effect. If the compact area has attained the standard, EPA will designate the area as attainment. Any compact area that has not attained the NAAQS and thus has an effective nonattainment designation will be subject to the full planning requirements of title I, part D of the CAA, and the area will be required to submit a revised attainment demonstration SIP within 1 year of the effective date of designation.

D. What comments did EPA receive on the June 8, 2005 proposal to extend the deferral of the effective date of the nonattainment designations for 14 Early Action Compact areas?

We received a number of comments on the proposed rule to extend the

deferred effective date of the nonattainment designations for 14 Early Action Compact areas to December 31, 2006. We have responded to the significant comments in this section. There are additional comments to which we do not respond in this notice; however, all comments and responses are included in the docket for this rulemaking (OAR–2003–0090).

Comment: Several commenters expressed support for the compact process, the goal of clean air sooner, the incentives and flexibility the program provides for encouraging early reductions of ozone-forming pollution, and the deferred effective date of nonattainment designation. However, a number of commenters opposed the Early Action Compact program. Several of these commenters expressed concern about various legal aspects of the program, primarily the deferral of the effective date of the nonattainment designation for these areas. Although some of these commenters were supportive of the goal of proactively addressing the public health concerns associated with ozone pollution, the commenters state that the program is not authorized by the CAA. All of these commenters indicated that EPA lacks authority under the CAA to defer the effective date of a nonattainment designation. In addition, these commenters state that EPA lacks authority to enter into Early Action Compacts with areas and lacks authority to allow areas to be relieved of obligations under title I, part D of the CAA while these areas are violating the 8-hour ozone standard or are designated nonattainment for that standard. One comment submitted by several groups attached comments that the commenters had submitted on EPA's December 16, 2003, proposed rule to defer the nonattainment designation for EAC areas that had met the EAC milestones.

Response: We have determined that the compact program, as designed, gives local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard. The participating communities are serious in their commitment and have made good progress implementing State and local measures for controlling emissions from local sources earlier than the CAA would otherwise require. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental and citizens groups, a number of these communities are, for the first time, cooperating on a regional basis to solve environmental problems that affect the health and welfare of their citizens. People living in these areas realize reductions in pollution levels sooner and will enjoy the health benefits of cleaner air sooner than might otherwise occur. With respect to the commenter who attached comments that were submitted on EPA's initial proposal to defer the effective date of a nonattainment designation of EAC areas meeting compact milestones, we refer back to our response to those comments in the April 2004 designation rule (69 FR 23858).

Comment: One commenter disagreed with.....''EPA's assessment that the proposed rule does not constitute a ''significant regulatory action'' (see 70 FR 33412)''..... The commenter.....''believes that condition 4 of that finding has been met (raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.)''

Response: The Office of Management and Budget which has responsibility for implementing Executive Order 12866, has determined that the June 8, 2005 proposed rule (70 FR 33409) is not a significant regulatory action.

Comment: One commenter also had several very specific comments on the contents of the South Carolina SIP related to such items as maintenance and growth tracking, need to show satisfactory progress, air quality protection and growth review.

Response: A detailed response to these comments is included in the Response to Comments document for this rulemaking which is in the docket (OAR–2003–0090).

III. Statutory and Executive Order Reviews

This action finalizes the extension of the deferred effective date of the nonattainment designation for 14 compact areas until December 30, 2006.

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. This final rule does not require the collection of any information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) a small

business that is a small industrial entity as defined in 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 rule 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. Rather, this rule would extend the deferred effective date of the nonattainment designation for areas that implement control measures and achieve emissions reductions earlier than otherwise required by the CAA in order to attain the 8-hour ozone NAAQS.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost–benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this 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 1 year. In this final rule, EPA is deferring the effective date of nonattainment designations for certain areas that have entered into compacts with us. Thus, today's final rulemaking is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This 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. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This final rule would not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have ''Tribal implications'' as specified in Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time or has participated in a compact.

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

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not a 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 Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress,

through OMB, explanations when the Agency decides not to use available and applicable VCS.

This final rule does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

The EPA will encourage States that have compact areas to consider the use of such standards, where appropriate, in the development of their SIPs.

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

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that this final rule should not raise any environmental justice issues. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS. The level is designed to be protective with an adequate margin of safety.

K. 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. The 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 September 28, 2005.

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by October 28, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA Section 307(b)(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control

Authority: 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: August 16, 2005.

Stephen L. Johnson,

Administrator.

■ 40 CFR Part 81 is amended as follows:

PART 81 – [Amended]

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C – Section 107 Attainment Status Designations

■ 2. Section 81.300 is amended by revising paragraphs (e)(3)(i) and (e)(3)(ii)(B) and (C) to read as follows:

§ 81.300 Scope.

* * * * *

(e) * * *

(3) * * *

(i) *General*. Notwithstanding clauses (i) through (iv) of section 107(d)(1)(B) of the Clean Air Act (42 U.S.C. 7407(d)(1)(B)), the Administrator shall defer until December 31, 2006 the effective date of a nonattainment designation of any area subject to a compact that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the 8-hour ozone national ambient air quality standard if the Administrator determines that the area subject to a compact has met the requirements in paragraphs (e)(2)(i) through (iii) of this section.

(ii) * * *

(B) Prior to expiration of the deferred effective date on December 31, 2006, if the Administrator determines that an area or the State subject to a compact has not met either requirement in paragraphs (e)(2)(iv) and (v) of this section, the nonattainment designation shall become effective as of the deferred effective date, unless EPA takes affirmative rulemaking action to further extend the deadline.

(C) If the Administrator determines that an area subject to a compact and/or State has not met any requirement in paragraphs (e)(2)(iv) through (vi) of this section, the nonattainment designation shall become effective as of the deferred effective date, unless EPA takes affirmative rulemaking action to further extend the deadline.

* * * * *

■ 3. In §81.306, the table entitled ''Colorado–Ozone (8-Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.306 Colorado.

* * * * *

Colorado Ozone (8-Hour Standard)

* * * * * * *

[2] Early Action Compact Area, effective date deferred until December 31, 2006.

* * * * *

■ 4. In §81.311, the table entitled ''Georgia–Ozone (8-Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.311 Georgia.

* * * * *

Georgia Ozone (8-Hour Standard)

* * * * * * *

[2] Early Action Compact Area, effective date deferred until December 31, 2006.

* * * * *

■ 5. In §81.321, the table entitled ''Maryland–Ozone (8-Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.321 Maryland.

* * * * *

Maryland Ozone (8-Hour Standard)

* * * * * * *

[2] Early Action Compact Area, effective date deferred until December 31, 2006.

* * * * *

■ 6. In §81.334, the table entitled ''North Carolina–Ozone (8-Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.334 North Carolina.

* * * * *

North Carolina Ozone (8-Hour Standard)

* * * * * * *

[2] Early Action Compact Area, effective date deferred until December 31, 2006.

* * * * *

■ 7. In §81.341, the table entitled ''South Carolina–Ozone (8-Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.341 South Carolina.

* * * * *

South Carolina Ozone (8-Hour Standard)

* * * * * * *

[2] Early Action Compact Area, effective date deferred until December 31, 2006.

* * * * *

■ 8. In §81.343, the table entitled ''Tennessee–Ozone (8-Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.343 Tennessee.

* * * * *

Tennessee Ozone (8-Hour Standard)

* * * * * * *

[2] Early Action Compact Area, effective date deferred until December 31, 2006.

* * * * *

■ 9. In §81.344, the table entitled ''Texas–Ozone (8-Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.344 Texas.

* * * * *

Texas Ozone (8-Hour Standard)

* * * * * * *

[2] Early Action Compact Area, effective date deferred until December 31, 2006.

* * * * *

■ 10. In §81.347, the table entitled ''Virginia–Ozone (8-Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.347 Virginia.

* * * * *

Virginia Ozone (8-Hour Standard)

* * * * * * *

[2] Early Action Compact Area, effective date deferred until December 31, 2006.

* * * * *

■ 11. In §81.349, the table entitled ''West Virginia–Ozone (8-Hour Standard)'' is amended by revising footnote 2 to read as follows:

§ 81.349 West Virgina.

* * * * *

West Virginia Ozone (8-Hour Standard)

* * * * * * *

[2] Early Action Compact Area, effective date deferred until December 31, 2006.

* * * * *

[FR Doc. 05–17038 Filed 8–26–05; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 082305B]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; prohibition of retention.

SUMMARY: NMFS is prohibiting retention of yellowfin sole in the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catch of yellowfin sole in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the 2005 total allowable catch (TAC) of yellowfin sole in the BSAI has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 24, 2005, until 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 TAC of yellowfin sole in the BSAI was established as 83,883 metric tons by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) and the apportionment of the non-specified reserve to the yellowfin sole TAC on July 28, 2005 (70 FR 43644, July 28, 2005).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the yellowfin sole TAC in the BSAI has been reached. Therefore, NMFS is requiring that further catches of yellowfin sole in the BSAI be treated as a prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of yellowfin sole in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 22, 2005.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 23, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–17141 Filed 8–24–05; 2:52 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 166
Monday, August 29, 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 JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–269N]

Schedules of Controlled Substances: Placement of Embutramide Into Schedule III; Extension of Comment Period

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Drug Enforcement Administration (DEA) is extending the comment period and time to request a hearing on the **Federal Register** Notice of proposed rulemaking entitled ''Schedules of Controlled Substances: Placement of Embutramide into Schedule III'' published on July 29, 2005 (70 FR 43809).

DATES: The period for public comment that was to close on August 29, 2005, will be extended to September 28, 2005.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–269P'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative/ODL. Written comments sent via express mail should be sent to the Deputy Administrator, Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ ODL, 2401 Jefferson Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept electronic comments containing MS Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: DEA published a Notice of Proposed Rulemaking (70 FR 43809) proposing the placement of embutramide into Schedule III of the Controlled Substances Act (CSA). The proposed scheduling action is based on a scientific and medical evaluation and recommendation by the Department of Health and Human Services and an evaluation of this and other information by DEA. On August 22, 2005, DEA received a request for an extension of the period in which to comment and request a hearing. The requestor indicated that the additional time is necessary to review the scientific articles and other information cited by DEA in support of its scheduling proposal. Upon consideration of this request, a thirty day extension of the time to comment and request a hearing is granted. This allows sufficient time for interested persons to evaluate and consider all relevant information and respond accordingly. Therefore, the comment period and time to request a hearing is extended to September 28, 2005. Comments must be received by the DEA on or before this date.

Dated: August 24, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–17163 Filed 8–26–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. H023]

RIN 1218–AC18

Notice of a Regulatory Flexibility Act Review of Lead in Construction

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is conducting a review of the lead in construction standard, 29 CFR 1926.62, under Section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order 12866 on Regulatory Planning and Review. On June 6 (70 FR 32739–42), OSHA requested comments for that review, provided background and gave information on the issues. Requests have been received to extend the comment period to permit the public more time to gather and submit information. Accordingly, OSHA is extending the period.

DATES: Written comments to OSHA must be sent or postmarked by November 7, 2005.

ADDRESSES: You may submit three copies of your written comments to the OSHA Docket Office, Docket No. H023, Technical Data Center, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350. If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You do not have to send OSHA a hard copy of your faxed comments. Supplemental information such as studies and journal articles cannot be attached. Instead, three copies of each study, article, or other supplemental document must be sent to the OSHA Docket Office at the address above. These materials must clearly identify the associated comments to which they will be attached in the docket by the following information: Name of person submitting comments; date of comment submission; subject of comments; and docket number to which comments belong.

You may submit comments electronically at either of the following:

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

• *OSHA Web Site: http://ecomments.osha.gov.* Follow the instructions for submitting comments on OSHA's Web page.

Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies of the material to the OSHA Docket Office at the above address. When submitting such material to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, subject, and docket number so that the Docket Office can attach the materials to your electronic comments.

Note that security-related problems may result in significant delays in receiving comments and other materials by regular mail. Telephone the OSHA Docket Office at (202) 693–2350 for information regarding security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service.

All comments and submissions will be available for inspection and copying in the OSHA Docket Office at the address above. Most comments and submissions will be posted on OSHA's Web page (*http://www.osha.gov*). Contact the OSHA Docket Office at (202) 693–2350 for information about materials not available on the OSHA Web page and for assistance in using this Web page to locate docket submissions. Because comments sent to the docket or to OSHA's Web page are available for public inspection, the Agency cautions interested parties against including in these comments personal information, such as social security numbers and birth dates.

FOR FURTHER INFORMATION CONTACT: Joanna Dizikes Friedrich, Directorate of Evaluation and Analysis, Occupational Safety and Health Administration, Room N–3641, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 693–1939, Fax (202) 693–1641.

Authority: This document was prepared under the direction of Jonathan L. Snare, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under Section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) and Section 5 of Executive Order 12866 (59 FR 51724, October 4, 1993).

Signed at Washington, DC, this 22nd day of August, 2005.

Jonathan L. Snare,

Deputy Assistant Secretary of Labor.

[FR Doc. 05–17067 Filed 8–26–05; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–105]

RIN 1625–AA08

Special Local Regulations for Marine Events; Choptank River, Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the ''Chesapeakeman Ultra Triathlon'', an event to be held October 1, 2005 on the waters of Choptank River at Cambridge, MD. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Choptank River during the Chesapeakeman Ultra Triathlon swim.

DATES: Comments and related material must reach the Coast Guard on or before September 19, 2005.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–05–105), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In order to provide notice and an opportunity to comment before issuing an effective rule, we are providing a shorter than normal comment period. A 20-day comment period is sufficient to allow those who might be affected by this rulemaking to submit their comments because the regulations have a narrow, local application, and there will be local notifications in addition to the **Federal Register** publication such as press releases, marine information broadcasts, and the Local Notice to Mariners.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On October 1, 2005, the Columbia Triathlon Association will sponsor the ''Chesapeakeman Ultra Triathlon''. The swimming segment of the event will consist of approximately 300 swimmers competing across a 2.4-mile course along the Choptank River between the Hyatt Regency Chesapeake Bay Resort Beach and Great Marsh Park, Cambridge, Maryland. The competition will begin at the Hyatt Regency Beach. The participants will swim across to the finish line located at Great Marsh Park, swimming approximately 100 yards off shore, parallel with the shoreline. Approximately 20 support vessels will accompany the swimmers. Due to the need for vessel control during the swimming event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of

participants, support craft and other transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Choptank River between the beachfront adjacent to the Hyatt Regency Chesapeake Bay Resort and Great Marsh Park at Cambridge, Maryland. The temporary special local regulations will be in effect from 6:30 a.m. to 10:30 a.m. on October 1, 2005. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Vessel traffic may be allowed to transit the regulated area at slow speed as the swim progresses, when the Coast Guard Patrol Commander determines it is safe to do so. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This proposed 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 proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed regulation will prevent traffic from transiting a segment of the Choptank River adjacent to Cambridge, MD during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, area newspapers and local radio stations, so mariners can adjust their plans accordingly. Vessel traffic will be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit this section of the Choptank River during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period, from 6:30 a.m. to 10:30 a.m. on October 1, 2005. Vessels desiring to transit the event area will be able to transit the regulated area at slow speed as the swim progresses, when the Coast Guard Patrol Commander determines it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.** 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 proposed rule would call 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed 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)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 100.35–T05–105 to read as follows:

§ 100.35–T05–105 Choptank River, Cambridge, MD.

(a) *Regulated area.* The regulated area includes all waters of the Choptank River within 200 yards either side of a line drawn northwesterly from a point on the shoreline at latitude 38°33′45″ N, 076°02′38″ W, thence to latitude 38°35′06″ N, 076°04′42″ W, a position located at Great Marsh Park, Cambridge, MD. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all persons participating in the Chesapeakeman Ultra Triathlon swim under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course.

(d) *Effective period.* This section will be effective from 6:30 a.m. to 10:30 a.m. on October 1, 2005.

Dated: August 18, 2005.

L.L. Hereth,

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

[FR Doc. 05–17087 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AT81

Subsistence Management Regulations for Public Lands in Alaska, Subpart A

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed Rule: Notice of availability of supplemental information and reopening of the comment period.

SUMMARY: On December 8, 2004, we, the Federal Subsistence Board, published a proposed rule to revise and clarify the jurisdiction of the Federal Subsistence Management Program in coastal areas in southwestern Alaska. This rulemaking is necessary in order to exclude numerous saltwater embayments within National Wildlife Refuge boundaries that were never intended to fall under the jurisdiction of the Federal Subsistence Management Program. We are now reopening the comment period for this rulemaking action because of newly available maps of the specific embayments in southwestern Alaska to be excluded from the jurisdiction of the Federal Subsistence Management Program. If you have already commented on the proposed rule and have no additional comments to make as a result of viewing the newly available maps, then you do not need to resubmit your comment(s), as they will

be fully considered in the final determination.

DATES: We must receive your written public comments on this proposed rule no later than October 21, 2005.

ADDRESSES: Please submit comments electronically to *Subsistence@fws.gov.* See ''Viewing Documents'' and ''Public Comment'' under **SUPPLEMENTARY INFORMATION** for information about viewing the maps and electronic filing of your comments. You may also submit written comments to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

Federal Subsistence Management Regulations (50 CFR 100.3 and 36 CFR 242.3) currently specify that they apply on ''all navigable and non-navigable waters within the exterior boundaries * * *'' of the parks, refuges, forests, conservation areas, recreation areas, and Wild and Scenic Rivers. This includes, within National Wildlife Refuge boundaries, hundreds of thousands of acres of saltwater embayments that were not withdrawn prior to Statehood and thus where the current regulations exert jurisdiction. During the early interagency discussions relative to inclusion of fisheries management in the Federal Subsistence Management Program, there does not appear to have been any intention to specifically extend Federal jurisdiction to various embayments where there was no pre-Statehood withdrawal of submerged lands and waters.

On December 8, 2004, the Secretary of the Interior and the Secretary of Agriculture published a proposed rule in the **Federal Register** (69 FR 70940) that, if finalized, would revise and clarify the jurisdiction of the Federal Subsistence Management Program in coastal areas of southwestern Alaska to exclude those various embayments where there was no pre-Statehood withdrawal of submerged lands and waters. During the comment period, which closed originally on January 24, 2005, and was extended until April 1, 2005, one commenter indicated that in order to make meaningful comments, the public needed to know which specific bays would be affected and needed access to maps of the affected areas. We agree and are making maps available for review and are reopening the comment period to accept comments on the maps as well as on the proposed rule (69 FR 70940).

Areas To Be Excluded From Federal Subsistence Management Program Jurisdiction

Under the proposed rule, all of the following areas have been identified for exclusion from jurisdiction under the Federal Subsistence Management Program. Maps are now available for these areas.

Within the Alaska Peninsula or Izembek National Wildlife Refuge boundaries:

Wide Bay
Agripina Bay
Kujulik Bay
Chignik Lagoon, including Mallard Duck Bay and Schooner Bay
Mud Bay
Anchorage Bay
Lake Bay
Castle Bay
Warner Bay, including Ross Cove
Devils Bay
Kuiukta Bay, including Portage Bay, Windy Bay, Foot Bay, Fishhook Bay, and Herring Lagoon
Mitrofania Bay, including Fishrack Bay
Ivanof Bay
Boulder Bay
Fox Bay
American Bay
Albatross Anchorage
Pavlof Bay, including Canoe Bay, Jackson Lagoon, and Chinaman Lagoon
Long John Lagoon
Dushkin Lagoon
Bear Bay
Cold Bay, including Lenard Harbor, Nurse Lagoon, and Kinzarof Lagoon
Morzhovoi Bay, including Littlejohn Lagoon
Traders Cove
Bechevin Bay, including Hotsprings Bay
Herendeen Bay, including Mine Harbor
Port Moller, including Mud Bay, Right Head, and Left Head

Within Togiak National Wildlife Refuge boundaries:

Tvativak Bay
Kulukak Bay
Metervik Bay

Within the Yukon Delta National Wildlife Refuge boundaries:

Kangirlvar Bay, including Toksook Bay
Hazen Bay
Hooper Bay
Kokechik Bay

Viewing Documents

To view maps, go to the Office of Subsistence Management Web site at *http://alaska.fws.gov/asm/home.html.* If you do not have access to the internet, you may contact the Office of Subsistence Management at the address and phone number shown at **FOR FURTHER INFORMATION CONTACT** and we will send the maps to you.

Public Comment

Electronic filing of comments (preferred method): Please submit electronic comments and other data to *Subsistence@fws.gov.* Please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

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. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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.

William Knauer drafted this document under the guidance of Thomas H. Boyd of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Greg Bos, Carl Jack, and Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Pat Petrivelli, and Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, Alaska Regional Office, USDA-Forest Service provided additional guidance.

Dated: July 25, 2005.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: July 27, 2005.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 05–17080 Filed 8–26–05; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FHWA–97–2267 Formerly MC 96–4]

RIN 2126–AA05

Physical Qualification of Drivers; Vision Standard

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); withdrawal.

SUMMARY: FMCSA (formerly the Federal Highway Administration's Office of Motor Carriers) withdraws its 1992 advance notice of proposed rulemaking (ANPRM) on the vision standard for commercial motor vehicle drivers in interstate commerce. The agency sought comment on whether it should revise its driver qualification requirements relating to the vision standard, including visual acuity, field of vision and color perception. After reviewing the public comments received in response to the ANPRM, the agency believes there is insufficient data to support moving forward with a proposal to change the vision standard at this time. FMCSA has long term plans to reevaluate all of its commercial driver health standards and guidelines and will review the current vision standard at that time.

DATES: The ANPRM with request for comments published on February 28, 1992, is withdrawn effective immediately.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division (MC–PSP), (202) 366–4001, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Federal Motor Carrier Safety Administration (FMCSA) is authorized by statute to establish minimum qualification requirements for drivers of commercial motor vehicles (CMVs) in interstate commerce. This authority was originally granted to the Interstate Commerce Commission (ICC) in the Motor Carrier Act of 1935,[1] and then transferred to the U.S. Department of Transportation in 1966 when the Department was created.[2]

In 1984,[3] Congress further directed the Secretary to establish minimum safety standards to ensure ''the physical condition of operators of commercial motor vehicles is adequate to enable them to operate such vehicles safely * * *.''

In several of the congressional committee reports for the Americans with Disabilities Act of 1990 (ADA),[4] Congress expressly stated that while it expected persons who wish to drive CMVs to meet Federal Highway Administration (FHWA) minimum physical qualification standards, it expected FHWA to review its standards in light of the ADA within 2 years of its enactment.

Efforts To Reassess the Vision Standard

The agency has used considerable resources in assessing its requirements for driver vision. The principal agency initiatives were the Ketron Panel (1991), an ANPRM requesting comments on the vision standard (1992), the FHWA Vision Research Plan (1996), and the Berson Panel (1997–98). Each is discussed briefly below.

Ketron Panel. In the early 1990s, FHWA began examining the relationship between visual disorders and the performance of CMV drivers. In 1991, FHWA retained Ketron, a division of the Bionetics Corporation, to analyze this issue. The study had four objectives: (1) To assess the basis for the current vision standard, (2) to define the acceptable level of vision for CMV drivers, (3) to recommend revised vision tests if needed, and (4) to assess the risk associated with establishing objective measurements of visual acuity, field of vision (FOV), and color perception.

The Ketron Panel recommended clarifying the horizontal FOV standard in § 391.41(b)(10). FOV refers to the ability to see peripherally and measures the ability to detect the presence of an object or shape in the periphery without moving the head or eyes.

Individuals tested for FOV focus on a point directly in front of them. It could be a spot on the wall. It is referred to as the ''point of fixation.'' The individual is directed not to move his or her head or eyes at any time during the test. An object is then presented at several locations in the periphery, one at a time, at irregular intervals, and at varying angles, from the eye of the individual. The individual signals the examiner when he or she first detects the object. The various points at which the object is detected are noted, and formal measurement is made in degrees. Normal horizontal FOV in each eye is 60 degrees inward toward the nose, and 100 to 110 degrees outward toward the ear, or a total of 160 to 170 degrees.

In a rule adopted in 1952, the ICC required CMV drivers to have a horizontal FOV of at least 140 degrees.[5] Responsibility for motor carrier safety activities, including establishment of driver physical qualification standards, was transferred to the FHWA in 1966. In a 1970 final rule,[6] FHWA changed the horizontal FOV standard to 70 degrees in each eye. Other than a general statement that the physical qualification requirements for drivers were being changed based upon ''discussions with the Administration's medical advisors,'' the 1970 final rule provided no insight into why the agency changed the FOV standard from 140 degrees in each eye, to 70 degrees in each eye. The 1969 Notice of Proposed Rulemaking (NPRM)[7] did not mention a proposed FOV standard change at all.

Ketron concluded the 1971 amendment to the vision standard had misstated the appropriate minimum horizontal FOV. Ketron recommended the horizontal FOV be at least 120 degrees in each eye. However, the Ketron Report included no data indicating a driver with a horizontal FOV less than 120 degrees in each eye is at greater risk for CMV crash involvement or a link between diminished FOV and higher probability of crash involvement.

Request for Comments on the Vision Standard. On February 28, 1992, FHWA published an ANPRM[8] requesting comment on whether the vision standard for drivers should be revised. The agency believed a review of the vision standard was appropriate in light of medical, scientific, and technological advances. The ANPRM also was in response to enactment of the ADA. The agency's review of the vision standard was part of the review of CMV driver physical qualification standards recommended in several congressional committee reports accompanying the ADA. The ANPRM asked 14 specific questions on the vision standard,

[1] Motor Carrier Act of 1935 (49 U.S.C. 31502(b)).

[2] Department of Transportation Act, Sec. 6(e)(6)(C), Pub. L. 89–670, 80 Stat. 931, at 939.

[3] Motor Carrier Safety Act of 1984 (49 U.S.C. 31136(a)(3)).

[4] Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12101, Pub. L. 101–336, 104 Stat. 327).

[5] 49 CFR 191.2(b), 17 FR 4422, at 4425, May 15, 1952.

[6] ''Qualifications of Drivers of Commercial Motor Vehicles,'' 35 FR 6463, April 22, 1970, effective January 1, 1971.

[7] ''Qualifications of Drivers,'' 34 FR 9084, June 7, 1969.

[8] ''Qualifications of Drivers; Vision,'' 57 FR 6793.

including whether the current 70-degree horizontal FOV standard should remain. Readers were advised medical experts believe 120 degrees in each eye is the appropriate standard and asked to comment on the FOV standard, specifically on the effect devices such as mirrors might have on assisting persons with restricted FOV.

There were approximately 100 comments to the ANPRM. The majority of the commenters discussed concerns about the proposed FHWA Federal vision exemption program, as well as key issues and research related to monocular vision and visual acuity testing.

A small group of commenters focused specifically on field of vision. Three commenters were physicians who directly addressed discrepancies in the FOV standards. Other commenters included two State agencies, several safety advocate organizations, the American Trucking Associations and the American Optometric Association. This group of commenters focused on the inadequacy of the FOV measurement, but no commenter offered data or relevant information to support changing this standard.

FHWA Vision Research Plan. FHWA initiated a program to develop a vision research plan resulting in a complete list of visual performance parameters serving as the basis for a new CMV driver vision standard. In 1995, Star Mountain, Inc., under contract to the agency, conducted a literature review on this issue. FHWA also consulted with a panel of medical and technical experts to obtain their views on the design of the research plan.

On June 5, 1996,[9] FHWA requested public comment on its proposed vision research plan. On August 9, 1996, the agency held a public hearing on the subject in Chicago. FHWA evaluated the oral testimony and written comments and concluded the best course of action was to postpone vision research. First, it was generally agreed development of predictive vision tests would require substantial agency resources. Furthermore, validation of the tests could require using driving simulators, whose scientific validity was highly uncertain. FHWA also concluded it would need a large number of drivers to validate the new vision tests.

Berson Panel. In September 1997, FHWA contracted with the Beth Israel Deaconess Medical Center in Boston to establish a panel of medical experts to develop medically-based recommendations for amending the current vision standard. The agency directed the panel to assess the FHWA vision standard and to make recommendations for changes, with specific limits to the scope of the panel's work:

- Recommendations must ensure drivers operating CMVs are physically qualified.
- Recommendations must be consistent with national policy objectives expressed in the ADA and the Rehabilitation Act of 1973,[10] as amended.
- Recommendations must be based on the most current technology in visual assessment.
- Recommendations should include any screening protocols found reliable for the examination of drivers.
- The panel must rely upon sound medical judgment concerning the demands placed on the eyes of drivers as they operate CMVs on a daily basis.

The Berson Panel endorsed the Ketron Panel recommendation to change the horizontal FOV standard from 70 degrees in each eye to at least 120 degrees in each eye. The Berson experts agreed the 70-degree FOV standard is insufficient. They cited the unique visual demands placed upon CMV drivers while stopping, accelerating, changing lanes, and responding to signage. The Berson experts believed the poor maneuverability of the typical CMV and the potential for severe injury and extensive property damage in a CMV crash justify a more stringent vision standard. Nevertheless, like the Ketron Panel Report, the Berson Report included no data indicating a driver with a horizontal FOV less than 120 degrees in each eye is at greater risk for CMV crash involvement or a link between diminished FOV and higher probability of crash involvement.

Withdrawal of Proposal

Although considerable resources have been expended on assessing the vision standard in general and the FOV provision in particular, FMCSA believes there are insufficient crash data to support initiating an FOV rulemaking at this time. It is clear 70 degrees horizontal FOV represents only a portion of the ''normal'' FOV for most individuals. However, there are no data concerning the relationship between a specific horizontal FOV value(s) and crash causation. There also are no data available to help identify the minimum horizontal FOV necessary to safely operate a CMV. Therefore, FMCSA is withdrawing its ANPRM dated February 28, 1992, on the vision standard for CMV drivers.

FMCSA has a long-term plan of reevaluating CMV driver health and wellness issues, including physical qualifications, medical advisory criteria, and safety research and policy. The agency plans to review the horizontal FOV standard under that initiative.

Issued on: August 22, 2005.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 05–17102 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–EX–P

[9] ''Proposed Research Plan on Vision Standard,'' 61 FR 28547, June 5, 1996.

[10] Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 355, September 26, 1973) (29 U.S.C. 681 *et seq.*).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2005–21649]

RIN 2127–AI53

Federal Motor Vehicle Safety Standards; Rearview Mirrors

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of termination of rulemaking.

SUMMARY: On September 5, 2000, AM General Corporation submitted a petition for rulemaking seeking to amend the Federal motor vehicle safety standard for rearview mirrors to permit certain vehicles with a gross vehicle weight rating (GVWR) of more than 4,536 kilograms (kg) (10,000 pounds) to be equipped with passenger-side convex mirrors. The standard currently requires vehicles in that weight class to be equipped with mirrors of unit magnification in that location. The agency granted the petition on May 23, 2001 and began to gather data to evaluate the request, including information obtained from a January 22, 2003 Request for Comments. Based on analysis of the available data, NHTSA is terminating this rulemaking proceeding, because we have determined that convex mirrors are not an adequate substitute for mirrors of unit magnification in terms of providing safety benefits associated with allowing the driver to better judge the distance and speed of oncoming vehicles, particularly during lane change maneuvers.

FOR FURTHER INFORMATION CONTACT: Mr. John Lee, Office of Crash Avoidance Standards, NVS–123, National Highway

Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone number is: (202) 366–2720. Fax: (202) 366–7002. For legal issues: Eric Stas, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone number is: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

On September 5, 2000, AM General Corporation (AM General) submitted a petition for rulemaking [1] requesting that NHTSA amend Federal Motor Vehicle Safety Standard (FMVSS) No. 111, *Rearview Mirrors*, to allow manufacturers the option of installing a convex, passenger-side rearview mirror on certain light trucks with a GVWR of more than 4,536 kg (10,000 pounds). Specifically, AM General's petition stated that: (1) The mirror should be at least 323 cm^2 in area; (2) it should comply with the convex mirror requirements in FMVSS No. 111 S5.4, and (3) the overall length of the vehicle should be less than 508 cm. FMVSS No. 111 currently requires each multipurpose passenger vehicle (MPV) and truck with a GVWR of more that 4,536 kg (10,000 pounds) and less than 11,340 kg (25,000 pounds) to be equipped with outside mirrors of unit magnification (commonly referred to as ''flat mirrors''), each with not less than 323 cm^2 of reflective surface (*See* S7.1). The following discussion outlines the reasoning presented in AM General's petition, our analysis of the available information, and the basis for our termination of this rulemaking proceeding.

By way of background, AM General manufactures the Hummer H1, which is a four-wheel-drive vehicle with a GVWR of 4,672 kg (10,300 pounds) to 5,488 kg (12,099 pounds) that was originally designed for the military but which is now being sold for commercial use. Because the Hummer H1 has a GVWR that is greater than 4,536 kg (10,000 pounds), FMVSS No. 111 S7.1 requires it to have a passenger-side mirror of unit magnification with a reflective area of not less than 323 cm^2. However, the petitioner stated that a significant number of Hummer H1 owners are affixing small, convex mirrors to their flat passenger-side mirrors in order to provide a better rearward field of view, and AM General has received numerous requests from these owners to install a full-sized convex mirror like those offered on similarly-sized light trucks. Since the Hummer H1 is roughly the same size as some other full-size light trucks (albeit of greater weight), AM General does not believe that a rational basis exists for the standard to preclude utilization of a convex rearview mirrors on SUVs like the Hummer H1 although its GVWR is greater than 4,536 kg (10,000 pounds).[2]

AM General further argued that in 1975, when FMVSS No. 111 was amended to require passenger-side mirrors of unit magnification on vehicles of over 4,536 kg (10,000 pounds) GVWR (40 FR 33825 (August 12, 1975)), there were not any vehicles in use that were comparable to the Hummer H1. The petitioner stated that because the Hummer's interior rearview mirror admittedly does not provide an adequate rearward view, it has found that drivers tend to rely heavily on the vehicle's outside mirrors. According to AM General, this increases the importance of having a wider field of view in the outside mirrors, even if greater distortion results.

The petitioner also argued that the rulemaking history of FMVSS No. 111 supports, or at least would permit, its requested change. According to the petitioner, in its 1975 rulemaking, the agency's rationale for requiring passenger-side mirrors of unit magnification in this context was that a driver of a large vehicle needs an undistorted view when moving in reverse and that these larger vehicles did not typically have an interior mirror of unit magnification to aid in judging distance. AM General stated that although the agency's reasoning primarily pertained to vehicle size, in the final rule, the agency decided to link vehicle size to weight, stating that vehicles over 4,536 kg (10,000 pounds) GVWR needed special mirror systems ''suited to their large size.'' (39 FR 15143, 15144 (May 1, 1974))

AM General also argued that in the notice of proposed rulemaking (NPRM) that preceded the 1975 final rule (39 FR 15143, 15144 (May 1, 1974)), the agency stated, ''[i]f the vehicle resembles a passenger car with regard to its rearward visibility potential, the manufacturer will be free to equip it with a passenger car-type mirror system.'' AM General further cited the rationale that the agency used in the preamble to the 1982 final rule allowing convex mirrors on light vehicles, which indicated that the main safety benefit of these mirrors is that they provide ''an expanded field of view of the right, rear quadrant area adjacent to the vehicle, thus reducing the need of the driver to turn around to view that area directly.'' (47 FR 38698, 38699 (Sept. 2, 1982).) According to AM General, the primary consideration for mirror selection should be size, not weight; therefore, because the Hummer H1 has a size similar to many MPVs, installation of passenger-side convex mirrors should be permissible.

Although AM General did not provide a safety benefit study, it stated that it is not aware of any studies or data suggesting that its recommended amendment would adversely impact motor vehicle safety. Moreover, AM General stated that several countries already have similar requirements.[3]

The agency granted the petition on May 23, 2001 and began to gather data to evaluate the merits of its requested change. To this end, on January 22, 2003, the agency published a Request for Comments on this petition and other related issues related to mirrors (68 FR 2993). (The Request for Comments and comments submitted pursuant to that request may be found in Docket No. NHTSA–2002–12347.) The notice also discussed past and on going mirror research for possible future regulatory requirements. All individuals who commented on the AM General petition supported the option of installing convex mirrors for vehicles with a GVWR of greater than 4,536 kg (10,000 pounds). However, the Alliance of Automobile Manufacturers (Alliance) and Ford Motor Company (Ford) stated that for very long vehicles, a planar mirror may be needed for certain loading dock and other off-road backing maneuvers.

II. Reason for Termination

The agency is terminating this rulemaking proceeding for the following reasons. Despite public commenters' expressions of support for a convex mirror option for the vehicles in question, the agency remains concerned about the difficulties that drivers may encounter in correctly judging distance and speed of approaching traffic if the vehicle is only equipped with a convex

[1] Docket No. NHTSA–2000–7073–13.

[2] AM General submitted specifications on a number of light trucks for comparative purposes. The intention was to demonstrate that although the GVWR of the Hummer H1 is substantially greater than many full-size SUVs and pick-up trucks, it is comparable in size to those vehicles.

[3] As examples, the petitioner cited the following regulations. ECE Regulation No. 46, June 1997, permits a wide-angle, exterior rearview mirror on vehicles with a GVWR that is less than 7,500 kg (16,535 pounds). Canadian Standard No. 111 allows vehicles with a GVWR of greater than 4,536 kg (10,000 pounds) to have a passenger-side convex mirror, as long as it is at least 323 cm^2 in area. Australian Design Rule 14/02 allows vehicles to have a passenger-side convex mirror if the reflective surface area is equal to or greater than that of a mirror of unit magnification that meets its field-of-view requirements.

mirror. As stated in the Request for Comments, although convex mirrors are permitted on the passenger side of light vehicles, the agency still receives complaints from consumers about these mirrors. ''There have been other problems associated with the use of convex mirrors that include double vision, eyestrain, and nausea.'' (68 FR 2993, 2994 (January 22, 2003))

In response to the Request for Comments, most commenters stated that length should be the only relevant factor in determining the use of a mirror of unit magnification or a convex mirror in a vehicle and that NHTSA should undertake further study to determine the maximum allowable length for a given mirror type. However, the Alliance and Ford stated that an outside passenger-side mirror of unit magnification may be needed for certain loading dock and other off-road backing maneuvers. Thus, if a vehicle such as the Hummer H1 were to tow a long object such as a trailer, the view provided by the interior mirror of unit magnification may be obstructed. In such situations, an outside passenger-side mirror of unit magnification would be beneficial during lane change and backing maneuvers.

As to the argument that certain foreign jurisdictions permit use of passenger-side convex mirrors on vehicles with similar weights, we do not find that argument compelling, because the existence of such regulations does not resolve our previously-discussed concerns regarding the efficacy of such mirrors in judging speed and distance of approaching vehicles. As noted above, we have concerns that the Hummer H1's interior mirror of unit magnification may be obstructed during certain applications. The agency has long held the position that in general MPVs, trucks, and buses with a GVWR of 4,536 kg (10,000 pounds) or more must be equipped with exterior mirrors of unit magnification with a reflective surface of not less than 323 cm^2. Our analysis of the available information does not support a change to that requirement for the exterior mirror on the side of the vehicle opposite of the driver. Some vehicles of similar size to the Hummer H1 have no rear windows, are not equipped with an interior mirror, but are equipped to tow a trailer. Therefore, it would be beneficial for these vehicles to have a flat exterior mirror on the side of the vehicle opposite the driver for use during lane change and backing maneuvers.

In accordance with 49 CFR part 552, this completes the agency's technical review of the petition for rulemaking. For the reasons discussed above, NHTSA has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of the rulemaking proceeding. Therefore, the agency has decided to terminate the present rulemaking action.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: August 23, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–17066 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050819225–5225–01; I.D. 080505A]

RIN 0648–AS59

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast. The Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and its implementing regulations require NMFS to set an annual harvest guideline for Pacific mackerel based on the formula in the FMP. The intended effect of this action is to propose allowable harvest levels for Pacific mackerel off the Pacific coast.

DATES: Comments must be received by September 13, 2005.

ADDRESSES: You may submit comments on this proposed rule identified by I.D. 080505A by any of the following methods:

- E-mail: *0648–AS59.SWR@noaa.gov*. Include I.D. 080505A in the subject line of the message.
- Federal e-Rulemaking portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: (562) 980–4047.
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

The report *Assessment of the Pacific Mackerel (Scomber japonicus) Stock for U.S. Management in the 2005–2006 Season*, and an economic analysis may be obtained at the address above.

FOR FURTHER INFORMATION CONTACT: Tonya L. Wick, Southwest Region, NMFS, (562) 980–4036.

SUPPLEMENTARY INFORMATION: The FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into the categories of actively managed and monitored. Harvest guidelines of actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) CPS Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews reports from the Team, Subpanel, and SSC, then, after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure are published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific mackerel season begins on July 1 of each year and ends on June 30 of the following year.

The Team meeting took place at the office of the NMFS, Southwest Fisheries Science Center, in La Jolla, California, on May 18, 2005. The Subpanel and SSC meetings took place in conjunction with the June 13–18, 2005, Council meeting in Foster City, California.

The size of the Pacific mackerel population was estimated using a newly modified version of the integrated stock assessment model called Age-structured Assessment Program (ASAP). Using this new ASAP model was recommended by the Coastal Pelagic Species Stock Assessment Review panel meeting held on June 16, 2004, in La Jolla, California. This new ASAP model replaces the old modified virtual population analysis stock assessment model used in previous years. ASAP is a flexible

forward-simulation that allows for the efficient and reliable estimation of a large number of parameters. ASAP uses parameters such as fishery dependent (commercial and recreational landings) and fishery independent (e.g., aerial spotter survey index, commercial passenger fishing vessel logbook catch per unit effort, and California Cooperative Oceanic Fisheries Investigations surveys) data to obtain annual estimates of Pacific mackerel abundance, year-class strength, and age-specific fishing mortality for 1983 through 2004. The biomass was calculated through the end of 2004, then estimated for the fishing season that begins July 1, 2005, based on (1) the number of Pacific mackerel estimated to comprise each year class at the beginning of 2005, (2) modeled estimates of fishing mortality during 2004, (3) assumptions for natural and fishing mortality through the first half of 2005, and (4) estimates of age-specific growth. Based on this approach, the biomass for July 1, 2005, would be 101,147 metric tons (mt). Applying the formula in the FMP results in a harvest guideline of 17,419 mt, which is 32 percent greater than last year but similar to low harvest guidelines of recent years.

The formula in the FMP uses the following factors to determine the harvest guideline:

1. *The biomass of Pacific mackerel.* For 2005, this estimate is 101,147 mt.

2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established the cutoff level at 18,200 mt. The cutoff is subtracted from the biomass, leaving 82,947 mt.

3. *The portion of the Pacific mackerel biomass that is in U.S. waters.* This estimate is 70 percent, based on the historical average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters. Therefore, the harvestable biomass in U.S. waters is 70 percent of 82,947 mt, that is, 58,063 mt.

4. *The harvest fraction.* This is the percentage of the biomass above 18,200 mt that may be harvested. The FMP established the harvest fraction at 30 percent. The harvest fraction is multiplied by the harvestable biomass in U.S. waters (58,063 mt), which results in 17,419 mt.

Information on the fishery and the stock assessment are found in the report *Assessment of the Pacific Mackerel (Scomber japonicus) Stock for U.S. Management in the 2005–2006 Season*, which may be obtained at the address above (see **ADDRESSES**).

For the last three years, the fishing industry has recommended dividing the harvest guideline into a directed fishery and an incidental fishery, reserving a portion of the harvest guideline for incidental harvest in the Pacific sardine fishery so that the Pacific sardine fishery is not hindered by a prohibition on the harvest of Pacific mackerel. At its meeting on June 15, 2005, the Subpanel recommended for the 2005–2006 fishing season that a directed fishery of 13,419 mt and an incidental fishery of 4,000 mt be implemented. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS would become effective if the 13,419 mt of the directed fishery is harvested. The Subpanel also recommended to allow up to 1 mt of Pacific mackerel to be landed during the incidental fishery without the requirement to land any other CPS. This provision provides Pacific mackerel for small specialty markets. The Subpanel recommended that an inseason review of the Pacific mackerel season be completed for the March 2006 Council meeting, with the possibility of reopening the directed fishery as an automatic action if sufficient amount of the harvest guideline reserved for the incidental fishery remains unharvested. At that time the NMFS Southwest Regional Administrator will review the fishery to assess whether there is a sufficient amount of the unharvested portion of the harvest guideline (i.e., anything in excess of the amount needed to support incidental harvest) to warrant a reopening of the directed fishery. As of June 7, 2005, approximately 4,808 mt of Pacific mackerel had been landed; therefore, an incidental fishery was not necessary.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The purpose of the proposed rule is to implement the 2005–2006 harvest guideline for Pacific mackerel in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an annual harvest guideline for Pacific mackerel based on the formula in the FMP. The harvest guideline is derived by a formula applied to the current biomass estimate. The formula leaves little latitude for discretion except when errors are found in the calculations or in the data. There is no alternative to the harvest guideline as specified; there is no discretion to use an adjusted formula. Further, there is only one stock assessment method recommended for use to establish the adult biomass used to derive the harvest guideline. No changes are proposed in the regulations governing the fishery.

The harvest guideline would apply to approximately 90 small fishing vessels coastwide that fish for Pacific mackerel within U.S. waters. This proposed rule has an equal effect on all of these small entities and therefore will impact a substantial number of these small entities in the same manner. These vessels fish for small pelagic fish (Pacific sardine, Pacific mackerel) all year and for market squid in the winter, and may harvest tuna in the U.S. EEZ seasonally when they are available, usually late in the summer and early fall. These vessels are considered small business entities by the U.S. Small Business Administration since the vessels do not have annual receipts in excess of $3.5 million. Therefore, there would be no economic impacts resulting from disproportionality between small and large vessels under the proposed action.

There is no limit on the amount of catch that any single vessel can take; the harvest guideline is available until fully utilized by the entire CPS fleet. The small entities that would be affected by the proposed action are the vessels that compose the West Coast CPS finish fleet. The profitability of these vessels as a result of this proposed rule is based on the average Pacific mackerel ex-vessel price per mt. NMFS used average Pacific mackerel average ex-vessel price per mt to conduct a profitability analysis because it lacked cost data for the harvesting operations of CPS finfish vessels.

For the July 1, 2004, through June 30, 2005, fishing year, the harvest guideline was set at 13,268 mt with an estimated ex-vessel value of $2.1 million based. As of June 7, 2005, only 4,808 mt had been harvested, valued at an estimated $741 thousand, reflecting the relatively poor market conditions for Pacific mackerel relative to other species of interest (e.g., Pacific sardine, market squid) and the lack of market orders.

The 2005–2006 Pacific mackerel season began on July 1, 2005, and ends on June 30, 2006, or when the harvest guideline is caught and the fishery is closed. The proposed harvest guideline for the 2005–2006 fishing season is 17,419 mt, which is higher than the 13,268 mt harvest guideline for the prior year. If the fleet were to take the entire 2005–2006 harvest guideline, and assuming no change in the coastwide average ex-vessel price per mt of $154.35, the potential revenue to the fleet could be approximately $2.69 million. However, if there is no change in market conditions (i.e., a lack in demand for Pacific mackerel product), it is not likely that the full harvest guideline will be taken in the 2005–2006 fishing year in which case profits may be lower than if the entire harvest guideline were to be landed. Additionally, the full harvest guideline may not be taken because of the lack of availability of the Pacific mackerel resource in the area of the fishery. The potential lack of availability of

the resource to the fishing fleet could also cause reduction in the amount of Pacific mackerel that could be harvested in which case would reduce total revenue to the fleet. NMFS does not anticipate a drop in profitability based on this rule as, if anything, it allows fishermen to harvest more than last year. Based on the disproportionality and profitability analysis above, NMFS does not believe that there will be a significant economic impact to a substantial number of these small entities. As a result, an Initial Regulatory Flexibility Analysis is not required and none has been prepared.

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

Dated: August 24, 2005.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–17142 Filed 8–26–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 166

Monday, August 29, 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

August 23, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Agricultural Research Service

Title: National Agricultural Library Information Needs Assessment.

OMB Control Number: 0518–NEW.

Summary of Collection: Executive Order 12802 seeks to establish high quality customer service standards within all federal agencies that provide significant services directly to the public. The National Agricultural Library (NAL) is one such agency, mandated by the Farm Bill of 1990 to serve as the primary agricultural resource of the United States. NAL is called upon to provide agricultural information and information products to a variety of customers. NAL is seeking to issue a survey to identify the customers it already serves, as well as those it should be serving; to determine the kind and quality of services they want; and to assess their level of satisfaction with existing services.

Need and Use of the Information: The information collected from the survey will be used to evaluate institutional performance, reform management practices, and reallocate resources to services in line with customer needs and expectations. If the information is not collected, NAL will be hindered from advancing its mandate to provide accurate, timely and easily accessible agricultural information to its customers.

Description of Respondents: Individuals or households; Not-for-profit institutions; Business or other for-profit; Farms; Federal Government; State, Local and Tribal Government.

Number of Respondents: 122,200.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 5,359.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–17056 Filed 8–26–05; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 24, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Food and Nutrition Service

Title: Uniform Grant Application for Non-Entitlement Discretionary Grants.

OMB Control Number: 0584–0512.

Summary of Collection: The Food and Nutrition Service (FNS) has establish a process for a uniform grant application usable for all of the non-entitlement discretionary grant programs to collect the information from grant applicants needed to evaluate and rank applicants and protect the integrity of the grantee selection process. All FNS discretionary grant programs will be eligible, but not required to use the uniform grant

application package. The authorities for these grants vary. The term ''grant'' in this submission refers only to non-entitlement discretionary grants or cooperative agreements. Discretionary grant announcements include a number of information collections, including a ''project description'' (program narrative), budget information, assurances, and certifications. An optional faith-based survey form may also be included for the purpose of helping the Federal government determine the organizational nature of the applicant population, specifically when dealing with nonprofit organizations. The requirements for the program narrative statement are based on the requirements for program narrative statements described in section 1.c(5) of OMB Circular A–102 and OMB A–110 (as implemented at USDA 7 CFR Part 3015, 3016 and 3019); and will apply to all types of grantees—State and local governments, non-profit organizations, institutions of higher education, hospitals, and for profit organizations.

Need and Use of the Information: As the primary users of the information collected, FNS will review, evaluate and approve grant and cooperative agreement applications. The uniform grant application package will include general information and instructions; a checklist; a requirements for the program narrative statement describing how the grant objectives will be reached as well as a description of the budget; the Standard Form 424 series that requests basic information, budget information and assurances regarding Nonprocurement Debarment and Suspension, the Drug-Free Workplace rule, general assurances, a lobbying certification, and an optional survey form to ensure equal opportunity for applicants. Without this information, FNS will not have adequate data to select appropriate grantees or evaluate which grants should be continued.

Description of Respondents: State, Local, or Tribal Government; Business or other for-profit; Not for profit institutions.

Number of Respondents: 353.

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

Total Burden Hours: 32,380.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–17116 Filed 8–26–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 24, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Rural Utilities Service

Title: 7 CFR 1726, Electric System Construction Policies and Procedures—Electric.

OMB Control Number: 0572–0107.

Summary of Collection: The Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended, (RE Act) in Sec. 4 (7 U.S.C. 904) authorizes and empowers the Administrator of the Rural Utilities Service (RUS) to make loans in the several States and Territories of the United States for rural electrification and the furnishing and improving of electric energy to persons in rural areas. These loans are for a term of up to 35 years and are secured by a first mortgage on the borrower's electric system. In the interest of protecting loan security and accomplishing the statutory objective of a sound program of rural electrification, Section 4 of the RE Act further requires that RUS make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower, will be repaid in full within the time agreed. RUS will collect information using various RUS forms.

Need and Use of the Information: RUS will collect information to implement certain provisions of the RUS standard form of loan documents regarding the borrower's purchase of materials and equipment and the construction of its electric system by contract or force account. The information will be used by RUS electric borrowers and their contractors and by RUS. If standard forms were not used, borrowers would need to prepare their own documents at a significant expense; and each document submitted by a borrower would require extensive and costly review by both RUS and the Office of the General Counsel.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1,210.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 101.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–17117 Filed 8–26–05; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, September 8, 2005 at the Lassen National Forest Supervisors Office, 2550 Riverside Drive, Susanville, California for a

business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on September 8 will begin at 9 a.m. The Committee will review and approve May meeting minutes and current agenda, have an overview of BLM Proposal on the Bizz Johnson Trail, Special Weed Action Team (SWAT) Proposal Update/ Accomplishments, review monthly Monitoring Reports and discuss the development of an Annual Monitoring Report, Committee appointments, reappointments and elect a chair, announce the new grant cycle rollout & season meeting schedule. Time will also be set aside for public comments at the beginning and end of the meeting.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official Robert Andrews at (530) 257–4188; or Public Affairs Officer, Heidi Perry, at (530) 252–6604.

Laurie Tippin,

Forest Supervisor.

[FR Doc. 05–17062 Filed 8–26–05; 8:45 am]

BILLING CODE 4310–55–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the New Mexico State Advisory Committee will convene at 1 p.m. (MDT) and adjourn at 2 p.m. (MDT), Monday, August 29, 2005. The purpose of the conference call is to provide a status report on the Commission and regional programs, have planning for the public release of the Farmington report, *The Farmington Report: Civil Rights for Native Americans 30 Years Later*, and future planning.

This conference call is available to the public through the following call-in number: 1–800–473–6927; call-in ID#: 4344–5550. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting John F. Dulles, Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049), by 3 p.m. (MDT) on Thursday, August 25, 2005.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington DC, August 18, 2005.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 05–17130 Filed 8–26–05; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet September 13, 2005, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advised the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Regulations update.
4. Wassenaar Statement of Understanding on Military End-uses.
5. Update on MT controls.
6. Country policy update: India.
7. Country policy updates: Libya, Iraq.
8. Update on Country Group revision project.
9. Update on proposed rule on deemed export related regulatory requirements (RIN 0694–AD29).
10. Update on Automated Export System.
11. Export Enforcement update.
12. Update on De Minimis controls.
13. Update on Encryption controls.
14. Work group reports.

Closed Session

15. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov*.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on August 16, 2005, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public. For more information, call Yvette Springer at (202) 482–4814.

Dated: August 23, 2005.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 05–17120 Filed 8–26–05; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests

to revoke one antidumping duty order in part and one countervailing duty order in part.

EFFECTIVE DATE: August 29, 2005.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Individually Quick Frozen (''IQF'') Red Raspberries from Chile and the countervailing duty order on Certain Pasta from Italy.

Initiation of Reviews:

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than July 31, 2006.

Antidumping Duty Proceedings	Period to be Reviewed
BRAZIL: Silicon Metal.	
A–351–806	7/1/04 - 6/30/05
Camargo Correa Metais S.A..	
Ligas de Aluminio S.A..	
Companhia Ferroligas de Minas Gerais - Minasligas.	
CHILE: Individual Quick Frozen Red Raspberries.	
A–337–806	7/1/04 - 6/30/05
Agricola Nova Ltda..	
Agroindustria Sagrada Familia Ltda..	
Agroindustria Frisac Ltda..	
Agroindustria Frutos del Maipo Ltda..	
Agroindustria Merco Trading Ltda..	
Agross S.A..	
Alimentos Naturales Vitalfoods, S.A..	
Alimentos Prometeo Ltda..	
Alimentos y Frutos S.A..	
Andesur S.A..	
Angloeuro Comercio Exterior S.A..	
Armijo Carrasco, Claudio del Carmen.	
Arvalan S.A..	
Bajo Cero S.A..	
Certified Pure Ingredients (Chile) Inc. y Cia., Ltda..	
Chile Andes Foods S.A..	
Comercializadora Agricola Berries & Fruit Ltda..	
Comercializadora de Alimentos del Sur Ltda..	
Comercio y Servicios S.A..	
Copefrut S.A..	
C y C Group S.A..	
Exportaciones Meyer S.A..	
Multifrigo Valparaiso S.A..	
Exportadora Pentagro S.A..	
Exportadora South Berries Ltda..	
Exportadora Fragaria Ltda..	
Agroindustria Framberry Ltd..	
Francisco Nancuvilu Punsin.	
Frigorifico Ditzler Ltda..	
Frutas de Guaico S.A..	
Fruticola Olmue S.A..	
Fruticola Viconto S.A..	
Hassler Monckeberg S.A..	
Hortifrut S.A..	
Interagro Comercio Y Ganado S.A..	
Kugar Export Ltda. (Kulenkampff & Gardeweg Ltda.).	
Maria Teresa Ubilla Alarcon.	
Prima Agrotrading Ltda..	
Procesadora y Exportadora de Frutas y Vegetales Ltda..	
Santiago Comercio Exterior Exportaciones Ltda..	
Sociedad Agricola Valle del Laja Ltda..	
Sociedad Agroindustrial Valle Frio Ltda..	
Sociedad Comercial C y C, S.A..	
Sociedad Exportaciones Antiquina Ltda..	
Sociedad San Ernesto Ltda..	
Surfrut.	
Terra Natur S.A..	
Terrazas Export S.A..	
Valles Andinos S.A..	
Vital Berry Marketing S.A..	
Rio Teno S.A..	
Nevada Export S.A..	
Agrofruta Chilena Ltda..	

Antidumping Duty Proceedings	Period to be Reviewed
Agroindustrias San Francisco Ltda..	
Agroindustria Niquen Ltda..	
Agroindustria y Frigorifico M y M Ltda..	
Agrocomercial Las Tinajas Ltda..	
GERMANY: Stainless Steel Sheet and Strip in Coils.	
A–428–825	7/1/04 - 6/30/05
ThyssenKrupp Nirosta GmbH.	
ThyssenKrupp Nirosta Prazisionsband GmbH.	
Thyssen Krupp VDM GmbH.	
INDIA: Polyethylene Terephthalate (PET) Film.	
A–533–824	7/1/04 - 6/30/05
Garware Polyester Limited.	
Jindal Poly Films Limited of India (formerly Jindal Polyester Limited).	
MTZ Polyfilms, Ltd..	
Polyplex Corporation Ltd..	
ITALY: Certain Pasta.	
A–475–818	7/1/04 - 6/30/05
Atar S.r.L..	
Barilla Alimentare, S.p.a..	
Corticella Molini e Pastifici S.p.a./Pasta Combattenti S.p.a..	
Italpasta, S.p.A..	
Moline e Pastificio Tomasello S.r.L..	
Pastificio Antonio Pallante, S.r.L./Industrie Alimentari Molisane, S.r.L./. Vitelli Foods, LLC.	
Pastificio Laporta S.a.s..	
ITALY: Stainless Steel Sheet and Strip in Coils.	
A–475–824	7/1/04 - 6/30/05
Thyssen Krupp Acciai Speciali Terni S.p.A..	
JAPAN: Stainless Steel Sheet and Strip in Coils.	
A–588–845	7/1/04 - 6/30/05
Kawasaki Steel Corporation (and its alleged sucessor–in-interest JFE Steel Corp.).	
MEXICO: Stainless Steel Sheet and Strip in Coils.	
A–201–822	7/1/04 - 6/30/05
ThyssenKrupp Mexinox S.A. de C.V..	
SOUTH KOREA: Stainless Steel Sheet and Strip in Coils.	
A–580–834	7/1/04 - 6/30/05
BNG Steel Co., Ltd. (formerly Sammi Steel Co.).	
Boorim Corporation.	
Dae Kyung Corporation.	
DaiYang Metal Co., Ltd..	
Dine Trading Co., Ltd..	
Dosko Co., Ltd..	
Hyundai Corporation.	
NIC International Co., Ltd..	
Pohang Iron & Steel Co., Ltd..	
Samkyung Corporation.	
Sammi Corporation.	
Sun Woo Tech Company.	
TAIWAN: Stainless Steel Sheet and Strip in Coils.	
A–583–831	7/1/04 - 6/30/05
Ta Chen Stainless Pipe Co., Ltd..	
Yieh United Steel Corporation.	
Chia Far Industrial Factory Co., Ltd..	
China Steel Corporation.	
Emerdex Stainless Flat–Rolled Products, Inc..	
Emerdex Stainless Steel, Inc..	
Emerdex Group.	
Tang Eng Iron Works.	
PFP Taiwan Co., Ltd..	
Yieh Loong Enterprise Co., Ltd.(aka Chung Hung Steel Co., Ltd.).	
Yieh Trading Corp..	
Goang Jau Shing Enterprise Co., Ltd..	
Yieh Mau Corp..	
Chien Shing Stainless Co..	
Chain Chon Industrial Co., Ltd..	
THAILAND: Canned Pineapple.	
A–549–813	7/1/04 - 6/30/05
Tropical Food Industries Co., Ltd..	
The Prachuab Fruit Canning Company.	
Vita Food Factory (1989) Co., Ltd..	
THAILAND: Furfuryl Alcohol.	
A–549–812	7/1/04 - 6/30/05
Indorama Chemicals Thailand Ltd..	
THE PEOPLE'S REPUBLIC OF CHINA: Persulfates.	

Antidumping Duty Proceedings	Period to be Reviewed
A–570–847	7/1/04 - 6/30/05
Shanghai AJ Import and Export Corporation.	
Degussa–AJ (Shanghai) Initiators Co., Ltd..	
THE PEOPLE'S REPUBLIC OF CHINA: Tapered Roller Bearings.	
A–570–601	6/1/04 - 5/31/05
Wanxiang Group Company.	
Countervailing Duty Proceedings.	
ITALY: Certain Pasta.	
C–475–819	1/1/04 - 12/31/04
Atar S.r.L..	
Corticella Molini e Pastifici S.p.a./Pasta Combattenti S.p.a..	
Moline e Pastificio Tomasello S.r.L..	
Pastificio Antonio Pallante, S.r.L..	
Pastificio Laporta S.a.s..	
Pasta Lensi S.r.l..	
INDIA: Polyethylene Terephthalate (PET) Film.	
C–533–825	1/1/04 - 12/31/04
Garware Polyester Limited.	
Jindal Poly Films Limited of India (formerly Jindal Polyester Limited).	
Polyplex Corporation Ltd..	
TURKEY: Pasta.	
C–489–806	1/1/04 - 12/31/04
Gidasa Sabanci Gida Sanayi ve Ticaret A.S..	
Suspension Agreements.	
None..	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with FAG Italia v.United States, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: August 23, 2005.

Holly A. Kuga,

Senior Office Director AD/CVD Operations, Office 4 for Import Adminstration.

[FR Doc. E5–4717 Filed 8–26–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway: Preliminary Results of the Full Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 2, 2005, the Department of Commerce (the Department) initiated a sunset review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway (Salmon from Norway) (70 FR 5415) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On the basis of substantive responses filed by domestic and respondent interested parties, the Department determined to conduct a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the *Preliminary Results of Review* section of this notice.

EFFECTIVE DATE: August 29, 2005.

FOR FURTHER INFORMATION CONTACT: Zev Primor, AC/CVD Operations, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC , 20230; telephone: 202–482–4114.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this order is the species Atlantic salmon (Salmon Salar) marketed as specified herein; the order excludes all other species of salmon: Danube salmon, Chinook (also called ''king'' or ''quinnat''), Coho (''silver''), Sockeye (''redfish'' or ''blueback''), Humpback (''pink'') and Chum (''dog''). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice (''chilled''). Excluded from the subject merchandise are fillets, steaks and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon was classifiable under item number 110.2045 of the Tariff Schedules of the United States Annotated (''TSUSA''). Atlantic salmon is currently provided for under the Harmonized Tariff Schedules of the United States (''HTSUS'') subheadings 0302.12.0003 and 0302.12.0004.[1] The HTSUS subheadings are provided for convenience and customs purposes. The

[1] Prior to January 1, 1990, Atlantic salmon was provided for under item numbers 0302.0060.8 and 0302.12.0065.3 of HTSUS (56 FR 7678, February 25, 1991). In 1992, the HTSUS subheading for Atlantic salmon was revised. Specifically, the HTSUS subheading of 0302.12.00.02.9 was divided into two different subheadings: 0302.12.0003 (Farmed) and 0302.12.0004 (Not farmed).

written description remains dispositive as to the scope of the product coverage.

There have been no scope rulings for the subject order. There was one changed circumstances determination in which the Department affirmed that Kinn Salmon A/S was the successor-in-interest to Skaarfish Group A/S. *See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstance Antidumping Duty Administrative Review*, 64 FR 9979 (March 1, 1999).

Background

On February 2, 2005, the Department published its notice of initiation of the second sunset review of the antidumping duty order on Salmon from Norway, in accordance with section 751(c) of the Act. *See Notice of Initiation of Five-Year (''Sunset'') Reviews*, 70 FR 5415 (February 2, 2005). The Department received Notices of Intent to Participate on behalf of Heritage Salmon Company, Inc., and Atlantic Salmon of Maine (collectively, ''petitioners''), within the applicable deadline specified in section 351.218(d)(1)(i) of the Department's regulations. Petitioners claimed interested party status pursuant to sections 771(9)(C) and (D) of the Act. The Department received a complete substantive response to the notice of initiation from petitioners within the 30-day deadline specified in the Department's regulations under section 351.218(d)(3)(i). The Department also received a complete substantive response from respondent interested parties, The Norwegian Seafood Federation (NSF) and The Norwegian Seafood Association (NSA) (collectively ''respondents''), within the applicable deadline specified in section 351.218(d)(3)(i). On March 9, 2005, the Department received rebuttal comments from respondents. Additionally, on February 25, 2005 and March 9, 2005, petitioners filed comments challenging the standing of the respondents in this proceeding. On March 4, March 11 and March 16, 2005, respondents rebutted petitioners' comments pertaining to their standing and filed comments challenging petitioners' standing in this proceeding.

Section 351.218(e)(1)(ii)(A) of the Department's regulations provides that the Secretary normally will conclude that respondents have provided an adequate response to a notice of initiation where it receives complete substantive responses from respondent interested parties accounting on average for more than 50 percent, by volume, or value, if appropriate, of the total exports of the subject merchandise to the United States over the five calender years preceding the year of publication of the notice of initiation. On April 13, 2005, the Department determined that respondents have standing in the instant review and also that their filings constituted an adequate response to the notice of initiation. In accordance with section 351.218(e)(2)(i) of the Department's regulations, the Department determined to conduct a full sunset review of this antidumping duty order. *See* Memorandum from the Sunset Team to Ronald Lorentzen, Acting Director, Office of Policy. On April 25, 2005, all parties submitted comments pertaining to the Department's April 13, 2005, decision to grant respondents standing in this proceeding and to accept respondents' filings as adequate.

On May 13, 2005, the Department determined that the sunset review of the antidumping duty order on Salmon from Norway is extraordinarily complicated, and, therefore, we extended the time limit for completion of the final results of this review until not later than December 29, 2005, in accordance with section 751(c)(5)(B) of the Act. *See Extension of Time Limits for Preliminary Results and Final Results of the Full Sunset Review of the Antidumping Duty Order on Fresh and Chilled Atlantic Salmon from Norway and the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Fresh and Chilled Atlantic Salmon from Norway*, 70 FR 25537 (May 13, 2005).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the ''Issues and Preliminary Decision Memorandum'' (Preliminary Decision Memorandum) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated August 22, 2005, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Preliminary Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Web at *www.ita.doc.gov/import_admin/records/frn/* under the heading ''Norway 2005.'' The paper copy and electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine that revocation of the antidumping duty order on Salmon from Norway would be likely to lead to continuation or recurrence of dumping at the following weighted-average margins:

Manufacturer/Exporter	Margin (percent)
Salmonor A/S	18.39
Sea Star International	24.61
Skaarfish Mowi A/S	15.65
Fremstad Group A/S	21.51
Domstein and Co.	31.81
Saga A/S	26.55
Chr. Bjelland	19.96
Hallvard Leroy A/S	31.81
All Others	23.80

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

This notice serves as the preliminary reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Dated: August 22, 2005.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4718 Filed 8–26–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–827]

Certain Cut-To-Length Plate From Italy: Notice of Amended Final Determination Pursuant to Final Court Decision and Partial Revocation of Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 26, 2004, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department) third remand determination of the *Final*

Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon Steel Plate from Italy, 64 FR 73244 (December 29, 1999) (*Italian Plate*). *See ILVA Lamiere e Tubi S.p.A. v. United States, Court No. 00–03–00127*, Slip. Op. 04–29 (CIT, March 26, 2004) (*ILVA v. United States*). The Department appealed this decision to the United States Court of Appeals for the Federal Circuit (Federal Circuit). On February 10, 2005, the Federal Circuit affirmed the CIT's decision in a non-precedential judgment. *See Ilva Lamiere E Tubi S.r.L. and Ilva S.p.A. v. United States*, Court No. 04–1415 (February 10, 2005). Because all litigation in this matter has concluded, the Department is issuing the amended final determination in *Italian Plate* in accordance with the CIT's decision.

EFFECTIVE DATE: April 16, 2004

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–6071.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1999, the Department published its affirmative countervailing duty determination in *Italian Plate*. The Department published related countervailing duty orders on February 10, 2000. *See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-to-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000) (*CVD Order*). ILVA S.p.A. and ILVA Lamieri e Tubi S.r.l. (collectively, ILVA) challenged this determination before the CIT arguing, in relevant part, that the Department misapplied its change-in-ownership methodology. On August 30, 2000, the CIT granted the Department's request for a voluntary remand, and remanded the *Italian Plate* proceeding to the Department with instructions to: ''Issue a determination consistent with United States law, interpreted pursuant to all relevant authority, including the decision of the Court of Appeals for the Federal Circuit in *Delverde, S.r.l. v. United States*, 202 F.3d 1360 (Fed. Cir. 2000).'' *ILVA v. United States*, Court No. 00–03–00127 (CIT August 30, 2000). The Department issued its remand results on December 28, 2000. *See Final Results of Redetermination Pursuant to Court Remand: ILVA Lamiere e Tubi S.p.A. v. United States Remand Order*, Court No. 00–03–00127 (CIT, August 30, 2000) (December 28, 2000) (*Remand Determination I*).

On March 29, 2002, the CIT remanded the *Italian Plate* proceeding to the Department, and ordered the Department to reexamine the facts of the proceeding pursuant to its instructions. *See ILVA v. United States*, Court No. 00–03–00127, Slip. Op. 02–32 (CIT, March 29, 2002). Though the Department noted its objections, it complied with the court's instructions and issued its second redetermination on July 2, 2002. *See Final Results of Second Redetermination Pursuant to Remand Order, ILVA Lamiere e Tubi S.r.L. and ILVA S.p.A. v. United States*, Court No. 00–03–00127, Remand Order (CIT, March 29, 2002) (July 2, 2002) (*Remand Determination II*).

On July 29, 2003, the CIT affirmed the Department's second redetermination in part, and remanded it in part. *See ILVA v. United States*, Slip. Op. 03–97 (CIT, July 29, 2003). The CIT affirmed the Department's application of the court-ordered methodology, but remanded the proceeding, ordering the Department to resolve one issue, still outstanding, pursuant to the CIT's prescribed methodology. Though the Department noted its objections, it complied with the court's instructions and issued its third redetermination on August 28, 2003. *See Results of Redetermination Pursuant to Court Remand: ILVA Lamiere e Tubi S.r.L. and ILVA S.p.A.*, Court No. 00–03–00127, Remand Order (CIT, July 29, 2003) (August 28, 2003) (*Remand Determination III*). As a result of the methodologies established in Remand Determinations I through III, the Department calculated a cash deposit rate of 2.45 percent for ILVA. *Id.*

In a contemporaneous but separate proceeding, on November 17, 2003, the Department published a *Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Measures Concerning Certain Steel Products from the European Communities*, 68 FR 64858 (November 17, 2003) (*Section 129 Implementation*). The Department implemented, among other determinations, its Section 129 determination with respect to the *CVD Order*. The result was a revised cash deposit rate of 3.44 percent *ad valorem* for ILVA/ILT, which is consistent with the revised rate in *Redetermination II* pursuant to the CIT's ordered methodology. The effective date of the revised cash deposit rate pursuant to the *Section 129 Implementation* was November 7, 2003. The Department instructed U.S. Customs and Border Protection (CBP) to collect cash deposits of estimated countervailing duties in the percentage of 3.44 percent *ad valorem* of the f.o.b. invoice price on all shipments of subject merchandise from ILVA/ILT entered or withdrawn from warehouse, for consumption on or after November 7, 2003.

On March 26, 2004, the CIT sustained the Department's third redetermination in all respects, and thus affirmed the Department's calculated cash deposit rate of 2.45 percent. On April 16, 2004, the Department, consistent with the decision of the Federal Circuit in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990), notified the public that the *ILVA v. United States* decision, along with the CIT's earlier opinions and orders in this case, were ''not in harmony'' with the Department's original results. *See Certain Cut-to-Length Plate from Italy: Notice of Decision of the Court of International Trade*, 69 FR 20600 (April 16, 2004) (*Timken Notice*). The *Timken Notice* continued the suspension of liquidation, and further informed that if the CIT's decision was not appealed, or if appealed, and upheld, the Department would publish amended final countervailing duty results. *Id.*

The Department subsequently appealed the case to the Federal Circuit on May 24, 2004. On February 10, 2005, the Federal Circuit issued a non-precedential decision affirming the CIT's decision in *ILVA v. United States* sustaining the results of *Redetermination III*. Because there is now a final and conclusive decision in the court proceeding, we are amending the final determination and establishing the revised countervailing duty rate of 2.45 percent, effective as of April 16, 2004, the publication date of the *Timken Notice*.

Amended Final Determination

Because there is now a final and conclusive decision in the court proceeding, we are amending the final determination to reflect the results of *Remand Determination III, i.e.*, that the countervailable subsidy rate for ILVA/ILT is 2.45 percent *ad valorem*, effective as of April 16, 2004, the publication date of the *Timken Notice*. Accordingly, we will instruct CBP to collect cash deposits of estimated countervailing duties in the percentage of 2.45 percent of the f.o.b. invoice price on all shipments of subject merchandise from ILVA/ILT entered or withdrawn from warehouse, for consumption, on or after April 16, 2004.

Further, we will instruct CBP to assess countervailing duties at 3.44 percent *ad valorem* on all shipments of the subject merchandise from ILVA/ILT, entered, or withdrawn from warehouse, for consumption, on or after January 1, 2004, through April 15, 2004. We will instruct CBP to assess countervailing duties at 2.45 percent *ad valorem* on all shipments of the subject merchandise from ILVA/ILT, entered, or withdrawn from warehouse, for consumption, on or after April 16, 2004 through December 31, 2004.[1]

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

[1] All entries prior to January 1, 2004, have been liquidated.

Dated: August 22, 2005.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4716 Filed 8–26–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–39]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–39 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 23, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 AUG 2005
In reply refer to:
I-05/008128

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-39, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Singapore for defense articles and services estimated to cost $741 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-39

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Singapore

(ii) Total Estimated Value:

Major Defense Equipment*	$257 million
Other	$484 million
TOTAL	$741 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:

Major Defense Equipment (MDE)

200 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM);
6 AMRAAM Captive Air Training (CAT) Missiles;
50 MK-82 GBU-38 Joint Direct Attack Munitions (JDAM) with BLU-111 Warhead;
44 AN/AVS-9(V) Night Vision Goggles;
24 Link 16 Multifunctional Information Distribution System/Low Volume Terminals (Fighter Data Link Terminals);
30 AGM-154A-1 Joint Standoff Weapons (JSOW) with BLU-111;
30 AGM-154C JSOW;
200 AIM-9X SIDEWINDER Missiles;
24 AIM-9X SIDEWINDER CAT and Dummy Missiles;

Non- MDE

300,000 20mm Practice Round Cartridges;
4 MK-82 and MK-84 Bomb Practice trainers;
100 KMU-556 GBU-31 Joint Direct Attack Munitions (JDAM) Tail Kit Assemblies; and

* as defined in Section 47(6) of the Arms Export Control Act.

testing; integration; devices; containers; common munitions built-in test reprogramming equipment; mission data production system; drones; technical coordination program; engine component management program; aircrew safety equipment; foreign liaison officer administration support; training equipment; repair and return services; technical assistance; missile planning system; technical orders; electronic warfare systems and support; weapons trainers; weapon system reports; missile containers; spare and repair parts; supply support; integration and technical services; support and test equipment; personnel training and training equipment; software support; publications and technical documentation; training; life support and survival equipment; studies and surveys; ground support equipment; training missiles; U.S. Government and contractor technical and logistics personnel services and other related elements of logistics support.

(iv) Military Department: Air Force (SAA and NCW)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 22 AUG 2005

POLICY JUSTIFICATION (U)

Singapore – Weapons and Logistics/Training Support for F-15 Aircraft

The Government of Singapore has requested a possible sale of

Major Defense Equipment (MDE)

200 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM);
6 AMRAAM Captive Air Training (CAT) Missiles;
50 MK-82 GBU-38 Joint Direct Attack Munitions (JDAM) w/BLU-111 warhead;
44 AN/AVS-9(V) Night Vision Goggles;
24 Link 16 Multifunctional Information Distribution System/Low Volume Terminals (Fighter Data Link Terminals);
30 AGM-154A-1 Joint Standoff Weapons w/BLU-111;
30 AGM-154C Joint Standoff Weapons;
200 AIM-9X SIDEWINDER Missiles;
24 AIM-9X SIDEWINDER CAT and Dummy Missiles;

Non- MDE

300,000 20mm Practice Round Cartridges;
100 KMU-556 GBU-31 JDAM Tail Kit Assemblies;
4 MK-82 and MK-84 Bomb Practice trainers; and

testing; integration; devices, containers; common munitions built-in test reprogramming equipment; mission data production system; drones; technical coordination program; engine component management program; aircrew safety equipment; foreign liaison officer administration support; training equipment; repair and return services; technical assistance; missile planning system; technical orders; electronic warfare systems and support; weapons trainers; weapon system reports; missile container; spare and repair parts; supply support; integration and technical services; spares; support and test equipment; personnel training and training equipment; software support; publications and technical documentation; training; life support and survival equipment; studies and surveys; ground support equipment; training missiles; U.S. Government and contractor technical and logistics personnel services and other related elements of logistics support. The estimated cost is $741 million.

Singapore has requested a competition between U. S. contractor and foreign competitors for an aircraft program. If Singapore selects the F-15 aircraft, the aircraft and engines will be purchased commercially, for which there would be an eventual 36(c) notification of the commercial sale. This proposed sale includes the weapons and logistics support for the F-15 aircraft.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for economic progress in Southeast Asia.

This proposed sale will provide Singapore with a credible self-defense capability that will deter aggression in the region and ensure interoperability with U.S. forces for coalition operations. Current U.S. Government policy is to enhance and strengthen our relationship with Singapore and this proposed sale will bring our two militaries closer together. Other countries in the region already or will soon possess this capability. Singapore needs these missiles to modernize their defensive capability, increase interoperability with U.S. forces, and provide a viable deterrent force in protection of vital ports and waterways. Singapore will use these missiles in defense of their sovereignty, or as part of an international coalition. These missiles will significantly improve their military capability by providing an intermediate-range anti-aircraft capability. Singapore is a modern, high-tech nation that can absorb these weapons into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Raytheon Missile System Corporation of Tucson, Arizona and Boeing Integrated Defense Solutions of St. Louis. There are no known offset agreements proposed in connection with this potential sale.

There will be up to 10 U.S. Government personnel and 10 contractor representatives for two-week intervals annually to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 05-39

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Classified Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AIM-120C Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, air launched, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics. The missile employs active radar target tracking, proportional navigation guidance, and active Radio Frequency target detection. It can be launched day or night in any weather and increases pilot survivability by allowing the pilot to disengage after missile launch and engage other targets. AMRAAM capabilities include lookdown/shootdown, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high- and low-flying and maneuvering targets. The AMRAAM All Up Round (AUR) is classified Confidential, major components and subsystems range from unclassified to Confidential; and technical data and other documentation are classified up to Secret.

2. The AIM-9X SIDEWINDER missile is a supersonic, air-to-air guided missile that employs a passive infrared (IR) target acquisition system, proportional navigational guidance, a closed-loop position servo Fin Actuator Unit, and a Target Detector. It features digital technology and micro-miniature solid-state electronics. A solid-propellant Rocket Motor propels the missile. The AIM-9X is configured with an Annular Blast Fragmentation warhead controlled by an Electronic Safe-Arm Device. Jet Vane Control provides enhanced maneuverability over other variants of the AIM-9, as well as most currently fielded foreign infrared missiles, by deflecting rocket motor thrust to aid in turning. The AIM-9X AUR is Confidential; major components and subsystems range from unclassified to Confidential; and technical data and other documentation are classified up to Secret.

3. The AGM-154 Joint Standoff Weapon (JSOW) is a low cost, launch and leave, air launched standoff weapon that provides aircraft with a capability to attack well defended targets in day, night, and less-than-ideal weather conditions. The AGM-154A-1 with BLU-111 and AGM-154C missiles, including publications, documentation, operations, supply, maintenance, and training to be conveyed with this proposed sale have the highest classification level of Confidential. The AGM-154A-1 with BLU-111

and AGM-154C JSOW incorporate components, software, and technical design information that are considered sensitive. The following JSOW components being conveyed by the proposed sale that are considered sensitive and may be classified up to Confidential include:

a. global positioning system/inertial navigation system
b. imaging infrared seeker
c. operation flight program software
d. missile operational characteristics and performance data

These elements are essential to the ability of the JSOW missile to selectively engage hostile targets under a wide range of operational, tactical and environmental conditions.

4. The Joint Direct Attack Munitions (JDAM) is a guidance tail kit that converts unguided free-fall bombs into accurate, adverse weather "smart" munitions. With the addition of a new tail section that contains an inertial navigational system and a global positioning system guidance control unit, JDAM improves the accuracy of unguided, general-purpose bombs in any weather condition. JDAM can be launched from very low to very high altitudes in a dive, toss and loft, or in straight and level flight with an on-axis or off-axis delivery. JDAM enables multiple weapons to be directed against single or multiple targets on a single pass. The JDAM AUR and all of its components are unclassified, technical data for JDAM is classified up to Secret.

5. The Multifunctional Information Distribution System-Low Volume Terminal (MIDS-LVT) is an advanced Link-16 command, control, communications, and intelligence (C3I) system incorporating high-capacity, jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements. MIDS-LVT is intended to support key theater functions such as surveillance, identification, air control, weapons engagement coordination, and direction for all services and allied forces. The system will provide jamming-resistant, wide-area communications on a Link-16 network among MIDS and Joint Tactical Information Distribution System (JTIDS) equipped platforms. The MIDS/LVT and MIDS On Ship Terminal hardware, publications, performance specifications, operational capability, parameters, vulnerabilities to countermeasures, and software documentation are classified Confidential. The classified information to be provided consists of that which is necessary for the operation, maintenance, and repair (through intermediate level) of the data link terminal, installed systems, and related software.

6. The AN/AVS-9 Night Vision Goggle (NVG) is a 3rd generation aviation NVG offering higher resolution, high gain, and photo response to near infrared. Features include independent eye-span adjustment, 25-mm eye relief eyepieces which easily

accommodate eyeglasses, and a low-profile battery pack. Minus-blue filter screens glare from cockpit instrument lighting; class B filter (available with some variants) can accommodate aircraft color displays. Other features include low-distortion optics and automatic brightness control. The Night Vision Imaging System modification includes cockpit modifications to provide NVG-compatible cockpit lighting that optimizes NVG sensitivity, as well as external lighting capable of operating in a covert mode wherein only NVG-equipped personnel can see the aircraft external lighting. Hardware is Unclassified; and technical data and documentation to be provided are Unclassified.

7. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 05–17089 Filed 8–26–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–21]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (702) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–21 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 23, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 AUG 2005
In reply refer to:
I-05/004720

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-21, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Kuwait for defense articles and services estimated to cost $295 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-21

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Kuwait

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$295 million
TOTAL	$295 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: continuing logistics support, contractor maintenance, and technical services in support of the F/A-18 aircraft to include contractor engineering technical services, contractor maintenance support, avionics software, engine component improvement and spare parts, technical ground support equipment, spare and repair parts, supply support, publications and technical data, engineering change proposals, U.S. Government and contractor technical and logistics personnel services and other related elements of program support.

(iv) Military Department: Navy (GFV and GFX)

(v) Prior Related Cases, if any:
FMS case GFR - $74 million - 1APR03
FMS case GFP - $50 million - 19AUG02

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(viii) Date Report Delivered to Congress: 22 AUG 2005

as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait - Technical/Logistics Support for F-18 Aircraft

The Government of Kuwait has requested a possible sale of continuing logistics support, contractor maintenance, and technical services in support of the F/A-18 aircraft to include contractor engineering technical services, contractor maintenance support, avionics software, engine component improvement and spare parts, technical ground support equipment, spare and repair parts, supply support, publications and technical data, engineering change proposals, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $295 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The Government of Kuwait needs the contractor technical, maintenance, and logistical services to maintain the operational capabilities of its aircraft, previously procured from the United States. These contractor services will provide for a continuation of the required logistics support through CY 2011.

The contractor maintenance and training technical services will not alter the basic military balance in the region.

The principal contractors participating in this proposed sale are DYNCORP of Fort Worth, Texas; The Boeing Company of St. Louis, Missouri; and Anteon Corporation of Fairfax, Virginia. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of 50 contractor representatives in Kuwait to maintain continuity in the program support through CY 2011.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 05–17090 Filed 8–26–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Organizational Structures for Stabilization Operations will meet in open session September 2, 2005, from 1300–1700 at the Pentagon, Room 3E947, Washington, DC. The task force will address organizational structures necessary to support or conduct stability operations. At this meeting, the Defense Science Board Task Force will focus on: (1) What organizational change is needed within OSD Policy, the Joint Staff and the rest of DoD to manage implementation—that is, to ensure that the designated capabilities are created and the interagency and joint vision are followed at various DoD levels; (2) What organizational change is needed within DoD to improve our ability to conduct or support stability operations—including employing and integrating DoD capabilities with those of other Departments and Agencies, NGOs, international organizations and the private sector; (3) What should be the timing and sequence of organization change within DoD; (4) What additional staffing is required for any new or

reshaped stability operations entities in DoD; and (5) Who the right people are to staff key positions.

Members of the public who wish to attend the meeting must contact LTC Dolgoff no later than August 26, 2005, for further information about admission as seating is limited. Additionally, those who wish to make oral comments or deliver written comments should also request to be scheduled, and submit a written text of the comments by August 26, 2005, to allow time for distribution to Task Force members prior to the meeting. Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding 15 minutes. Due to critical mission requirements and the short timeframe to accomplish this review, there was insufficient time to provide timely notice required by section 10(a)(2) of the Federal Advisory Committee Act and subsection 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR 102–3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

DATES: September 2, 2005, from 1 p.m.–5 p.m.

ADDRESSES: The Pentagon, Room 3E947, Washington, DC.

FOR FURTHER INFORMATION, CONTACT: LTC Scott Dolgoff, USA, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *scott.dolgoff@osd.mil*, or via phone at (703) 571–0082.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Dated: August 23, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–17088 Filed 8–26–05; 8:45 am]

BILLING CODE 5001–06–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 September 28, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, 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, 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: August 23, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: State Plan for Assistive Technology.

Frequency: Every three years.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 56. Burden Hours: 5,040.

Abstract: States that wish to receive funds under the Assistive Technology Act of 1998, as amended, will be required to provide to RSA a State Plan for Assistive Technology (AT). The State Plan for AT requires States to describe the activities of statewide comprehensive programs that increase access to AT for individuals with disabilities, and the goals to be achieved by undertaking those activities during the three-year period covered by the plan.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2866. 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 202–245–6623. 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 Sheila Carey at her e-mail address *Sheila.Carey@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. 05–17069 Filed 8–26–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education (ED).

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 28, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information

collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 23, 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: Extension.

Title: Pre-Elementary Education Longitudinal Study (PEELS).

Frequency: Varies.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 6,757.

Burden Hours: 4,597.

Abstract: PEELS will provide the first national picture of experiences and outcomes of three to five year old children in early childhood special education. The study will inform special education policy development and support Government Performance and Results Act (GPRA) measurement and Individuals with Disabilities Education Act (IDEA) reauthorization with data from parents, service providers, and teachers.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2861. 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 Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: Early Childhood Longitudinal Study (ECLS)—Kindergarten Cohort, Eighth Grade Followup.

Frequency: One time.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 900.

Burden Hours: 375.

Abstract: Starting in the Fall and Spring of the 1998–99 school year with a cohort of kindergartners, this cohort was contacted again in the Fall and in the Spring of their first grade year and in their third grade and fifth grade years. This clearance is to conduct a field test and a full scale data collection for the eighth grade assessment and background questionnaires.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2865. 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 Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–17071 Filed 8–26–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES: Thursday, September 15, 2005.

Time: 9 a.m.–3 p.m.

ADDRESSES: The Board will meet at the Hyatt Regency Washington Hotel, 400 New Jersey Avenue, NW., Washington, DC 20001. Phone: 202–737–1234, Fax: 202–393–7927.

FOR FURTHER INFORMATION CONTACT: Dr. Leonard Dawson, Deputy Counselor, White House Initiative on Historically Black Colleges and Universities, 1990 K Street, NW., Washington, DC 20006; telephone: (202) 502–7889, fax: (202) 502–7879.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established under Executive Order 13256, dated February 12, 2002, and Executive Order 13316 dated September 17, 2003. The Board is established (a) to report to the President annually on the results of the participation of historically black colleges and universities (HBCUs) in Federal programs, including

recommendations on how to increase the private sector role, including the role of private foundations, in strengthening these institutions, with particular emphasis also given to enhancing institutional planning and development, strengthening fiscal stability and financial management, and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions; (b) to advise the President and the Secretary of Education (Secretary) on the needs of HBCUs in the areas of infrastructure, academic programs, and faculty and institutional development; (c) to advise the Secretary in the preparation of an annual Federal plan for assistance to HBCUs in increasing their capacity to participate in Federal programs; (d) to provide the President with an annual progress report on enhancing the capacity of HBCUs to serve their students; and (e) to develop, in consultation with the Department of Education and other Federal agencies, a private sector strategy to assist HBCUs.

Agenda: The purpose of the meeting is to receive and deliberate on legislative and policy issues pertinent to the Board and the nation's HBCUs and to discuss relevant issues to be addressed in the Board's multiyear annual report.

Additional Information: Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or material in alternative format) should notify ReShone Moore at (202) 502–7893, no later than Thursday, September 8, 2005. We will attempt to meet requests for accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Thursday, September 15, 2005, between 2 p.m.–3 p.m. Those members of the public interested in submitting written comments may do so at the address indicated above by Thursday, September 8, 2005.

Records are kept of all Board proceedings and are available for public inspection at the Office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006, during the hours of 8 a.m. to 5 p.m.

Margaret Spellings,

Secretary of Education, U.S. Department of Education.

[FR Doc. 05–17138 Filed 8–26–05; 8:45 am]

BILLING CODE 4001–01–M

DEPARTMENT OF ENERGY

Notice of Availability of the Environmental Assessment Supporting the Department of Energy's Application to the Department of the Interior for a Public Land Order To Withdraw Public Lands Within and Around the Caliente Rail Corridor, Nevada, From Surface Entry and New Mining Claims

AGENCY: Office of Civilian Radioactive Waste Management, U.S. Department of Energy.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability, and opportunity for public review and comment, of the environmental assessment (EA) that supports the Department of Energy's (DOE) application to the Department of the Interior, filed with the Bureau of Land Management (BLM), for a Public Land Order to withdraw public lands within and surrounding the Caliente Rail Corridor. As applied for, the withdrawal would preclude surface entry and new mining claim locations for a 20 year period.

DATES: Comments should be received by DOE no later than September 28, 2005.

ADDRESSES: Comments, or requests for copies of the draft EA, should be sent to Lee Bishop, EA Document Manager, United States Department of Energy, 1551 Hillshire Drive, Las Vegas, NV 89134. Requests for copies of the draft EA may also be made by calling 1–800–225–6972. The draft EA and electronic comment forms are available at *http://www.ocrwm.doe.gov.* Comments may also be faxed to 1–800–967–0739.

FOR FURTHER INFORMATION CONTACT: Lee Bishop, EA Document Manager, at the address above or at 1–800–225–6972.

SUPPLEMENTARY INFORMATION: A notice of proposed withdrawal was published in the **Federal Register** on December 29, 2003 (68 FR 74965–74968), stating that the Bureau of Land Management had received an application from DOE to withdraw for 20 years approximately 308,600 acres of public land from surface entry and mining locations while DOE evaluates the land for the potential construction, operation, and maintenance of a branch rail line. The rail line would be used for the transportation of spent nuclear fuel and high-level radioactive waste as provided under the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101 *et seq.*). BLM held public meetings on the application in June 2004.

In accordance with 43 CFR 2310.3–2(b)(3), DOE has prepared a draft EA to support its application, with the BLM participating as a cooperating agency. The application seeks a Public Land Order for the purpose of precluding surface entry and the location of new mining claims which could interfere with the evaluation of the land. The proposed Public Land Order would not affect existing mining claims or other activities such as grazing rights, water rights, and recreational uses.

The draft EA may be reviewed on the Internet at *http://www.ocrwm.doe.gov.* Copies of the EA may also be obtained by contacting Mr. Lee Bishop (see address above). Comments may be submitted to Mr. Bishop or through the comment form at the above website, and should be received by September 28, 2005.

Three public meetings on the draft EA will be held as follows:

Monday, September 12, 2005, 4 p.m. to 8 p.m., Longstreet Inn & Casino, Highway 373, Amargosa Valley, NV;

Tuesday, September 13, 2005, 4 p.m. to 8 p.m., Goldfield School Gymnasium, 233 Ramsey, Goldfield, NV; and

Thursday, September 15, 2005, 4 p.m. to 8 p.m., Caliente Youth Center, U.S. Highway 93, Caliente, NV.

Comments received will be considered in finalizing the EA. After the EA is finalized it will be formally submitted to the BLM. The BLM will subsequently make a recommendation to the Secretary of the Interior, who will make a final determination regarding DOE's application for a Public Land Order.

Issued in Washington, DC.

Paul M. Golan,

Principal Deputy Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 05–17143 Filed 8–26–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 15, 2005 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513, (859) 219–4001.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

5:30 p.m.
Informal Discussion
6 p.m.
Call to Order
Introductions
Review of Agenda
Approval of August Minutes
Election of Chair-Elect
6:15 p.m.
Deputy Designated Federal Officer's Comments
6:35 p.m.
Federal Coordinator's Comments
6:40 p.m.
Ex-officios' Comments
6:50 p.m.
Public Comments and Questions
7 p.m.
Task Forces/Presentations
- Waste Disposition Task Force
- Water Quality Task Force
- Long Range Strategy/Stewardship Task Force
- Community Outreach Task Force

8 p.m.
Public Comments and Questions
8:10 p.m.
Break
8:20 p.m.
Administrative Issues
- Budget Review
- Review of Workplan
- Review of Next Agenda

8:30 p.m.
Review of Action Items
8:35 p.m.
Subcommittee Reports
- Executive Committee—Chairs Meeting Templates

8:50 p.m.
Final Comments
9 p.m.
Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m., on Monday thru Friday or by writing to David Dollins, Department of Energy, Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC on August 24, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–17107 Filed 8–26–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, September 19, 2005, 8 a.m.–6 p.m., Tuesday, September 20, 2005, 8 a.m.–5 p.m.

Opportunities for public participation will be held Monday, September 19, from 12:15 to 12:30 p.m. and 5:45 to 6 p.m.; and on Tuesday, September 20, from 11:45 a.m. to 12 p.m. and 4 to 4:15 p.m. Additional time may be made available for public comment during the presentations.

These times are subject to change as the meeting progresses, depending on the extent of comment offered. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Ameritel Inn, 645 Lindsay Boulevard, Idaho Falls, ID 83402.

FOR FURTHER INFORMATION CONTACT: Shannon A. Brennan, Federal Coordinator, Department of Energy, NE-ID Idaho Operations Office, 1955 Fremont Avenue, MS–1216, Idaho Falls, ID 83401. Phone (208) 526–3993; Fax (208) 526–1926 or e-mail: *Shannon.Brennan@nuclear.energy.gov* or visit the Board's Internet home page at: *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Shannon A. Brennan for the most current agenda):

- Status of the closure of the Tank Farm—including characteristics of the Idaho tank waste, plans for cleaning and closure of the tanks, the performance assessment, the sodium bearing waste treatment plan, and plans for disposition of the sodium bearing waste
- Status of the Radioactive Waste Management Complex cleanup
- Receive a presentation addressing retrieval, treatment, and disposal of remote-handled transuranic waste, including an explanation of what it is, where it came from, and related issues

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Shannon A. Brennan at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Shannon A. Brennan, Federal

Coordinator, at the address and phone number listed above.

Issued at Washington, DC, on August 24, 2005.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–17108 Filed 8–26–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, September 26, 2005, 1 p.m.–6 p.m.

Tuesday, September 27, 2005, 8:30 a.m.–4 p.m.

ADDRESSES: Holiday Inn Coliseum at the University of South Carolina, 630 Assembly Street, Columbia, SC 29201.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, September 26, 2005

1 p.m.
Combined Committee Session.
5:15 p.m.
Adjourn.
5:15 p.m.
Executive Committee Meeting.
6 p.m.
Adjourn.

Tuesday, September 27, 2005

8:30 a.m.
Approval of Minutes, Agency Updates.
9 a.m.
Public Comment Session.
9:15 a.m.
Chair and Facilitator Update.
9:45 a.m.
Waste Management Committee Report.
11:45 a.m.
Public Comments.
12 p.m.
Lunch Break.
1 p.m.
National Nuclear Security Administration.
1:30 p.m.
Facilities Disposition & Site Remediation Committee Report.
2 p.m.
Strategic and Legacy Management Committee Report.
2:45 p.m.
Nuclear Materials Committee Report.
3:30 p.m.
Administrative Committee Report.
3:50 p.m.
Public Comments.
4 p.m.
Adjourn.

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, September 26, 2005.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC, on August 24, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–17109 Filed 8–26–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 23, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER97–2904–006.
Applicants: Lake Benton Power Partners, LLC.
Description: Lake Benton Power Partners, LLC submits it's triennial market power review in support of its market-based rate authority and request for market-based rate authority for sales of ancillary services.
Filed Date: 07/28/2005.
Accession Number: 20050801–0020.
Comment Date: 5 p.m. eastern time on Friday, September 2, 2005.

Docket Numbers: ER98–4515–003.
Applicants: Cadillac Renewable Energy LLC.
Description: Cadillac Renewable Energy LLC submits its updated market power study and an amendment to its market-based rate tariff.
Filed Date: 07/28/2005.
Accession Number: 20050804–0011.
Comment Date: 5 p.m. eastern time on Friday, September 2, 2005.

Docket Numbers: ER99–1228–004.
Applicants: Storm Lake Power Partners II, LLC.
Description: Storm Lake Power Partners II, LLC submits its triennial market power review and a request for market-based rate authority for sales of ancillary services.
Filed Date: 07/28/2005.
Accession Number: 20050801–0019.
Comment Date: 5 p.m. eastern time on Friday, September 2, 2005.

Docket Numbers: ER01–2398–010.
Applicants: Liberty Electric Power, LLC.
Description: Liberty Electric Power, LLC supplements its 7/7/05 compliance filing as amended on 7/20/05 and tenders for filing a revised tariff sheet designated as FERC Electric Tariff, First Revised Volume No. 1, Substitute Original Sheet No. 2.
Filed Date: 08/18/2005.
Accession Number: 20050822–0079.
Comment Date: 5 p.m. eastern time on Thursday, September 08, 2005.

Docket Numbers: ER02–1695–002.
Applicants: Cabazon Power Partners LLC.
Description: Cabazon Power Partners LLC submits notice of change status and motion to withdraw its qualifying status.

Filed Date: 05/17/2005.
Accession Number: 20050519–0110.
Comment Date: 5 p.m. eastern time on Friday, September 2, 2005.

Docket Numbers: ER03–715–003.
Applicants: Marina Energy, L.L.C.
Description: Marina Energy, L.L.C. submits Substitute Original Sheet No. 2 to its Original Rate Schedule No. 1, in compliance with Commission's letter order issued 7/20/05 in Docket No. ER03–715–002.
Filed Date: 08/18/2005.
Accession Number: 20050822–0081.
Comment Date: 5 p.m. eastern time on Thursday, September 08, 2005.

Docket Numbers: ER04–23–014.
Applicants: Devon Power LLC, Middletown Power LLC; Montville Power LLC; Norwalk Power LLC .
Description: Devon Power, LLC; Middletown Power LLC; Montville Power LLC; Norwalk Power LLC (collectively, NRG) submit a Revised Schedule No. 1 to the Cost-of-Service Agreement among NRG and ISO New England Inc., a refund report of the refunds made by NRG to ISO New England, and a report of the payments made by ISO New England to NRG.
Filed Date: 08/17/2005.
Accession Number: 20050822–0087.
Comment Date: 5 p.m. eastern time on Wednesday, September 07, 2005.

Docket Numbers: ER05–725–003.
Applicants: Deephaven RV Sub Fund Ltd.
Description: Deephaven RV Sub Fund Ltd. submits First Revised 3 to Rate Schedule No. 1 containing corrected language for Market Behavior Rule 2(B).
Filed Date: 08/17/2005.
Accession Number: 20050822–0078.
Comment Date: 5 p.m. eastern time on Wednesday, September 07, 2005.

Docket Numbers: ER05–810–002.
Applicants: UGI Energy Services, Inc.
Description: UGI Energy Services, Inc. submits substitute original Sheet No. 3, to its FERC Electric Tariff No. 1, in compliance with the Commission's letter order issued 7/20/05 in Docket Nos. ER05–810–000 and 001.
Filed Date: 08/16/2005.
Accession Number: 20050822–0080.
Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1009–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits notice of withdrawal of its 5/23/05 filing in Docket No. ER05–1009 of a Facilities Agreement with the City of Ames, Iowa.
Filed Date: 08/18/2005.
Accession Number: 20050818–5041.
Comment Date: 5 p.m. eastern time on Thursday, September 08, 2005.

Docket Numbers: ER05–1238–001.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits an amendment to the 7/22/05 filing of an interconnection agreement with Indianola Municipal Utilities.
Filed Date: 08/18/2005.
Accession Number: 20050822–0086.
Comment Date: 5 p.m. eastern time on Thursday, September 08, 2005.

Docket Numbers: ER05–1299–001.
Applicants: Wabash Valley Power Association, Inc.
Description: Wabash Valley Power Association, Inc. submits a correction of certain information contained in the 8/8/05 filing in Docket No. ER05–1299–001.
Filed Date: 08/18/2005.
Accession Number: 20050822–0084.
Comment Date: 5 p.m. eastern time on Thursday, September 08, 2005.

Docket Numbers: ER05–1360–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits amended and restated Harrison Interconnection and Transmission Facilities Conveyance Agreement with the Portland General Electric Company.
Filed Date: 08/18/2005.
Accession Number: 20050822–0074.
Comment Date: 5 p.m. eastern time on Thursday, September 08, 2005.

Docket Numbers: ER05–1361–000.
Applicants: Calpine Fox LLC.
Description: Calpine Fox, LLC (Fox) submits Rate Schedule No. 2, which sets forth the cost-based revenue requirements for the provision of reactive supply & voltage control from generator sources service from Fox to American Transmission Company, LLC and the Midwest Independent Transmission System Operator, Inc.
Filed Date: 08/18/2005.
Accession Number: 20050822–0075.
Comment Date: 5 p.m. eastern time on Thursday, September 08, 2005.

Docket Numbers: ER05–1362–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits an unexecuted facilities construction agreement among Prairie State Generating Company, LLC, the Midwest ISO and Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE.
Filed Date: 08/18/2005.
Accession Number: 20050822–0076.
Comment Date: 5 p.m. eastern time on Thursday, September 08, 2005.

Docket Numbers: ER05–1363–000.
Applicants: Deseret Generation & Transmission Co-operative, Inc.
Description: Deseret Generation & Transmission Co-operative, Inc. submits amendments to open access transmission, which is designated as FERC Electric Tariff, Second Revised Volume No. 2.
Filed Date: 08/18/2005.
Accession Number: 20050822–0154.
Comment Date: 5 p.m. eastern time on Thursday, September 08, 2005.

Docket Numbers: ER05–1364–000.
Applicants: Xcel Energy Operating Companies.
Description: Excel Energy Services Inc., on behalf of Northern States Power Company and Northern States Power Company (Wisconsin) submits revised tariff sheets to the Restated Agreement to Coordinate Planning and Operations and Interchange Power and Energy between Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).
Filed Date: 08/17/2005.
Accession Number: 20050822–0083.
Comment Date: 5 p.m. eastern time on Wednesday, September 07, 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. 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, 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 link 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 St. 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 *FERCOnlinSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4705 Filed 8–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2710–035–ME]

PPL Maine, LLC; Notice of Availability of Environmental Assessment

August 19, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a new license for the Orono Hydroelectric Project, located on the Stillwater Branch of the Penobscot River, in Penobscot County, Maine, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of relicensing the project and conclude that issuing a new license for the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Orono Project No. 2710'' to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact Patrick Murphy (202) 502–8755.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4703 Filed 8–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Robert D. Willis Power Rate

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of public review and comment.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), has prepared Current and Revised 2005 Power Repayment Studies that show the need for an increase in annual revenues to meet cost recovery criteria. Such increased revenues are required primarily due to significant increases in expected U.S. Army Corps of Engineers' generation investment and increases in operations and maintenance expenses at the project. The Administrator has developed a proposed Robert D. Willis rate schedule, which is supported by a power repayment study, to recover the required revenues. Beginning January 1, 2006, the proposed rates would increase annual revenues approximately 43.1 percent from $452,952 to $648,096.

DATES: The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end October 28, 2005.

1. Public Information Forum—September 13, 2005, 1 p.m. central time, Tulsa, OK.

2. Public Comment Forum—October 13, 2005, 1 p.m. central time, Tulsa, OK.

ADDRESSES: If forums are requested, they will be held in Southwestern's offices, Room 1402, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6696, *gene.reeves@swpa.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Pub. L. 95–91, dated August 4, 1977. Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977. Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2 entitled Power Marketing Administration Financial Reporting. Procedures for Public Participation in Power and Transmission Rate Adjustments of the Power Marketing Administrations are found at Title 10, part 903, Subpart A of the Code of Federal Regulations (10 CFR part 903). Procedures for the confirmation and approval of rates for the Federal Power Marketing Administrations are found at title 18, part 300, Subpart L of the Code of Federal Regulations (18 CFR part 300).

Southwestern markets power from 24 multi-purpose reservoir projects, with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these States plus Kansas and Louisiana. The costs associated with the hydropower facilities of 22 of the 24 projects are repaid via revenues received under the Integrated System rates, as are Southwestern's transmission facilities that consist of 1,380 miles of high-voltage transmission lines, 24 substations, and 46 microwave and VHF radio sites. Costs associated with the Robert D. Willis and Sam Rayburn Dams, two projects that are isolated hydraulically, electrically, and financially from the Integrated System are repaid by separate rate schedules.

Following Department of Energy guidelines, the Administrator, Southwestern, prepared a Current Power Repayment study using the existing Robert D. Willis rate. The Study indicates that Southwestern's legal requirement to repay the investment in the power generating facility for power and energy marketed by Southwestern will not be met without an increase in revenues. The need for increased revenues is due to expected increases in generation investment and operations and maintenance power-related expenses. The Revised Power Repayment Study shows that an increase in annual revenue of $195,144

(a 43.1 percent increase), beginning January 1, 2006, is needed to satisfy repayment criteria.

Opportunity is presented for Southwestern customers and other interested parties to receive copies of the Robert D. Willis Power Repayment Studies and the proposed rate schedule. If you desire a copy of the Robert D. Willis Power Repayment Data Package with the proposed Rate Schedule, submit your request to Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, One West Third Street, Tulsa, OK 74103, (918) 595–6696 or via e-mail to *swparates@swpa.gov*.

A Public Information Forum is scheduled to be held on September 13, 2005, to explain to customers and interested parties the proposed rate and supporting studies. The proceeding will be transcribed, if held. A chairman, who will be responsible for orderly procedure, will conduct the Forum. Questions concerning the rate, studies, and information presented at the Forum will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing. However, questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices.

Persons interested in attending the Public Information Forum should indicate in writing by letter, e-mail, or facsimile transmission (918–595–6656) by September 6, 2005, their intent to appear at such Forum. Should no one indicate an intent to attend by the above-cited deadline, no such Forum will be held.

A Public Comment Forum is scheduled to be held on October 13, 2005, at which interested persons may submit written comments or make oral presentations of their views and comments related to the rate proposal. The proceeding will be transcribed, if held. A chairman, who will be responsible for orderly procedure, will conduct the Forum. Southwestern's representatives will be present, and they and the chairman may ask questions of the speakers.

Persons interested in attending the Public Comment Forum should indicate in writing by letter, email, or facsimile transmission (918–595–6656) by October 3, 2005, their intent to appear at such Forum. Should no one indicate their intent to attend by the above-cited deadline, no such Forum will be held. Persons interested in speaking at the Forum should submit requests in writing by October 3, 2005, to the Administrator, Southwestern, indicating their intent to appear at such Forum, so that a list of speakers can be developed. The chairman may allow others to speak if time permits.

A transcript of each Forum will be made. Copies of the transcripts may be obtained directly from the transcribing service for a fee. Copies of the transcripts may be obtained directly from the transcribing service for a fee. Copies of all documents introduced will also be available from the transcribing service for a fee.

Written comments on the proposed Robert D. Willis Rate are due on or before October 28, 2005. Five copies of the written comments, together with a diskette in MS Word or Corel Word Perfect, should be submitted to Forrest E. Reeves, Assistant Administrator, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103.

Following review of the oral and written comments and the information gathered during the course of the proceedings, the Administrator will submit the final Robert D. Willis Rate Proposal, and Power Repayment Studies in support of the proposed rate to the Deputy Secretary of Energy for confirmation and approval on an interim basis, and subsequently to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increase before making a final decision.

Dated: August 15, 2005.

Michael A. Deihl,

Administrator.

[FR Doc. 05–17104 Filed 8–26–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Sam Rayburn Dam Power Rate

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of public review and comment.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), has prepared Current and Revised 2005 Power Repayment Studies that show the need for an increase in annual revenues to meet cost recovery criteria. Such increased revenues are required due to significant increases in expected U.S. Army Corps of Engineers' generation investment and slight increases in operations and maintenance expenses at the project. The Administrator has developed a proposed Sam Rayburn Dam rate schedule, which is supported by a power repayment study, to recover the required revenues. Beginning January 1, 2006, the proposed rate would increase annual revenues 12 percent from $2,513,724 to $2,816,064.

DATES: The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end November 28, 2005.

1. Public Information Forum—September 13, 2005, 9 a.m. central time, Tulsa, OK.

2. Public Comment Forum—October 13, 2005, 9 a.m. central time, Tulsa, OK.

ADDRESSES: If forums are requested, they will be held in Southwestern's offices, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6696, *gene.reeves@swpa.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, in the Department of Energy Organization Act, Pub. L. 95–91, dated August 4, 1977. Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977. Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2 entitled Power Marketing Administration Financial Reporting. Procedures for Public Participation in Power and Transmission Rate Adjustments of the Power Marketing Administrations are found at Title 10, part 903, Subpart A of the Code of Federal Regulations (10 CFR part 903). Procedures for the confirmation and approval of rates for the Federal Power Marketing Administrations are found at title 18, part 300, Subpart L of the Code of Federal Regulations (18 CFR part 300).

Southwestern markets power from 24 multi-purpose reservoir projects, with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these States as well as Kansas and Louisiana. The costs associated with the hydropower facilities of 22 of the 24

projects are repaid via revenues received under the Integrated System rates, as are Southwestern's transmission facilities that consist of 1,380 miles of high-voltage transmission lines, 24 substations, and 46 microwave and VHF radio sites. Costs associated with the Robert D. Willis and Sam Rayburn Dams, two projects that are isolated hydraulically, electrically, and financially from the Integrated System are repaid by separate rate schedules. The Sam Rayburn Dam project is addressed in this notice.

Following Department of Energy guidelines, the Administrator, Southwestern, prepared a Current Power Repayment study using the existing Sam Rayburn Dam rate. The Study indicates that Southwestern's legal requirement to repay the investment in the power generating facility for power and energy marketed by Southwestern will not be met without an increase in revenues. The need for increased revenues is due to increases in expected generation investment and operation and maintenance power-related expenses. The Revised Power Repayment Study shows that an increase in annual revenue of $302,364 (12 percent increase), beginning January 1, 2006, is needed to satisfy repayment criteria.

Opportunity is presented for Southwestern customers and other interested parties to receive copies of the Sam Rayburn Dam Power Repayment Studies and the proposed rate schedule. Persons desiring a copy of the Power Repayment Data Package with the proposed Rate Schedule should submit a request to the Director, Rates and Repayment, Office of Corporate Operations, Southwestern Power Administration, One West Third Street, Tulsa, OK 74103, (918) 595–6673 or via email to *swparates@swpa.gov.*

A Public Information Forum is scheduled on September 13, 2005, to explain to customers and interested parties the proposed rate and supporting studies. The proceeding will be transcribed, if held. A chairman, who will be responsible for orderly procedure, will conduct the Forum. Questions concerning the rate, studies, and information presented at the Forum will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing. However, questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices.

Persons interested in attending the Public Information Forum should so indicate in writing by letter, email or facsimile transmission (918–595–6656) by September 6, 2005, their intent to appear at such Forum. Should no one indicate an intent to attend by the above-cited deadline, no such Forum will be held.

A Public Comment Forum is scheduled for October 13, 2005, at which interested persons may submit written comments or make oral presentations of their views and comments related to the rate proposal. The proceeding will be transcribed, if held. A chairman, who will be responsible for orderly procedure, will conduct the Forum. Southwestern's representatives will be present, and they and the chairman may ask questions of the speakers.

Persons interested in attending the Public Comment Forum should so indicate in writing by letter or facsimile transmission (918–595–6656) by October 3, 2005, their intent to appear at such Forum. Should no one so indicate an intent to attend by the above-cited deadline, no such Forum will be held. Persons interested in speaking at the Forum should submit a request in writing by October 3, 2005, to the Administrator, Southwestern, indicated their intent to appear at such Forum, so that a list of speakers can be developed. The chairman may allow others to speak if time permits.

A transcript of each Forum will be made. Copies of the transcripts may be obtained directly from the transcribing service for a fee. Copies of all documents introduced will also be available from the transcribing service for a fee.

Written comments on the proposed Sam Rayburn Dam Rate are due on or before November 28, 2005. Five copies of the written comments, together with a diskette in MS Word or Corel Word Perfect, should be submitted to Forrest E. Reeves, Assistant Administrator, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103.

Following review of the oral and written comments and the information gathered during the course of the proceedings, the Administrator will submit the final Sam Rayburn Dam Proposal, and Power Repayment Studies in support of the proposed rate to the Deputy Secretary of Energy for confirmation and approval on an interim basis, and subsequently to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increase before making a final decision.

Dated: August 15, 2005.

Michael A. Deihl,

Administrator.

[FR Doc. 05–17105 Filed 8–26–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Washoe Project-Rate Order No. WAPA–119

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of order concerning a non-firm power formula rate.

SUMMARY: The Deputy Secretary of Energy confirmed and approved Rate Order No. WAPA–119 and Rate Schedule SNF–6, placing a non-firm power formula rate from the Stampede Powerplant of the Washoe Project (Stampede) of the Western Area Power Administration (Western) into effect on an interim basis. The provisional formula rate will be in effect until the Federal Energy Regulatory Commission (Commission) confirms, approves, and places it into effect on a final basis or until replaced by other rates. The provisional rate will provide sufficient revenue to pay all annual costs, including interest expense, and repay power investment and irrigation aid, within the allowable periods.

DATES: Rate Schedule SNF–6 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after October 1, 2005, and will be in effect until the Commission confirms, approves, and places the rate schedule in effect on a final basis through September 30, 2010, or until the rate schedule is superseded.

FOR FURTHER INFORMATION CONTACT: Mr. James D. Keselburg, Regional Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4418, or Mr. Sean Sanderson, Rates Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4466.

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved existing Rate Schedule SNF–5 for Stampede non-firm energy on August 22, 2000 (Rate Order No. WAPA–93, September 1, 2000). The Commission confirmed and approved the rate schedule on October 19, 2000, in FERC Docket No. EF00–5161–000. The existing rate schedule is effective from

October 1, 2000, through September 30, 2005.

The existing non-firm power Rate Schedule SNF–5 consists of floor and ceiling rates and is designed to recover an annual revenue requirement. The floor rate for non-firm energy from Stampede is 17.89 mills per kilowatthour (mills/kWh) and on average for the 5-year rate period provides sufficient revenue to repay nearly 100 percent of annual expenses, excluding interest expense. The current ceiling rate was set by a power repayment study and provides sufficient revenues to repay all annual costs, including interest expense, and the investment within the allowable period.

The Central Valley Project (CVP) 2004 Power Marketing Plan (2004 Power Marketing Plan) states that the output from the Washoe Project remaining after meeting project use loads will be marketed to the CVP preference customers. Beginning October 1, 2005, the costs remaining after meeting project use requirements are included in the CVP Power Revenue Requirement (PRR) on an annual basis. In addition, any energy remaining after meeting project use requirements will be marketed under the 2004 Power Marketing Plan. This situation makes it unnecessary to establish a new proposed ceiling rate for Stampede. Western's Contract No. 94–SAO–00010 with the Sierra Pacific Resources (Sierra) sets the floor rate.

The existing non-firm Rate Schedule SNF–5 is being superseded by SNF–6. SNF–6 removes the ceiling rate and provides a formula for determining Stampede's annual PRR transferred to the CVP PRR.

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 Commission. Existing Department of Energy (DOE) procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Under Delegation Order Nos. 00–037.00 and 00–001.00A, 10 CFR part 903, and 18 CFR part 300, I hereby confirm, approve, and place Rate Order No. WAPA–119, the non-firm energy formula rate for Stampede, into effect on an interim basis. The new Rate Schedule SNF–6 will be promptly submitted to the Commission for confirmation and approval on a final basis.

Dated: August 16, 2005.

Clay Sell,

Deputy Secretary.

Department of Energy, Deputy Secretary

[Rate Order No. WAPA–119]

In the matter of: Western Area Power Administration Rate Adjustment for the Washoe Project, Stampede Division, Non-Firm Power Formula Rate; Order Confirming, Approving, and Placing the Washoe Project, Stampede Division, Non-firm Power Formula Rate Into Effect on an Interim Basis

This rate was established in accordance with section 302 of the 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 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 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 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 Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Acronyms and Definitions

As used in this Rate Order, the following acronyms and definitions apply:

2004 Power Marketing Plan: The 2004 CVP Power Marketing Plan (64 FR 34417) effective January 1, 2005.

Administrator: The Administrator of the Western Area Power Administration.

Ancillary Services: Those services necessary to support the transfer of electricity while maintaining reliable operation of the transmission provider's transmission system in accordance with standard utility practice.

Base Resource: The Central Valley and Washoe Project power output and existing power purchase contracts extending beyond 2004, as determined by Western to be available for marketing, after meeting the requirements of Project Use and First Preference Customers, and any adjustments for maintenance, reserves, transformation losses, and certain ancillary services.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment expressed in kilowatts.

Commission: The Federal Energy Regulatory Commission.

Customer: An entity with a contract that receives service from the Western's Sierra Nevada Customer Service Region (SNR).

CVP: The Central Valley Project is a multipurpose Federal water development project extending from the Cascade Range in northern California to the plains along the Kern River south of Bakersfield, California.

DOE: United States Department of Energy.

DOE Order RA 6120.2: A DOE order outlining power marketing administration financial reporting and ratemaking procedures.

FERC: The Commission (to be used when referencing Commission Orders).

First Preference: A Customer or entity qualified to use Preference power within a county of origin (Trinity, Calaveras, and Tuolumne) as specified under the Trinity River Division Act of August 12, 1955 (69 Stat. 719) and the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192).

Floor Rate: Per the contract with Sierra, is equal to 85 percent of the then effective, non-time differentiated rate provided in Sierra's California Quarterly Short-Term Purchase Price Schedule for as-available purchases from qualifying facilities with capacities of 100 kilowatts (kW) or less.

FRN: **Federal Register** notice.

FY: Fiscal Year; October 1 to September 30.

kV: Kilovolt—The electrical unit of measure of electric potential that equals 1,000 volts.

kW: Kilowatt—The electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatthour—The electrical unit of energy that equals 1,000 watts in 1 hour.

Load: The amount of electric power or energy delivered or required at any specified point(s) on a transmission or distribution system.

Mill: A monetary denomination of the United States that equals one-tenth of a cent or one-thousandth of a dollar.

Mills/kWh: Mills per kilowatthour. The unit of charge for energy.

MW: Megawatt—The electrical unit of capacity that equals 1 million watts or 1,000 kilowatts.

NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

Net Revenue: Revenue remaining after paying all annual expenses.

Non-firm: A type of product and/or service not always available at the time requested by the customer.

O&M: Operation and Maintenance.

Power: Capacity and Energy.

Preference: The provisions of Reclamation Law which require Western to first make Federal power available to certain entities. For example, section 9(c) of the Reclamation Project Act of 1939 states that preference in the sale of Federal power shall be given to municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made under the Rural Electrification Act of 1936 (43 U.S.C. 485h(c)).

Project Use: Power used to operate Washoe Project facilities under Reclamation Law. The Lahontan National Fish Hatchery and the Marble Bluff Fish Facility are designated project use loads of the Washoe Project.

Provisional Rate: A rate which has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary.

PRR: Power revenue requirement. The annual revenue that must be collected to recover annual expenses such as O&M, purchase power, transmission service expenses, interest, deferred expenses, and repay Federal investments and other assigned costs.

PRS: Power repayment study.

Rate Brochure: A document dated May 2005 explaining the rationale and background for the rate proposal contained in this Rate Order.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

Reclamation Law: A series of Federal laws. Viewed as a whole, these laws create the originating framework under which Western markets power.

Revenue Requirement: The revenue required to recover annual expenses such as O&M, purchase power, transmission service expenses, interest, deferred expenses, and repay Federal investments and other assigned costs.

SEEA: The Stampede Energy Exchange Account.

Sierra: Sierra Pacific Power Company also known as Nevada Power and Sierra Pacific Resources.

SNR: The Sierra Nevada Customer Service Region of Western.

Stampede: Power system facilities of Washoe Project, Stampede Division.

Stampede Annual PRR: The total power revenue requirement for Stampede required to repay all reimbursable annual costs, including interest and the investment within the allowable period.

Stampede Revenue: Revenue generated from the floor rate and project generation.

Washoe Project: A Reclamation project located in the Lahontan Basin in west-central Nevada and east-central California.

Western: United States Department of Energy, Western Area Power Administration.

Effective Date

The new interim rates will take effect on the first day of the first full billing period beginning on or after October 1, 2005, and will remain in effect until September 30, 2010, pending approval by the Commission on a final basis.

Public Notice and Comment

Western followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these rates. The steps Western took to involve interested parties in the rate process were:

1. A **Federal Register** notice published on May 6, 2005, (70 FR 24019), announced the proposed formula rate for non-firm energy from Stampede. This notice began the public consultation and comment period.

2. On May 9, 2005, Western e-mailed the **Federal Register** notice (70 FR 24019) to the SNR Preference Customers and interested parties explaining the fact that this was a minor rate adjustment. Therefore, there was no public information or comment forum for this rate process. Western also reiterated its availability to meet with interested parties to discuss the studies that support the formula rate.

3. On May 9, 2005, Western also mailed letters to the SNR Preference Customers and interested parties transmitting the Web site address to obtain a copy of the FRN and providing instructions on how to receive a copy of the Rate Brochure.

4. Western communicated clarifying information on the proposed rate with the following Customers and/or interested parties. This information is included in the record.

Bay Area Rapid Transit District, California.
Energy Source, Nevada.
Northern California Power Agency, California.
Sacramento Municipal Utility District, California.
Sierra Pacific Power Company, aka Nevada Power, Nevada.

5. Western received no comment letters during the consultation and comment period, which ended on June 6, 2005.

Project Description

The Stampede Dam and Reservoir are located on the Little Truckee River approximately 8 miles above the confluence of the Little Truckee and Truckee River. The dam and reservoir are in Sierra County, California, about 11 miles northeast of the town of Truckee. The water source for Stampede Reservoir is the Little Truckee River drainage basin containing about 136 square miles of densely wooded slopes and grass meadowlands.

When the Stampede Dam and Reservoir project was authorized in 1956, under Public Law 858 hydroelectric power development was included. However, during the period 1966–1970 when the Stampede Dam was built, power facilities were not constructed because the power function was not economically justified. Nevertheless, provisions were made to facilitate the addition of power facilities at a later date.

Subsequently, in July 1976, a preliminary reevaluation of a powerplant at Stampede was conducted and published in a special Reclamation report *Adding Powerplants at Existing Federal Dams in California.* In the report, Reclamation recommended construction of a Stampede powerplant. As a result, definitive plan studies were initiated in FY 1977, and construction of the powerplant was completed in 1987. A one-half mile 60-kV transmission line interconnects the Stampede power facilities with Sierra's transmission system.

Stampede Dam and Reservoir is operated for four specific purposes: flood control, fisheries enhancement, recreation, and power generation. The powerplant has a 3.65 MW generator and it provides approximately 11 million kWh annually. The energy generated by the powerplant has a priority reservation for designated project use loads. All remaining energy generation is sold on a non-firm basis under the conditions outlined in Western's contract with Sierra. Energy generated at Stampede is dependent on the run of the river and is, therefore, non-firm.

The Lahontan National Fish Hatchery and the Marble Bluff Fish Facility are project use facilities entitled to energy from the Stampede Powerplant. The Marble Bluff Fish Hatchery is located on the Truckee River about 3.5 miles upstream from Pyramid Lake. The other project use facility, the Lahontan

National Fish Hatchery, is located off the Carson River just south of Carson City in Gardnerville, Nevada. The loads at these facilities are projected to be approximately 2 million kWh annually.

Power Repayment Study

Western prepares a PRS each FY to determine if revenues will be sufficient to repay, within the required time, all costs assigned to the power function. Repayment criteria are based on law, applicable policies, including DOE Order RA 6120.2, and authorizing legislation.

To benefit project use loads and market the energy from Stampede, Western's contract with Sierra provides for the SEEA. Under this contract, Sierra accepts delivery of all energy generated from Stampede into Sierra's electrical system. The dollar value of the Stampede energy received by Sierra during any month is credited into the SEEA at the floor rate. Western can use the SEEA to benefit project use facilities and market energy from Stampede to preference entities. The formula for the provisional floor rate, per the contract with Sierra, is equal to 85 percent of the then effective, non-time differentiated rate provided in Sierra's California Quarterly Short-Term Purchase Price Schedule for as-available purchases from qualifying facilities with capacities of 100 kW or less. This provisional floor rate is used to calculate the value of the SEEA and determines the benefit of Stampede power for project use loads. Western applies the ratio of projected project use costs to the projected revenue recorded in the SEEA to determine a non-reimbursable percentage. This non-reimbursable percentage is then applied to the appropriate power-related costs to determine the reimbursable costs. The reimbursable costs are reduced by revenues from sales made at the floor rate. Under the 2004 Power Marketing Plan, the remaining reimbursable costs are then transferred to the CVP PRR. Based on estimated expenses and projected revenues generated from the floor rate, Western anticipates including an annual cost of $401,000 in the CVP PRR for the 5-year rate case period (FY 2006–2010).

Existing and Provisional Rates and Revenue Requirement

The provisional rate for Stampede non-firm energy results in no change to the floor rate. This rate adjustment also marks a transition to a new marketing plan for Stampede. Any energy remaining after meeting project use requirements is marketed under the 2004 Power Marketing Plan and mitigates the need for a ceiling rate. In addition, the provisional formula rate calculates an annual transfer of Stampede revenue to the CVP PRR. The following table compares the current and provisional non-firm rates as listed under the existing (SNF–5) and provisional (SNF–6) rate schedules.

COMPARISON OF EXISTING AND PROVISIONAL RATES WASHOE PROJECT, STAMPEDE POWERPLANT

Non-firm energy formula rate components	Existing rates (as of 10/1/00)	Provisional rates (effective 10/1/05)	Percent change
Rate Schedule	(1)	(2)	
Floor Rate (Mills/kWh)	17.89	17.89	0
Ceiling Rate	90.07	N/A	N/A
Estimated Stampede Annual Transferred PRR ($)	N/A	$401,000	N/A

[1] *SNF–5.*
[2] *SNF–6.*

Certification of Rates

Western's Administrator certified that the provisional non-firm power formula rates for Stampede are the lowest possible rates consistent with sound business principles. The provisional formula rate was developed following administrative policies and applicable laws.

Non-Firm Power Formula Rate and Power Revenue Requirement Discussion

According to Reclamation Law, Western must establish rates sufficient to recover O&M, other annual and interest expenses, and repay power investment and irrigation aid.

Statement of Revenue and Related Expenses

The following table provides a summary of projected revenues and expenses data for the Stampede non-firm power formula rate through the 5-year provisional rate approval period, including a comparison of existing rate data to provisional rate data and the difference.

STAMPEDE NON-FIRM POWER RATE COMPARISON OF 5-YEAR RATE PERIOD (FY 2006–2010) TOTAL REVENUES AND EXPENSES

	Existing rate ($000)	Provisional revenue requirement ($000)	Difference ($000)
Total Revenues	$2,905	$2,989	$84
Revenue Distribution:			
Expenses:			
O&M	64	64	0
Project Use Expense	952	952	0
Interest	1,147	1,213	66
Total Expenses	2,163	2,229	66
Principal Payments:			
Capitalized Expenses	742	760	18
Original Project and Additions	0	0	0
Replacements	0	0	0

STAMPEDE NON-FIRM POWER RATE COMPARISON OF 5-YEAR RATE PERIOD (FY 2006–2010) TOTAL REVENUES AND EXPENSES—Continued

	Existing rate ($000)	Provisional revenue requirement ($000)	Difference ($000)
Irrigation	N/A	N/A	N/A
Total Principal Payments	742	760	18
Total Revenue Distribution	2,905	2,989	84

Basis for Rate Development

To benefit project use loads and market the energy from Stampede, Western's contract with Sierra provides for the SEEA. Under this contract, Sierra accepts delivery of all energy generated from Stampede into Sierra's electrical system. The dollar value of the Stampede energy received by Sierra during any month is credited into the SEEA at the floor rate. The formula for the provisional floor rate, per the contract with Sierra, is equal to 85 percent of the then effective, non-time differentiated rate provided in Sierra's California Quarterly Short-Term Purchase Price Schedule for as-available purchases from qualifying facilities with capacities of 100 kW or less. This provisional floor rate is used to calculate the value of the SEEA and determines the benefit of Stampede power for project use loads. Western applies the ratio of projected project use costs to the projected revenue recorded in the SEEA to determine a non-reimbursable percentage. This non-reimbursable percentage is then applied to the appropriate power-related costs to determine the reimbursable costs. The reimbursable costs are reduced by revenues from sales made at the floor rate. Under the 2004 Power Marketing Plan, the remaining reimbursable costs after meeting project use service are then transferred to the CVP PRR.

The provisional formula rate for Stampede power is:

$$\text{STAMPEDE ANNUAL TRANSFERRED PRR} = \text{STAMPEDE ANNUAL PRR} - \text{STAMPEDE REVENUE}$$

Where:

Stampede Annual Transferred PRR = Stampede annual costs (Power Revenue Requirement) transferred to the CVP.

Stampede Annual PRR = The total power revenue requirement for Stampede required to repay all reimbursable annual costs, including interest and the investment within the allowable period.

Stampede Revenue = Revenue generated from the floor rate and project generation.

Floor Rate = Per the contract with Sierra, is equal to 85 percent of the then effective, non-time differentiated rate provided in Sierra's California Quarterly Short-Term Purchase Price Schedule for as-available purchases from qualifying facilities with capacities of 100 kW or less.

Comments

Western received no comments on the rate proposal during the public comment and consultation period that ended on June 6, 2005.

Availability of Information

Information about this rate adjustment, including power repayment studies, comments, letters, memorandums, and other supporting material made and kept by Western and used to develop the provisional rates, is available for public review in the Sierra Nevada Regional Office, Western Area Power Administration, 114 Parkshore Drive, Folsom, California.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Submission to the Federal Energy Regulatory Commission

The interim rates herein confirmed, approved, and placed into effect, together with supporting documents, will be submitted to the Commission for confirmation and final approval.

Order

In view of the foregoing and under the authority delegated to me, I confirm and approve on an interim basis, effective October 1, 2005, Rate Schedule SNF–6 for the Washoe Project, Stampede Division of the Western Area Power Administration. The rate schedule shall remain in effect on an interim basis, pending the Commission's confirmation and approval of them or substitute rates on a final basis through September 30, 2010.

Dated: August 16, 2005.

Clay Sell,

Deputy Secretary.

Rate Schedule SNF–6 (Supersedes Schedule SNF–5)

United States Department of Energy, Western Area Power Administration, Washoe Project, Stampede Division

Schedule of Rates for Non-Firm Power Formula Rate

Effective: October 1, 2005, through September 30, 2010.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To preference customers under the 2004 Power Marketing Plan and to the Sierra Pacific Power Company under the terms of Contract No. 14–SAO–00010.

Character and Conditions of Service: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Non-Firm Power Formula Rate: The formula for the floor rate, per the contract with Sierra, is equal to 85 percent of the then effective, non-time differentiated rate provided in Sierra's California Quarterly Short-Term Purchase Price Schedule for as-available purchases from qualifying facilities with capacities of 100 kW or less. This floor rate is used to calculate the value of the SEEA and determines the benefit of Stampede power for project use loads. Western applies the ratio of projected project use costs to the projected revenue recorded in the SEEA to determine a non-reimbursable percentage. This non-reimbursable percentage is then applied to the appropriate power-related costs to determine the reimbursable costs. The reimbursable costs are reduced by the revenues from sales made at the floor rate. Under the 2004 Power Marketing Plan, the remaining reimbursable costs are then transferred to the CVP PRR.

The formula rate for Stampede power is:

$$\text{Stampede Annual Transferred PRR} = \text{Stampede Annual PRR} - \text{Stampede Revenue}$$

Where:

Stampede Annual Transferred PRR = Stampede annual costs (Power Revenue Requirement) transferred to the CVP.

Stampede Annual PRR = The total power revenue requirement for Stampede required to repay all reimbursable annual costs, including interest and the investment within the allowable period.

Stampede Revenue = Revenue generated from the floor rate and project generation.

Floor Rate = Per the contract with Sierra, is equal to 85 percent of the then effective, non-time differentiated rate provided in Sierra's California Quarterly Short-Term Purchase Price Schedule for as-available purchases from qualifying facilities with capacities of 100 kW or less.

Billing: Billing for the floor rate will be as specified in the service agreement.

Adjustment for Losses: Losses will be accounted for under this rate schedule as stated in the service agreement.

[FR Doc. 05–17106 Filed 8–26–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7961–2]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. (7413(g), notice is hereby given of a proposed Consent Decree to address a lawsuit filed by Our Children's Earth Foundation and the Sierra Club (collectively ''Plaintiffs''): *Our Children's Earth Found. et al.* v. *U.S. EPA*, No. C 05–00094 CW (N.D. Cal.). On or about January 6, 2005, Plaintiffs filed a complaint alleging that EPA had failed to perform a non-discretionary duty to review and, if appropriate, revise the new source performance standards (''NSPS'') for petroleum refineries and equipment leaks as required by Section 111(b) of the Clean Air Act, 42 U.S.C. 7411(b)(1)(B). Under the terms of the proposed Consent Decree, deadlines are established for EPA to review and, if appropriate, revise the NSPS standards for Subparts J, VV and GGG, 40 CFR 60.100–109, 60.480–498, 60.590–593.

DATES: Written comments on the proposed Consent Decree must be received by September 28, 2005.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2005–0013, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in WordPerfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Sonja Petersen, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone: (202) 564–4079.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed Consent Decree would resolve the deadline suit filed by Plaintiffs alleging that EPA failed to review and, if appropriate, revise the new source performance standards (''NSPS'') for petroleum refineries and equipment leaks (NSPS subparts J, VV and GGG). The proposed Consent Decree establishes deadlines by which EPA must review and revise all standards in subparts J, VV, and GGG except to the extent that EPA sets forth a proposed determination that review and/or revision is not appropriate. The Consent Decree relates only to these deadlines. It does not require the Administrator to make any specific revisions to the standards.

The Consent Decree provides the following schedule for reviewing and, if appropriate, revising these subparts. EPA must: (1) Within twelve months of entry of the Consent Decree, propose any appropriate revisions to the standards in NSPS subparts VV and GGG; (2) within twenty-four months of entry of the Consent Decree, sign a final rule containing any appropriate revisions to the standards in NSPS subparts VV and GG; (3) within eighteen months of entry of the Consent Decree,

propose any appropriate revisions to the standards in NSPS subpart J; and (4) within thirty months from the date of entry of the Consent Decree, sign a final rule containing any appropriate revisions to the standards in NSPS subpart J. In addition, under the proposed Consent Decree, EPA would acknowledge that plaintiffs are eligible and entitled to recover their litigation costs in this action. On July 22, 2005, the parties filed with the Court a notice of lodging of the Consent Decree. This notice informed the Court of the Decree but noted that the Decree was not ready for entry as it is subject to the requirements of section 113(g) of the Clean Air Act.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Consent Decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed Consent Decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the Consent Decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

EPA has established an official public docket for this action under Docket ID No. OGC–2005–0013 which contains a copy of the Consent Decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, 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 OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing 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.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket 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. In contrast to EPA's electronic public docket, EPA's electronic mail (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, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 18, 2005.

Richard B. Ossias,

Acting Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 05–17123 Filed 8–26–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7961–5]

Notice of Termination of Environmental Impact Statement for the Comprehensive Port Improvement Plan Within the Port of New York and New Jersey (PONYNJ)

AGENCY: U.S. Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (USACE), and Federal Highway Administration (FHWA) acting as Federal co-lead agencies.

SUMMARY: The Federal co-lead agencies, EPA, USACE, FHWA are canceling the preparation of an Environmental Impact Statement (EIS) for the Comprehensive Port Improvement Plan (CPIP–EIS) for the PONYNJ. As originally planned, the CPIP and CPIP–EIS would define economically viable and environmentally sound Port facilities and associated transportation network improvement initiatives to the year 2060; consider separate, ongoing, and planned environmental enhancements to natural resources of the Port and associated transportation network; incorporate Green Port principles to the maximum extent practicable; and evaluate, avoid, minimize, and mitigate adverse environmental effects. EPA, on behalf of all three Federal co-lead agencies, published a Notice of Intent to prepare an EIS for the CPIP in the **Federal Register** (68 FR 19207, April 18, 2003). The three federal co-lead agencies conducted several public scoping meetings in December 2003 and January 2004.

The CPIP presents an array of conceptual long-term port improvement scenarios, some of which would involve future federal activities were they to be advanced to the status of a real project. Any future port-improvement projects involving federal actions, as defined under NEPA, would be required to undergo the applicable environmental review process. Given the considerable time period before the conceptual improvements identified in the CPIP Plan would become actual proposed projects with sponsors, a detailed environmental review and analysis, as conducted in an EIS, is not warranted at this time. As a result, the Federal co-lead agencies are canceling the EIS process. In the short-term, a programmatic analysis in the form of an Environmental Assessment will be prepared to identify what type of environmental review could be expected of any improvement projects that may be proposed. This programmatic Environmental Assessment will be available for public review in Fall 2005.

FOR FURTHER INFORMATION CONTACT: Grace Musumeci, U.S. Environmental Protection Agency, (212) 637–3738; Bryce Wisemiller, U.S. Army Corps of Engineers, (917) 790–8307; Richard E. Backlund, Federal Highway Administration, (212) 668–2205.

Dated: August 4, 2005.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

[FR Doc. 05–17125 Filed 8–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0032; FRL–7959–8]

RIN 2040–AE76

Notice of Availability of Preliminary 2006 Effluent Guidelines Program Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of preliminary 2006 Effluent Guidelines Program Plan; request for comments.

SUMMARY: Under the Clean Water Act (CWA), EPA establishes national technology-based regulations known as effluent guidelines and pretreatment standards to reduce pollutant discharges from categories of industry discharging directly to waters of the United States or discharging indirectly through Publicly Owned Treatment Works (POTWs). The CWA sections 301(d), 304(b), 304(g), and 307(b) require EPA to annually review these effluent guidelines and pretreatment standards. Today's notice first presents EPA's 2005 review of its existing effluent guidelines and pretreatment standards. It also presents EPA's evaluation of categories of indirect dischargers without pretreatment standards to identify potential new categories for pretreatment standards. CWA section 304(m) requires EPA to biennially publish an effluent guidelines program plan and provide for public notice and comment on such plan. Therefore, this notice also presents the preliminary 2006 effluent guidelines program plan. Included in the preliminary 2006 plan is a solicitation for comments and data on industry categories that may be discharging non-trivial amounts of toxic or non-conventional pollutants and are not currently subject to any effluent guidelines. Finally, this notice provides a second opportunity for public notice and comment on the draft Strategy for National Clean Water Industrial Regulations (''draft Strategy''), see 67 FR 71165 (November 29, 2002).

DATES: If you wish to comment on any portion of this notice, EPA must receive your comments by October 28, 2005. EPA will conduct a public meeting on 20 September 2005, from 9 a.m. to 12 p.m. Eastern Standard Time. For information on the location of the public meeting, see **ADDRESSES** section.

ADDRESSES: Identify your comments, data and information relating to the Agency's draft Strategy; by Docket ID No. OW–2002–0020. Identify all other comments, data and information relating to this notice by Docket ID No. OW–2004–0032. Submit your comments, data and information by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Website: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments, data, and information. Follow the on-line instructions for submitting comments.

C. E-mail: *OW-Docket@epa.gov.*

D. Mail: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2004–0032. For comments, data, and information on the draft Strategy, use Docket ID No. OW–2002–0020.

E. Hand Delivery: Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2004–0032. Use Docket ID No. OW–2002–0020 for comments, data, and information on the draft Strategy. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments, data, and information to Docket ID No. OW–2004–0032. For comments, data, and information on the draft Strategy, use Docket ID No. OW–2002–0020. EPA's policy is that all comments, data, and information received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the material includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through EDOCKET, regulations.gov, or e-mail information that you consider to be CBI or otherwise protected. The EPA EDOCKET and the federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on obtaining access to comments, go to section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy

form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Public Meeting: EPA will hold an informational public meeting for interested stakeholders in the EPA East Building, Room 1153 (also known as the ''Great Room'' or the ''Map Room''), 1201 Constitution Avenue, NW., Washington, DC. For more information on the details and location of the public meeting, see section I.C.

FOR FURTHER INFORMATION CONTACT: Mr. Carey A. Johnston at (202) 566–1014 or *johnston.carey@epa.gov*, or Ms. Jan Matuszko at (202) 566–1035 or *matuszko.jan@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Is This Document Organized?

The outline of today's notice follows:

I. General Information
II. Legal Authority
III. What is the Purpose of Today's **Federal Register** Notice?
IV. Background
V. EPA's 2005 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)
VI. EPA's 2006 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)
VII. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards to Identify Potential New Categories for Pretreatment Standards
VIII. The Preliminary 2006 Effluent Guidelines Program Plan Under Section 304(m)
IX. Request for Comment and Information

I. General Information

A. Regulated Entities

Today's notice does not contain regulatory requirements. Rather, today's notice describes: (1) The Agency's 2005 annual review of existing effluent limitations guidelines and pretreatment standards under the Clean Water Act (CWA) sections 301(d), 304(b), 304(g), and 307(b); (2) EPA's review of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b); and (3) the preliminary 2006 effluent guidelines program plan under CWA section 304(m) (''Plan''). EPA anticipates completing the final 2006 Plan by August 2006. As required by CWA section 304(m), the final Plan will: (1) Present a schedule for EPA's annual review of existing effluent guidelines under CWA section 304(b) and a schedule for any effluent guidelines revisions; and (2) identify industries for which EPA has not promulgated effluent guidelines but may decide to do so through rulemaking and a schedule for these rulemakings.

B. How Can I Get Copies of Related Information?

1. Docket

EPA has established an official public docket for the Agency's 2005 and 2006 annual reviews of existing effluent limitations guidelines and pretreatment standards under CWA sections 301(d), 304(b), 304(g), and 307(b), and the 2006 Plan under CWA section 304(m) under Docket ID No. OW–2004–0032. EPA has established an official public docket for the Agency's draft Strategy under Docket ID No. OW–2002–0020. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute is not included in the materials available to the public. The official public docket is the collection of materials that is available for public viewing at the Water Docket 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 Public Reading Room is (202) 566–1744, and the telephone number for the Water 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 EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1. Once in the system, select ''search,'' then key in the appropriate docket identification number.

C. What Are the Public Meeting Details for the Preliminary Plan?

A public meeting to review the preliminary 2006 Plan will be held in Washington, DC (see the **DATES** and **ADDRESSES** sections for the date and location of the public meeting). The meeting is open to the public, and limited seating for the public is available on a first-come, first-served basis. For security reasons, we request that you bring photo identification with you to the meeting. Also, it will expedite the process of entering the building if you contact Ms. Cassandra Holmes at least three business days prior to the meeting with your name, phone number, and any affiliation. Ms. Holmes can be reached via e-mail at *holmes.cassandra@epa.gov.* Please use ''304(m) Public Meeting Attendee'' in the e-mail subject line. Ms. Holmes can also be reached by telephone at (202) 566–1000.

EPA will not distribute meeting materials in advance of the public meeting; all materials will be distributed at the meeting. The purpose of the public meeting is to: (1) Present the Agency's 2005 annual review of existing effluent guidelines and pretreatment standards under CWA sections 301(d), 304(b), 307(b), and 304(g); (2) present the Agency's evaluation of categories of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA section 307(b); (3) present the preliminary 2006 Plan under CWA section 304(m); (4) review the industry sectors identified for further investigation; and (5) identify information collection activities and analyses EPA anticipates completing for the Agency's 2006 review of effluent guidelines and pretreatment standards and the final Plan. EPA will not provide a transcript of the meeting but will record the meeting minutes for the docket supporting this action. Individuals wishing to comment on the Agency's review and the preliminary Plan would need to submit written comments as described in section I.C. in order for EPA to consider their comments in the next annual review and final Plan.

If you need special accommodations at this meeting, including wheelchair access or special audio-visual support needs, you should contact Ms. Holmes at least seven days prior to the meeting so that we can make appropriate arrangements. For those unable to attend the meeting, a copy of the presentation and meeting materials will be posted on the EPA Dockets website at: *http://www.epa.gov/edocket/* and EPA's Effluent Guidelines Planning web site at: *http://www.epa.gov/guide/plan.html.*

Please note that parking is very limited in downtown Washington, and we recommend you use public transit. The EPA Headquarters complex is located near the Federal Triangle Metro station. Upon exiting the Metro station, walk east to 12th Street. On 12th Street, walk south to Constitution Avenue. At the corner, turn right onto Constitution Avenue and proceed to the entrance at the EPA East Building, 1201 Constitution Avenue, NW., Washington, DC.

II. Legal Authority

Today's notice is published under the authority of the CWA, 33 U.S.C. 1251, *et seq.*, and in particular sections 301(d), 304(b), 304(g), 304(m), 306, and 307(b), 33 U.S.C. 1311(d), 1314(b), 1314(g), 1314(m), 1316, and 1317.

III. What Is the Purpose of Today's Federal Register Notice?

Today's notice presents EPA's 2005 review of its existing effluent guidelines and pretreatment standards. It also presents EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards. CWA section 304(m) requires EPA to biennially publish an effluent guidelines program plan and provide for public notice and comment on such plan. Therefore, this notice also presents the preliminary 2006 effluent guidelines program plan. Included in the preliminary 2006 plan is a solicitation for comments and data on industry categories that may be discharging non-trivial amounts of toxic or non-conventional pollutants and are not currently subject to effluent guidelines. Finally, this notice provides a second opportunity for public notice and comment on the draft Strategy for National Clean Water Industrial Regulations (''draft Strategy''), see 67 FR 71165 (November 29, 2002).

IV. Background

A. What Are Effluent Guidelines and Pretreatment Standards?

The CWA directs EPA to promulgate effluent limitations guidelines and standards that reflect pollutant reductions that can be achieved by categories or subcategories of industrial point sources using specific technologies. See CWA sections 301(b)(2), 304(b), 306, 307(b), and 307(c). For point sources that introduce pollutants directly into the waters of the United States (direct dischargers), the effluent limitations guidelines and standards promulgated by EPA are implemented through National Pollutant Discharge Elimination System (NPDES) permits. See CWA sections 301(a), 301(b), and 402. For sources that discharge to publicly owned treatment works (POTWs) (indirect dischargers), EPA promulgates pretreatment standards that apply directly to those sources and are enforced by POTWs and State and Federal authorities. See CWA sections 307(b) and (c).

1. Best Practicable Control Technology Currently Available (BPT)—CWA Sections 301(b)(1)(A) & 304(b)(1)

EPA defines Best Practicable Control Technology Currently Available (BPT) effluent limitations for conventional, toxic, and non-conventional pollutants. Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids, fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979. See 44 FR 44501 (July 30, 1979). EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific substances have been designated priority toxic pollutants. See Appendix A to part 423. All other pollutants are considered to be non-conventional.

In specifying BPT, EPA looks at a number of factors. EPA first considers the total cost of applying the control technology in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed, and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the EPA Administrator deems appropriate. See CWA section 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes, or other common characteristics. Where existing performance is uniformly inadequate, BPT may reflect higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)—CWA Sections 301(b)(2)(E) & 304(b)(4)

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with Best Conventional Pollutant Control Technology (BCT) for discharges from existing industrial point sources. In addition to considering the other factors specified in section 304(b)(4)(B) to establish BCT limitations, EPA also considers a two part ''cost-reasonableness'' test. EPA explained its methodology for the development of BCT limitations in 1986. See 51 FR 24974 (July 9, 1986).

3. Best Available Technology Economically Achievable (BAT)—CWA Sections 301(b)(2)(A) & 304(b)(2)

For toxic pollutants and non-conventional pollutants, EPA promulgates effluent guidelines based on the Best Available Technology Economically Achievable (BAT). See CWA section 301(b)(2)(A), (C), (D) & (F). The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and other such factors as the EPA Administrator deems appropriate. See CWA section 304(b)(2)(B). The technology must also be economically achievable. See CWA section 301(b)(2)(A). The Agency retains considerable discretion in assigning the weight accorded to these factors. BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. Where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved within a particular subcategory based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)—CWA Section 306

New Source Performance Standards (NSPS) reflect effluent reductions that are achievable based on the best available demonstrated control technology. New sources have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (*i.e.*, conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—CWA Section 307(b)

Pretreatment Standards for Existing Sources (PSES) are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTWs), including sludge disposal methods at POTWs. Pretreatment standards for existing sources are technology-based and are analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of national pretreatment standards, are found at 40 CFR part 403.

6. Pretreatment Standards for New Sources (PSNS)—CWA Section 307(c)

Like PSES, Pretreatment Standards for New Sources (PSNS) are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their facilities the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. What Are EPA's Review and Planning Obligations Under Sections 301(d), 304(b), 304(g), 304(m), and 307(b)?

1. EPA's Review and Planning Obligations Under Sections 301(d), 304(b), and 304(m)—Direct Dischargers

Section 304(b) requires EPA to review its existing effluent guidelines for direct dischargers each year and to revise such regulations ''if appropriate.'' Section 304(m) supplements the core requirement of section 304(b) by requiring EPA to publish a plan every two years announcing its schedule for performing this annual review and its schedule for rulemaking for any effluent guideline selected for possible revision as a result of that annual review. Section 304(m) also requires the plan to identify categories of sources discharging non-trivial amounts of toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or NSPS under section 306. See CWA section 304(m)(1)(B); S. Rep. No. 50, 99th Cong., 1st Sess. (1985); WQA87 Leg. Hist. 31. Finally, under section 304(m), the plan must present a schedule for promulgating effluent guidelines for industrial categories for which it has not already established such guidelines, with final action on such rulemaking required not later than three years after the industrial category is identified in a final Plan. See CWA section 304(m)(1)(C). EPA is required to publish its preliminary Plan for public comment prior to taking final action on the plan. See CWA section 304(m)(2).

In addition, CWA section 301(d) requires EPA to review every five years the effluent limitations required by CWA section 301(b)(2) and to revise them if appropriate pursuant to the procedures specified in that section. Section 301(b)(2), in turn, requires point sources to achieve effluent limitations reflecting the application of the best available technology economically achievable (for toxic pollutants and non-conventional pollutants) and the best conventional pollutant control technology (for conventional pollutants), as determined by EPA under sections 304(b)(2) and 304(b)(4), respectively. For nearly three decades, EPA has implemented sections 301 and 304 through the promulgation of effluent limitations guidelines, resulting in regulations for 56 industrial categories. See *E.I. du Pont de Nemours & Co.* v. *Train,* 430 U.S. 113 (1977). Consequently, as part of its annual review of effluent limitations guidelines under section 304(b), EPA is also reviewing the effluent limitations they contain, thereby fulfilling its obligations under section 301(d) and 304(b) simultaneously.

2. EPA's Review and Planning Obligations Under Sections 304(g) and 307(b)—Indirect Dischargers

Section 307(b) requires EPA to revise its pretreatment standards for indirect dischargers ''from time to time, as control technology, processes, operating methods, or other alternatives change.'' See CWA section 307(b)(2). Section 304(g) requires EPA to annually review these pretreatment standards and revise them ''if appropriate.''Although section 307(b) only requires EPA to review existing pretreatment standards ''from time to time,'' section 304(g) requires an annual review. Therefore, EPA meets its 304(g) and 307(b) review requirements by reviewing all industrial categories subject to existing categorical pretreatment standards on an annual basis to identify potential candidates for revision.

Section 307(b)(1) also requires EPA to promulgate pretreatment standards for pollutants not susceptible to treatment by POTWs or that would interfere with the operation of POTWs, although it does not provide a timing requirement for the promulgation of such new pretreatment standards. EPA, in its discretion, periodically evaluates indirect dischargers not subject to categorical pretreatment standards to identify potential candidates for new pretreatment standards. The CWA does not require EPA to publish its review of pretreatment standards or identification of potential new categories, although EPA is exercising its discretion to do so in this notice.

EPA intends to repeat this publication schedule for future pretreatment standards reviews (*e.g.*, EPA will publish the 2006 annual pretreatment standards review in the notice containing the Agency's 2006 annual review of existing effluent guidelines and the final 2006 Plan). EPA intends that these coincident reviews will provide meaningful insight into EPA's effluent guidelines and pretreatment standards program decision-making. Additionally, EPA hopes to most efficiently serve the public with these coincident reviews whereby this single notice and future notices serve as the ''one-stop shop'' source of information for the Agency's current and future effluent guidelines and pretreatment standards program reviews.

V. EPA's 2005 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)

A. What Process Did EPA Use to Review Existing Effluent Guidelines and Pretreatment Standards Under CWA Section 301(d), 304(b), 304(g), and 307(b)?

1. Background

In its 2005 annual review, EPA reviewed all industrial categories subject to existing effluent limitations guidelines and pretreatment standards,

representing a total of 56 point source categories and over 450 subcategories. EPA thereby met its obligations to annually review both existing effluent limitations guidelines for direct dischargers under CWA sections 301(d) and 304(b) and existing pretreatment standards for indirect dischargers under CWA sections 304(g) and 307(b).

EPA's annual review of existing effluent guidelines and pretreatment standards represents a considerable effort by the Agency to consider the hazards to human health or the environment from industrial point source category discharges. The 2005 annual reviews, which themselves build on reviews from previous years, also reflect a lengthy outreach effort to involve stakeholders in the review process. In performing its 2005 annual review, EPA considered all information and data submitted to EPA as part of its outreach activities. EPA reviewed all industrial sectors and will conduct more focused detailed reviews for a select number of industrial sectors. EPA will complete these detailed reviews prior to publication of the final 2006 Plan.

As discussed in more detail below, EPA uses pollutant loadings information and technological, economic, and other information in evaluating whether it would be appropriate to revise its promulgated effluent guidelines and pretreatment standards. EPA also examines the processes and operations of each category subject to promulgated effluent guidelines to decide whether it might be appropriate to address (through additional subcategories) other industrial activities that are similar in terms of type of operations performed, pollutants and wastewaters generated, and available pollution prevention and treatment options. Because issues associated with such additional subcategories very often are interwoven with the structure and requirements of the existing regulation, EPA believes that incorporating its review of these potential subcategories into its annual review of the larger categories with which they likely belong is the most efficient way to fulfill its statutory obligations under sections 301(d), 304(b), 304(g), and 307(b). This is especially important in view of the large number of existing categories and potential additional subcategories that EPA must review annually.

One example where EPA established effluent guidelines for an additional subcategory under an existing category is the agricultural refilling establishments subcategory (Subpart E) that EPA added to the Pesticide Chemicals point source category (40 CFR part 455). *See* 61 FR 57518 (November 6, 1996). The BPT limitations in Part 455 did not cover refilling establishments and their industrial operations (*e.g.*, refilling of minibulks) because these industrial operations did not begin until well after the limitations were first promulgated. EPA considered refilling establishments to be a subcategory of the Pesticide Chemicals point source category because of similar types of industrial operations performed, wastewaters generated, and available pollution prevention and treatment options.

EPA's annual reviews also focus on identifying pollutants that are not regulated by an existing effluent guideline or pretreatment standard for a point source category but that comprise a significant portion of the estimated toxic discharges (as measured by toxic-weighted pound equivalents (TWPE)) for that category. EPA believes that it is reasonable to consider new pollutants for regulation in the course of reviewing and revising existing effluent guidelines and pretreatment standards. EPA has several reasons for this. First, a newly identified pollutant might be adequately addressed through existing regulations or through the additional control of already regulated pollutants in an existing set of effluent guidelines or pretreatment standards. In some cases, revising existing limitations for one set of pollutants will address hazards associated with a newly identified pollutant, thus obviating the need for EPA to promulgate specific limitations for that pollutant. Second, EPA believes it is necessary to understand the effectiveness (or ineffectiveness) of existing effluent guidelines and pretreatment standards in controlling newly identified pollutants before EPA can identify potential technology-based control options for these pollutants. For example, EPA revised effluent limitations for the bleached papergrade kraft and soda and papergrade sulfite subcategories within the Pulp, Paper, and Paperboard point source category (40 CFR part 430) to add BAT limitations for dioxin, which was not measurable when EPA first promulgated these effluent guidelines and pretreatment standards. *See* 63 FR 18504 (April 15, 1998).

In general, treatment technologies address multiple pollutants and it is important to consider their effects holistically in order to develop limitations that are both environmentally protective and economically achievable. In short, EPA believes that the appropriateness of creating an additional subcategory or addressing a newly identified pollutant is best considered in the context of revising an existing set of effluent guidelines. Accordingly, EPA performed these analyses as part of its annual review of existing effluent guidelines and pretreatment standards.

2. What factors does EPA consider in its annual review of effluent guidelines and pretreatment standards under sections 301(d), 304(b), 304(g), and 307(b)?

Section 304(b) and 304(g) direct EPA to revise existing effluent guidelines ''if appropriate.'' In the draft Strategy for National Clean Water Industrial Regulations (''draft Strategy''), see 67 FR 71165 (November 29, 2002), EPA identified four major factors that the Agency would aim to examine, in the course of its annual review, to determine whether it would be appropriate to revise an existing set of effluent guidelines or pretreatment standards for direct and indirect dischargers.

The first factor EPA considers is the amount and toxicity of the pollutants in an industrial category's discharge and the extent to which these pollutants pose a hazard to human health or the environment. This enables the Agency to set priorities for rulemaking in order to achieve the greatest environmental and health benefits. EPA's assessment of hazard also enables the Agency to indirectly assess the effectiveness of the pollution control technologies and processes currently in use by an industrial category, based on the amount and toxicity of its dischargers. This also helps the Agency assess the extent to which additional regulation may contribute reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as specified in section 301(b)(2)(A). The second factor identifies and evaluates the cost and performance of an applicable and demonstrated technology, process change, or pollution prevention alternative that can effectively reduce the pollutants remaining in the industrial category's wastewater and, consequently, substantially reduce the hazard to human health or the environment associated with these pollutant discharges. Cost is a factor specifically identified in section 304(b) for consideration in establishing BPT, BAT, and BCT. The third factor evaluates the affordability or economic achievability of the technology, process change, or pollution prevention measures identified using the second factor. If the financial condition of the industry indicates that it would experience significant difficulties in implementing the new technology, process change, or pollution prevention

measures, EPA might conclude that Agency resources would be more effectively spent developing more efficient, less costly approaches to reducing pollutant loadings that would better satisfy applicable statutory requirements.

The fourth factor addresses implementation and efficiency considerations and recommendations from stakeholders. Here, EPA considers opportunities to eliminate inefficiencies or impediments to pollution prevention or technological innovation, or opportunities to promote innovative approaches such as water quality trading, including within-plant trading. For example, in the 1990s, industry requested in comments on the Offshore and Coastal Oil and Gas Extraction (40 CFR part 435) effluent guidelines rulemakings that EPA revise these effluent guidelines because they inhibited the use of a new pollution prevention technology (synthetic-based drilling fluids). EPA agreed that revisions to these effluent guidelines were appropriate for promoting synthetic-based drilling fluids as a pollution prevention technology and promulgated revisions to the Oil and Gas Extraction point source category. *See* 66 FR 6850 (Jan. 22, 2001). This factor might also prompt EPA, during an annual review, to decide against identifying an existing set of effluent guidelines or pretreatment standards for revision where the pollutant source is already efficiently and effectively controlled by other regulatory or non-regulatory programs.

EPA intends to finalize the draft Strategy in connection with the final 2006 Plan. EPA first solicited public comments in the November 29, 2002, **Federal Register** notice (67 FR 71165) announcing the availability of the draft Strategy. EPA received 22 public comments on the draft Strategy and these are included in Docket ID No. OW–2002–0020. EPA again solicits public comment on the draft Strategy. Commenters should follow the instructions for submitting comments on the draft Strategy listed in **DATES** and **ADDRESSES** sections in this notice. In particular, commenters should send their comments, data, and information on the draft Strategy to the Agency using Docket ID No. OW–2002–0020.

3. How did EPA's 2004 annual review influence its 2005 annual review of point source categories with existing effluent guidelines and pretreatment standards?

In view of the annual nature of its reviews of existing effluent guidelines and pretreatment standards, EPA believes that each annual review can and should influence succeeding annual reviews, *e.g.*, by indicating data gaps, identifying new pollutants or pollution reduction technologies, or otherwise highlighting industrial categories for more detailed scrutiny in subsequent years. During its 2004 annual review, which concluded in September 2004, EPA completed detailed studies for two industrial categories: Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) (Part 414); and Petroleum Refining (Part 419). In addition, EPA identified nine other priority industrial categories as candidates for detailed study in future reviews based on the toxic discharges reported to TRI and PCS. EPA summarized its findings in the ''Technical Support Document for the 2004 Effluent Guidelines Program Plan,'' EPA–821–R–04–014, August 2004. EPA's 2004 annual review, including stakeholder comments received as of that date, is discussed in the comment response document in the record supporting that action. See Docket OW–2003–0074, Document No. OW–2003–0074–1345.

EPA used the findings, data and comments from the 2004 annual review to inform its 2005 annual review. For example, in its 2005 review, EPA gathered more data for industrial categories identified for future study in the 2004 annual review, and began a detailed study of two of these categories (*i.e.*, Steam Electric Power Generation and Pulp, Paper and Paperboard Manufacturing). Although the OCPSF and Petroleum Refining categories again ranked high in terms of TWPE discharged, EPA did not conduct a new detailed study of these categories, as EPA's 2004 detailed study of these categories had revealed that effluent guidelines revisions were not warranted at that time. In 2005, EPA confirmed that its findings in the 2004 annual review, which used TRI and PCS data from year 2000, were still applicable based on the 2002 TRI and PCS data used in the 2005 annual review.

During the 2003 and 2004 reviews, EPA developed methodologies for screening level analysis of discharge data in TRI and PCS as well as for detailed review of prioritized categories. The 2005 review built on the previous reviews by continuing to use the screening level methodology, incorporating some refinements to assigning discharges to categories and updating toxic weighting factors used to estimate potential hazards of toxic pollutant discharges.

4. What actions did EPA take in performing its 2005 annual reviews of existing effluent guidelines and pretreatment standards?

a. Screening-Level Review

The first component of EPA's 2005 annual review consisted of a screening-level review of all industrial categories subject to existing effluent guidelines or pretreatment standards. As a starting point for this review, EPA examined screening-level data from its 2004 annual reviews. In its 2004 annual reviews, EPA focused its efforts on collecting and analyzing data to identify industrial categories whose pollutant discharges potentially pose the greatest hazard to human health or the environment because of their toxicity (*i.e.*, highest estimates of toxic-weighted pollutant discharges). In particular, EPA ranked point source categories according to their discharges of toxic and non-conventional pollutants (reported in units of toxic-weighted pound equivalent or TWPE), based primarily on data from the Toxics Release Inventory (TRI) and the Permit Compliance System (PCS). EPA calculated the TWPE using pollutant-specific toxic weighting factors (TWFs). Where data are available, these TWFs reflect both aquatic life and human health effects. For each facility that reports to TRI and PCS, EPA multiplies the pounds of discharged pollutants by pollutant-specific TWFs. This calculation results in an estimate of the discharged toxic-weighted pound equivalents (TWPE) which EPA then uses to assess the hazard posed by these toxic and non-conventional pollutant discharges to human health or the environment. EPA repeated this process for the 2005 annual reviews using the most recent data (2002). EPA also considered implementation and efficiency issues raised by EPA Regions and stakeholders. The full description of EPA's methodology for the 2005 screening-level review is presented in the Docket accompanying this notice (*see* OW–2004–0032–0017).

EPA is continuously investigating and solicits comment on how to improve its analyses. EPA made a few such improvements to the screening-level review methodology from the 2004 to the 2005 annual review. EPA updated the TWFs and its estimate of average POTW pollutant removal efficiencies for a number of pollutants. Prior to publication of the final 2006 Plan, EPA will start the process for conducting a peer review of its development and use of TWFs. EPA also included pollutant loadings from potential new subcategories in their respective parent

industrial category totals (*e.g.*, the pollutant loadings from petroleum bulk stations and terminals (SIC 5171) were included in the pollutant loadings for the Petroleum Refining point source category (40 CFR part 419)).

EPA also combined the estimated discharges of toxic and non-conventional pollutants calculated from the TRI and PCS databases to estimate the total TWPE for each category. In the 2003 and 2004 annual reviews, EPA separately evaluated the TWPE estimates from the TRI and PCS databases. EPA finds that combining the TWPE estimates from the TRI and PCS databases into a single TWPE number offers a clearer perspective of the industries with the most toxic pollution. Different pollutants may dominate the TRI and PCS TWPE estimates for an industrial category due to the differences in pollutant reporting requirements between the TRI and PCS databases. The single TWPE number for each category highlights those industries with the most toxic discharge data in both TRI and PCS. Although this approach could have theoretically led to double-counting, EPA's review of the data indicates that because the two databases focus on different pollutants, double-counting was minimal and did not affect the ranking of the top ranked industrial categories (*see* OW–2004–0032–0016 and 0017). EPA specifically solicits comment on these revisions to its screening-level review methodology.

EPA also developed and used a quality assurance project plan (QAPP) to document the type and quality of data needed to make the decisions in this annual review and to describe the methods for collecting and assessing those data (*see* OW–2004–0032–0050). EPA used the following document to develop the QAPP for this annual review: ''EPA Requirements for QA Project Plans (QA/R–5), EPA–240-B01–003.'' Using the QAPP as a guide, EPA performed extensive quality assurance checks on the data used to develop estimates of toxic-weighted pollutant discharges (*i.e.*, verifying data reported to TRI and the PCS) to determine if any of the pollutant discharge estimates relied on incorrect or suspect data. For example, EPA contacted facilities and permit writers to confirm and, as necessary, corrected TRI and PCS data for facilities EPA identified in its screening-level review as the significant dischargers of toxic and non-conventional pollution.

Based on this methodology, EPA was able to prioritize its review of industries that offered the greatest potential for reducing hazard to human health and the environment. EPA assigned those categories with the lowest estimates of toxic weighted pollutant discharges a lower priority for revision (*i.e.*, industrial categories marked ''3'' in the ''Findings'' column in Table V–1).

In order to further focus its inquiry during the 2005 annual review, EPA did not prioritize for additional review categories for which effluent guidelines had been recently promulgated or revised, or for which effluent guidelines rulemaking was currently underway (i.e, industrial categories marked ''1'' in the ''Findings'' column in Table V–1). For example, EPA excluded from additional review facilities that are associated with the Vinyl Chloride and Chlor-Alkali Manufacturing rulemaking currently underway, subtracting the pollutant discharges from these facilities in its 2005 hazard assessment of the OCPSF and Inorganic Chemicals point source categories to which they belong. Additionally, EPA applied less scrutiny to industrial categories for which EPA had promulgated effluent guidelines or pretreatment standards within the past seven years. EPA chose seven years because this is the time it customarily takes for the effects of effluent guidelines or pretreatment standards to be fully reflected in pollutant loading data and TRI reports (in large part because effluent limitations guidelines are often incorporated into NPDES permits only upon re-issuance, which could be up to five years after the effluent guidelines or pretreatment standards are promulgated). Because there are 56 point source categories (including over 450 subcategories) with existing effluent guidelines and pretreatment standards that must be reviewed annually, EPA believes it is important to prioritize its review so as to focus on industries where changes to the existing effluent guidelines or pretreatment standards are most likely to be needed. In general, industries for which new or revised effluent guidelines or pretreatment standards have recently been promulgated are less likely to warrant such changes. However, in cases where EPA becomes aware of the growth of a new segment within a category for which EPA has recently revised effluent guidelines or pretreatment standards, or where new concerns are identified for previously unevaluated pollutants discharged by facilities within the industrial category, EPA would apply more scrutiny to the category in a subsequent review. EPA identified no such instance during the 2005 annual review.

EPA identified thirteen industrial sectors in its 2005 annual review where the estimated toxic-weighted pollutant discharges appeared unclear and more data were needed to determine their magnitude (*i.e.*, industrial categories marked ''(4)'' or ''(5)'' in the ''Findings'' column in Table V–1). For these industries, EPA intends to collect additional information for the next annual review.

As part of its 2005 annual review, EPA also considered the number of facilities responsible for the majority of the estimated toxic-weighted pollutant discharges associated with an industrial activity. Where only a few facilities in a category accounted for the vast majority of toxic-weighted pollutant discharges, EPA did not prioritize the category for additional review (i.e, categories marked ''(2)'' in the ''Findings'' column in Table V–1). EPA believes that revision of individual permits may be more effective at addressing the toxic-weighted pollutant discharges than a national effluent guidelines rulemaking because requirements can be better tailored to these few facilities, and because individual permitting actions may take considerably less time than a national rulemaking. The Docket accompanying this notice lists facilities that account for the vast majority of the estimated toxic-weighted pollutant discharges for particular categories (*see* OW–2004–0032–0017). For these facilities, EPA will consider identifying pollutant control and pollution prevention technologies that will assist permit writers in developing facility-specific, technology-based effluent limitations on a best professional judgment (BPJ) basis. In future annual reviews, EPA also intends to re-evaluate each category based on the information available at the time in order to evaluate the effectiveness of the BPJ permit-based support.

EPA received comments urging the Agency, as part of its annual review, to encourage and recognize voluntary efforts by industry to reduce pollutant discharges, especially when the voluntary efforts have been widely adopted within an industry and the associated pollutant reductions have been significant. EPA agrees that industrial categories demonstrating significant progress through voluntary efforts to reduce hazard to human health or the environment associated with their effluent discharges would be a comparatively lower priority for effluent guidelines or pretreatment standards revision, particularly where such reductions are achieved by a significant majority of individual facilities in the industry. Although during this annual review EPA could not complete a systematic review of voluntary pollutant loading reductions, EPA's review did

account for the effects of successful voluntary programs through taking into consideration any significant reductions in pollutant discharges reflected in discharge monitoring and TRI data, as well as any data provided directly by commenters, that EPA used to assess the toxic-weighted pollutant discharges.

EPA directly assessed the availability of technology for some—but not all—industrial categories (*see* OW–2004–0032–0016 and 0017). As was the case in the 2004 annual review, EPA was unable to gather the data needed to perform a comprehensive screening-level analysis of the availability of treatment or process technologies to reduce toxic pollutant wastewater discharges beyond the performance of technologies already in place for all of the 56 existing industrial categories. However, EPA believes that its analysis of hazard can also serve as a proxy for assessing the effectiveness of existing technologies in terms of the amount and significance of the pollutants discharged.

Similarly, EPA could not identify a suitable screening-level tool for comprehensively evaluating the affordability of treatment or process technologies because the universe of facilities is too broad and complex. EPA could not find a reasonable way to prioritize the industrial categories based on a broad economic profile. In the past, EPA has gathered information regarding technologies and economic considerations through detailed questionnaires distributed to hundreds of facilities within a category or subcategory for which EPA has commenced rulemaking. Such information-gathering is subject to the requirements of the Paperwork Reduction Act, 33 U.S.C. 3501, *et seq.* The information acquired in this way is valuable to EPA in its rulemaking efforts, but the process of gathering, validating and analyzing the data—even for only a few subcategories—can consume considerable time and resources. EPA does not think it appropriate to conduct this level of analysis prior to identifying an industrial category for possible regulation. Consequently, EPA is working to develop more streamlined screening-level tools for assessing technological and economic achievability as part of future annual reviews under section 301(d), 304(b), and 307(b). EPA solicits comment on how to best identify and use screening-level tools for assessing technological and economic achievability on an industry-specific basis as part of future annual reviews.

In summary, EPA focused its 2005 screening-level review on industrial categories whose pollutant discharges potentially pose the greatest hazards to human health or the environment because of their toxicity. EPA also considered efficiency and implementation issues raised by stakeholders. By using this multi-layered screening approach, the Agency concentrated its resources on those point source categories with the highest estimates of toxic-weighted pollutant discharges (based on best available data), while assigning a lower priority to categories that the Agency believes are not good candidates for effluent guidelines or pretreatment standards revision at this time.

b. Detailed Review of Certain Industries

For a number of the industries that appeared to offer the greatest potential for reducing hazard to human health or the environment, EPA gathered and analyzed additional data on pollutant discharges, economic factors, and technology issues during its 2005 annual review. EPA examined: (1) Wastewater characteristics and pollutant sources; (2) the pollutants driving the toxic-weighted pollutant discharges; (3) treatment technology and pollution prevention information; (4) the geographic distribution of facilities in the industry; (5) any pollutant discharge trends within the industry; and (6) any relevant economic factors.

EPA relied on many different sources of data including: (1) 1997 and 2002 U.S. Economic Census; (2) TRI and PCS data; (3) contacts with reporting facilities to verify reported releases and facility categorization; (4) contacts with regulatory authorities (states and EPA regions) to understand how category facilities are permitted; (5) NPDES permits and their supporting fact sheets; (6) EPA effluent guidelines technical development documents; (7) relevant EPA preliminary data summaries or study reports; (8) technical literature on pollutant sources and control technologies; (9) information provided by industry including industry conducted survey and sampling data; and (10) stakeholder comments (*see* OW–2004–0032–0016, 0017, and 0020).

During its 2005 annual review, EPA started detailed studies for the Pulp, Paper, and Paperboard (Part 430) and Steam Electric Power Generation (Part 423) point source categories because they represent the two industrial point source categories with the largest combined TWPE based on EPA's ranking approach. EPA plans to complete these detailed studies in its 2006 annual review, prior to publication of the final 2006 Plan. An expected outcome of these detailed studies will be the determination of whether it would be appropriate to identify these industrial categories for possible effluent guidelines revision in the 2006 final Plan. The current status of these two detailed studies is presented in section V.B.

c. Preliminary Review of Effluent Guidelines for Certain Industrial Categories

In addition to identifying two categories for detailed studies (*see* section V.B.2) during the 2005 screening level review, EPA identified 11 additional categories with potentially high TWPE discharge estimates (*i.e.*, industrial point source categories with existing effluent guidelines identified with ''(5)'' in the column entitled ''Findings'' in Table V–1). EPA will continue to collect and analyze hazard and technology-based information on these eleven industrial categories but will assign a higher priority to investigating the Pulp, Paper, and Paperboard and Steam Electric Power Generation industrial categories. The docket accompanying this notice presents a summary of EPA's findings on these eleven industrial categories (*see* OW–2004–0032–0016).

d. Public Comments on the 2004 Annual Review

EPA's annual review process considers information provided by stakeholders regarding the need for new or revised effluent limitations guidelines and pretreatment standards. To that end, EPA established a docket for its 2005 annual review with the publication of the final 2004 Plan to provide the public with an opportunity to provide additional information to assist the Agency in its annual review. EPA's Regional Offices and stakeholders identified other industrial point source categories as potential candidates for revision of effluent limitations guidelines and pretreatment standards based on potential opportunities to improve implementation of these regulations or because of their pollutant discharges (*see* OW–2004–0032–0020). See section V.B.3. EPA hopes that public review of the 2005 annual review and the preliminary Plan in this notice, as well as public review of future annual reviews and Plans, will elicit additional information and suggestions for improving the Effluent Guidelines Program.

B. What Were EPA's Findings From Its Annual Review for 2005?

1. Screening-Level Review

The findings of the 2005 annual review are presented in Table V–1. This table uses the following codes to describe the Agency's findings with respect to each existing industrial category.

(1) Effluent guidelines or pretreatment standards for this industrial category were recently revised or reviewed through an effluent guidelines rulemaking or a rulemaking is currently underway.

(2) National effluent guidelines or pretreatment standards are not the best tools for establishing technology-based effluent limitations for this industrial category because most of the toxic and non-conventional pollutant discharges are from one or a few facilities in this industrial category. EPA will consider assisting permitting authorities in identifying pollutant control and pollution prevention technologies for the development of technology-based effluent limitations by best professional judgment (BPJ) on a facility-specific basis.

(3) Not identified as a hazard priority based on data available at this time.

(4) Incomplete data available for full analysis. EPA intends to complete a detailed study of this industry for the final 2006 Plan. See section V.B.2.

(5) Incomplete data available for full analysis. EPA intends to complete a preliminary category review of this industry for the final 2006 Plan. See section V.A.4.c.

TABLE V–1.—FINDINGS FROM THE 2005 ANNUAL REVIEW OF EFFLUENT GUIDELINES AND PRETREATMENT STANDARDS PROMULGATED UNDER SECTION 301(D), 304(B), 304(G), AND 307(B)

No.	Industry category (listed alphabetically)	40 CFR Part	Findings †
1	Aluminum Forming	467	(3)
2	Asbestos Manufacturing	427	(3)
3	Battery Manufacturing	461	(3)
4	Canned and Preserved Fruits and Vegetable Processing	407	(3)
5	Canned and Preserved Seafood Processing	408	(3)
6	Carbon Black Manufacturing	458	(3)
7	Cement Manufacturing	411	(3)
8	Centralized Waste Treatment	437	(1)
9	Coal Mining	434	(1) and (3)
10	Coil Coating	465	(3)
11	Concentrated Animal Feeding Operations (CAFO)	412	(1)
12	Concentrated Aquatic Animal Production	451	(1)
13	Copper Forming	468	(3)
14	Dairy Products Processing	405	(3)
15	Electrical and Electronic Components	469	(3)
16	Electroplating	413	(1)
17	Explosives Manufacturing	457	(3)
18	Ferroalloy Manufacturing	424	(3)
19	Fertilizer Manufacturing	418	(5)
20	Glass Manufacturing	426	(3)
21	Grain Mills	406	(3)
22	Gum and Wood Chemicals	454	(3)
23	Hospitals	460	(3)
24	Ink Formulating	447	(3)
25	Inorganic Chemicals	415	(1) and (5)
26	Iron and Steel Manufacturing	420	(1)
27	Landfills	445	(1)
28	Leather Tanning and Finishing	425	(3)
29	Meat and Poultry Products	432	(1)
30	Metal Finishing	433	(1)
31	Metal Molding and Casting	464	(3)
32	Metal Products and Machinery	438	(1)
33	Mineral Mining and Processing	436	(3)
34	Nonferrous Metals Forming and Metal Powders	471	(3)
35	Nonferrous Metals Manufacturing	421	(5)
36	Oil and Gas Extraction	435	(1) and (2)
37	Ore Mining and Dressing	440	(5)
38	Organic Chemicals, Plastics, and Synthetic Fibers	414	(1) and (5)
39	Paint Formulating	446	(3)
40	Paving and Roofing Materials (Tars and Asphalt)	443	(3)
41	Pesticide Chemicals	455	(5)
42	Petroleum Refining	419	(5)
43	Pharmaceutical Manufacturing	439	(1)
44	Phosphate Manufacturing	422	(3)
45	Photographic	459	(3)
46	Plastic Molding and Forming	463	(5)
47	Porcelain Enameling	466	(5)
48	Pulp, Paper, and Paperboard	430	(2) and (4)
49	Rubber Manufacturing	428	(5)
50	Soaps and Detergents Manufacturing	417	(3)
51	Steam Electric Power Generation	423	(4)
52	Sugar Processing	409	(3)
53	Textile Mills	410	(5)
54	Timber Products Processing	429	(3)

TABLE V–1.—FINDINGS FROM THE 2005 ANNUAL REVIEW OF EFFLUENT GUIDELINES AND PRETREATMENT STANDARDS PROMULGATED UNDER SECTION 301(D), 304(B), 304(G), AND 307(B)—Continued

No.	Industry category (listed alphabetically)	40 CFR Part	Findings †
55	Transportation Equipment Cleaning	442	(1)
56	Waste Combustors	444	(1)

† **Note:** The descriptions of the ''Findings'' codes are presented immediately prior to this table.

2. Detailed Studies

As a result of its 2005 screening-level review, EPA is conducting detailed studies of two industrial point source categories with existing effluent guidelines and pretreatment standards: Pulp, Paper, and Paperboard (Part 430) and Steam Electric Power Generation (Part 423). During detailed study of these categories, EPA will first verify that the pollutant discharges reported to TRI and PCS for 2002 accurately reflect the current discharges of the industry. EPA will also perform an in-depth analysis of the reported pollutant discharges, technology innovation and process changes in these industrial categories, as well as an analysis of technology cost and affordability. Additionally, EPA will consider whether there are industrial sectors not currently subject to effluent guidelines or pretreatment standards that should be included with these existing categories, either as part of existing subcategories or as potential new subcategories. The purpose of the detailed study is to determine whether, in the final 2006 Plan, EPA should identify one or both of these industrial categories for possible revision of their existing effluent guidelines and pretreatment standards.

Based on the information available to EPA at this time, EPA is not proposing such identification. However, EPA will determine whether it is appropriate to identify these categories for possible revision of their effluent guidelines and pretreatment standards based on the results of its 2006 annual review and the two detailed studies, which it intends to conclude prior to publishing the final 2006 Plan. EPA requests comment and supporting data on whether it should identify either or both of these industrial categories for possible rulemakings in the final 2006 Plan.

a. Pulp, Paper, and Paperboard (Part 430)

EPA began a detailed study of the Pulp, Paper, and Paperboard point source category in the 2005 annual review because it ranked highest in terms of toxic and non-conventional pollutant discharges among the industrial point source categories investigated in the screening-level analyses. The most recent changes to effluent guidelines for this point source category, known as part of the ''Cluster Rules,'' were new limits for facilities in the Bleached Papergrade Kraft and Soda (Subpart B) and Papergrade Sulfite (Subpart E) subcategories (April 15, 1998; 63 FR 18504). EPA promulgated new limits for dioxin, furan, chloroform, chlorinated phenolic compounds, and adsorbable organic halides (AOX). In the 2005 annual review, EPA reviewed effluent discharge data for all 78 bleached papergrade kraft and sulfite mills—the ''Phase I'' mills. EPA also reviewed effluent discharges for pulping mills, secondary (recycled) fiber mills, and paper and paperboard mills in eight subcategories (Subparts C and F through L)—the ''Phase II'' mills. EPA reviewed data from PCS for 171 Phase II mills and data for 169 Phase II mills that reported to TRI.

EPA did not review effluent discharge data for the four dissolving kraft and dissolving sulfite mills (Subparts A and D)—''Phase III'' mills. As discussed in the 2004 annual review, EPA believes that because of the small number of facilities, effluent guidelines rulemaking is not appropriate at this time for these subcategories. Instead of an effluent guidelines rulemaking EPA will provide site-specific permit support to state permit writers as they develop NPDES permits for the four facilities in these two subcategories. These NPDES permits will include effluent limitations that reflect a determination of BAT based on BPJ, or, if necessary, more stringent limitations to ensure compliance with state water quality standards. Therefore, EPA did not include these four Phase III mills in the detailed study for this industry.

Phase I and Phase II mills reported discharges of ''dioxin and dioxin-like compounds'' to TRI in 2002 which resulted in an effluent discharge estimate of 2.81 million TWPE (66.4 grams of various dioxin congeners). Phase I mills in PCS in 2002 also showed discharges of the most toxic forms of dioxin (*i.e.*, 2,3,7,8–TCDD and 2,3,7,8–TCDF) which resulted in an effluent discharge estimate of 1.37 million TWPE (0.9 grams of 2,3,7,8–TCDD and 2,3,7,8–TCDF). EPA notes that one mill accounted for more than 99 percent of the PCS dioxin discharges for this industrial category in 2002. This mill changed its operations after 2002 and has not reported dioxin releases since 2002 (*see* OW–2004–0032–0021). EPA also notes that with or without the PCS TWPE from this one mill, this category ranks higher than any other category in terms of the estimated combined TRI and PCS TWPE discharged to U.S. waters. In its detailed study of this industrial category EPA will further verify pollutant discharge data and assess the impact of these mill changes and the corresponding 2003 and 2004 pollutant discharges reported by the mill to TRI and PCS. In the past, EPA has sometimes found that apparently high dioxin discharges reported to TRI may result from facilities using annual discharge volumes multiplied by one half the dioxin analytic method detection limit for their TRI dioxin release estimates when dioxin sampling data were ''non-detect.'' In general, EPA would expect to have a stronger record basis, with positive detections of toxic pollutants, before it identified an industry for a rulemaking. Other toxic pollutant discharges for Phase I and II mills that resulted in additional TWPE discharge estimates include: polycyclic aromatic compounds; metals (*e.g.*, manganese, lead, zinc, mercury); and nitrate.

Key issues the Agency will address in the detailed study include whether Phase I and II mills are currently generating and discharging dioxin; and whether PCS contains dioxin discharge data for the Phase II mills. EPA will also investigate the source and magnitude of the other toxic pollutants and non-conventional pollutants reported as discharged by these mills, and whether there are any new technologies or process changes for wastewater volume or pollutant reduction that might appropriately serve as the basis for revised effluent guidelines. See section IX.A. Based on this detailed study, EPA will determine whether or not to identify this industrial category for possible revisions to its effluents guidelines.

EPA has already made considerable progress in investigating pollutant discharges in this category and has solicited and received assistance from a trade association for this industrial category, the American Forest & Paper Association (AF&PA), and from the National Council for Air and Stream Improvement (NCASI), an independent, non-profit research institute that focuses on environmental topics of interest to the forest products industry. EPA held a meeting with AF&PA and NCASI and member companies and the meeting minutes are included in the docket (*see* OW–2004–0032–0048). AF&PA members provided EPA with 48 NPDES permits for Phase I mills (representing 62% of the Phase I mills in the industry). AF&PA also provided written documentation and data on the details of TRI release estimates and PCS errors (*see* OW–2004–0032–0022). Prior to completing its 2005 annual review, EPA did not have time to fully evaluate the large amount of data submitted by AF&PA, NCASI, and their member companies in the context of the 2003 and 2004 pollutant discharges reported to TRI and PCS. EPA intends to complete this evaluation in its 2006 annual review. EPA will also continue to work with AF&PA, NCASI, and other stakeholders to better understand the current pollutant discharges by this category.

b. Steam Electric Power Generation (Part 423)

EPA began a detailed study of the Steam Electric Power Generation point source category in the 2005 annual review because it ranked second highest in terms of toxic and non-conventional toxic weighted pollutant discharges among the industrial point source categories investigated in the screening-level analyses. Effluent guidelines for direct dischargers were first promulgated for this category in 1974 (39 FR 36186). In 1977, EPA promulgated pretreatment standards for indirect dischargers (42 FR15690). In 1982, EPA made significant revisions to these effluent guidelines and pretreatment standards (47 FR 52290). The current effluent guidelines are applicable to discharges from steam electric generating units that are primarily engaged in generating electricity for distribution and sale and that use fossil-type or nuclear fuels. EPA's screening-level analysis during the 2005 annual review was based primarily on information reported to TRI, PCS, and the Energy Information Administration (EIA) for the year 2002. EPA also obtained and reviewed additional information to supplement that data. These data include industry-compiled data on the likely source and magnitude of the reported toxic dischargers (*see* OW–2004–0032–0023). Pollutants significantly influencing this category's hazard ranking include arsenic, boron, metals (including mercury), and chlorine.

In this detailed study, EPA plans to better quantify pollutant discharges in wastewater discharged by steam electric facilities. See section IX.A. EPA will also investigate whether there are any new technologies or process changes for wastewater volume or pollutant reduction that might appropriately serve as the basis for revised effluent guidelines. Additionally, EPA will investigate whether the recently revised analytic method for mercury better quantifies the sources and amounts of mercury in discharged wastewater from facilities in this category (*see* October 29, 2002; 67 FR 65876 and OW–2004–0032–0024).

Additionally, during its review of this industrial category, EPA received comments that it should consider amending the applicability of these effluent guidelines to include combined-cycle facilities, refuse-derived fuel facilities, and industrial non-utilities. Combined-cycle technology utilizes waste heat created by the powering of one generator to drive a second generator, which significantly increases the amount of electricity generated by the same amount of fuel. Refuse-derived fuel facilities generate electricity from the combustion of unprocessed or minimally processed refuse. Industrial non-utilities have steam electric plants co-located with other manufacturing or commercial facilities. These power plants are most prevalent at chemical, paper, and petroleum refining facilities and are not currently regulated by Part 423. EPA is investigating the similarities and differences between combined-cycle, refuse-derived fuel facilities, and industrial non-utilities and facilities in the Steam Electric Power Generation point source category in terms of plant operation, water use, and potential pollutants in the wastewaters. EPA specifically solicits comment and data on whether EPA should consider combined-cycle facilities and refuse-derived fuel facilities as potential new subcategories in the Steam Electric Power Generation point source category.

EPA has already made considerable progress in investigating pollutant discharges in this category and has solicited and received assistance from a trade association for this industrial category, the Utility Water Action Group (UWAG). EPA held several meetings with UWAG and its member companies and the meeting minutes are included in the docket (*see* OW–2004–0032–0025). UWAG provided EPA with industry-collected data related to the source and magnitude of pollutant discharges from facilities in this category (*see* OW–2004–0032–0026). In the 2006 annual review, EPA will continue to work with UWAG and other stakeholders to better understand the current pollutant discharges in this category.

3. Other Category Reviews Prompted by Stakeholder Outreach

Following the publication of the 2004 Plan, EPA's Regional Offices and stakeholders identified other industrial point source categories as potential candidates for effluent guideline revision based on potential opportunities to improve efficient implementation of the national water quality program or because of the categories' pollutant discharges (*see* OW–2004–0032–0020 for a listing of these comments).

a. Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) Effluent Guidelines

Congress has directed the Office of Management and Budget (OMB) to prepare an annual report to Congress on the costs and benefits of Federal regulations. See 68 FR 64375 (February 20, 2004). In the 2004 draft report to Congress, OMB also solicited public comment for ''nominations of promising regulatory reforms relevant to the manufacturing sector, particularly those relevant to the welfare of small and medium-sized enterprises.'' In particular, OMB requested suggestions on ''specific reforms to rules, guidance documents or paperwork requirements that would improve manufacturing regulation by reducing unnecessary costs, increasing effectiveness, enhancing competitiveness, reducing uncertainty and increasing flexibility.'' See ''Draft Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities,'' *http://www.whitehouse.gov/omb/inforeg/draft_2004_cbreport.pdf.*

In response to this solicitation two commenters suggested revisions to the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) effluent guidelines (40 CFR part 414). The commenters suggest that OCPSF facilities are discouraged by existing OCPSF effluent guidelines from installing water re-use and reduction technologies and pollution prevention practices and are penalized by more stringent limits because NPDES permit

writers recalculate lower mass-based permit limits based on the reduced wastewater flow rates when re-issuing NPDES permits. The commenters suggest that OCPSF facilities should be able to retain mass limits of the original stringency, established prior to wastewater flow reduction, when process wastewater flows are reduced for purposes of water conservation. The commenters also stated that if process wastewater flows are decreased for other reasons, the mass-based limits should continue to be adjusted pursuant to the current rule.

As part of the Agency's commitments in the President's Manufacturing Initiative, EPA began an evaluation of options for promoting water conservation through the use of mass-based limits as part of its 2005 annual review of existing effluent guidelines. See the OMB report to Congress titled, ''Regulatory Reform of the U.S. Manufacturing Sector,'' Page 30, March 9, 2005. See *http://www.whitehouse.gov/omb/inforeg/regpol-reports_congress.html.* EPA strongly supports water conservation and encourages all sectors, including municipal, industrial, and agricultural, to achieve efficient water use. EPA does not intend for its regulations to present a barrier to efficient water use in any industrial sector.

EPA proposed, and is currently considering finalizing, greater flexibility for control authorities to convert concentration-based pretreatment standards to flow-normalized mass-based permit limits for indirect dischargers where necessary to facilitate adoption of water conservation technologies, provided there is no increase in the discharge of pollutants to the environment. See 64 FR 39563 (July 22, 1999). EPA requests comment on whether it should consider a rulemaking or other ways that would extend greater flexibility to permitting authorities to retain mass-based limits based on current wastewater flows for direct discharges where necessary to facilitate the prospective adoption of water conservation technologies. EPA is particularly interested in specific, detailed examples of situations where the adoption of water conservation technologies and practices have or have not made the achievement of new flow-normalized mass-based permit limits based on the reduced wastewater flow more difficult. See section IX.G.

b. Stakeholder Identified Industries

With the publication of the final 2004 Plan, EPA solicited public comment to inform its 2005 annual review of existing effluent guidelines and pretreatment standards. In addition to the comments identified in the previous section, EPA received five comments on how to conduct its annual review and which industries and pollutants should be the focus of this review (*see* OW–2004–0032–0020). These comments are located in the docket. EPA considered relevant information from these comments in its 2005 annual review.

In particular, industry stakeholders commented that EPA should revise the analytical methods in the Oil and Gas Extraction point source category (40 CFR Part 435, Subpart A) to eliminate the current differences between the synthetic-based drilling fluids (SBF) analytical methods used in the EPA Region 4 and 6 general permits regulating offshore oil and gas facilities in the Eastern and Western Gulf of Mexico (*see* OW–2004–0032–0051). Industry stakeholders also supplied additional data and suggested that EPA change the sediment toxicity analytical methods to account for analytical method variability (*see* OW–2004–0032–0007). See section IX.H.

VI. EPA's 2006 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)

As discussed in section V and further in section VIII, EPA is coordinating its annual review of existing effluent guidelines and pretreatment standards under CWA sections 301(d), 304(b), 307(b) and 304(g) with the publication of a preliminary and biennial Plan under section 304(m). Public comments received on EPA's prior reviews and Plans helped the Agency to prioritize its analysis of existing effluent guidelines and pretreatment standards during the 2005 review. The information gathered during the 2005 annual review, including the identification of data gaps in the analysis of certain existing industry categories, in turn, provides a starting point for EPA's 2006 annual review. See Table V–1 above. In 2006, EPA intends to conduct a screening-level analysis of all 56 industry categories and compare the results against those from previous years. EPA will also conduct more detailed analyses of those industries that rank high in terms of toxic and non-conventional discharges among all point source categories. EPA specifically invites comment and data on the 56 point source categories.

VII. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards

As noted in 40 CFR 403.2, the three principal objectives of the National Pretreatment Program are to: (1) Prevent the wide-scale introduction of pollutants into publicly owned treatment works (POTWs) that will interfere with POTW operations, including use or disposal of municipal sludge; (2) prevent the introduction of pollutants into POTWs which will pass through the treatment works or will otherwise be incompatible with the treatment works; and (3) improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges. See Introduction to the National Pretreatment Program, EPA–833–B–98–002, February 1999.

All indirect dischargers are subject to general pretreatment standards (40 CFR part 403), including a prohibition on discharges causing ''pass through'' or ''interference.'' See 40 CFR 403.5. POTWs that are required to implement approved programs, and those that have experienced interference or pass through, are required to develop local limits to implement the general pretreatment standards. There are approximately 1,500 POTWs with approved pretreatment programs and 13,500 small POTWs that are not required to develop and implement pretreatment programs.

In addition, EPA establishes technology-based national regulations, termed ''categorical pretreatment standards,'' for categories of industry discharging to Publicly Owned Treatment Works (POTWs) pollutants that may pass through, interfere with or are otherwise incompatible with POTW operations. CWA section 307(b). Generally, categorical pretreatment standards are designed such that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment.

EPA has promulgated such pretreatment standards for 35 industrial categories. In this review, EPA evaluated various indirect discharging industries without categorical pretreatment standards to determine whether their discharges were causing pass through or interference, in order to determine whether categorical pretreatment standards may be necessary for these industrial categories.

Stakeholder comments and pollutant discharge information have helped EPA to identify industrial sectors for this review. In particular, EPA has looked

more closely at sectors that are comprised entirely or nearly entirely of indirect dischargers, and is grouping them into the following seven industrial categories: Food Service Establishments; Industrial Laundries; Photoprocessing; Printing and Publishing; Independent and Stand Alone Laboratories; Industrial Container and Drum Cleaning; and Health Services Industry. EPA is including within the Health Services Industry the following activities: Independent and Stand Alone Medical and Dental Laboratories, Offices and Clinics of Doctors of Medicine, Offices and Clinics of Dentists, Nursing and Personal Care Facilities, Veterinary Care Services, and Hospitals and Clinics. EPA solicits comment on that grouping (*see* OW–2004–0032–0038). For all seven of these industrial sectors EPA evaluated (1) the ''Pass Through Potential'' of toxic pollutants and non-conventional pollutants through POTW operations; and (2) the ''Interference Potential'' of industrial indirect discharges with POTW operations. EPA also received, reviewed, and summarized suggestions from commenters on options for improving various categorical pretreatment standards (see OW–2004–0032–0020).

A. EPA's Evaluation of ''Pass Through Potential'' of Toxic and Non-Conventional Pollutants Through POTW Operations

For these seven industrial sectors, EPA evaluated the ''pass through potential'' of toxic pollutants and non-conventional pollutants through POTW operations. Historically, for most effluent guidelines rulemakings, EPA determines the ''pass through potential'' by comparing the percentage of the pollutant removed by well-operated POTWs achieving secondary treatment with the percentage of the pollutant removed by wastewater treatment options that EPA is evaluating as the bases for categorical pretreatment standards (January 28, 1981; 46 FR 9408). For these seven industry sectors, however, EPA was unable to gather the data needed for a comprehensive analysis of the availability and performance (*e.g.*, percentage of the pollutants removed) of treatment or process technologies that might reduce toxic pollutant discharges beyond that of technologies already in place at these facilities. Instead, EPA evaluated the ''pass through potential'' as measured by the total annual TWPE discharged by the industrial sector and the average TWPE discharge among facilities that discharge to POTWs.

EPA based this two part evaluation in part on EPA's prior decision not to promulgate national categorical pretreatment standards for an industrial category (*i.e.*, Industrial Laundries). See August 18, 1999 (64 FR 45071). EPA noted in this 1999 final action that, ''While EPA has broad discretion to promulgate such [national categorical pretreatment] standards, EPA retains discretion not to do so where the total pounds removed do not warrant national regulation and there is not a significant concern with pass through and interference at the POTW.'' See August 18, 1999 (64 FR 45077). EPA solicits comment on this two part evaluation for determining the ''pass through potential'' for industrial categories comprised entirely or nearly entirely of indirect dischargers.

EPA's 2005 review of these seven industrial sectors used pollutant discharge information from TRI, PCS, and other publicly available data to estimate the total annual TWPE discharged per facility. EPA's use of PCS data was limited as nearly all of the PCS discharge monitoring data is from direct dischargers. Consequently, EPA transferred pollutant discharges from direct dischargers to indirect dischargers in some of the seven industrial sectors when other data were not available. Based on these estimated toxic pollutant discharges, EPA's review suggests that there is a low pass through potential for four of the seven industrial sectors and that categorical pretreatment standards for these four industrial sectors are not warranted at this time. These four industrial sectors are: Food Service Establishments; Industrial Laundries; Photoprocessing; and Printing and Publishing. EPA is currently evaluating the pass through potential for the Industrial Container and Drum Cleaning industry using data from its recent study of this industrial sector, ''Preliminary Data Summary: Industrial Container and Drum Cleaning Industry,'' EPA–821–R–02–011, June 2002. EPA also did not have enough information to determine whether there was pass through potential for the remaining two industrial sectors: Independent and Stand Alone Laboratories and Health Services Industries. EPA will continue to evaluate the pass through potential for these three industrial sectors and conducted detailed studies if warranted for the 2007/2008 planning cycle. A summary of EPA's analyses supporting this review are located in the docket (*see* OW–2004–0032–0017). EPA solicits comment on whether these or other industrial activities discharge pollutants that might pass through POTWs and into surface waters.

B. EPA's Evaluation of ''Interference Potential'' of Industrial Indirect Discharges

For each of these seven industrial sectors EPA evaluated the ''interference potential'' of indirect industrial discharges. The term ''interference'' means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both (1) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with applicable regulations or permits. See 40 CFR 403.3(i). To determine the ''interference potential,'' EPA generally evaluates the industrial indirect discharges in terms of: (1) The compatibility of industrial wastewaters and domestic wastewaters (*e.g.*, type of pollutants discharged in industrial wastewaters compared to pollutants typically found in domestic wastewaters); (2) concentrations of pollutants discharged in industrial wastewaters that might cause interference with the POTW collection system (*e.g.*, oil and grease discharges causing blockages in the POTW collection system), the POTW treatment system (*e.g.*, high ammonia mass discharges inhibiting the POTW treatment system) or biosolids disposal options; and (3) the potential for variable pollutant loadings to cause interference with POTW operations (*e.g.*, batch discharges or slug loadings from industrial facilities interfering with normal POTW operations).

EPA relied on readily available information from the literature and stakeholders to evaluate the severity, duration, and frequency of interference incidents caused by industrial indirect discharges. As part of its evaluation, EPA reviewed data from its recent report to Congress on one type of interference incidents, blockages in the POTW collection system leading to combine sewer overflows (CSOs) and sanitary sewer overflows (SSOs). See Impacts and Controls of CSOs and SSOs, EPA 833–R–04–001, August 2004. With respect to Food Service Establishments, EPA noted that ''grease from restaurants, homes, and industrial sources is the most common cause (47%) of reported blockages. Grease is problematic because it solidifies, reduces conveyance capacity, and

blocks flow.'' Other major sources of blockages are grit, rock, and other debris (27%), roots (22%), and roots and grease (4%).

EPA's review of current information indicates that there is no interference potential from the seven industrial sectors that would warrant the development of categorical pretreatment standards. Information collected from control authorities and stakeholders indicate that a growing number of control authorities are using their existing authority (under general pretreatment standards in Part 403) to set more stringent permit limits or to enforce existing permit limits and local ordinances to reduce interferences with POTW operations (*e.g.*, blockages from fats, oils, and greases).

EPA did receive comments from stakeholders during its review that even with current authority provided in the general pretreatment regulations, some POTWs have difficulty controlling interference from some categories of indirect industrial dischargers (*see* OW–2004–0032–0020). EPA notes, however, that to a large extent, interference problems tend to be a local, rather than a national, problem. Pollutants which interfere with the operation of one POTW may not adversely affect the operation of another. These differences are attributable to several factors including the varying sensitivities of different POTWs and the constituent composition of wastewater collected and treated by the POTW (January 28, 1981; 46 FR 9406).

EPA notes that local pretreatment programs already have the necessary tools to control interference problems with existing authority provided by the general pretreatment standards (40 CFR Part 403). Under the provisions of § 403.5(c)(1) & (2), in defined circumstances, a POTW must establish specific local limits to prevent interference. ''[A] POTW must develop specific limits for Industrial Users to guard against interference with the operation of the municipal treatment works.'' 46 FR 9406 (January 28, 1981). Consequently, pretreatment programs should correct interference incidents with enforcement and oversight activities. The interference incidents identified by commenters do not necessarily indicate the need for additional categorical pretreatment standards, but they may indicate the need for additional oversight and enforcement. EPA solicits comment on whether there are industrial sectors discharging pollutants that cause interference issues that cannot be adequately controlled through the general pretreatment standards.

VIII. The Preliminary 2006 Effluent Guidelines Program Plan Under Section 304(m)

In accordance with CWA section 304(m)(2), EPA is publishing this preliminary Plan for public comment prior to publication of the final Plan. EPA expects to finalize this Plan by August 2006. EPA will carefully consider all public comments and information. Commenters should see the **DATES** and **ADDRESSES** sections of this notice for instructions on how to submit comments to EPA on this preliminary Plan. EPA will respond to all these public comments and include these responses in the docket supporting the final Plan.

A. EPA's Schedule for Annual Review and Revision of Existing Effluent Guidelines Under Section 304(b)

1. Schedule for 2005 and 2006 Annual Reviews Under Section 304(b)

As noted in section IV.B, CWA section 304(m)(1)(A) requires EPA to publish a Plan every two years that establishes a schedule for the annual review and revision, in accordance with section 304(b), of the effluent guidelines that EPA has promulgated under that section. Today's preliminary Plan announces EPA's schedule for performing its section 304(b) reviews. The schedule is as follows: To coordinate its annual review of existing effluent guidelines under section 304(b) with its publication of the preliminary and final Plans under CWA section 304(m). In other words, in odd-numbered years, EPA intends to complete its annual review upon publication of the preliminary Plan that EPA must publish for public review and comment under CWA section 304(m)(2). In even-numbered years, EPA intends to complete its annual review upon the publication of the final Plan. EPA's 2005 annual review is the review cycle ending upon the publication of this preliminary 2006 Plan and the 2006 annual review is the review cycle ending upon publication of the final 2006 Plan.

EPA is coordinating its annual reviews under section 304(b) with publication of Plans under section 304(m) for several reasons. First, the annual review is inextricably linked to the planning effort, because the results of each annual review can inform the content of the preliminary and final Plans, *e.g.*, by calling to EPA's attention point source categories for which EPA has not promulgated effluent guidelines. Second, even though not required to do so under either section 304(b) or section 304(m), EPA believes that the public interest is served by periodically presenting to the public a description of each annual review (including the review process employed) and the results of the review. Doing so at the same time EPA publishes preliminary and final plans makes both processes more transparent. Third, by requiring EPA to review all existing effluent guidelines each year, Congress appears to have intended that each successive review would build upon the results of earlier reviews. Therefore, by describing the 2005 annual review along with the preliminary 2006 Plan, EPA hopes to gather and receive data and information that will inform its review for 2006 and final 2006 Plan.

2. Schedule for Possible Revision of Effluent Guidelines Promulgated Under Section 304(b)

EPA is currently conducting rulemakings to potentially revise existing effluent guidelines and pretreatment standards for the following categories: Vinyl Chloride and Chlor-Alkali Manufacturing, Iron and Steel Manufacturing, and Concentrated Animal Feeding Operations. For a summary of the status of the current effluent guidelines rulemakings and a list of completed effluent guidelines rulemakings conducted by EPA since 1992, see the Docket accompanying this notice (*see* OW–2004–0032–0042). EPA solicits comment on these proposed schedules.

As previously identified in Table V–1, EPA does not have sufficient information to identify any additional effluent guidelines for potential revision at this time. Because there are 56 point source categories (including over 450 subcategories) with existing effluent guidelines that must be reviewed annually, EPA believes it is important to prioritize its review so as to focus especially on industries where changes to the existing effluent guidelines are most likely to be needed. Consequently, EPA has identified thirteen industrial categories whose pollutant discharges warrant further study at this time. (*i.e.*, highest estimates of toxic-weighted pollutant discharges).

In particular, as a result of its 2005 annual review, EPA identified two of these thirteen industrial point source categories with existing effluent guidelines for detailed study in its 2006 annual review: Pulp, Paper, and Paperboard (Part 430) and Steam Electric Power Generation (Part 423). During detailed study of these categories, EPA will verify the pollutant discharges identified in the 2005 annual reviews and perform an in-depth analysis of pollutant discharges,

technology innovation and process changes in these industrial categories, as well as an analysis of technology cost and affordability. EPA will also consider whether new subcategories or revisions to the applicability of these effluent guidelines are needed for either of these categories. The purpose of the detailed studies is to determine whether, in the final 2006 Plan, EPA should identify one or both of these industrial categories for possible revision of their existing effluent guidelines. Based on the information available to EPA at this time, EPA is not proposing such an identification. However, EPA will determine whether it is appropriate to identify these categories for revision based on public comments and the results of its 2006 annual review, which it intends to conclude prior to publishing the final 2006 Plan. EPA requests comment and supporting data on whether it should identify either or both of these industrial categories for possible effluent guidelines rulemakings in the final 2006 Plan.

EPA emphasizes that identification of one or both sets of effluent guidelines for possible revision in the final 2006 Plan would not constitute a final decision to revise the guideline or guidelines. EPA would make any such effluent guidelines revisions—supported by an administrative record following an opportunity for public comment—only in connection with a formal rulemaking process pursuant to a schedule announced in the final 2006 Plan.

B. Identification of Point Source Categories Under CWA Section 304(m)(1)(B)

The final Plan must also identify categories of sources discharging non-trivial amounts of toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or new source performance standards (NSPS) under section 306. See CWA section 304(m)(1)(B). The final Plan must also establish a schedule for the promulgation of effluent guidelines for the categories identified under section 304(m)(1)(B) not later than three years after such identification. See CWA section 304(m)(1)(C). Applying the criteria in section VIII.B.1, EPA is not at this time proposing to identify any potential new categories for effluent guidelines rulemaking. Consequently, EPA is not proposing in this preliminary Plan to schedule an effluent guidelines rulemaking for any potential new industrial category. EPA is, however, reviewing the pollutant discharges from facilities in one industrial sector, Tobacco Products (SIC 21), to determine whether to identify this sector as a potential new category in the final 2006 Plan. See section VIII.B.2. EPA is also currently conducting rulemakings to establish effluent guidelines for two potential new categories identified in the final 2004 Plan: Airport Deicing Operations and Drinking Water Supply and Treatment.

1. Process for Identifying Industrial Categories for Which EPA Has Not Promulgated Effluent Guidelines

EPA primarily used data from TRI and PCS to identify industrial categories not currently subject to effluent guidelines. As discussed in the docket, facilities with data in TRI and PCS are identified by a four-digit SIC code. EPA performs a crosswalk between the TRI and PCS data, identified with a the four digit SIC code, and the 56 point source categories with effluent guidelines or pretreatment standards to determine if a four-digit SIC code is correctly regulated, or if it belongs as a potential new subcategory of a currently regulated category (*see* OW–2004–0032–0017). EPA then assessed whether these industrial sectors not currently regulated by effluent guidelines meet the criteria specified in section 304(m)(1)(B), as discussed below.

First, this analysis applies only to industrial categories for which EPA has not promulgated effluent guidelines, not to unregulated subcategories or pollutants within a currently regulated industrial category. The distinction between a category (reflecting an industry as a whole) and a subcategory (reflecting differences among segments of the industry) has long been recognized by the U.S. Supreme Court. *See, e.g., Chemical Mfrs. Ass'n* v. *NRDC*, 470 U.S. 116, 130, 132 n.24 (1985). Thus, EPA's first decision criterion asks whether an industrial operation or activity in question is properly characterized—in a broad sense—as an industry ''category'' or more narrowly as a segment of some broader industrial category (*i.e.*, a subcategory). If EPA determines that an industrial operation is properly characterized as a new subcategory of an existing category, rather than a new category, then EPA reviews that new subcategory in the context of conducting its annual review of existing effluent guidelines under sections 301(d) and 304(b).

The second criterion EPA considers when implementing section 304(m)(1)(B) also derives from the plain text of that section. By its terms, CWA section 304(m)(1)(B) applies only to industrial categories to which effluent guidelines under section 304(b)(2) or section 306 would apply, if promulgated. Therefore, for purposes of section 304(m)(1)(B), EPA would not identify in the biennial Plan any industrial categories composed exclusively or almost exclusively of indirect discharging facilities regulated under section 307 or categories for which other CWA controls take precedence over effluent guidelines, *e.g.*, POTWs regulated under CWA section 301(b)(1)(B) or municipal storm water runoff regulated under CWA section 402(p)(3)(B).

Third, the analysis under CWA section 304(m)(1)(B) applies only to industrial categories of sources that may be discharging non-trivial amounts of toxic or non-conventional pollutants to waters of the United States. EPA did not consider, under this analysis, industrial activities where conventional pollutants, rather than toxic or non-conventional pollutants, are the pollutants of concern. In addition, even when toxic and non-conventional pollutants might be present in an industrial category's discharge, the analysis under 304(m)(1)(B) does not apply when those discharges occur in trivial amounts. EPA does not believe that it is necessary, nor was it Congressional intent, to develop national effluent guidelines for categories of sources that are likely to pose an insignificant hazard to human health or the environment due to their trivial discharges. See Senate Report Number 50, 99th Congress, 1st Session (1985); WQA87 Legislative History 31. This decision criterion leads EPA to focus on those remaining industrial categories where, based on currently available information, new effluent guidelines have the potential to address a non-trivial hazard to human health or the environment associated with toxic or non-conventional pollutants.

Priority-setting is intrinsic to any planning exercise, and EPA believes that Congress intended for EPA to focus on categories discharging ''non-trivial'' amounts of toxic or non-conventional pollutants as a way of setting priorities to achieve the greatest environmental results. Because section 304(m)(1)(C) requires that EPA complete an effluent guidelines rulemaking within three years of identifying an industrial category in a 304(m) plan, it is important that EPA have the discretion to prioritize its identification of new industrial categories so that it can use available resources effectively, and identify in each successive Plan those industrial categories where an effluent guideline is an appropriate tool to address non-trivial discharges of toxic or non-conventional pollutants. This

interpretation is supported by the fact that section 304(m) imposes an on-going planning requirement, with new final Plans due every two years and draft Plans published for public comment in between. The CWA specifically contemplated that effluent guidelines would not be the only solution to all water quality problems.

EPA interprets section 304(m), including its requirement that EPA identify in a plan any industrial categories for which it might promulgate effluent guidelines, as a mechanism designed to promote regular and transparent priority-setting on the part of the Agency. A plan, ultimately, is a statement of choices and priorities. *See Norton* v. *Southern Utah Wilderness Alliance, et al.*, 124 S. Ct. 2373, 2383 (2004). Identifying an industrial activity for possible effluent guideline rulemaking reflects EPA's view, at the time the plan is issued, that a national categorical regulation may be an appropriate tool to accomplish the desired environmental results. Similarly, announcing a schedule reflects EPA's assignment of priorities, taking into account all of the other statutory mandates and policy initiatives designed to implement the CWA's goals and the funds appropriated by Congress to execute them. By requiring EPA to publish its plan, Congress assured that EPA's priority-setting processes would be available for public viewing. By requiring EPA to solicit comments on preliminary plans, Congress assured that interested members of the public could contribute ideas and express policy preferences. Finally, by requiring publication of plans every two years, Congress assured that EPA would regularly re-evaluate its past policy choices and priorities (including whether to identify an industrial activity for effluent guidelines rulemaking) to account for changed circumstances. Ultimately, however, Congress left the content of the plan to EPA's discretion—befitting the role that effluent guidelines play in the overall structure of the CWA and their relationship to other tools for addressing water pollution. Considering the full scope of the mandates and authorities established by the CWA, of which effluent guidelines are only a part, EPA needs the discretion to promulgate new effluent guidelines in a phased, orderly manner. Otherwise, EPA might find itself commencing an effluent guidelines rulemaking when none is actually needed for the protection of human health or the environment. By crafting section 304(m) as a planning mechanism, Congress has given EPA that discretion.

2. Discharges From Tobacco Products Facilities

Public comments on the preliminary 2004 Plan suggested that EPA consider developing effluent guidelines for the tobacco products industrial sector due to the potential of facilities in this industrial sector to discharge nontrivial amounts of nonconventional and toxic pollutants. In particular, commenters expressed concern over the quantity of toxics and carcinogens that may be discharged in wastewater associated with the manufacture of cigarettes. At the time of publication of the final 2004 Plan, EPA was unable to make a determination, based on readily available information, as to whether toxic and nonconventional discharges associated with tobacco products facilities are trivial or nontrivial. In order to better respond to these comments and determine whether to identify the tobacco products industrial sector as a potential new point source category, EPA is conducting a detailed study of the pollutant discharges for this industrial sector.

This industrial sector is divided into the following four industry groups: (1) SIC code 2111 (Cigarettes)—establishments primarily engaged in manufacturing cigarettes from tobacco or other materials; (2) SIC code 2121 (Cigars)—establishments primarily engaged in manufacturing cigars; (3) SIC code 2131 (Chewing and Smoking Tobacco and Snuff)—establishments primarily engaged in manufacturing chewing and smoking tobacco and snuff; and (4) SIC code 2141 (Tobacco Stemming and Redrying)—establishments primarily engaged in the stemming and redrying of tobacco or in manufacturing reconstituted tobacco. Based on information in the 2002 Economic Census, EPA estimates there are 114 tobacco products facilities in the United States, nine of which are direct dischargers and currently have NPDES permits. EPA's review of TRI and PCS data indicates that there is very little information about the facilities in this sector. Consequently, EPA is conducting a detailed review of this industrial sector. EPA plans to complete this detailed review prior to publication of the final 2006 Plan in order to determine whether to identify this industry sector as a potential new industrial point source category. Key issues EPA will address in its detailed study include the source and magnitude of the toxic and non-conventional pollutants discharged directly to waters of the U.S. and whether indirect discharges of these pollutants present any pass through or interference issues for POTW operations.

EPA has already made considerable progress in investigating pollutant discharges in this category and has solicited and received assistance from the companies who represent 90% of the U.S. market. EPA held several meetings with these tobacco products companies since publication of the 2004 Plan and the meeting minutes are included in the docket (*see* OW–2004–0032–0043 and 0044). These companies have provided extensive information on processes, pollutant discharges and existing permits. Based on information collected to date, EPA believes that primary processing at cigarette manufacturers and their related reconstituted tobacco operations is the main source of discharged wastewater pollution in this industrial sector. EPA conducted site visits at six tobacco product facilities, four cigarette manufacturing facilities and two dedicated reconstituted tobacco facilities. In addition to collecting information on processes and wastewater generation, EPA also collected grab samples of wastewater during these site visits. EPA collected these wastewater samples to: (1) Further characterize wastewater generated and/or discharged at these facilities; and (2) evaluate treatment effectiveness, as applicable. EPA expects to place non-CBI information and data regarding these site visits and sampling episodes in the public record (EPA Docket No. OW–2004–0032) by December 2005. As these data will be available after the close of the public comment period (*see* **DATES** section), EPA will accept public comment on these data for 30 days after these data become available in the docket. Members of the public who would like notice of when this data is available should contact EPA (*see* **FOR FURTHER INFORMATION CONTACT** section). EPA also plans to work with State NPDES permit writers and pretreatment control authorities to obtain existing permits and to identify any issues or concerns with wastewaters from this industrial sector.

C. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 **Federal Register** 51735 (October 4, 1993)] the Agency must determine whether a ''regulatory action'' is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines the term ''regulatory action'' to include any substantive action by an agency (normally published in the **Federal**

Register) that is expected to lead to the promulgation of a final rule or regulation. While EPA does not normally publish plans and priority-setting documents such as this preliminary 2006 Plan in the **Federal Register**, EPA is required by statute to do so here. The Order also defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this is not a ''significant regulatory action'' within the meaning of the Executive Order. Consequently, EPA did not submitted this notice to OMB for its review under Executive Order 12866.

IX. Request for Comment and Information

EPA invites and encourages public participation in the development of the effluent guidelines annual reviews and the biennial Plans. The Agency asks that comments address deficiencies in the docket of this preliminary Plan and that commenters provide supporting data for suggested revisions or corrections where possible.

A. Detailed Studies

EPA requests information on the industries for which it is conducting detailed studies: Pulp, Paper, and Paperboard (Part 430); Steam Electric Power Generation (Part 423); and Tobacco Products (SIC 21). As discussed above, the Agency has identified two of these categories through its annual hazard screening review process (Pulp, Paper, and Paperboard and Steam Electric Power Generation) and the third through public comment (Tobacco Products). EPA hopes to gather the following information.

Pulp, Paper, and Paperboard (Part 430)

In order to evaluate the implementation of the Cluster Rules, EPA reviewed pipe and outfall descriptions contained in PCS for bleached papergrade kraft and papergrade sulfite mills (Phase I mills). EPA identified these pipes and outfalls as bleach plant effluent, final effluent, or other type of monitoring location. EPA requests that operators of these Phase I mills verify EPA's identification of their PCS monitoring locations. See OW–2004–0032–0046, Appendix A.

EPA reviewed the information provided by AF&PA and its member companies regarding the measurement techniques used to calculate TRI-reported toxic discharges at 19 individual Phase I mills. EPA requests additional details of methods used to estimate releases of toxic pollutant discharges reported to TRI, in particular those methods used by Phase II mills (mills without bleached papergrade kraft or papergrade sulfite operations).

Some permits require in-process monitoring (bleach plant effluent monitoring) but the permitting authority (state) does not include in-process monitoring results in PCS. EPA requests that operators of bleached papergrade kraft or papergrade sulfite mills provide results of their permit-required (or other) bleach plant effluent monitoring, where these monitoring results are missing from PCS.

EPA requests information about non-bleaching sources of toxic wastewater pollutants, such as pollutants derived from combustion-related activities, spent pulping liquor from unbleached kraft mills, and papermachine additives and coatings.

EPA requests examples (case studies) of mill process changes implemented in response to the cluster rules, including the wastewater pollution reduction benefits of installing BAT and using BMPs for the control of spent pulping liquor losses.

Steam Electric Power Generation (Part 423)

EPA is investigating various types of wastewater discharges by steam electric utility and non-utility facilities including: Cooling water, ash-handling wastes, coal pile drainage, water treatment wastes, boiler blowdown, wet air pollution control device wastes, maintenance cleaning wastes, and miscellaneous waste streams. EPA solicits information on these and any other wastewaters that may be discharged by steam electric utility and non-utility facilities. In particular, EPA solicits information on the pollution prevention, management, and treatment for these wastewaters (*e.g.*, how many facilities discharge coal pile runoff to ash ponds for further treatment) and the typical wastewater volumes and pollutant concentrations for wastewater discharges (*e.g.*, what are typical wastewater volumes and pollutant concentrations of arsenic, beryllium, lead, mercury, and selenium in ash-handling wastewaters).

EPA solicits information on any new technologies or process changes for flow or pollutant reduction that might appropriately serve as the basis for revised effluent guidelines. In particular, EPA solicits comment on whether facilities are implementing pollution prevention, best management practices, or other operational changes (*e.g.*, flow reduction technology) to reduce wastewater pollutant discharges. For each practice or technology EPA solicits information on which of these are more readily adopted by new facilities rather than existing facilities. EPA also solicits comment as to whether any other regulatory programs or voluntary programs have had or may have any effect on the mass of pollutants discharged by existing steam electric facilities to surface waters and POTWs.

EPA notes that process additives in use in the steam electric power generation category have changed over time. Starting in the early 1990s, some power plants began converting from the use of chlorinated compounds to brominated compounds. However, many of these plants report only total residual oxidant (TRO) as part of their NPDES permit requirements. EPA solicits information on the amount and type of brominated compounds discharged from this industry.

EPA also solicits comment regarding electric power generation facilities that use prime movers other than steam turbines (*e.g.*, gas turbines). Specifically, EPA solicits comments on: (1) The wastewater volumes and pollutant concentrations of these discharges; (2) the similarities and differences of the discharge characteristics as compared to steam electric facilities regulated by Part 423; (3) current pollution prevention and treatment options for these discharges and estimates of which pollution prevention and treatment options are most widely used in this industry sector; and (4) whether EPA should amend the applicability of the existing steam electric power generation effluent guidelines to regulate these discharges.

Similarly, EPA is also soliciting information related to these four questions in order to better evaluate the discharges from: (1) The non-utility electric power generation sector and non-conventional renewable and other fuel sources sector (*e.g.*, facilities using wood, wood wastes, non-wood wastes,

refuse, geothermal and solar as the energy sources to fuel steam turbines); and (2) facilities using combined-cycle, combustion turbine, and integrated gasification combined-cycle technology.

Tobacco Products (SIC 21)

EPA solicits information and data on the number and identity of tobacco products processing facilities that discharge to surface waters and POTWs. EPA solicits information and data on the volume and characteristics of tobacco products processing discharges to surface waters and POTWs. EPA solicits information and data on the fate and affects of nicotine discharges to waters of the U.S. EPA solicits information and data on the treatment effectiveness of POTWs in removing nicotine from tobacco products processing wastewaters.

Based on information collected to date, EPA believes non-cigarette related tobacco products processing (such as the manufacture of cigars, smokeless tobacco products, and tobacco stemming and redrying) generate and discharge little or no wastewater (in terms of volumes and toxic and/or non-conventional pollutant mass) to waters of the U.S. EPA solicits data to support or refute this assertion.

B. EPA Requests Information on the Industries Recommended for a Preliminary Category Review

EPA requests information on the industries for which there are incomplete data available for analysis (*i.e.*, industrial point source categories with existing effluent guidelines identified with ''(5)'' in the column entitled ''Findings'' in Table V–1). EPA will need to collect more information for the next biennial plan. Specifically, EPA hopes to gather the following information:

- What toxic pollutants are discharged from these industries in non-trivial amounts on an industry and per-facility basis?
- What raw material(s) or process(es) are the sources of these pollutants?
- What technologies or management practices are available (technically and economically) to control or prevent the generation and/or release of these pollutants.

C. Data Sources and Methodologies

EPA solicits comments on whether EPA used the correct evaluation factors, criteria, and data sources in conducting its annual review and developing this preliminary Plan. EPA also solicits comment on other data sources EPA can use in its annual reviews and biennial planning process. Please see the docket for a more detailed discussion of EPA's analysis supporting the reviews in this notice (*see* OW–2004–0032–0017).

D. BPJ Permit-Based Support

EPA solicits comments on whether, and if so how, the Agency should provide EPA Regions and States with permit-based support instead of revising effluent guidelines (*e.g.*, when the vast majority of the hazard is associated with one or a few facilities).

E. Identification of New Industrial Categories

EPA solicits comment on the methodology for grouping industrial sectors currently not subject to effluent guidelines or pretreatment standards for review and prioritization, and the factors and measures EPA should consider for determining whether to identify such industries for a rulemaking. EPA solicits comment on other data sources and approaches EPA can use to identify industrial sectors currently not subject to effluent guidelines or pretreatment standards for review and prioritization.

F. Implementation Issues Related to Existing Effluent Guidelines and Pretreatment Standards

As a factor in its decision-making, EPA considers opportunities to eliminate inefficiencies or impediments to pollution prevention or technological innovation, or opportunities to promote innovative approaches such as water quality trading, including within-plant trading. Consequently, EPA solicits comment on implementation issues related to existing effluent guidelines and pretreatment standards. EPA also solicits comment on these proposed schedules for current effluent guidelines rulemakings (*see* OW–2004–0032–0042).

G. EPA Solicits Comment on Implementation Issues Related to the Use of Flow Normalized Mass-Based Permit Limits and Their Potential Impact on the Adoption of Water Conservation Technologies

EPA solicits comment on the suggested revisions to the OCPSF effluent guidelines raised by commenters. See section V.B.3.a. In particular, EPA requests comment on the likely advantages and disadvantages of the commenters' suggestion (i.e., allowing NPDES permittees to keep flow-normalized mass-based permit limits established at the beginning of the prior permit term before possible water re-use and reduction technologies and pollution prevention practices may have been implemented). EPA requests data to evaluate the costs, benefits, and impacts of water conservation practices advocated by commenters. EPA also solicits comment on whether the commenters' suggestion could have a broader application to other industrial categories with flow-normalized mass-based NPDES permit limits.

In particular, EPA requests paired influent and effluent regulated pollutant concentration and flow data where available, before and after implementation of the increased water conservation technologies and practices, to determine wastewater treatment performance (*i.e.*, percent pollutant removals) and the discharged effluent pollutant concentrations for OCPSF (and other) facilities that they believe may or may not have adversely impacted their ability to achieve existing effluent guidelines. EPA also solicits other data on these water re-use and reduction technologies and pollution prevention practices which may include:

- The main reasons why these technologies and practices were adopted, and whether these technologies and practices are transferrable to other facilities.
- Detailed process flow diagrams including wastewater flows from each industrial unit operation; typical pollutant concentration wastewater data from each industrial unit operation; descriptions of the water conservation technologies and practices employed at each of these industrial unit operations; and data and descriptions on whether these water conservation technologies and practices reduce the amount of wastewater volume or the mass of wastewater pollutants resulting from an industrial unit operation or both.
- Detailed descriptions of the wastewater treatment and the annual costs of operating wastewater treatment to maintain compliance with the effluent guidelines. Detailed descriptions of the capital and annual costs associated with implementing water conservation technologies and practices and any cost savings resulting from water conservation technologies and practices.

Additionally, EPA solicits estimates of the amount of increased water conservation and the number of facilities that would adopt more advanced water conservation technologies and practices as a sole result of: (1) Implementing the commenters' suggestion; or (2) other factors (*e.g.*, limitations on water source availability, potential costs savings). EPA would be particularly interested in specific, detailed examples of situations where the adoption of water

conservation technologies and practices have or have not made the achievement of new flow-normalized mass-based permit limits based on the reduced wastewater flow more difficult for both direct and indirect dischargers. EPA solicits comment on how and when NPDES permit writers are calculating flow-normalized mass-based permit limits when facilities reduce their wastewater flow. EPA solicits comment on whether the commenters' suggestion is more or less relevant to certain industries, treatment technologies, or pollutants. If EPA were to address the commenters' suggestion, should any rule or guidance changes be limited to one or a few industries (*e.g.*, OCPSF) or more broadly applicable. EPA solicits comment on whether there are differences between direct and indirect dischargers that might suggest that different approaches are warranted.

Comments and data provided to EPA will be evaluated in the context of the CWA factors required for consideration of effluent guidelines. Were EPA to make any effluent guidelines revisions, they would need to be supported by an administrative record following an opportunity for public comment based on available data.

H. EPA Solicits Comment on Implementation Issues Related to the Analytical Methods for Synthetic-Based Drilling Fluids (SBF) in the Oil and Gas Extraction Point Source Category (40 CFR Part 435)

EPA solicits comment on the suggested revisions to the Oil and Gas Extraction effluent guidelines (40 CFR Part 435) raised by commenters. See section V.B.3.b. In particular, EPA solicits comment on whether EPA should propose a rulemaking to replace the synthetic-based drilling fluids (SBF) analytic methods in the Oil and Gas Extraction effluent guidelines with the SBF analytical methods from the EPA Region 6 general permit for the ''Outer Continental Shelf of the Gulf of Mexico,'' NPDES Permit No: GMG290000 (*see* OW–2004–0032–0047). EPA also solicits comment on the number, geographic distribution, and types of wells (*e.g.*, oil or gas extraction, exploration or development, deepwater or shallow water, likely bottom depth of well) with down-hole temperatures above the practical limitations of ester-based drilling fluids (*i.e.*, above 350 °F). EPA also solicits comment on whether drilling fluid additives (*e.g.*, emulsifiers) can address the effects of high temperatures on ester-based drilling fluids. Finally, EPA solicits comments on whether the issues raised by commenters are more appropriately addressed through improved standardization of the SBF analytical methods in order to reduce variability rather than the commenter's suggested revisions to the effluent guidelines.

I. EPA Solicits Comment on the Draft Strategy

In connection with the final 2006 Plan, EPA intends to finalize the draft Strategy for National Clean Water Industrial Regulations (''draft Strategy''). See 67 FR 71165 (November 29, 2002). EPA again solicits public comment on the draft Strategy. This will allow time for EPA to better refine the Strategy as it performs future effluent guidelines reviews. In particular, EPA requests comments on its proposed use of the four factors described in the draft Strategy (*see* section V.A.2) and invites the public to identify other or different factors for EPA's consideration.

The Agency is also interested to receive comments on whether each of these four factors should be ranked, and if so, whether different weights should be applied to each. EPA also requests suggestions as to the information the Agency should use to prioritize industrial categories that pass both the primary and secondary screening reviews described in the draft Strategy.

J. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards

EPA solicits comments on its evaluation of categories of indirect dischargers without categorical pretreatment standards. Specifically, EPA solicits wastewater characterization data (*e.g.*, wastewater volumes, concentrations of discharged pollutants), current examples of pollution prevention, treatment technologies, and local limits for all industries EPA evaluated: Food Service Establishments; Industrial Laundries; Photoprocessing; Printing and Publishing; Independent and Stand Alone Laboratories; Industrial Container and Drum Cleaning; and Health Services Industry. EPA solicits comment on the grouping of six industrial sectors into the Health Services Industry grouping (*see* OW–2004–0032–0038). EPA also solicits comment on whether there are industrial sectors discharging pollutants that cause interference issues that cannot be adequately controlled through the general pretreatment standards.

Dated: August 19, 2005.

Michael Shapiro,

Acting Assistant Administrator for Water.

[FR Doc. 05–17032 Filed 8–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7961–8]

Proposed CERCLA Administrative Agreement; Circuitron Corporation Superfund Site, East Farmingdale, Suffolk County, NY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Agency's May 24, 1995, ''Guidance on Agreements with Prospective Purchasers of Contaminated Property,'' notice is hereby given of a proposed prospective purchaser agreement (''PPA'') with the United States Environmental Protection Agency; Suffolk County, New York; the State of New York; and an as-of-yet unnamed ''Auction Purchaser'' regarding a 0.9-acre parcel of real property (the ''Property'') included within the Circuitron Corporation Superfund Site, located at 82 Milbar Boulevard in East Farmingdale, Suffolk County, New York (the ''Site''). Under the PPA, Suffolk County would market the Property at auction, with a portion of the proceeds to be paid to EPA in reimbursement of response costs it incurred at the Site. Also under the PPA, the United States and the State would covenant not to sue or take administrative action against Suffolk County and its departments and agencies, and the Auction Purchaser, under Sections 106 or 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''). EPA also agrees to release the CERCLA Section 107(l) lien against the Property, and waive any lien or right to perfect any lien it may have on the Property now and in the future under Section 107(r) of CERCLA. By publication of this Notice, a thirty (30) day period has been established in which the Agency will accept written comments relating to the PPA agreement. The Agency will consider all comments received and may modify or withdraw its consent to the PPA if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the

U.S. Environmental Protection Agency, Region II, Office of Regional Counsel, New York/Caribbean Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866.

DATES: Comments must be submitted on or before September 28, 2005.

ADDRESSES: The proposed PPA and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region II, Office of Regional Counsel, New York/Caribbean Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866. A copy of the proposed PPA may be obtained from the individual listed below. Comments should reference the Circuitron Corporation Superfund Site, East Farmingdale, Suffolk County, New York and EPA Index No. CERCLA–02–2005–2018, and should be addressed to the individual listed below.

FOR FURTHER INFORMATION CONTACT: Carl P. Garvey, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007–1866, Telephone: (212) 637–3181.

Dated: August 19, 2005.

Dore LaPosta,

Acting Regional Administrator, Region II.

[FR Doc. 05–17188 Filed 8–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7962–1]

Proposed CERCLA Administrative Cost Recovery Settlement; The Vega Alta Public Supply Wells Superfund Site, Vega Alta, PR

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act as amended (''CERCLA''), 42 U.S.C. 9622(h), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Vega Alta Public Supply Wells Superfund Site located in Vega Alta, Puerto Rico with the settling parties, Caribe General Electric Products, Inc. and Unisys Corporation. The settlement requires the settling parties to pay $858,433.41, plus an additional sum for Interest on that amount calculated from January 28, 2004 through the date of payment to the Vega Alta Public Supply Wells Superfund Site Special Account within the EPA Hazardous Substance Superfund in reimbursement of EPA's past response costs incurred with respect to the Site. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a) for past response costs. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before September 28, 2005.

ADDRESSES: The proposed settlement is available for public inspection at USEPA, 290 Broadway, 17th Floor, New York, New York 10007–1866. A copy of the proposed settlement may be obtained from Marla E. Wieder, Assistant Regional Counsel, USEPA, 290 Broadway, 17th Floor, New York, New York 10007–1866, (212) 637–3184. Comments should reference the Vega Alta Public Supply Wells Superfund Site, CERCLA Docket No. 02–2005–2029. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Marla E. Wieder, Assistant Regional Counsel, USEPA, 290 Broadway, New York, New York 10007–1866, (212) 637–3184.

Dated: August 18, 2005.

Kathleen Callahan,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region II.

[FR Doc. 05–17189 Filed 8–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0032; FRL–7730–7]

TSCA Section 21 Petition; Response to Citizen's Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On May 13, 2005, the Ecology Center of Ann Arbor, Michigan, petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA) to establish regulations prohibiting the manufacture, processing, distribution in commerce, use, and improper disposal of lead wheel balancing weights. For the reasons set forth in this notice, EPA has denied the petition to initiate rulemaking. In this notice, the Agency elaborates the reasons for its denial and the type of information it may need.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1401; e-mail address: *TSCAHotline@epa.gov*.

For technical information contact: Dave Topping, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–1974; e-mail address:*topping.dave@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may potentially be affected by this action if you manufacture, import, process, use, distribute, or dispose of lead wheel balancing weights or are an automobile tire retailer. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2005–0032. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to

4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work toward providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

II. Background

A. What is a TSCA Section 21 Petition?

Section 21 of TSCA allows citizens to petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth facts that the petitioner believes establish the need for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. Within 60 days of denial, or the expiration of the 90–day period, if no action is taken, the petitioners may commence a civil action in a U.S. District Court to compel initiation of the requested rulemaking proceeding.

B. What Action is Requested Under This TSCA Section 21 Petition?

On May 13, 2005, EPA received a petition under TSCA section 21 from the Ecology Center of Ann Arbor, Michigan. The petition requests that EPA initiate a rulemaking under TSCA section 6(a)(1)(A) to prohibit the manufacture, processing, distribution in commerce, use, and improper disposal of lead wheel balancing weights.

To promulgate a rule under TSCA section 6(a), EPA must find that there is a ''reasonable basis to conclude'' that activities involving a chemical substance or mixture present or will present ''an unreasonable risk of injury to health or the environment.'' It is important to note that TSCA section 6 does not require a factual certainty, but only a ''reasonable basis to conclude'' that a risk is unreasonable. The legislative history of TSCA makes it clear that EPA may take regulatory action to prevent harm even though there are uncertainties as to the threshold levels of risk. Congress recognized that ''such action must be based not only on consideration of facts but also on consideration of scientific theories, projections of trends from currently available data, modeling using reasonable assumptions, and extrapolations from limited data.'' (H.R. Rep. No. 1341, 94th Cong., 2d Sess. 32 (1976).)

Although TSCA uses unreasonable risk as its basic standard for deciding on appropriate action regarding the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, TSCA does not define the term ''unreasonable risk.'' Guidance is provided by section 6(c), which requires certain considerations in promulgating a rule under section 6(a). EPA must consider the following: (1) The effects of the chemical on health and the magnitude of human exposure; (2) the effects of the chemical on the environment and the magnitude of environmental exposure; (3) the benefits of the chemical for various uses and the availability of substitutes for such uses; and (4) the reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

Section 6(c) offers no further guidance to decision-makers. In particular, it does not discuss how each of these factors is to be weighed in relationship to each other. However, the House Report on TSCA (H.R. Rep. No. 1341, 94th Cong., 2d Sess. 13-15 (1976)) provides a useful pertinent explanation. The House Report describes the finding of unreasonable risk as involving a balancing of the probability that harm will occur, and the magnitude and severity of that harm, against the adverse effects (social and economic) on society of the proposed Agency action to reduce the harm.

III. Disposition of Petition

EPA finds that there are insufficient data available for the Agency to initiate a TSCA section 6 rulemaking at this time. EPA has reviewed the supporting information included with the petition, as well as other available information on lead wheel balancing weights. The petition contains very limited, uncertain evidence on the potential environmental releases from lead wheel balancing weights to the air, surface water, ground water, and soil (particularly regarding potential releases in the proximity of roadways and potential releases to particularly sensitive environments or human and ecological populations). Some estimates of potential releases of lead from lead wheel balancing weights to the environment are available within references noted within the petition, or within other sources available in the literature. However, EPA needs additional, verifiable data in order to develop an adequate understanding of the environmental and human exposure associated with releases to the environment from lead wheel balancing weights.

While the hazard of lead and the fate and transport of lead in the environment are well-characterized, without additional information EPA cannot adequately estimate potential exposures and, thus, potential risks. A literature search conducted by the Agency identified little data beyond that cited by the petitioner. In particular, EPA is interested in the following data:

- The number of sites and number of workers involved in the manufacture, processing, recycling, use, and disposal of lead wheel balancing weights, and any associated exposure of workers to lead.

• Quantities and releases of lead from the point of manufacture of lead wheel weights to the point of deposition on roadways.

• Whether abrasion of lead wheel balancing weights occurs on the road, and if so, the extent of the abrasion and the mass of lead lost from the abrasion.

• The contribution of lead from wheel balancing weights to the overall levels of lead near roadways.

• The quantity of lead from lead wheel balancing weights deposited on roadways that subsequently enters various environmental pathways.

• The percentage of deposited lead that enters each pathway (to determine which pathways are of concern).

• The number of salvage yards, automobile shredders, steel mills, and secondary smelting sites and the quantities of lead that are released from recycling and disposal of lead wheel weights.

• Exposures to hobbyists who melt lead wheel weights to manufacture other items such as fishing sinkers, toy soldiers, and bullets.

While the Agency does not believe information in all of these areas would be necessary, the data currently available are not adequate in any of these areas to support granting the petition or initiating the requested rulemaking; there is insufficient information to adequately estimate potential risks for any one exposure pathway.

In evaluating the petition, the Agency assessed a number of plausible exposure scenarios and associated releases of lead from lead wheel balancing weights in order to identify specific data gaps that should be filled in order to allow a meaningful, realistic assessment of risk. The data gaps are summarized above and the details are presented in the following documents, which are found in the public docket for today's notice:

• *Preliminary Exposure Assessment Support Document for the TSCA Section 21 Petition on Lead Wheel-Balancing Weights*, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency.

• *Occupational Exposures and Environmental Releases of Lead Wheel-Balancing Weights*, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency.

In addition, the data that are available have significant uncertainties and limitations. The analyses provided by the petitioner in support of statements regarding potential exposure raise several concerns, including: (1) Limitations in scope, both geographically and temporally; (2) potential limitations in the calculated lead wheel balancing weight releases during the weekly surveys that supported these analyses; (3) lack of data on potential routes of exposure from roadways to humans and the environment; and (4) lack of data on lead in soil, dust, and water near the test area to help establish a link between lead wheel balancing weights and measured lead in the environment.

Consequently, the Agency concludes that there are currently not enough data on human or environmental exposures to adequately assess the risks from the manufacturing, processing, distribution in commerce, use, or improper disposal of lead wheel balancing weights, and to initiate a TSCA section 6 rulemaking to prohibit these activities, as requested by the petitioner. In addition, due to the data limitations, the Agency has no basis to determine how significant the contribution of lead to the environment from wheel weights is and whether a rulemaking to address lead wheel weights would be an effective use of Agency resources.

However, while EPA cannot at present initiate a rulemaking under TSCA section 6, the Agency is concerned about the potential contribution of lead wheel weights and other products that contain lead to elevated blood lead levels in children. Nationally, the primary source of elevated blood lead levels in children is lead-based paint used before the product was banned in 1978. There are other sources, however, which may contribute to elevated blood lead levels, perhaps significantly. These sources include certain products that contain lead (such as wheel weights), historical contamination of soil, certain foods and folk remedies that contain lead, and releases from stationary sources. (For more information, see*http://www.cdc.gov/nceh/lead/faq/about.htm*.) As part of the Federal Government's effort to meet its goal to eliminate lead poisoning in children by 2010, EPA is working with the Centers for Disease Control and Prevention and other Federal Partners to characterize and address these other sources of lead exposure in children. As part of its focus on children's exposure to lead, EPA is developing an approach to prioritize for further analysis and action the variety of products containing lead, that would be subject to TSCA and/or voluntary initiatives, including lead wheel weights.

IV. Comments Received

EPA received nine comments in response to the **Federal Register** notice published June 21, 2005 (70 FR 35667) (FRL–7720–5), announcing EPA's receipt of this TSCA section 21 petition.

Three comments were received from members of the public and one from an environmental organization (The Department of the Planet Earth) supporting the petition. These commenters cited the toxicity of lead. None provided any technical data regarding exposure to lead from wheel balancing weights.

Two States (Maine and Minnesota) submitted comments and supported the petition. The State of Maine noted that State water quality data indicate many locations where lead in road and parking lot runoff exceed Ambient Water Quality Standards. This commenter stated that lead is a persistent, bioaccumulative toxic chemical and that a transition to non-lead wheel weights would be a good practical step if less-toxic alternatives are cost effective and available. However, the comment provided no basis for attributing the lead in road and parking lot runoff to wheel weights. The Minnesota Office of Environmental Assistance noted that their State fleet of vehicles had participated in a pilot project to evaluate alternative wheel balancing weights and believes that the lead weights could be replaced with alternatives. They also noted their concern with exposures to people who make products from used lead wheel balancing weights and problems with lead in the waste streams from electric arc furnaces that recycle scrap automobiles.

Three trade associations submitted comments. The Association of Battery Recyclers (ABR) and the Tire Industry Association opposed the petition on the basis that no information is available to demonstrate any exposure to lead from wheel balancing weights. The Steel Manufacturers Association supports the petition, noting that a prohibition would reduce the contamination of scrap metal feedstock with lead, which contributes to the hazardous waste stream from electric arc furnaces that process scrap automobiles. They provided no information on lead exposure from wheel balancing weights.

BFS Retail Commercial Operations, LLC, which operates more than 2,200 consumer and commercial vehicle service and tire locations across the United States and Canada, commented that it did not support a ban on lead wheel balancing weights at this time. The commenter opined that there is a lack of substitute materials readily available in the marketplace, a lack of manufacturing capacity for such substitutes, and a lack of consensus in the industry on substitute materials that

would be likely to lead to confusion and additional costs in the marketplace. Further, the commenter noted a lack of basic research on the environmental consequences of substitute materials and their effectiveness as a replacement for lead in wheel balancing weights.

ABR initially requested an extension of the comment period but later timely submitted its comments. EPA has considered these comments in responding to the petition.

List of Subjects

Environmental protection.

Dated: August 10, 2005.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–17129 Filed 8–26–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before October 28, 2005.

ADDRESSES: You may submit comments, identified by unnum Regulation M, by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.), between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: The Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing).

Agency form number: Reg M.

OMB control number: 7100–0202.

Frequency: On occasion.

Reporters: Consumer lessors.

Annual reporting hours: Disclosures, 3,509 hours; and advertising, 25 hours.

Estimated average hours per response: Disclosures, 6.5 minutes; and advertising, 25 minutes.

Number of respondents: 270.

General description of report: This information collection is mandatory sections 105(a) and 187 of TILA (15 U.S.C. 1604(a) and 1667(f)) is not given confidential treatment.

Abstract: The Consumer Leasing Act and Regulation M are intended to provide consumers with meaningful disclosures about the costs and terms of leases for personal property. The disclosures enable consumers to compare the terms for a particular lease with those for other leases and, when appropriate, to compare lease terms with those for credit transactions. The act and regulation also contain rules about advertising consumer leases and limit the size of balloon payments in consumer lease transactions. The information collection pursuant to Regulation M is triggered by specific events. All disclosures must be provided to the lessee prior to the consummation of the lease and when the availability of consumer leases on particular terms is advertised.

Board of Governors of the Federal Reserve System, August 24, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–17134 Filed 8–26–05; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 22, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Bank of Montreal, Montreal, Canada; Harris Bankcorp, Inc., Chicago, Illinois, and Harris Financial Corp., Wilmington, Delaware; to acquire 100 percent of the voting shares of Edville Bankcorp, Inc., Villa Park, Illinois, and thereby indirectly acquire Villa Park Trust and Savings Bank, Villa Park, Illinois.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Jefferson Bancshares, Inc., Pine Bluff, Arkansas; to acquire 100 percent of the voting shares of First Security Bank of Clarksville, Clarksville, Arkansas.

2. Liberty Bancshares, Inc., Jonesboro, Arkansas; to acquire an additional 21.35 percent, for total ownership of 50.15 percent, of Russellville Bancshares, Inc., Jonesboro, Arkansas, and thereby indirectly acquire First Arkansas Valley Bank, Russellville, Arkansas.

Board of Governors of the Federal Reserve System, August 24, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–17135 Filed 8–26–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0259]

Federal Supply Service; Information Collection; Market Research Questionnaire

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding the market research questionnaire. A request for public comments was published at 70 FR 35086, June 16, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary 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; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: September 28, 2005.

FOR FURTHER INFORMATION CONTACT: Kathleen Baden, Director, Supply Standards Division, Federal Supply Service, at telephone (703) 605–1824, or via e-mail to *kathleen.baden@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0259, Market Research Questionnaire, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Market Research Questionnaire is used to gather information that is necessary to develop and/or revise Federal specifications and other purchase descriptions.

B. Annual Reporting Burden

Respondents: 25.
Responses Per Respondent: 1.
Total Responses: 25.
Hours Per Response: 0.5.
Total Burden Hours: 12.5.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0259, Market Research Questionnaire, in all correspondence.

Dated: August 18, 2005.

Michael W. Carleton,

Chief Information Officer.

[FR Doc. 05–17065 Filed 8–26–05; 8:45 am]

BILLING CODE 6820–PH–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Federal Guidelines for Requesting, Stockpiling, Distributing Potassium Iodide (KI) From the Strategic National Stockpile (SNS)

AGENCY: Office of Public Health Emergency Preparedness (OPHEP), HHS.

SUMMARY: In accordance with the provisions of Section 127 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law 107–188, (the Bioterrorism Act), this document provides guidelines for State, local, and tribal governments, for the expanded distribution, stockpiling, and utilization of KI in the event of a radioactive iodine release from a commercial nuclear power plant incident. This program would extend coverage from the current ten mile radius up to twenty miles from a commercial nuclear power plant. This document is being published in the **Federal Register** to permit public input on this expanded coverage from a wider

range of interested entities than was accomplished with a previous draft. Respondents are also invited to include comments as to whether or not employing measures of prophylaxis other than KI or continuing reliance upon established preventive measures without expanding the area of KI coverage would render the deployment of this expanded KI distribution unnecessary. Further background follows later in these draft guidelines.

If individuals inhale or ingest radioactive iodine, administration of KI, when given prior to or within several hours after exposure, can reduce the risk of thyroid cancer among certain categories of persons. KI does not provide protection from external exposure or contamination with radioactive iodine nor does it provide general protection from other sources of ionizing radiation. The primary protective actions are evacuation of the area near the source of the plume, external decontamination of individuals affected, and preventing potentially contaminated food and milk from reaching consumers. Because radioactive iodine exposure at distances beyond 10 miles is likely to be due to contamination of the food and water supply, avoiding the consumption of food or water is expected to be the most effective protective measure for persons in this zone.

The Federal Government, through the Nuclear Regulatory Commission, presently makes KI available to States upon their request for distribution to or stockpiling for individuals within 10 miles of a commercial nuclear power plant.

FOR FURTHER INFORMATION CONTACT: Office of Mass Casualty Planning, Office of Public Health Emergency Preparedness, U.S. Department of Health and Human Services, 200 Independence Avenue SW., Room 638G, Washington, DC 20201, Tel: 202–260–1198.

Background

Bioterrorism Act

Section 127 of the Bioterrorism Act established new Federal requirements for the distribution and use of KI within 20 miles of commercial nuclear power plants. It requires that KI tablets be made available through the Strategic National Stockpile (SNS) to State and local governments for stockpiling and distribution, as appropriate, to public facilities, such as schools and hospitals, in quantities sufficient to provide adequate protection for the population within 20 miles of a commercial nuclear power plant.

In addition, Section 127 requires:

- Development of guidelines by the U.S. Government for stockpiling, distribution and utilization of KI. State, local, and tribal governments requesting KI under this program are required to submit plans for local stockpiling, distribution, and utilization of KI accompanied by certification that sufficient quantities of KI have not already been provided by the U.S. Government.
- Submission of a Report to Congress six months after publication of guidelines on measures taken to implement the Act, including whether KI has been made available.
- A National Academy of Sciences (NAS) study on the most effective and safe way to distribute and administer KI.

The Department of Health and Human Services (HHS) funded the NAS KI study and in December 2003 the NAS released ''Distribution and Administration of Potassium Iodide in the Event of a Nuclear Incident.'' Although the Homeland Security Act of 2002, Public Law 107–296, established joint management of the Strategic National Stockpile (SNS) by the Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS), the SNS was officially transferred back to HHS under the Project BioShield Act of 2004, Public Law 108–276. This transfer became effective on August 13, 2004.

Potassium Iodide

KI is the chemical symbol for the chemical compound potassium iodide. It is a salt, similar to table salt and, in fact, KI is the ingredient that is routinely added to table salt, sodium chloride (NaCl), to make it ''iodized salt.''

Iodine is a necessary element for the formation of thyroid hormone, and in order to accomplish this, KI is 'taken up' by the thyroid gland and used in hormone synthesis. If KI is administered as a countermeasure just before or within 4 hours following exposure to inhaled or ingested radioactive iodine, it will saturate receptor capability within the thyroid gland so that radioactive iodine does not become concentrated within the thyroid, thereby minimizing its exposure to ionizing radiation. Significant internal exposures to radioactive iodine can increase the risk of thyroid diseases, notably thyroid cancers.

The use of KI has been recognized by the World Health Organization, the U.S. Food and Drug Administration and the National Academy of Sciences as a safe and effective thyroid prophylaxis in the event of a significant release of radioactive iodine from a nuclear power plant. However, KI offers protection for only one radiation-sensitive organ, the thyroid, under conditions of inhalation or ingestion of radioactive iodine. It does not protect against external irradiation of the thyroid, as might happen if one is exposed to external iodine in a radioactive cloud as opposed to iodine that is inhaled or ingested. It is not a panacea for protection from radiation injury.

The health effect risks to the thyroid gland depend upon many factors, including: (1) The radiation dose to the thyroid, including time (hours/days/weeks/months) required to deliver the dose); (2) the age of the person at the time of exposure and; (3) whether or not the individual is deficient in dietary iodine intake.

A review by The National Academy of Sciences (NAS) of experience with thyroid cancer in populations exposed to the consequences of nuclear events shows that:

- Exposure to external radiation or internal radiation from radioactive iodine is linked to a dose-dependent increase in thyroid-cancer incidence.
- Young children are by far the most sensitive to the carcinogenic effect of radiation on the thyroid, especially after exposure to radioactive iodine in fallout.
- The risk of thyroid cancer in adults exposed to radioactive iodine in fallout is low for adults over 40 years of age.

Radiological Emergency Preparedness Program (REPP)

The REPP, a program managed by the Nuclear and Chemical Hazards Branch within DHS, is designed to assure that off-site response organizations are capable of protecting the public in the event of an incident at a commercial nuclear power plant. The primary actions for protecting the public include evacuation and, as indicated, sheltering. Off-site response organizations base their initial protective action decisions on plant conditions, so that the people closest to the facility are evacuated before significant releases of radioactive materials occur. This ensures maximum protection of the population closest to the facility. The use of KI as a supplemental action to evacuation and sheltering is also sometimes recommended to protect the public. However, the use of KI should not be adopted as an alternative for the implementation of an effective evacuation strategy. Additional protective actions include decontamination of individuals that have external contamination and preventing potentially contaminated food and milk from being ingested by

consumers. Because radioactive iodine exposure at distances beyond 10 miles is likely to be due to contamination of the food and water supply, avoiding the consumption of contaminated food or water is the most effective countermeasure at this distance.

Emergency Planning Zones

To permit protective measures to be taken effectively, the Nuclear Regulatory Commission (NRC) established two Emergency Planning Zones (EPZ) around each commercial nuclear power plant. The zone within 10 miles (16 km) of the plant is designated the plume EPZ and the region within 50 miles (80 km) from the plant the ingestion EPZ. Current analyses indicate that in the event of a power plant accident, direct exposure to the plume poses the greatest threat for persons near the plant, and people who had not evacuated would be exposed to radiation from the airborne radioactive material, material deposited on the ground or other surfaces, and materials taken into the body by inhalation. Within the plume EPZ, circumstances may result in levels, which, if delivered in a short period of time, may be high enough to produce acute radiation effects in exposed people. Farther from the power plant, the predominant exposure threat would come from radioactive materials taken into the body, primarily by the consumption of contaminated foods, milk, and water. The planned protective measures differ in the two zones, however there is flexibility in the emergency plans, and protective measures will be adapted to the circumstances at the time of the incident.

The NAS report, Chapter 5, PROTECTIVE MEASURES, page 81, states: ''Exposure to radioactive iodine is possible through the ingestion pathway, so it is important that plans address this situation. Monitoring of the environment and food products controls this route of exposure. Removing contaminated products from the market and isolating contaminated products until the radioactive iodine decays to safe levels are the most effective way to eliminate radiation exposure and damage to the thyroid. That also eliminates the need for the use of KI by the general public as a protective action [in the ingestion zone].''

- The 10 mile Emergency Planning Zone (Plume EPZ)

The 10 mile EPZ predetermined protective actions include sheltering, decontamination, evacuation, and the use of KI as a supplement to sheltering and evacuation, where appropriate.

- The 50 mile Emergency Planning Zone (Ingestion EPZ)

In the area beyond 10 miles and out to approximately 50 miles, the primary exposure to radioactive materials is from ingestion and the protective actions for this exposure area include a ban on consumption of contaminated food, milk, and water.

The 10-mile EPZ has been reviewed and accepted by the EPA, NRC, and FEMA as the appropriate EPZ size for commercial nuclear power plant licensees to use in developing emergency plans in cooperation with State and local governments. It is not within the scope of these guidelines to question the appropriateness of the 10-mile EPZ under NRC regulations, and nuclear power plant licensees will not be expected to modify their emergency plans.

Chernobyl

A great deal has been learned since the accident at Chernobyl. We believe that design and safety features of U.S. nuclear power plants plus our emphasis on planning through the REPP make it unlikely that a similar scenario could occur on U.S. soil. Persons have tried to extrapolate a Chernobyl experience to the U.S. However, according to the NAS, ''although the qualitative results after Chernobyl are valuable, the quantitative results cannot be transposed to the United States situation without many caveats.''

Terrorism and Nuclear Power Plants

The rigid design features of U.S. nuclear power plants coupled with heightened security measures at these facilities would present significant challenges to terrorists who would seek to cause radioiodine to be released from one of our power plants as the result of an attack. As the National Academy of Sciences concluded, ''The terrorism threat does not appear to add significantly to the risk, because of the existing mechanisms and procedures.''

Roles and Responsibilities

In order to facilitate implementation of the requirements of Section 127 and ensure coordination with the existing REPP requirements, the roles and responsibilities of HHS, DHS, and State, local, and tribal governments are set forth below.

A. HHS

Within HHS, the Office of Public Health Emergency Preparedness (OPHEP) will be responsible for implementing the requirements of Section 127. OPHEP will:

1. Review and approve in writing all requests for KI;
2. Develop the procedures and mechanisms for distribution of KI to State, local, or tribal governments;
3. Provide subject matter expertise on KI and other technical support to State, local, and tribal governments, as requested;
4. Provide the initial approved quantity of KI and ensure sufficient supplies are available to replace used or expiring stocks; and
5. Submit Reports to Congress, as required in Section 127, for the following:

- Measures taken by the Federal Government to implement Section 127
- Whether KI has been made available to State, local, and tribal governments under Section 127 or other programs;
- The extent to which State, local, and tribal governments have made KI available to their populations;
- The findings of the NAS study.

B. DHS

Although Section 127 does not establish direct implementing requirements for the DHS, DHS will maintain its current activities in support of the NRC's current KI program.

C. NRC

Although Section 127 does not establish direct implementing requirements for the NRC, the NRC will maintain its current program for KI distribution and will approve all requests for the initial supply of KI within the 10 mile EPZ, consistent with NRC regulations, after DHS has reviewed the requests for completeness and appropriateness.

D. State Governments Will

1. Decide whether to add KI as a protective measure to their emergency plans. See the NAS Study for examples of distribution options;
2. Submit KI applications to the HHS' Office of Public Health Emergency Preparedness; such applications will include a plan for stockpiling and for distribution and use of KI in the event of a nuclear incident;
3. Certify that the State has not already received sufficient quantities of KI from the Federal Government, (See Section 127(b)(1)(B));
4. Consider FDA's Guidance, ''Potassium Iodide as a Thyroid Blocking Agent in Radiation Emergencies'' in preparing emergency KI dosing plans;

E. Local Governments Will

1. Decide whether to add KI as a protective measure in their emergency

plans. We recommend that local governments review Appendix D of the NAS Study prior to making a decision on the use of KI;

2. Petition the State in which they are located to modify its plan to address their population (not to exceed a 20-mile radius from the plant);

3. Submit their plans for stockpiling, distribution, and using KI to the State for approval and certification that the plan is ''not inconsistent'' with the State emergency plan;

4. Consider FDA's Guidance, ''Potassium Iodide as a Thyroid Blocking Agent in Radiation Emergencies'' in preparing emergency KI dosing plans;

5. Submit KI requests to the HHS Office of Public Health Emergency Preparedness, such applications will include a plan for stockpiling KI and for distribution and use of KI in the event of a nuclear incident.

Note: State approval and certification must be obtained before HHS will accept a KI request from a local government for review and approval.

F. Tribal Governments

1. Decide whether to add KI as a protective measure in their emergency plans. We recommend that tribal governments review Appendix D of the NAS Study prior to making a decision on the use of KI;

2. Petition the state in which they are located to modify its plan to address their population (not to exceed a 20-mile radius from the plant);

3. Consider FDA's Guidance, ''Potassium Iodide as a Thyroid Blocking Agent in Radiation Emergencies'' in preparing emergency KI dosing plans;

4. Submit a KI request to the HHS' Office of Public Health Emergency Preparedness.

Stockpiling, Distribution, Public Education

A. Considerations for KI Utilization

Numerous issues must be considered when making the decision whether to utilize KI as a protective action. These issues include, but are not limited to, the following:

- How will incorporation of KI as a protective measure impact existing emergency plans, procedures, and operations?
- What is the benefit to public health and safety from incorporating KI into emergency response plans?
- Who will be responsible for the KI program? Is there an existing program that can take on this responsibility or must a new one be created?
- Who has the authority to make the recommendation that KI be taken? If the State government is not participating in the program, does the local government have the authority to recommend that KI be taken?
- How will KI be stockpiled and distributed?
- How will incident-specific emergency and environmental conditions be included in the decision to use KI?
- How will the public be notified during an incident when to take KI? Is there a communication system available to notify the public of a nuclear incident?
- How will KI be provided to transient populations?
- What medical assistance will be available for the individual who experiences an adverse medical reaction following KI administration?
- How will medical authorities advise the population to take KI, and under what circumstances will this advice be given, *i.e.*, methods for public education, information, and instruction?
- What is the cost-benefit of the program? Are there better uses of the funding and resources that would result in a greater reduction in risk?
- What is the liability associated with establishing a KI program?
- What procedures will be used to monitor the expiration of KI stocks and request KI replacement from the stockpile?
- If KI is stockpiled under controlled conditions, will they pursue shelf-life extension pursuant to the Food and Drug Administration's guidance? (See Reference O below.)

B. Stockpiling and Distribution

The NAS's report on KI distribution reviewed KI distribution programs in various countries as well as within the United States. An extensive discussion on these programs can be found in Chapter 6, EXISTING DISTRIBUTION PLANS FOR POTASSIUM IODIDE. It is important to note that the report did not identify a preferred method of mass distribution of KI to the public. The report recognized that local conditions surrounding the commercial power plants and existing emergency plans vary between the countries surveyed as well as between the States. The report recognized that the most successful KI plan will take into consideration existing State/local emergency planning as well as specific characteristics of the location and population around the commercial nuclear power plants. A method for evaluation of KI distribution plans was developed and published in Appendix D to the KI distribution report. It is recommended that the NAS's Report on KI distribution be reviewed by State, local, and tribal governments for insights in development and implementation of KI plans and programs.

C. Public Education

Public education is a key component to the success of a KI program. It is important that members of the public have a basic knowledge about the use and side effects of KI, are aware that KI protects only the thyroid from internal exposure to radioactive iodine, and understand that it is to be taken only at the direction of authorized officials. Several methods have been used by States with existing KI programs. These include: Letters to physicians and residents, in-home visits by public health officials, newspaper ads, distribution through pharmacies, press releases and a press conference, a cable television program, KI distribution or ''pick-up'' days, and commercial nuclear power plant public education materials. An expanded discussion of various public education methods is included in chapter 6 of the NAS KI Report.

Health and Human Services KI Distribution Program

A. Requests for KI should be submitted to the:

Office of Mass Casualty Planning, Office of Public Health Emergency Preparedness, U.S. Department of Health and Human Services, 200 Independence Avenue SW., Room 638G, Washington, DC 20201, Tel: 202–260–1198.

B. State Government KI requests must:

- Certify that the State has not already received sufficient quantities of KI from the Federal Government;
- Specify the quantity and formulation of KI needed and describe the calculation used to make this determination;
- Identify the location of the commercial nuclear power plant within the State or within a 20-mile border strip inside an adjacent State; and contain the State's and Tribal Government's plans and procedures for stockpiling, distributing, and administering KI.

These plans must:

- Identify the office with the authority to recommend the use of KI by the general public;
- Identify the organization(s) responsible for implementing the KI use decision;
- Identify the single recipient responsible for receiving the KI; provide

a recipient address for the shipment of KI;

• Specify the decision-making criteria for KI administration;

• Specify the criteria for issuing KI to the public (location, special need);

• Specify the method for making KI available to the public; pre-distribution or stockpiling;

• Specify the method for ensuring the supply of KI is sufficient for the targeted population, including the estimated transient/seasonal population that may be advised to take KI;

• If pre-distributing KI, specify the procedure for the public or special population groups to obtain KI;

• Specify the procedure for storing, monitoring, safeguarding, dispensing (to include, if applicable, tracking who received the drug, when, in what quantity, and maintenance of waivers from liability), and disposing of KI stocks;

• Identify the method for alerting and notifying the general public of the recommendation to take KI;

• Specify how the plan is integrated into existing emergency response plans; and

• Specify quantities of KI (tablets and pediatric liquid oral formulation) that will be requested.

C. Local Governments

KI requests from local governments must certify that:

• The State in which the local government is located does not have a DHS-approved KI distribution plan that includes KI as a protective measure for populations, or a DHS approved plan that does not address populations located beyond 10 miles from the commercial nuclear power plant;

• The local government has petitioned the State in which it is located to modify the State plan to address populations within 20 miles of a commercial nuclear power plant, and 60 days have elapsed without the State modifying the plan to accommodate the request;

• The local government KI plans have been approved by the State and certified to be 'not inconsistent' with the State emergency plan; and

• The local government has reached an agreement with the State that the State will serve as the single point of contact for receipt of KI shipments from the stockpile and will then redistribute the KI to the approved governments.

Funding and Resource Requirements

State, local, and tribal governments are responsible for obtaining the funding and resources necessary to request and implement the KI program within their respective jurisdictions, should they decide to request KI. Only the provision of KI tablets/liquid will be funded through HHS.

Dated: August 24, 2005.

Robert G. Claypool,

Deputy Assistant Secretary, Office of Public Health Emergency Preparedness, Department of Health and Human Services.

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J. Federal Emergency Management Agency, Federal Policy on Distribution of Potassium Iodide Around Nuclear Power Sites for Use as a Thyroidal Blocking Agency, 50 FR, 30258, July 24, 1985.

K. Nauman, J., and Wolff, J., Iodide Prophylaxis in Poland After the Chernobyl Reactor Accident: Benefits and Risks, American Journal of Medicine, Vol. 94, p. 524, May 1993.

L. International Atomic Energy Agency, International Basic Safety Standards for Protection Against Ionizing Radiation and for Safety of Radiation Sources. Safety Series No. 115, 1996.

M. Food and Drug Administration (Department of Health and Human Services) Guidance for Industry KI in Radiation Emergencies—Questions and Answers, *http://www.fda.gov/cder/guidance/5386fnl.htm.*

N. Food and Drug Administration (Department of Health and Human Services) Frequently Asked Questions on Potassium Iodide (KI). *http://www.fda.gov/cder/drugprepare/KI_Q&A.htm.*

O. Food and Drug Administration (Department of Health and Human Services) Guidance for Federal Agencies and State and Local Governments: Potassium Iodide Tablets: Shelf Life Extension. *http://www.fda.gov/cder/guidance/5666fnl.pdf.*

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[FR Doc. 05–17223 Filed 8–25–05; 2:41 pm]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 46527–46530, dated August 10, 2005) is amended to reflect the establishment of the Office of Chief of Public Health Practice within the Office of the Director, Centers for Disease Control and Prevention.

After the mission statement for the Office of Workforce and Career Development (CAL), insert the following:

Office of Chief of Public Health Practice (CAR). The Office of Chief of Public Health Practice (OCPHP) serves as the advocate, guardian, promoter, and conscience of public health practice throughout CDC and in the larger public health community; ensures coordination and synergy of CDC's scientific and practice activities; and promotes and protects the public's health through science-based, practice-relevant standards, policies, and legal tools. Activities in support of the mission are carried out through programs and offices focused on public health law, public health system standards, agency accreditation, and surveillance for emerging issues in public health practice. To carry out its mission, OCPHP: (1) Develops the legal preparedness of CDC programs and the public health system to address terrorism and other national public

health priorities; (2) improves the understanding and use of law as a public health tool by CDC programs and extramural partners; (3) establishes robust partnerships among CDC programs, public health practitioners and key sectors, including elected officials, the legal community, and law enforcement and emergency response organizations; (4) establishes a functional area focused specifically on standards and improvement in practice among state and local public health systems; (5) advances the development and implementation of a national agency accreditation system; (6) relates relevant research and policy analysis to public health practice; (7) monitors and anticipates public health practice trends and issues; and (8) coordinates and addresses cross-cutting issues related to public health practice within CDC.

Dated: August 10, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–17072 Filed 8–26–05; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 46527–46530, dated August 10, 2005) is amended to reflect the establishment of the Coordinating Center for Infectious Diseases at the Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

After the mission statement for the Centers for Disease Control and Prevention (C), insert the following:

Coordinating Center for Infectious Diseases (CV). The mission of the Coordinating Center for Infectious Diseases (CCID) is to protect health and enhance the potential for full, satisfying and productive living across the lifespan of all people in all communities related to infectious diseases.

To carry out its mission, CCID: (1) Fosters collaborations, partnerships, integration, and resource leveraging to increase CDC's health impact and achieve population health goals; (2) helps investigate and diagnose infectious diseases of public health significance; (3) coordinates applied and operational research to define, prevent, and control infectious diseases; (4) assists in providing consultation and training to help state and local health departments plan, develop, implement and improve immunization programs; (5) coordinates research and operational programs to prevent and control vaccine-preventable diseases; (6) assists in providing technical assistance to states, localities, and other nations to investigate and diagnose sexually transmitted diseases (STDs), tuberculosis (TB), human immunodeficiency virus (HIV) infections, and retroviruses; and coordinates applied and operational research on the spread, diagnosis, prevention and control of HIV, other STDs, TB, and non-TB mycobacteria, and non-HIV retroviruses.

Office of the Director (CVA). Manages, coordinates, and evaluates the activities of the CCID; (2) communicates overarching goals and objectives and provides leadership, scientific oversight and guidance in program planning and development; (3) coordinates assistance provided by CCID to other CDC components, other federal, state, and local agencies, the private sector and other nations; (4) provides and coordinates resource management support services for CCID, (*e.g.,* for grants, cooperative agreements, and other assistance mechanisms); (5) coordinates workforce development activities within CCID and coordinates the recruitment, assignment, technical supervision, and career development of staff, with emphasis on goals for equal employment opportunity and diversity where appropriate; (6) assists in the development and implementation of a comprehensive communication program for CCID, assuring that the center's health information is accurately and appropriately represented to a diversity of constituencies and ensuring integration with CDC-wide communications activities; (7) provides liaison with other governmental agencies, international organizations, and outside groups representing the infectious disease activities of CDC; and, (8) collaborates as appropriate with other coordinating centers, offices, and institutes of CDC, other public health service agencies, and other federal agencies.

Dated: August 10, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–17074 Filed 8–26–05; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 46527–46530, dated August 10, 2005) is amended to reflect the establishment of the Coordinating Center for Health Information and Service at the Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

After the mission statement for the Centers for Disease Control and Prevention (C), delete the title *Coordinating Center for Health Information and Service (CP)* and insert the following:

Coordinating Center for Health Information and Service (CP). The mission of the Coordinating Center for Health Information and Service (CCHIS) is to assure that CDC provides high-quality information and programs in the most effective ways to help people, families, and communities protect their health and safety. Through continuous consumer input, prevention research, and public health information technology, we identify and evaluate health needs and interests, translate science into actions to meet those needs, and engage the public in the excitement of discovery and the progress being made to improve the health of the nation.

In carrying out its mission, the CCHIS (1) fosters collaborations, partnerships, integration, and resource leveraging to increase CDC's health impact and achieve population health goals; (2) disseminates and evaluates CDC programs and products; (3) manages programs, messages to the public, and policies in innovative ways; (4) monitors, analyzes, and disseminates high quality, timely health information

which achieves positive public health outcomes; (5) plans and coordinates marketing efforts to achieve CDC's health impact goals related to people, places, and preparedness; (6) plans, directs, and coordinates information systems to support performance measurement and knowledge management related to CDC's health impact goals and other data systems to measure progress towards accomplishment of the goals; (7) assures that health information, interventions, and programs are appropriately packaged and released in a timely manner; (8) collects, analyzes and disseminates national health statistics on vital events and health activities; (9) applies the latest public health informatics strategies and information technology to public health practice, research, and learning; (10) provides consultation and technical assistance, public health surveillance and informatics, health information systems, prevention effectiveness, scientific communications, behavioral science, statistics, and development of community health practice guidance; (11) identifies critical cross-CDC relationships and devotes concerted, consistent and high-level attention to these relationships in order to maximize CDC's success in achieving priority health goals; and (12) provides leadership in the development and coordination of high-priority partnerships and sets strategy and goals for working with the health sectors and partners (business and workers, health care, education, federal agencies, foundations, faith and community organizations, and public health community including state and local health organizations).

Office of the Director (CPA). (1) Provides leadership and guidance and evaluates the activities of the CCHIS; (2) develops overarching goals and objectives and provides leadership, policy formation, scientific oversight and guidance in program planning and development; (3) coordinates assistance provided by CCHIS to other CDC components, other federal, state, and local agencies, the private sector and other nations; (4) provides and coordinates resource management requirements for CCHIS; (5) develops and provides guidance on workforce development activities within CCHIS and coordinates the recruitment, assignment, technical supervision and career development of staff, with emphasis on goals for equal employment opportunity and diversity where appropriate; (6) develops strategies, programs and procedures to ensure quality and integrity in the research activities; and (7) collaborates as appropriate with other coordinating centers, centers, offices, institutes of CDC, and other public health service agencies and other federal agencies.

Dated: August 10, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–17076 Filed 8–26–05; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 46527–30, dated August 10, 2005) is amended to reflect the reorganization of the Procurement and Grants Office, within the Office of the Chief Operating Officer.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the title and functional statement for the *Procurement and Grants Office (CAJ7), Office of the Chief Operating Officer (CAJ),* and insert the following:

Procurement and Grants Office (CAJH). (1) Advises the Director, Centers for Disease Control and Prevention (CDC), the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), and their staff, and provides leadership and direction for CDC acquisition, assistance, and materiel management activities; (2) plans and develops CDC-wide policies, procedures, and practices in acquisition, assistance, and materiel management areas; (3) obtains research and development, services, equipment, supplies, and construction through acquisition processes; (4) maintains functions relating to personal property, transportation, and warehousing operations; (5) awards, administers, and terminates contracts, purchase orders, grants, and cooperative agreements; (6) maintains a continuing program of reviews, evaluations, inquiries, and oversight activities of CDC-wide acquisitions, assistance, and materiel management operations to ensure adherence to laws, policies, procedures, and regulations; (7) maintains liaison with the Department of Health and Human Services (DHHS), General Services Administration (GSA), General Accounting Office (GAO), and other federal agencies on acquisition, assistance, and materiel management policies, procedures, and operating matters.

Office of the Director (CAJH1). (1) Provides overall leadership, guidance and coordination in all areas of the Procurement and Grants Office (PGO) activities; (2) develops and implements organizational strategic planning goals and objectives; (3) provides overall budgetary and human resource management, and administrative support; (4) directs and coordinates activities in support of the Department's Equal Employment Opportunity Program and employee development; (5) conducts continuing studies and analysis of branch activities; (6) provides technical and managerial direction for the development, implementation, and maintenance of the Integrated Contracts Expert System on a CDC-wide basis; (7) operates CDC's Small and Disadvantaged Business Program, and provides direction and support to various other socioeconomic programs encompassing acquisition and assistance activities; (8) develops technical requirements for support business practices through technology.

Materiel Management Activity (CAJH12). (1) Implements CDC-wide policies, procedures, and criteria required to implement federal and departmental regulations governing materiel management and transportation management; (2) evaluates operations to determine procedural changes needed to maintain effective management; (3) provides technical assistance to other parts of CDC on matters pertaining to materiel management, transportation management, fleet management, and agent cashier services; (4) develops, designs, and tests materiel management systems and procedures; (5) represents CDC on inter- and intra-departmental materiel and transportation management committees; (6) maintains liaison with the department and other federal agencies on materiel management, and transportation and traffic management matters; (7) establishes activity goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO.

Office of Policy, Oversight and Evaluation (CAJHK). (1) Provides technical and managerial direction for the development of CDC-wide policies, procedures, and practices in the

acquisitions, assistance, and materiel management areas; (2) participates with senior management in program planning, policy determinations, evaluations, and decisions concerning acquisition, assistance, and materiel management; (3) provides direction for award, administration, measures of effectiveness and termination of contracts, purchase orders, grants, and cooperative agreements; (4) maintains a continuing program of reviews, evaluations, inquiries, and oversight activities of CDC-wide acquisitions, assistance, and materiel management operations to ensure adherence to laws, policies, procedures, and regulations; (5) maintains liaison with DHHS, GSA, GAO, and other Federal agencies on acquisition, assistance, and materiel management policy, procedures, and operating matters; (6) serves as central CDC receipt and referral point for all applications for assistance funds, including interfacing with the automated grants systems and relevant DHHS line of business agencies and distributing draft program announcements for review; (7) provides cost advisory support to acquisition and assistance activities with responsibility for initiating requests for audits and evaluations, and providing recommendations to contracting officer or grants management officer, as required; participates in negotiations with potential contractors and grantees, develops overhead rates for profit and nonprofit organizations, and provides professional advice on accounting and cost principles in resolving audit exceptions as they relate to the acquisition and assistance processes.

Buildings and Facilities Contracts Branch (CAJHL). (1) Directs and controls acquisition planning activities to assure total program needs are addressed and procurements are conducted in a logical, appropriate, and timely sequence; (2) plans, directs, and conducts the acquisition of non-personal services, institutional support services, architect-engineering services, construction of new buildings, alterations, renovations, commodities, and equipment in support of CDC/ATSDR facilities, utilizing a wide variety of contract types and pricing arrangements; (3) provides leadership, direction, procurement options, and approaches in developing specification/statements of work and contract awards; (4) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (5) performs simplified acquisition activities in support of CDC/ATSDR program offices; (6) assures that contractor performance is in accordance with contractual commitments; (7) provides leadership and guidance to CDC/ATSDR project officers and program officials; (8) participates with senior program management in program planning, policy determination, evaluation, and directions concerning acquisition strategies and execution; (9) plans, directs, and coordinates activities of the branch; (10) maintains branch's official contracts files; (11) maintains a close working relationship with facilities management and other CDC components in carrying out their missions; (12) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with overall objectives of PGO.

Acquisition and Assistance Branch I (CAJHM). This branch supports the Coordinating Center for Infectious Diseases and the National Center for HIV, STD, and TB Prevention by performing the following: (1) Plans, directs and conducts the acquisition of non-personal services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive); (2) plans, directs and conducts assistance management activities for CDC through the awards for grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract, grant, and cooperative agreement awards; (4) provides continuing surveillance of financial and administrative aspects of acquisition and assistance-supported activities to assure compliance with appropriate DHHS and CDC policies; (5) gives technical assistance, where indicated, to improve the management of acquisition and assistance-supported activities, and responds to requests for management information from the Office of the Director, headquarters, regional staffs, CDC offices and the public; (6) performs contract and purchasing administrative activities including coordinating and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (7) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in accordance with contractual and assistance commitments; (9) provides leadership and guidance to CDC projects officers and program officials; (10) provides leadership, direction, procurement options, and approaches in developing specifications/statements of work and contract awards; (11) plans, directs, coordinates, and conducts the grants management functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to state and local governments, universities, colleges, research institutions, hospitals, public and private organizations, small businesses, and minority- and/or women-owned businesses for CDC; (12) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution; (13) maintains branch's official contract and assistance files; (14) maintains a close working relationship with CDC program office components in carrying out their missions; (15) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO.

Acquisition and Assistance Branch II (CAJHN). This branch supports the Coordinating Center for Infectious Diseases, the National Center for Infectious Diseases, the National Immunization Program, and CDC Office of the Director assistance requirements by performing the following: (1) Plans, directs, and conducts the acquisition of non-personal services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive); (2) plans, directs, and conducts assistance management activities for CDC through the awards of grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract, grant, and cooperative agreement awards; (4) provides continuing surveillance of financial and administrative aspects of acquisition and assistance-supported activities to assure compliance with appropriate DHHS and CDC policies; (5) gives technical assistance, where indicated, to

improve the management of acquisition and assistance-supported activities, and responds to requests for management information from the Office of the Director, headquarters, regional staffs, CDC program offices and the public; (6) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (7) provides for collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in accordance with contractual and assistance commitments; (9) provides leadership and guidance to CDC project officers and program officials; (10) provides leadership, direction, procurement options, and approaches in developing specifications/statements of work and contract awards; (11) plans, directs, coordinates, and conducts the grants management functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to state and local governments, universities, colleges, research institutions, hospitals, public and private organizations, small businesses, and minority- and/or women-owned businesses for CDC; (12) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution; (13) maintains branch's official contract and assistance files; (14) maintains a close working relationship with CDC program office components in carrying out their missions; (15) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO.

Acquisition and Assistance Branch III (CAJHP). This branch supports the Coordinating Center for Health Promotion, the National Center for Birth Defects and Developmental Disabilities, the National Center for Chronic Disease Prevention and Health Promotion, and the Office of Genomics and Disease Prevention by performing the following: (1) Plans, directs, and conducts the acquisition of non-personal services, supplies equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive); (2) plans, directs, and conducts assistance management activities for CDC through the awards of grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract, grant, and cooperative agreement awards; (4) provides continuing surveillance of financial and administrative aspects of acquisition and assistance-supported activities to assure compliance with appropriate DHHS and CDC policies; (5) gives technical assistance, where indicated, to improve the management of acquisition and assistance-supported activities, and responds to requests for management information from the Office of the Director, headquarters, regional staffs, CDC program offices and the public; (6) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (7) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in accordance with contractual and assistance commitments; (9) provides leadership and guidance to CDC project officers and program officials; (10) provides leadership, direction procurement options, and approaches in developing specifications/statements of work and contract awards; (11) plans, directs, coordinates, and conducts the grants management functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to state and local governments, universities, colleges, research institutions, hospitals, public and private organizations, small businesses, and minority- and/or women-owned businesses for CDC; (12) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution; (13) maintains branch's official contract and assistance files; (14) maintains a close working relationship with CDC program office components in carrying out their missions; (15) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO.

Acquisition and Assistance Branch IV (CAJHR). This branch supports the Coordinating Center for Environmental Health and Injury Prevention, the National Center for Environmental Health, ATSDR, and the National Center for Injury Prevention and Control by performing the following: (1) Plans, directs, and conducts the acquisition of non-personal services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive); (2) plans, directs, and conducts assistance management activities for CDC through the awards of grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract, grant, and cooperative agreement awards; (4) provides continuing surveillance of financial and administrative aspects of acquisition and assistance-supported activities to assure compliance with appropriate DHHS and CDC policies; (5) gives technical assistance, where indicated, to improve the management of acquisition and assistance-supported activities, and responds to requests for management information from the Office of the Director, headquarters, regional staffs, CDC program offices and the public; (6) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing closeout/termination activities; (7) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in accordance with contractual and assistance commitments; (9) provides leadership and guidance to CDC project officers and program officials; (10) provides leadership, direction, procurement options, and approaches in developing specifications/statements of work and contract awards; (11) plans, directs, coordinates, and conducts the grants management functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to state and local governments, universities, colleges, research institutions, hospitals, public and private organizations, small

businesses, and minority- and/or women-owned businesses for CDC; (12) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution; (13) maintains branch's official contract and assistance files; (14) maintains a close working relationship with CDC program office components in carrying out their missions; (15) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO.

Acquisition and Assistance Branch V (Field)(CAJHS). This branch supports the National Institute for Occupational Safety and Health (NIOSH) by performing the following: (1) Plans, directs, and conducts the acquisition of non-personal services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive); (2) plans, directs, and conducts assistance management activities for CDC through the awards of through grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract, grant, and cooperative agreement awards; (4) provides continuing surveillance of financial and administrative aspects of acquisition and assistance-supported activities to assure compliance with appropriate DHHS and CDC policies; (5) gives technical assistance, where indicated, to improve the management of acquisition and assistance-supported activities and responds to requests for management information from the Office of the Director, headquarters, regional staffs, and the public; (6) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (7) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in accordance with contractual and assistance commitments; (9) provides leadership and guidance to CDC project officers and program officials; (10) provides leadership, direction, procurement options, and approaches in developing specification/statements of work and contract awards; (11) plans, directs, coordinates, and conducts the grants management functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to state and local governments, universities, colleges, research institutions, hospitals, pubic and private organizations, small businesses, and minority- and/or women-owned businesses for CDC; (12) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution; (13) maintains branch's official contract and assistance files; (14) maintains a close working relationship with CDC components in carrying out their missions; (15) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO; (16) acquisition and assistance functions in support of NIOSH are accomplished with field office locations located in Pittsburgh, PA; Morgantown, WV; Cincinnati, OH; and Spokane, WA.

Acquisition and Assistance Branch VI (CAJHT). This branch supports the Coordinating Center for Health Information and Service, the National Center for Health Marketing, the National Center for Health Statistics, the National Center for Public Health Informatics, and the Coordinating Office of Terrorism Preparedness and Emergency Response by performing the following: (1) Plans, directs, and conducts the acquisition of non-personal services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive); (2) plans, directs, and conducts assistance management activities for CDC through the awards of grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract, grant, and cooperative agreement awards; (4) provides continuing surveillance of financial and administrative aspects of acquisition and assistance-supported activities to assure compliance with appropriate DHHS and CDC policies; (5) gives technical assistance, where indicated, to improve the management of acquisition and assistance-supported activities, and responds to requests for management information from the Office of the Director headquarters, regional staffs, CDC program offices and the public; (6) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (7) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in accordance with contractual and assistance commitments; (9) provides leadership and guidance to CDC project officers and program officials; (10) provides leadership, direction, procurement options, and approaches in developing specifications/statements of work and contract awards; (11) plans, directs, coordinates, and conducts the grants management functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to state and local governments, universities, colleges, research institutions, hospitals, public and private organizations, small businesses, and minority- and/or women-owned businesses for CDC; (12) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution; (13) maintains branch's official contract and assistance files; (14) maintains a close working relationship with CDC program office components in carrying out their missions; (15) establishes branch goals, objectives and priorities, and assures their consistency and coordination with the overall objectives of PGO.

Acquisition and Assistance Branch VII (Global) (CAJHU). This branch supports the Coordinating Office of Global Health and CDC's global acquisition and assistance needs by performing the following: (1) Plans, directs and conducts the acquisition of a wide variety of services, research and development, studies, data collection, equipment, materials, and personal and non-personal services in support of CDC's international operations, utilizing a wide variety of contract types and pricing arrangements; (2) plans, directs, and conducts assistance management activities for CDC's international programs; (3) provides leadership, direction, acquisition options, and approaches in developing

specifications/statements of work and grants announcements; (4) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and grants strategies and execution; (5) provides innovative program-solving methods in the coordination of international procurement and grants for a wide range plan with partners in virtually all major domestic and international health agencies dealing with the United Nations Foundation health priorities/issues, to include resolution of matters with the Department of State; (6) executes contracts and grants in support of international activities; (7) provides business management oversight for contracts and assistance awards; (8) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution; (9) maintains branch's official contract and assistance files; (10) maintains a close working relationship with CDC program office components in carrying out their missions; (11) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO.

Acquisition and Assistance Branch VIII (CAJHV). This branch supports the CDC Office of the Director acquisition requirements by performing the following: (1) Plans, directs, and conducts the acquisition of non-personal services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive); (2) reviews statements of work from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contracts; (3) provides continuing surveillance of financial and administrative aspects of acquisition-supported activities to assure compliance with appropriate DHHS and CDC policies; (4) gives technical assistance, where indicated, to improve the management of acquisition activities, and responds to requests for management information from the Office of the Director, headquarters, regional staffs, CDC program offices and the public; (5) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (6) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (7) assures that contractor performance is in accordance with contractual commitments; (8) provides leadership and guidance to CDC project officers and program officials; (9) provides leadership, direction, procurement options, and approaches in developing specifications/statements of work and contract awards; (10) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition strategies and execution; (11) maintains branch's official contract files; (12) maintains a close working relationship with CDC program office components in carrying out their missions; (13) establishes branch goals, objectives, and priorities, and assures their consistency and coordination with the overall objectives of PGO.

Dated: August 10, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–17073 Filed 8–26–05; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0331]

Able Laboratories, Inc.; Withdrawal of Approval of Ten Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of ten abbreviated new drug applications (ANDAs) held by Able Laboratories, Inc. (Able Labs), One Able Dr., Cranbury, NJ 08512. Able Labs has initiated a class II recall of the products covered by these ANDAs. The company has requested that the applications be withdrawn and has waived its opportunity for a hearing.

DATES: Effective August 29, 2005.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: On May 25, 2005, Able Labs notified the agency that, because of improper laboratory practices and noncompliance with standard operating procedures, Able Labs was initiating a voluntary, class II recall of the products covered by the ANDAs listed in the table of this document. The company voluntarily requested withdrawal of approval of the ANDAs under § 314.150(d) (21 CFR 314.150(d)), and waived its opportunity for a hearing, provided under § 314.150(a) and (b). The following ANDAs are affected by this action:

ANDA No.	Drug
40–395	Diphenoxylate Hydrochloride (HCl) and Atropine Sulfate Tablets USP, 2.5 milligrams (mg)/0.025 mg
40–404	Methylphenidate HCl Tablets USP, 5 mg, 10 mg, and 20 mg
40–407	Prochlorperazine Suppositories USP, 2.5 mg, 5 mg, and 25 mg
40–452	Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/30 mg
40–459	Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/60 mg
71–780	Clorazepate Dipotassium Tablets USP, 3.75 mg
71–781	Clorazepate Dipotassium Tablets USP, 7.5 mg
71–782	Clorazepate Dipotassium Tablets USP, 15 mg

ANDA No.	Drug
75–838	Propoxyphene Napsylate and Acetaminophen Tablets USP, 100 mg/650 mg
76–032	Methylphenidate HCl Exended-Release Tablets USP, 20 mg

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.105(a)), approval of the ANDAs listed in the table of this document, and all amendments and supplements thereto, is withdrawn, effective August 29, 2005. Thereafter, distribution of the products in interstate commerce without approved applications is illegal and subject to regulatory action. Also, on the basis of the circumstances described in this document that led to the recall of the products and their subsequent removal from the market, the agency will remove the products from the agency's list of drug products with effective approvals, published under the title ''Approved Drug Products With Therapeutic Equivalence Evaluations.'' This document serves as notice of the removal of the products covered by the ANDAs listed in this document from the list of approved drug products. Distribution of these products in interstate commerce without approved applications is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the act (21 U.S.C. 355(a) and 331(d)).

Dated: August 15, 2005.

Steven Galson,

Director, Center for Drug Evaluation and Research.

[FR Doc. 05–17151 Filed 8–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Research Review Subcommittee of the Cellular, Tissue and Gene Therapies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a subcommittee of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Subcommittee: Research Review Subcommittee of the Cellular, Tissue and Gene Therapies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 29, 2005, from 8 a.m. to 4 p.m.

Location: Holiday Inn Select, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Gail Dapolito or Sheila Langford, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512389. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 29, 2005, the subcommittee will listen to presentations about the research program at the Office of Cellular, Tissue and Gene Therapies (OCTGT), Center for Biologics Evaluation and Research (CBER). The program is intended to provide dynamic, responsive, cutting edge research to contribute to OCTGT's regulatory mission and facilitate development of safe and effective biological products. The subcommittee will discuss the program and make recommendations to the Cellular Tissue and Gene Therapies Advisory Committee at a future open meeting of the full Committee. Information regarding CBER's scientific program is outlined in its Strategic Plan of 2004 and is available to the public on the Internet at: *http://www.fda.gov/cber/inside/mission.htm*. Information regarding FDA's Critical Path to New Medical Products is available to the public on the Internet at: *http://www.fda.gov/oc/initiatives/criticalpath/*.

Procedure: On September 29, 2005, from 8 a.m. to approximately 1:20 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by September 22, 2005. Oral presentations from the public will be scheduled between approximately 11:20 a.m. and 12:20 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by September 22, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Subcommittee Deliberations: On September 29, 2005, from approximately 1:20 p.m. to 4 p.m. the meeting will be closed to the public. The meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The subcommittee will discuss internal research programs in OCTGT, CBER.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gail Dapolito at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 18, 2005.

Scott Gottlieb,

Deputy Commissioner for Policy.

[FR Doc. 05–17149 Filed 8–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0312]

Draft Guidance for Industry on Abbreviated New Drug Applications: Impurities in Drug Products; Chemistry, Manufacturing, and Controls Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''ANDAs: Impurities in Drug Products; Chemistry, Manufacturing, and Controls Information.'' This draft guidance provides recommendations on what chemistry, manufacturing, and controls information sponsors should include regarding reporting, identification, qualification, and setting acceptance criteria for impurities that are classified as degradation products in drug products when submitting an abbreviated new drug application (ANDA) or supplement to support changes in drug substance synthesis or process, formulation of the drug product, the manufacturing process, or components of the container/closure system.

DATES: Submit written or electronic comments on the draft guidance by November 28, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Devinder Gill, Center for Drug Evaluation and Research (HFD–630), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5845.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 5, 1999 (64 FR 516), FDA published the draft guidance for industry on ''ANDAs: Impurities in Drug Products.'' The draft guidance provided recommendations for including information in ANDAs and ANDA supplements about the reporting, identification, qualification of, and setting acceptance criteria for degradation products in drug products that are manufactured from drug substances produced by chemical synthesis.

FDA is announcing the availability of a revised draft guidance for industry entitled ''ANDAs: Impurities in Drug Products,'' which revises the January 5, 1999, draft guidance. The draft guidance is being revised to update information on listing of degradation products, setting acceptance criteria, and qualifying degradation products in conformance with our current thinking and the revision of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) guidance for industry on ''Q3B(R) Impurities in New Drug Products,'' published in November 2003. The draft guidance is also being revised to remove sections of the guidance containing recommendations that are no longer needed because they are addressed in the more recent Q3B(R).

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this draft guidance was approved under OMB Control No. 0910–0001.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on these topics. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: August 16, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–17150 Filed 8–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD17–05–0010]

Annual Certification of Cook Inlet Regional Citizen's Advisory Council (CIRCAC)

AGENCY: Coast Guard, DHS.

ACTION: Notice of recertification.

SUMMARY: Under the Oil Terminal and Tanker Environmental Oversight Act of 1990, the Coast Guard may certify on an annual basis an alternative voluntary advisory group in lieu of a regional citizens' advisory council for Cook Inlet, Alaska. This certification allows the advisory group to monitor the activities of terminal facilities and crude oil tankers under the Cook Inlet Program established by the statute. The purpose of this notice is to inform the public that the Coast Guard has recertified the alternative voluntary advisory group for Cook Inlet, Alaska.

DATES: This recertification is effective for the period from September 1, 2005 through August 31, 2006.

FOR FURTHER INFORMATION CONTACT: For general information regarding the CIRCAC or viewing material submitted to the docket, contact Rick Janelle, Seventeenth Coast Guard District, Marine Safety Division, (907) 463–2808.

SUPPLEMENTARY INFORMATION: In section 5002 of the Oil Pollution Act of 1990, cited as the Oil Terminal and Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), Congress sought to foster the long-term partnership among industry, government, and local communities in overseeing compliance with the environmental concerns in the operation of terminal facilities and

crude-oil tankers. Subsection 5002(o) permits an alternative voluntary advisory group to represent to communities and interests in the vicinity of the terminal facilities in Cook Inlet (CI), in lieu of a council of the type specified in subsection 5002(d), if certain conditions are met.

The Act requires that the group enter into a contract to ensure annual funding, and that it receive annual certification by the President to the effect that it fosters the general goals and purposes of the Act, and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Cook Inlet. Accordingly, in 1991, the President granted certification to the Cook Inlet Regional Citizen's Advisory Council (CIRCAC). The authority to certify alternative advisory groups was subsequently delegated to the Commandant of the Coast Guard and redelegated to the Commander, Seventeenth Coast Guard District.

On June 28, 2005, the Coast Guard published a notice of availability of an application for recertification submitted by the Cook Inlet Regional Citizens' Advisory Council in the **Federal Register** (70 FR 37103) and we requested comments. Eight comments were received.

Discussion of Comments

Of the comments received, all were supportive of recertification and noted the positive efforts, good communication, and broad representation of Cook Inlet communities by CIRCAC as it carries out its responsibilities as intended by the Act.

The Coast Guard received one letter of public comment from the Cook Inlet Keeper, a citizen-based, non-profit group dedicated to protecting Alaska's Cook Inlet watershed. This comment supported the recertification of the CIRCAC and also encouraged the Coast Guard to investigate ways to ensure the CIRCAC has a more reliable, long-term funding stream. Although the Coast Guard understands the Cook Inlet Keeper's concern, the Coast Guard is limited to determining whether the CIRCAC has entered into a contract for funding in accordance with the requirements of 33 U.S.C. 2732(o), and reviewing the expenditure of those funds.

Upon review of the comments received regarding the CIRCAC's performance during the past year and the information provided by the RCAC in their annual report and recertification package, the Coast Guard finds the CIRCAC meets the criteria established under the Oil Pollution Act, and that recertification in accordance with the Act is appropriate.

Recertification

By letter dated 12 August, 2005 the Commander, Seventeenth Coast Guard, certified that the CIRCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification lasts through August 31, 2006.

Dated: August 15, 2005.

James C. Olson,

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

[FR Doc. 05–17093 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22235]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Licensing Implementation Working Group of the Towing Safety Advisory Committee (TSAC) will meet to discuss matters relating to specific issues of towing safety. The meeting will be open to the public.

DATES: The Licensing Implementation Working Group will meet via teleconference on Friday, September 2, 2005 from 10 a.m. to approximately 12 noon EDT. Written material and requests to make oral presentations should reach the TSAC working group Chairperson on or before August 30, 2005.

ADDRESSES: The Working Group will meet via conference call only. Contact Ms. Jennifer Carpenter, working group Chairperson, or her assistant, Ms. Amy Hewett at 703–841–9300 for the conference call telephone number and access code. Send written material and requests to make oral presentations to Ms. Jennifer Carpenter; American Waterways Operators; 801 North Quincy Street, Suite 200; Arlington, VA 22209. This notice and related documents are available on the Internet at *http://dms.dot.gov* under the docket number USCG–2005–22235.

FOR FURTHER INFORMATION CONTACT: For general TSAC information you may also contact Mr. Gerald Miante, Assistant Executive Director of TSAC, telephone 202–267–0214, fax 202–267–4570, or e-mail *gmiante@comdt.uscg.mil*. If you plan to participate in this meeting, please notify both Mr. Miante and either Ms. Carpenter or Ms. Hewett by August 30, 2005.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat.770, as amended).

Agenda of Working Group Meeting

The agenda for the Licensing Working Group tentatively includes the following items:

(1) Time frame flexibility—

- Credit apprentice mate/steersman time at higher rate if individual is carried as an extra person;
- Model course;

(2) Combine inland and Western Rivers routes;

(3) Ability to upgrade from tonnage-limited Master of Towing Vessels to Master of Towing Vessels without tonnage Limitation;

(4) Require towing endorsement for Master of Steam or Motor Vessels of Not More Than 500 Gross Tons. (Current regs allow Master 500 to operate towing vessels if he/she has either a towing endorsement or a completed Towing Officer's Assessment Record (TOAR.);

(5) Clarify how Master of Towing Vessels can obtain a Standards of Training, Certification and Watchkeeping (STCW) certificate if needed;

(6) Reconcile apparent discrepancies between licensing regulations and Navigation and Vessel Inspection Circular (NVIC) 4–01 *Licensing and Manning for Officers of Towing Vessels* re. TOAR format;

(7) Clarify TOAR requirements for harbor tug operators. Can certain items be marked ''Not Applicable'' (N/A)?;

(8) Reconsider elements that may prolong time needed to complete a TOAR (*e.g.*, operate in high water, high wind.);

(9) Work with the Coast Guard to develop a communications plan aimed at mariners; and

(10) Proposed changes to NVIC 4–01. A letter proposing changes is attached; the NVIC can be found on-line at: *http://www.uscg.mil/hq/g-m/nvic/index00.htm#2001*.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the working group Chairperson (as provided above in **ADDRESSES** no later than August 30,

2005. Written material for distribution at the meeting should reach the Chairperson no later than August 30, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Carpenter or Ms. Hewett at the number listed in **ADDRESSES** as soon as possible.

Dated: August 25, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–17192 Filed 8–25–05; 12:25 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review; guarantee of payment; Form I–510.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This information collection was previously published in the **Federal Register** on June 22, 2005 at 70 FR 36201, allowed for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days of public comment. Comments are encouraged and will be accepted until; September 28, 2005. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Guarantee of Payment.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–510. U.S. Customs and Border Protection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Section 253 of the Immigration and Nationality Act (INA) provides that the master or agent of a vessel or aircraft shall guarantee payment incurred for an alien crewman who arrived in the United States and is afflicted with any disease or illness mentioned in Section 255 of the INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at five minutes: (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Mr. Richard A. Sloan, Director, Regulatory Management Division, U.S. Immigration and Citizenship Services, 111 Massachusetts Avenue, NW., Washington, DC 20529. The U.S. Citizenship and Immigration Services published this notice on behalf of the U.S. Customs and Border Protection.

Dated: August 24, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–17145 Filed 8–26–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Information Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day Notice of Information Collection Under Review: Inter-Agency Alien Witness and Information Record, Form I–854.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 22, 2005 at 70 FR 36204. The notice allowed for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 28, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a previously approved information collection.

(2) *Title of the Form/Collection:* Inter-Agency Alien Witness and Information Record.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–854. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. This form is used by law enforcement agencies (LEA) to bring alien witnesses and informants to the United States in ''S'' nomimmigrant classification. This form also provides the Department of State and the USCIS with information necessary to identify the requesting LEA, and the alien witness and/or informant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 125 responses at 4 hours and 15 minutes (4.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 531 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529.

Dated: August 24, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–17144 Filed 8–26–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review; Application for Waiver of Grounds of Excludability, form I–690.

The Department of Homeland Security, U.S. Citizenship and Immigration Service (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 22, 2005 at 70 FR 36203, allowed for a 60-day public comment period. No comments were received by the USCIS on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 28, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utilityu;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumtpions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological colleciton techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Excludability.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the Collection:* Form I–690, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or requirfed to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on the application will be used by the USCIS in considering eligibility for legalization under section 210 and 245A of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 85 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 21 annual burden hours.

In you have additional comments, suggestions, or need a copy of the information collection instrument with instructions, or additional information, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, U.S. Department Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20592, (202) 272–8377.

Dated: August 24, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–17146 Filed 8–26–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: nonimmigrant petition based on Blanket L Petition, Form I–129S.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 22, 2005 at 70 FR 36203, allowed for a 60-day public comment period. No comments were received on this USCIS on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 28, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a previously approved information collection.

(2) *Title of the Form/Collection:* Nonimmigrant Petition Based on Blanket L Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129S, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection will be used by an employer to classify employees as L–1 nonimmigrant intracompany transferees under a blanket L petition approval. The USCIS will use the data on this form to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250,000 responses at 35 minutes (.583 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 145,750 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529.

Dated: August 24, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–17147 Filed 8–26–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on October 11–13, 2005 is to convene the full Advisory Committee; and to discuss implementation of action items outlined in the National Invasive Species Management Plan, which was finalized on January 18, 2001.

DATES: Meeting of Invasive Species Advisory Committee: Tuesday, October 11, 2005 through Thursday, October 13, 2005; beginning at approximately 8 a.m., and ending at approximately 5 p.m. each day.

ADDRESSES: Wyndham City Center Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037. Meeting will be held all three days in the New Hampshire Ballroom.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, National Invasive Species Council Program Analyst; Phone: (202) 513–7243; Fax: (202) 371–1751.

Dated: August 24, 2005.

Lori C. Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 05–17133 Filed 8–26–05; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Final Decisions Regarding Self-Determination and Self-Governance Funding Agreement Language on Fiduciary Trust Records Management

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of final decision.

SUMMARY: This notice announces the final decision regarding Self-Determination and Self-Governance language to be negotiated into funding agreements for 2006 regarding fiduciary trust records management. The **Federal Register** notice published on February 2, 2005 (70 FR 5457) presented a proposed policy on fiduciary trust records management for Self-Determination (Title I) and Self-Governance (Title IV) Tribes/Consortia and language to be negotiated into 2006 Title I and Title IV funding agreements. The February 2, 2005, notice also announced three consultation meetings and an invitation to submit written comments on the proposed policy and funding agreement language.

Final Decision: After reviewing numerous comments and suggestions, both written and oral, the Department decided not to institute the proposed policy on fiduciary trust records management for Title I and Title IV Tribes/Consortia; rather, the Department will negotiate with each Tribe/Consortium a specific section in the funding agreement that addresses Tribe's/Consortium's and the Secretary's respective responsibilities regarding the management of fiduciary trust records. This specific section will include the definition of ''fiduciary trust records,'' ''Indian trust assets,'' and ''management.'' The language to be negotiated into the 2006 Title I and Title IV funding agreements regarding fiduciary trust records management is the following and will replace the three options used in the past.

The Tribe/Consortium and Secretary agree to the following:

The Tribe/Consortium agrees to:

(a) Preserve, protect and manage all fiduciary trust records, created and/or maintained by the Tribes/Consortia during their management of trust programs in their Title IV agreements. (A fiduciary trust record is any document that reflects the existence of an Indian trust asset and was used in the management of an Indian trust asset. An Indian trust asset refers to lands, natural resources, monies or other assets held in trust at a particular time by the Federal Government for a Tribe, Alaska natives

or that are or were at a particular time restricted against alienation, for individual Indians. Management includes actions that influence, affect, govern, or control an Indian trust asset. The following are examples not considered to be fiduciary trust records: General administrative, personnel or travel records; education records; law enforcement records; health records; law making unrelated to Indian trust assets; tribal council resolutions and laws unrelated to Indian trust assets; and tribal elections.)

(b) Make available to the Secretary all fiduciary trust records maintained by the Tribe/Consortium, provided that the Secretary gives reasonable oral or written advance request to the Tribe/Consortium. Access shall include visual inspection and, at the expense of the Secretary, the production of copies (as agreed upon between the parties), and shall not include the removal of the records without tribal approval; and

(c) Store and permanently retain all inactive fiduciary trust records at the Tribe/Consortium or allow such records to be removed and stored at the American Indian Records Repository (AIRR) in Lenexa, Kansas, at no cost to the Tribe/Consortium.

The Secretary agrees to:

(a) Allow the Tribe/Consortium to determine what records it creates to implement the trust programs assumed under its Title IV agreement, except that the Tribe/Consortium must create and maintain the information required by statute and regulation. No additional record keeping requirements are required by this agreement.

(b) Store all inactive fiduciary trust records at the American Indian Records Repository (AIRR) at no cost to the Tribe/Consortium when the Tribe/Consortium no longer wishes to keep the records. Further, the Tribe/Consortium will retain legal custody and determine access to these records. Such records shall not be treated as Federal records for purposes of chapter 5 of Title 5 of the United States Code unless expressly agreed to by the Tribe;

(c) Create and manage a single tribal storage and retrieval system for all fiduciary trust records stored at AIRR (No records will be accepted at AIRR until such a retrieval system exists); and

(d) Provide filing equipment and technical assistance for Tribes/Consortia in preserving, protecting and managing their fiduciary trust records from available funds appropriated for this purpose.

Summary of Comments: The final decision above is the result of a nearly 2-year consultation process by the Department with some Title I and IV Tribes/Consortia. This process included: Conducting pre-scoping telephone conversations with tribal leaders, staff and consultants; holding a scoping meeting as part of a 2-day conference on Indian trust records management at Haskell Indian Nations University; forming a Tribal Fiduciary Trust Records Management Workgroup; conducting four workgroup meetings; transmitting a tribal leader letter soliciting comments on the proposed policy language to be presented for consultation; and engaging in discussions with Tribal leaders and staff at the Fall 2004, Self-Governance Conference. This process culminated with three consultation meetings held in Nashville, Tennessee; Portland, Oregon; and Phoenix, Arizona that were attended by approximately 60 tribal leaders, staff and consultants. In addition, written comments were received from 14 tribes, tribal organizations or tribal consultants some of whom attended the consultation meetings.

The comments received can be grouped into the following four major categories:

Category 1: New funding agreement language is not needed because existing compact and funding agreement language sufficiently provides for the maintenance of records of trust programs managed by the Tribes/Consortia, and Tribes/Consortia should not be required to implement a Federal policy on fiduciary trust records management through their funding agreements. The Department respectfully disagrees. The Department believed that the three options available to Tribes/Consortia in the past are too vague and do not specifically address the Secretary's primary concerns that fiduciary trust records not be destroyed and that the Secretary have the right to access those records if needed in her capacity as trustee delegate. The Department does agree with the comments that a Federal policy does not need to be instituted through the Departmental Manual. Instead the Department has chosen to negotiate language with each Tribe/Consortium into its funding agreement to address fiduciary trust records management.

Category 2: The definition of ''fiduciary trust records'' is too broad and vague and the Department should produce a specific list of what fiduciary trust records should be maintained and preserved by the Tribe/Consortium. The definition is purposely broad in recognition of tribal sovereignty. It allows Tribes/Consortia the flexibility to create those records they believe are necessary to properly manage their trust assets through their Title I or Title IV funding agreements. For the Department to create a list of fiduciary trust records would have been both overly restrictive for some Tribes/Consortia and overly expansive for others. A Department-generated list to be used by all Tribes/Consortia would have been restrictive in that it could deter tribes from creating certain records they feel were appropriate and at the same time it could be expansive by ''requiring'' Tribes/Consortia to create fiduciary trust records they did not believe were necessary for effective management of their trust assets. The Department's concern is that whatever trust records are created be properly protected and available to the Secretary.

Category 3: The funding agreement language creates an unfunded mandate because no funding is being provided, and the language requires Tribes/Consortia to maintain record facilities and administer and monitor a records policy. The Department believes that the language proposed for negotiation does not require Tribes/Consortia to create and keep any additional records beyond those they now keep; namely, those that are required by statute or regulation or those records the Tribe/Consortium chooses to create in the management of its own trust resources. The language does not require a tribe to have any other kind of record keeping system other than the ones they currently operate. Before becoming a Title I or Title IV Tribe/Consortium, a Tribe/Consortium had to demonstrate that it had a functional record keeping system and this language does not expand that requirement. Further, while the language does indicate that Tribes/Consortia are to preserve, protect and manage all fiduciary trust records and that all fiduciary trust records are to be kept permanently, once the Tribe/Consortium chooses that it no longer wants to house their inactive fiduciary trust records at their facility, the Secretary has offered to store those records, at the Secretary's expense, at the American Indian Records Repository. Finally, the Secretary is willing to provide to the Tribes/Consortia equipment, training and technical assistance, subject to availability of appropriated funds for that purpose.

Category 4: A potential problem exists for Tribes/Consortia in storing records at AIRR in that outside interests might gain access to Tribal/Consortium trust records through the Freedom of Information Act because the Tribal/Consortium trust records are held on the Tribe's/Consortium's behalf by the Department in a Federal facility. To

accommodate this concern, language was inserted stating that the Tribe/Consortium retains legal custody and determines access to those records. Further, language was inserted stating that such records shall not be treated as Federal records for purposes of chapter 5 of Title 5 of the United States Code, unless expressly agreed to by the Tribe.

Dated: August 19, 2005.

Abraham E. Haspel,

Assistant Deputy Secretary—Office of the Secretary.

[FR Doc. 05–17137 Filed 8–26–05; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for the Florida Scrub-jay Resulting From Construction of a Single-Family Home in Charlotte County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Mr. and Mrs. Nicholas Tamburri (Applicants) request an incidental take permit (ITP) for a period of one year, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended (U.S.C. 1531 *et seq.*). The Applicants anticipate removal of about 1.2 acres of occupied Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) nesting, foraging, and sheltering habitat, incidental to partial land clearing of their 5-acre lot and subsequent residential construction of a single-family home and supporting infrastructure in Charlotte County, Florida. Up to three scrub-jay individuals could be taken as a result of the Applicants' proposed action. It is not currently known if these three scrub-jays are part of the same scrub-jay family.

The Applicants' Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the project to the scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. We announce the availability of the ITP application, HCP, and accompanying Environmental Assessment (EA). Copies of the application, HCP, and EA may be obtained by making a request to the Southeast Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the ITP application and HCP, and EA should be sent to the Service's Southeast Regional Office (see **ADDRESSES**) and should be received on or before October 28, 2005.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office at the address below. Please reference permit number TE093169–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Southeast Regional Office, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or also at the South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960–3559 (Attn: Field Supervisor).

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, Southeast Regional Office (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Ms. Constance Cassler, Fish and Wildlife Biologist, South Florida Ecological Services Office (see **ADDRESSES** above), telephone: 772/562–3909, ext. 243.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE093169–0 in such comments. You may mail comments to the Service's Southeast Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov.* Please submit comments over the Internet as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to either Service office listed above (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, 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.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (well-drained, sandy soil habitats supporting a growth of oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals. The decline in the number and distribution of scrub-jays in Florida has been exacerbated by tremendous urban growth in the past 50 years.

Xeric upland vegetative communities in southwestern Florida are restricted primarily to ancient coastal dunes which are typically much dryer and less susceptible to flooding due to their deep, well-drained soils. Historically, these areas extended in a nearly continuous, narrow band along the western mainland portions of northern Charlotte to southern Hillsborough County. However, the same physical attributes that resulted in the evolution of xeric vegetation on these sandy dunes also provided sites for both agricultural and urban development. Over the past 50 years, these ancient dunes have served as the backbone of residential and commercial growth in southwestern Florida. The project area is under tremendous development pressure, as is much of Charlotte County. Much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded, due to interruption of the natural fire regime that is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Florida scrub-jays were documented using this residential lot on ten separate occasions between October 9 and October 16, 2002, by consultants from AMS Engineering and Environmental, Incorporated. Based on the consultant's report, it appears that at least three scrub-jays use this residential lot. It is not known whether these scrub-jays previously nested on the subject lot, though the birds roost regularly on a turkey oak there. Scrub-jays using the

project site are part of a metapopulation of scrub-jays in Charlotte County that occurs east of the Peace River and Punta Gorda. The continued survival and recovery of scrub-jays in this area may be dependent on the maintenance of suitable habitat and the restoration of unsuitable habitat.

Scrub-jays in urban areas are particularly vulnerable and typically do not successfully produce young that survive to adulthood. Persistent urban growth in the vicinity of the project will likely continue to reduce the amount of suitable habitat for scrub-jays. Increasing urban pressures are also likely to result in the continued degradation of scrub-jay habitat, as fire exclusion slowly results in vegetative overgrowth. Thus, over the long-term, scrub-jays are unlikely to persist in urban settings, and conservation efforts for this species should include acquisition and management of large parcels of land outside the direct influence of urbanization.

Construction of the project's infrastructure and facilities could result in harm to scrub-jays, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed residential construction would reduce the availability of nesting, foraging, and sheltering habitat for three scrub-jays. The Applicants propose to minimize take of scrub-jays by avoiding land-clearing activities during the breeding or nesting season (March through June), by not planting additional trees which would allow perching of predatory birds, by eliminating most predatory bird perches (slash pines) to possibly reduce the risk of scrub-jays being killed by raptors, and by preserving and maintaining 3.8 acres of scrub-jay habitat on their 5-acre lot in perpetuity. The preserve would be accomplished through recorded deed restriction which must be in place within 30 days of ITP issuance and prior to any land-clearing activities.

The Applicants also propose to mitigate the take of scrub-jays through contribution of $1,200 to an approved scrub-jay mitigation fund. This contribution must be made within 30 days of ITP issuance and prior to any land-clearing activities. The fund would be used to acquire and manage larger tracts of scrub habitat in the County.

The Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITP will be issued for the incidental take of the Florida scrub-jay. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: August 4, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–17064 Filed 8–26–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for the Florida Scrub-Jay Resulting From Construction of a Single-Family Home in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Maronda Homes, Inc. (Applicant) requests an incidental take permit (ITP) for a duration of 10 years, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended (U.S.C. 1531 *et seq.*). The Applicant requests a permit to remove about 0.24 acre of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging, sheltering, and possibly nesting habitat incidental to lot preparation for the construction of a single-family home and supporting infrastructure in Section 23, Township 23 South, Range 35 East, Port St. John, Brevard County, Florida. The proposed destruction of 0.24 acre of foraging, sheltering, and possibly nesting habitat could result in the take of one family of scrub-jays.

The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the project to the scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The Fish and Wildlife Service (Service) has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). We announce the availability of the ITP application and HCP for the incidental take application. Copies of the application and HCP may be obtained by making a request to the Southeast Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the ITP application and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before September 28, 2005.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office at the address below. Please reference permit number TE103390–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Southeast Regional Office, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912 (Attn: Field Supervisor).

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, Southeast Regional Office (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Ms. Erin Gawera, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES** above), telephone: 904/232–2580, ext. 121.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE103390–0 in such comments. You may mail comments to the Service's Southeast Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov.* Please submit comments over the Internet as an ASCII file, avoiding the use of special characters and any form

of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to either Service office listed above (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, 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.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (areas of dry, sandy soils, supporting the growth of oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in east-central Florida has been exacerbated by tremendous urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils which previously supported scrub-jay habitat. Based on existing soils data, much of the historic and current scrub-jay habitat of coastal east-central Florida occurs proximal to the current shoreline and larger river basins. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded, due to the interruption of the natural fire regime, which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Residential construction for Maronda Homes, Inc. would take place within Section 23, Township 23 South, Range 35 East, Port St. John, Brevard County, Florida on Lot 07, Block 59. This lot is within locations where scrub-jays were sighted during surveys for this species from 1999 to 2003.

Scrub-jays affected by the issuance of this permit are found on the extreme western edge of a large area supporting a 16-family cluster of birds that inhabits urban areas, commercial development, and undeveloped native habitat in the Tico and Grissom territory cluster just south of Port St. John, Florida. This cluster of scrub-jays is part of a larger metapopulation complex of scrub-jays that persists in northern Brevard County. The number of scrub-jay families in the vicinity of the project site and in the northern Brevard County metapopulation has declined in recent years. Survey results indicate that the number of scrub-jay families has declined in the Tico and Grissom cluster from 72 in the early 1990s to 47 in 2002 (33 percent decline). Similarly, the number of families of scrub-jays within the northern Brevard County metapopulation, which includes the Tico and Grissom territory cluster, has declined from 102 to 67 families (34 percent decline) during this same time period. Both of these observed rates of decline approximate the four percent per year decline estimated by recent research findings.

The decline in numbers of scrub-jay families in northern Brevard County is the cumulative result of habitat destruction, fragmentation, and degradation. Metapopulation viability analysis suggests that this metapopulation of scrub-jays has a high quasi-extinction risk if no further conservation efforts are undertaken to acquire and manage land for the benefit of scrub-jays. However, with active acquisition and management of habitat in the metapopulation, the quasi-extinction risk decreases substantially.

The demographic viability, and thus future biological value, of scrub-jays within highly urbanized areas (*e.g.*, residential areas, industrial sites, and other commercial development) is problematic in most situations, but the contribution urban scrub-jays have on metapopulation dynamics is not certain. Research conducted in central Florida suggests that juvenile and adult scrub-jays living within urban areas have low survival rates and that the persistence of scrub-jays in these environments is largely dependent on immigration from other low-quality habitat. In this instance, urban scrub-jays may have a negative impact on the demographic viability of the overall metapopulation since available breeders are essentially lost to habitats in which mortality exceeds recruitment. Other research conducted in east-central Florida suggests that recruitment will exceed mortality if optimal habitat conditions exist, regardless of whether the habitat is in a pristine or urban setting. In this case, urban scrub-jays would be as demographically important as scrub-jays in more pristine habitats.

Regardless of whether the breeding territory is in an urbanized area or more pristine natural area, the success of a breeding pair is highly dependent on the quality of habitat within the territory. In most instances, scrub-jay habitat in urban settings is degraded due to long-term fire suppression and there is no indication that habitat in these settings will be managed in the future. Thus, we generally believe, and existing research supports, that in most urban settings, scrub-jays occupy less than optimal habitat and are therefore less demographically viable than birds occupying habitat in areas that are actively managed. Consequently, scrub-jays living within suburban areas of Port St. John and urbanized areas of Brevard County appear to be demographically doomed over the long term and the only potential biological value these birds currently have is in providing a source of breeders for other adjacent lands that are actively managed for conservation purposes. One such site is located approximately two miles north off of County Road 50 in the southern end of Titusville. The 52 acres of scrub at this site is managed for scrub-jays through Brevard County's Environmentally Endangered Lands Program (EELS). Future acquisition is proposed by EELS for areas northwest and south of the project site, but until these lands are secured and managed, dispersing scrub-jays from the city may not find suitable habitat.

Construction of the Applicant's single-family residence and infrastructure will result in harm to scrub-jays, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed residential construction will reduce the availability of foraging, sheltering, and possible nesting habitat for one family of scrub-jays. The Applicant agrees to avoid construction during the nesting season if active nests are found on site, but no other on-site minimization measures are proposed to reduce take of scrub-jays. The lot

encompasses about 0.24 acre and the footprint of the home, infrastructure, and landscaping preclude retention of scrub-jay habitat on the project site. On-site minimization may not be a biologically viable alternative because of increasing negative demographic effects caused by urbanization.

Based on the above information, scrub-jays in the vicinity of the Applicant's lot, currently have little long-term demographic value to the metapopulation overall. Consequently, the Service has determined that the loss of 0.24 acre of habitat is likely to result in only minor or negligible impacts on the species.

The Applicant proposes to mitigate for the loss of 0.24 acre of scrub-jay habitat by contributing a total of $3,216 to the Florida Scrub-jay Conservation Fund administered by the National Fish and Wildlife Foundation. Funds in this account are earmarked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management. The $3,216 is sufficient to acquire and perpetually manage about 0.48 acre of suitable occupied scrub-jay habitat based on a replacement ratio of 2 mitigation acres per 1 impact acre. The cost is based on previous acquisitions of mitigation lands in southern Brevard County at an average $5,700 per acre, plus a $1,000-per-acre management endowment necessary to ensure future management of acquired scrub-jay habitat.

We have determined that the HCP is a low-effect plan that is categorically excluded from further NEPA analysis, and does not require the preparation of an EA or EIS. This preliminary determination may be revised based on our review of public comment we receive in response to this notice. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies for the following reasons:

1. Issuance of the ITP would result in minor or negligible effects on the Florida scrub-jay population as a whole. We do not anticipate significant direct or cumulative effects to the Florida scrub-jay population as a result of the construction project.

2. Issuance of the ITP would not have adverse effects on known unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

3. Issuance of the ITP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Issuance of the ITP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

We have determined that issuance of this incidental take permit qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1, and 516 DM 6, Appendix 1). Therefore, no further NEPA documentation will be prepared.

We will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITP will be issued for incidental take of the Florida scrub-jay. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: August 3, 2005.

Sam D. Hamilton,

Regional Director, Southeast Region.

[FR Doc. 05–17068 Filed 8–26–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Two Applications for Incidental Take Permits for Construction of Single-Family Homes in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Maronda Homes, Inc. of Florida and Duke Construction Corporation (Applicants) each request an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicants anticipate taking a combined total of about 0.48 acre of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging, sheltering, and possibly nesting habitat incidental to lot preparation for the construction of single-family homes and supporting infrastructure in Brevard County, Florida (Project). The destruction of 0.48 acre of foraging, sheltering, and possibly nesting habitat is expected to result in the take of one family of scrub-jays over requested permit terms of 10 years (Maronda) and 2 years (Duke).

The Applicants' Habitat Conservation Plans (HCPs) describe the mitigation and minimization measures proposed to address the effects of the Projects to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. We have determined that the Applicants' proposals, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCPs. Therefore, the ITPs are ''low-effect'' projects and qualify as categorical exclusions under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Copies of the HCPs may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the ITP applications and HCPs should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before September 28, 2005.

ADDRESSES: Persons wishing to review the applications and HCPs may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit number TE099862–0, for Maronda Homes and number TE099859–0, for Duke Construction in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Ms. Erin Gawera, General Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES** above), telephone: 904/232–2580, ext. 121.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit

comments by any one of several methods. Please reference permit number TE099862–0, for Maronda Homes and number TE099859–0, for Duke Construction in such requests. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov.* Please submit comments over the Internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your Internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). 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 administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, 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.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development have resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in east central Florida has been exacerbated by tremendous urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils which previously supported scrub-jay habitat. Based on existing soils data, much of the historic and current scrub-jay habitat of coastal east-central Florida occurs proximal to the current shoreline and larger river basins. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to the exclusion of fire which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Residential construction for Maronda Homes will take place within Section 23, Township 23 South, Range 35 East, Port St. Johns, Brevard County, Florida, on Lot 19, Block 67. Residential construction for Duke Construction will take place within Section 23, Township 34 South, Range 23 East, Port St. Johns, Brevard County, Florida, on Lot 15, Block 43. Each of these lots are within locations where scrub-jays were sighted during surveys for this species from 1999–2003.

Scrub-jays affected by the issuance of this permit are found on the extreme western edge of a large area supporting a 16-family cluster of birds that inhabits urban areas, commercial development, and undeveloped native habitat in the ''Tico'' and ''Grissom'' territory cluster just south of Port St. John, Florida. This cluster of scrub-jays is part of a larger metapopulation complex of scrub-jays that persists in northern Brevard County. The number of scrub-jay families in the vicinity of the project site and in the northern Brevard County metapopulation has declined in recent years. Survey results indicate that the number of scrub-jay families has declined in the Tico and Grissom cluster from 72 in the early 1990s to 47 in 2002 (33 percent decline). Similarly, the number of families of scrub-jays within the northern Brevard County metapopulation, which includes the Tico and Grissom territory cluster, has declined from 102 to 67 families (34 percent decline) during this same time period. Both of these observed rates of decline approximate the four percent per year decline estimated by recent research findings.

The decline in numbers of scrub-jay families in northern Brevard County is the cumulative result of habitat destruction, fragmentation, and degradation. Metapopulation viability analysis suggests that this metapopulation of scrub-jays has a high quasi-extinction risk if no further conservation efforts are undertaken to acquire and manage land for the benefit of scrub-jays. However, with active acquisition and management of habitat in the metapopulation, the quasi-extinction risk decreases substantially.

The demographic viability, and thus future biological value, of scrub-jays within highly urbanized areas (*e.g.*, residential areas, industrial sites, and other commercial development) is problematic in most situations but the contribution urban scrub-jays have on metapopulation dynamics is not certain. Research conducted in central Florida suggests that juvenile and adult scrub-jays living within urban areas have low survival rates and that the persistence of scrub-jays in these environments is largely dependent on immigration from other low-quality habitat. In this instance, urban scrub-jays may have a negative impact on the demographic viability of the overall metapopulation since available breeders are essentially lost to habitats in which mortality exceeds recruitment. Other research conducted in east-central Florida suggests that recruitment will exceed mortality if optimal habitat conditions exist, regardless of whether the habitat is in a pristine or urban setting. In this case, urban scrub-jays would be as demographically important as scrub-jays in more pristine habitats.

Regardless of whether the breeding territory is in an urbanized area or more pristine natural area, the success of a breeding pair is highly dependent on the quality of habitat within the territory. In most instances, scrub-jay habitat in urban settings is degraded due to long-term fire suppression and there is no indication that habitat in these settings will be managed in the future. Thus, we generally believe, and existing research supports, that in most urban settings, scrub-jays occupy less than optimal habitat and are therefore less demographically viable than birds occupying habitat in areas that are actively managed. Consequently, scrub-jays living within suburban areas of Port St. John and urbanized areas of Brevard County appear to be demographically doomed over the long term and the only potential biological value these birds currently have is in providing a source of breeders for other adjacent lands that are actively managed for conservation purposes. One such site is located approximately two miles north off of County Road 50 in the southern end of Titusville. The 52 acres of scrub at this site is managed for scrub-jays through Brevard County's Environmentally Endangered Lands Program (EELS). Future acquisition is proposed by EELS for areas northwest and south of the project site, but until these lands are secured and managed, dispersing scrub-jays from the city may not find suitable habitat.

The Applicants agree to avoid construction during the nesting season if active nests are found onsite, but no other on-site minimization measures are proposed to reduce take of scrub-jays. The lots combined encompass about 0.48 acre (0.24 acre each) and the footprint of the homes, infrastructure, and landscaping preclude retention of scrub-jay habitat. On-site minimization may not be a biologically viable alternative due to increasing negative demographic effects caused by urbanization.

Based on the above information, we believe that scrub-jays in the vicinity of the Applicant's lots, currently have little long-term demographic value to the metapopulation overall. Consequently, we feel that the loss of 0.48 acres of habitat is likely to result in only minor or negligible impacts on the species.

In combination, the Applicants propose to mitigate for the loss of 0.48 acres of scrub-jay habitat by contributing a total of $6,432 ($3,216 for Maronda Homes and $3,216 for Duke Construction) to the Florida Scrub-jay Conservation Fund administered by the National Fish and Wildlife Foundation. Funds in this account are ear-marked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management. The $6,432 is sufficient to acquire and perpetually manage about 0.96 acres of suitable occupied scrub-jay habitat based on a replacement ratio of two mitigation acres per one impact acre. The cost is based on previous acquisitions of mitigation lands in southern Brevard County at an average $5,700 per acre, plus a $1,000 per acre management endowment necessary to ensure future management of acquired scrub-jay habitat.

We have determined that the HCPs are low-effect plans that are categorically excluded from further NEPA analysis, and do not require the preparation of an EA or EIS. This preliminary information may be revised due to public comment received in response to this notice. Low-effect HCPs are those involving: (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicants' HCPs qualify for the following reasons:

1. Approval of each of the HCPs would result in minor or negligible effects on the Florida scrub-jay population as a whole. We do not anticipate significant direct or cumulative effects to the Florida scrub-jay population as a result of the construction projects.

2. Approval of each of the HCPs would not have adverse effects on known unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of each of the HCPs would not result in any significant adverse effects on public health or safety.

4. The projects do not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor do they threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plans would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

We have determined that issuance of these incidental take permits qualify as a categorical exclusion under the NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Therefore, no further NEPA documentation will be prepared.

We will evaluate the HCPs and comments submitted thereon to determine whether the applications meet the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITPs will be issued for the incidental take of the Florida scrub-jay. We will also evaluate whether issuance of the section 10(a)(1)(B) ITPs comply with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITPs.

Dated: August 11, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–17077 Filed 8–26–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Proposed Amendment to Environmental Defense, Inc.'s Safe Harbor Agreement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and 30-day public comment period.

SUMMARY: Environmental Defense, Inc. (ED) has submitted to the U.S. Fish and Wildlife Service (Service) a request to amend their Safe Harbor Agreement (SHA) and associated Endangered Species Act (Act) Section 10(a)(1)(A) Safe Harbor Enhancement of Survival permit (Permit) for habitat restoration activities on private lands for the endangered Black-capped vireo (*Vireo atricapilla*) (BCVI) and Golden-cheeked warbler (*Dendroica chrysoparia*) (GCWA) in the Hill Country of Texas to include twelve additional counties, along with amending language in Attachment 2 of their SHA. The amendment would allow the Safe Harbor program to expand onto additional private lands in Texas, thus furthering the conservation of BCVIs and GCWAs.

DATES: To ensure consideration, written comments must be received on or before September 28, 2005.

ADDRESSES: Persons wishing to review the application may obtain copies by calling or faxing a request to the Service at the U.S. Fish and Wildlife Service Austin Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758, (512/490–0057 voice, 512/490–0974 fax). The amendment request will also be available for public inspection, by appointment, during normal business hours (8 a.m. to 4:30 p.m.) at the Fish and Wildlife Service Austin Office. During the 30-day public comment period, written comments or data should be submitted to the Field Supervisor at the above address. Please refer to the amendment to ED's SHA in the Texas Hill Country (TE–024875–1). All comments received, including names and addresses, will become a part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Christina Williams at the Fish and Wildlife Service Austin Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758, (512/490–0057 voice, 512/490–0974 fax).

SUPPLEMENTARY INFORMATION: In addition to the 25 counties covered under their current permit, habitat enhancement activities could now occur in any or all of the following additional counties: Bexar, Callahan, Coke, Concho, Hamilton, Hood, Kinney, McLennan, Palo Pinto, Runnels, Taylor, and Tom Green. Habitat enhancement activities could include, but are not limited to, prescribed burning, selective Ashe juniper thinning, rotational grazing, cowbird trapping, and hardwood regeneration.

Currently, ED is prevented by the terms and conditions of their original SHA from enrolling non-habitat within 300 feet of GCWA habitat, which would create and maintain a strip of non-habitat between two patches of habitat. Therefore, ED is requesting that language in Attachment 2 of the SHA be amended to allow for the creation of habitat for BCVIs or GCWAs within 300 feet of GCWA habitat, so long as no alteration of existing habitat occurs.

BCVI and GCWA were listed as endangered in November 1987 and May 1990, respectively. The BCVI and GCWA are migratory songbirds that occupy breeding habitat in Texas from about March 1–August 31. The BCVI requires an early successional stage, patchy island habitat of wooded areas with shrubs up to about 6 feet tall surrounded by grasslands. GCWA habitat is mixed closed canopy woodland of mature Ashe juniper and oaks.

Approximately 98 percent of the land in Texas is privately owned, with a substantial majority of existing and restorable BCVI and GCWA habitat falling into this category. Therefore, the participation of private landowners in the recovery of these two species is highly important.

Landowners having currently unoccupied or unsuitable, but restorable habitat and thus a zero baseline condition for the Safe Harbor, would be eligible for Certificates of Inclusion. Exceptions to the zero baseline may also be included for certificates under very limited circumstances with concurrence from the Service. Upon completion and maintenance of the habitat improvements for at least four breeding seasons, the landowners would be permitted to conduct any otherwise lawful activity on their property, including activities that result in the partial or total elimination of the restored habitat and the incidental taking of either of these species as a result of such habitat elimination (return to baseline).

The authority for this action is the Endangered Species Act of 1973, as amended, through its permitting provisions (50 CFR part 17). The amendment request is available for public review, and subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such document within the comment period to the address specified below (43 CFR part 2).

Joy E. Nicholopoulos,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 05–17063 Filed 8–26–05; 8:45 am]

BILLING CODE 4510–55–P

INTERNATIONAL TRADE COMMISSION

Possible Modifications to the International Harmonized System Nomenclature

AGENCY: United States International Trade Commission.

ACTION: Request for proposals to amend the international Harmonized System.

SUMMARY: The Commission is soliciting proposals from interested parties and agencies to amend the international Harmonized Commodity Description and Coding System (Harmonized System), including the rules of interpretation, section and chapter notes and the texts of the headings and subheadings, with a view to keeping the System current with changes in technology and trade patterns. Specific proposals in this connection will be reviewed by the Commission staff for potential submission to the World Customs Organization (WCO), in Brussels, Belgium.

EFFECTIVE DATE: August 18, 2005.

FOR FURTHER INFORMATION CONTACT: David Beck, Acting Director, Office of Tariff Affairs and Trade Agreements (O/TATA) (202–205–2595, *david.beck@usitc.gov*) or Ronald Heller (202–205–2596, *ronald.heller@usitc.gov*). The O/TATA fax number is 202–205–2616. The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819, *margaret.olaughlin@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810). General information concerning the Commission, including subsequent notices published pursuant to section 1210 of the 1988 act, may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ONLINE) at *http://www.usitc.gov/secretary/edis.htm.*

Background: Soon after the implementation of the Harmonized System (HS) in 1988, the Harmonized System (HS) Review Subcommittee (RSC) of the World Customs Organization (WCO) began a series of reviews of the entire HS. The fourth review cycle begins this year, with an expected implementation date for changes of January 2012.

The HS was established by an international Convention, which, *inter alia,* provides that the System should be kept up-to-date in light of changes in technology and patterns of international trade. The international HS nomenclature, which is maintained by the WCO, provides a uniform structural basis for the customs tariff and statistical nomenclatures of all major trading countries of the world, including the United States. The Commission, the U.S. Bureau of Customs and Border Protection and the Bureau of the Census are responsible for the development of U.S. technical proposals concerning the HS under section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 3010). A 1988 notice issued by the United States Trade Representative (53 FR 45646, Nov. 10, 1988), establishes the Commission as the lead U.S. agency in considering proposals for HS amendments that are intended to ensure that it reflects such changes in technology and trade.

A copy of the U.S. Harmonized Tariff Schedule (HTSA), which incorporates the international Harmonized System in its overall structure, can be downloaded at *http://www.usitc.gov/tata/index.htm.* Hard copies and electronic copies of the HTSA can be found at many of the 1,400 federal Depository Libraries located throughout the United States and its territories; further information about these locations can be found at *http://www.gpoaccess.gov/fdlp.html,* or by contacting GPO Access at the Government Printing Office, 866–512–1800.

Note that the international HS comprises the broadest levels of categories in the HTSA, that is, the General Rules for the Interpretation of the Nomenclature, Section and Chapter titles, Section and Chapter legal notes, and heading and subheading texts to the six-digit level of detail. Additional U.S. Notes, further subdivisions (eight- and ten-digit subheadings) and statistical notes, as well as the entire chapters 98 and 99, are national legal and statistical detail added for the administration of the tariff and statistical programs and are not part of the international HS review process that is the subject of this Notice.

Request for Proposals: In accordance with the USTR notice, the Commission is seeking proposals for specific modifications to the Harmonized System (including the rules of

interpretation, section and chapter notes and the texts of the headings and subheadings) that will further the above goals. No proposals for changes to the national-level provisions (which include U.S. 8-digit subheadings, statistical annotations and rates of duty) will be considered by the Commission as a part of this review. Interested parties, associations and government agencies should submit specific language for proposed amendments to the Harmonized System together with appropriate descriptive comments and, to the extent available, trade data.

As part of this review, the Commission particularly invites proposals concerning the following matters:

- The deletion of HS headings or subheadings with low trade volume,
- The identification of new products important in international trade,
- The simplification of the HS, *e.g.*, by the elimination of classification provisions which are difficult to administer.

As mentioned above, no proposals for changes to the Explanatory Notes or national-level provisions (including Additional U.S. Notes, U.S. 8-digit subheadings, statistical annotations and rates of duty) will be considered by the Commission as a part of this review. The changes in the international HS that will result from this review cycle will not necessarily affect tariff rates for products imported into the United States; as with the first three HS review cycles, the USITC plans to eventually develop a set of proposed HTS changes that will align the HTS on the international HS changes, pursuant to sec. 1205 of the 1988 Act.

This Notice is not soliciting proposals for changes to the HS Explanatory Notes. However, requests for changes to the existing Explanatory Notes (not arising from changes in the HS itself) may be sent by a government directly to the Harmonized System Committee (the parent committee to the RSC) at any time; government and private sector parties interested in such action internationally should separately contact the above-mentioned parties at the USITC or the following at the Bureau of Customs and Border Protection: Myles Harmon, Director, Commercial Rulings Division, 202–572–8860 or Gail Hamil, Director, International Nomenclature Staff, 202–572–8813.

Written Submissions: Interested persons are invited to submit written proposals. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E St. SW., Washington, DC 20436, and should be received no later than the close of business October 14, 2005. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, as least four (4) additional copies must be filed in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means except as permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://hotdocs.usitc.gov/pubs/handbook_on_electronic_filing.pdf.*

Any submissions that contain confidential business information must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for CBI, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. CBI received by the Commission in this investigation will not be released to other government agencies or the public in a manner that would reveal the operations of the firm supplying the information.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.

Issued: August 23, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–17057 Filed 8–26–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–527]

In the Matter of Certain Digital Image Storage and Retrieval Devices; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') terminating the above-captioned investigation in its entirety based upon withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 29, 2004, based on a complaint filed by Ampex Corporation of Redwood City, CA (''Ampex''). 69 FR 69390 (2004). The notice of investigation named three respondents: Eastman Kodak Company of Rochester, NY; Chinon Industries, Inc. of Chino City, Nagano, Japan; and Altek Corporation of Hsinchu, Taiwan (collectively, ''respondents''). *Id.* The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital image storage and retrieval devices by reason of infringement of claims 7, 8, 10–14, and 15 of U.S. Patent No. 4,821,121. *Id.*

On July 29, 2005, complainant Ampex moved to withdraw its complaint and to terminate the investigation as to all named respondents. On August 1, 2005, the Commission investigative attorney filed a response in support of the motion. On August 4, 2005, respondents Eastman Kodak Company and Altek Corporation filed a response stating that they did not oppose the motion. On August 5, 2005, the presiding ALJ issued an ID (Order No. 32) granting the motion. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: August 23, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–17052 Filed 8–26–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 22, 2005.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or email: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of currently approved collection.

Title: Planning Guidance and Instructions for Submission of the Strategic State Plan and Plan Modifications for Title I of the Workforce Investment Act of 1998 (WIA) and the Wagner Peyser Act.

OMB Number: 1205–0398.

Frequency: Every 5 years and On occasion.

Type of Response: Reporting.

Affected Public: State, Local, or Tribal Governments.

Number of Respondents: 56.

Number of Annual Responses: 19.

Estimated Time Per Response: 50 hours.

Total Burden Hours: 950.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Workforce Investment Act of 1998 (Pub. L. 105–220) provides the framework for a network of State workforce investment systems designed to meet the needs of the nation's businesses, job seekers, youth, and those who want to further their careers. Title I requires that States develop five-year strategic plans for this system, which must also contain the detail plans required under the Wagner-Peyser Act (29 U.S.C. 49g). The Act also requires States to submit new Plans (if expiring) or medications as necessary. The WIA Planning Guidance is designed to advise states about how to continue their WIA Title I and Wagner Peyser Act programs under Public Law 105–220. Since all required five year plans have already been submitted, this information collection request only addresses potential plan modifications.

Agency: Employment and Training Administration.

Type of Review: Extension of currently approved collection.

Title: State Unified Plan Planning Guidance for State Unified Plans and Unified Plan Modifications Submitted Under Section 501 of the Workforce Investment Act of 1998 (WIA).

OMB Number: 1205–0407.

Frequency: Every 5 years and On occasion.

Type of Response: Reporting.

Affected Public: State, Local, or Tribal Governments.

Number of Respondents: 3.

Number of Annual Responses: 1.

Estimated Time Per Response: 50 hours.

Total Burden Hours: 50.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Workforce Investment Act of 1998 (Pub. L. 105–220) provides the framework for a network of State workforce investment systems designed to meet the needs of the nation's businesses, job seekers, youth, and those who want to further their careers. WIA requires that States develop five-year strategic plans for this system, which must also contain the detailed plans required under the Wagner-Peyser Act (29 U.S.C. 49g). Section V provides States the option of submitting a State Unified Plan. The Act also required States to submit new Plans (if expiring) or modifications as necessary. The WIA Unified Planning Guidance is designed to advise States about how to continue their WIA programs under Public Law 105–220. Since all required five year plans have already been submitted, this information collection request only addresses potential plan modifications.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–17059 Filed 8–26–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting of the Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of an open ACA meeting.

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. APP. 1), notice is hereby given of an open meeting of the Advisory Committee on Apprenticeship (ACA).

Time and Date: The meeting will begin at approximately 8:30 a.m. on Monday, September 12 and continue until approximately 3:30 p.m. The meeting will reconvene at approximately 8:30 a.m. on Tuesday, September 13, and continue until approximately 3:15 p.m. The ACA will visit and meet with apprenticeship partners on September 12 and 13 at approximately 4 p.m. at their training facilities. The final meeting day will begin at approximately 8:30 a.m. on Wednesday, September 14, and adjourn at 4 p.m.

Place: Bally's Las Vegas Hotel, 3645 Las Vegas Boulevard, South, Las Vegas, Nevada, 89109, (888) 742–9248.

The agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the ACA meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–5311, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 693–2796, (this is not a toll-free number).

Matters to be Considered: The agenda will focus on the following topics:

- Committee Orientation.
- Characteristics of a 21st Century Apprenticeship System.
- Community Colleges and the Apprenticeship Connection.
- Jobs Corps and Apprenticeship Collaboration.

Status: Members of the public are invited to attend the proceedings. Individuals with disabilities should contact Ms. Kenya Huckaby at (202) 693–3795 no later than September 5, 2005, if special accommodations are needed.

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending them to Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–5311, 200 Constitution Avenue NW., Washington, DC 20210. Such submissions should be sent by September 5, 2005, to be included in the record for the meeting.

Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official, Mr. Anthony Swoope, by September 5, 2005. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 23rd day of August, 2005.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training Administration.

[FR Doc. E5–4708 Filed 8–26–05; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–130]

NASA Advisory Council, Aeronautics Research Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Aeronautics Research Advisory Committee.

DATES: Tuesday, September 20, 2005, 9 a.m. to 5 p.m.; and Wednesday, September 21, 2005, 9 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 6H65, Washington, DC 20546 and Holiday Inn Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aeronautics Research Mission Directorate, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4729).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows: Tuesday, September 20—9 a.m. to 5 p.m., National Aeronautics and Space Administration, 300 E Street, SW., Room 6H65, Washington, DC 20546.

—Opening Remarks
—Assessment of Aeronautics Technology Programs
—Committee Reports
—Discussion on Issues and Activities that Impact NASA and FAA
—National Aeronautics Policy

Wednesday, September 21—9 a.m. to 5 p.m., Holiday Inn Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

—Opening Remarks
—Initial Reviews of NASA and FAA Research
—Joint Planning and Development Office Briefings
—Closing Comments

Individuals attending the September 20, 2005, meeting at NASA Headquarters will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); employer/affiliation information (name of institution, address, county, phone); and title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Mary-Ellen McGrath via e-mail at *mary.E.mcgrath@nasa.gov* or by telephone at (202) 358–4729. Persons with disabilities who require assistance should indicate this.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–17118 Filed 8–26–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–131]

NASA Aeronautics Research Advisory Committee, Council of Deans Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration, Aeronautics Research Advisory Committee, announces a forthcoming meeting of the Council of Deans Subcommittee.

DATES: Monday, September 19, 2005, 9 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 7H45, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aeronautics Research, National

Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4729.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Introductions and Opening Remarks
—Aeronautics University Strategy Review
—University Functional Research Program
—Future of NASA Facilities
—Vehicle Systems Program Update
—Closing Comments

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); employer/affiliation information (name of institution, address, county, phone); and title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Mary-Ellen McGrath via e-mail at *mary.E.mcgrath@nasa.gov* or by telephone at (202) 358–4729. Persons with disabilities who require assistance should indicate this.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–17119 Filed 8–26–05; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–009015]

Notice of License Termination and Release of Michigan Department of Natural Resources (MDNR) Site in Bay City, MI for Unrestricted Release

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of license termination and site release for unrestricted use.

FOR FURTHER INFORMATION CONTACT: David W. Nelson, Materials Decommissioning Section, Division of Waste Management and Environmental Protection, NRC, Washington, DC, 20555; telephone (301) 415–6626; fax (301) 415–5397; or e-mail at *dwn@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the U.S. Nuclear Regulatory Commission (NRC) is providing notice that it has terminated license SUC–1581 for the Michigan Department of Natural Resources (MDNR) (Licensee), and has released its Bay City, Michigan, Tobico Marsh State Game Area site for unrestricted use. The Licensee's request for an amendment to authorize decommissioning of its Bay City, Michigan site was previously noticed in the **Federal Register** on July 2, 2004 (69 FR 41855) with an opportunity to request a hearing.

MDNR provided a final radiological status survey and performed an on-site and off-site dose analysis to demonstrate the site meets the license termination criteria in Subpart E of 10 CFR Part 20. In addition, NRC staff conducted independent measurements of soils and surfaces at the site.

The NRC staff has evaluated MDNR's request, has reviewed the results of the final radiological survey, and has determined that the site meets the unrestricted release dose criteria in 10 CFR 20.1402. The staff prepared a Safety Evaluation Report (SER) to support its termination of the MDNR license.

II. Further Information

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' details with respect to this action, including the SER, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the termination letter and SER, ''Release of Michigan Department of Natural Resources Bay City, Michigan, Tobico Marsh State Game Area Site and Termination of License (License No. SUC–1581)'' is ADAMS No. ML052010626. If you do not have access to ADAMS or if there are problems in accessing a document located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

This document may also be viewed electronically on the public computers located at the NRC's PDR, O–1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at NRC, Rockville, MD, this 23rd day of August, 2005.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–4707 Filed 8–26–05; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Amergen Energy Company, LLC.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62, issued to AmerGen Energy Company, LLC, for operation of the Clinton Power Station, Unit 1 (CPS) located in DeWitt County, Illinois.

The proposed amendment would change Technical Specification (TS) 4.3, ''Fuel Storage,'' to reflect the increased fuel storage capacity in the spent fuel pool and the addition of fuel storage capacity in the fuel cask storage pool. A No Significant Hazards Consideration was previously published in the **Federal Register** on December 29, 2004 (69 FR 78051) regarding this amendment. However, the description of the use of the Fuel Building crane and the temporary crane has changed. Therefore, the No Significant Hazards Consideration has been revised.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 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. 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 change involves revising CPS TS 4.3, ''Fuel Storage,'' to reflect the increased storage capacity of the spent fuel pool due to the installation of higher density storage racks and the addition of fuel storage capacity in the fuel cask storage pool.

The method of handling fuel is not significantly changed since the same equipment and procedures will be used. During spent fuel rack removal and installation, all work in the spent fuel pool and cask storage pool area will be controlled and performed in strict accordance with specific written guidance. Any movement of fuel assemblies required to be performed to support the modification (*e.g.*, removal and installation of racks) will be performed in the same manner as during normal refueling operations. Shipping cask movements will not be performed during the modification period. There is no change to the methods or equipment to be used in moving fuel casks. Expanding the spent fuel storage capacity does not have a significant impact on the frequency of occurrence for any accident previously evaluated. Therefore, this change will not significantly increase the probability of occurrence of any event previously analyzed.

The consequences of the dropped spent fuel assembly in the spent fuel pool have been evaluated for the proposed change. The results show that the postulated drop of a spent fuel assembly striking the top of the spent fuel storage racks will not distort the racks sufficiently to impair their functionality. The minimum subcriticality margin (*i.e.*, neutron multiplication factor (keff) less than or equal to 0.95) will be maintained. The structural damage to the Fuel Building, spent fuel pool liner, and any fuel assembly resulting from a dropped fuel assembly striking the pool floor or another assembly located in the racks is primarily dependent on the mass of the failing object and drop height. Since these two parameters are not changed by the proposed modification, the postulated structural damage to these items remains unchanged. The radiological dose at the exclusion area boundary will not be increased since no changes are being made to in-core hold time or bumup as a result of the proposed amendment.

The consequences of a loss of spent fuel pool cooling were evaluated and found to not involve a significant increase as a result of the proposed changes. The concern with this event is a reduction of spent fuel pool water inventory from bulk pool boiling resulting in uncovering fuel assemblies. This situation could lead to fuel failure and subsequent significant increase in offsite dose. Loss of spent fuel pool cooling at CPS is mitigated by ensuring that a sufficient time lapse exists between the loss of forced cooling and uncovering fuel. This period of time is compared against a reasonable period to reestablish cooling or supply an alternative water source. Evaluation of this event includes determination of the time to boil. This time period is much less than the onset of any significant increase in offsite dose, since once boiling begins it would have to continue unchecked until the pool surface was lowered to the point of exposing active fuel. The time to boil represents the onset of loss of pool water inventory and is commonly used as a gage for establishing the comparison of consequences before and after a reracking project. The heatup rate in the spent fuel pool is a nearly linear function of the fuel decay heat load. The fuel decay heat load will increase subsequent to the proposed changes because of the increase in the number of assemblies. The thermal hydraulic analysis determined that the minimum time to boil is more than three hours subsequent to complete loss of forced cooling and a minimum of 24 hours between loss of forced cooling and a drop of water level to within 10 feet of the top of the racks. In the unlikely event that all pool cooling is lost, sufficient time will still be available subsequent to the proposed changes for the operators to provide alternate means of cooling before the water shielding above the top of the racks falls below 10 feet.

The consequences of a design basis seismic event are not increased. The consequences of this event were evaluated on the basis of subsequent fuel damage or compromise of the fuel storage or building configurations leading to radiological or criticality concerns. The new racks have been analyzed in their new configuration and were found to be safe during seismic motion. Fuel has been determined to remain intact and the storage racks maintain the fuel and fixed poison configurations subsequent to a seismic event. The structural capability of the pool and liner will not be exceeded under the appropriate combinations of dead weight, thermal, and seismic loads. The Fuel Building structure will remain intact during a seismic event and will continue to adequately support and protect the spent fuel storage racks, storage array, and pool moderator/coolant.

A fuel cask drop accident was previously evaluated as described in the CPS Updated Safety Analysis Report (USAR) Section 15.7.5. Administrative controls will be implemented to ensure that fuel will be removed from storage racks located within the cask storage pool prior to any fuel cask being moved in this area. The presence of any empty racks in this area will not adversely affect the previously evaluated cask drop scenarios, since any impacted empty racks will tend to absorb the kinetic energy of the dropped cask and thus reduce the impact load and corresponding damage. The thin walled rack cell material poses significantly less threat to puncturing the cask than impact to the floor of the pool area. Thus, the results of the previously evaluated cask drop accident remain unchanged.

Therefore, the proposed change does not result in a significant increase in the consequences of a previously evaluated accident.

In summary, 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 proposed change involves revising CPS TS 4 .3, ''Fuel Storage,'' to reflect the increased storage capacity of the spent fuel pool as a result of the installation of higher density storage racks and addition of fuel storage capacity in the fuel cask storage pool. Due to the proposed changes, an accidental drop of a rack module during construction activity in the pool was considered as the only event that might represent a new or different kind of accident.

A construction accident of a rack dropping onto stored spent fuel or the pool floor liner is not a postulated event due to the defense-in-depth approach to be taken. A new temporary crane, hoist, and rack lifting rig will be introduced to remove the existing racks and install the new racks. The temporary crane will be used to lift the racks from the operating deck and then lower them into the spent fuel pool. The temporary crane will then also be used to position the racks in their final location in the pool. The Fuel Building crane will only be used as an alternative method to initially introduce racks into the pool. The temporary lift items have been designed to meet the requirements of NUREG–0612, ''Control of Heavy Loads at Nuclear Power Plants, Resolution of Generic Technical Activity A–6,'' Crane Manufacturer's Association of America (CMAA) Specification #70, ''Specifications for Top Running Bridge & Gantry Type Multiple Girder Electric Overhead Traveling Cranes,'' and American National Standards Institute (ANSI) Standard N14.6, ''Standard for Special Lifting Devices for Shipping Containers Weighing 10000 Pounds (4500 kg) or More for Nuclear Materials.'' A rack drop event is considered to be a ''heavy load drop'' over the pools. Racks will not be allowed to be lifted or to travel over any racks containing new or spent fuel assemblies, thus a rack drop onto fuel is precluded. A rack drop to the pool liner is also precluded since all of the lifting components either provide redundancy in load path (*i.e.*, meet the definition of NUREG–0612 as a single failure proof design) or are designed to meet a safety factor of ten (10). The analysis of a rack dropping to the liner has been performed and shown to be acceptable. A drop of a spent lei rack onto the spent fuel pod liner, while unlikely, would not result in an uncontrollable loss of spent fuel pool water or lead to a catastrophic failure of the reinforced concrete slab. As noted above, the temporary crane (or the Fuel Building crane as an alternative) will be used to lower racks into the pool and place racks within their range of accessibility and to remove racks from the spent fuel pool. The temporary crane will be used to lift racks from the pool floor and move the racks horizontally with a limited height above the pool floor. All

movements of heavy loads over the pool will comply with the applicable administrative controls and guidelines (*i.e.* plant procedures, NUREG–0612, etc.). A rack drop would not alter the storage configuration or moderator/coolant presence. Therefore, the rack drop does not represent a new or different kind of accident .

The proposed change does not alter the operating requirements of the plant or of the equipment credited in the mitigation of the design basis accidents. The proposed change does not affect any of the important parameters required to ensure safe fuel storage. 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 amendment involve a significant reduction in a margin of safety?

Response: No.

The function of the spent fuel pool and fuel cask storage pool is to store the fuel assemblies in a subcritical and coolable configuration through all environmental and abnormal loadings, such as an earthquake or fuel assembly drop. The new rack design must meet all applicable requirements for safe storage and be functionally compatible with the spent fuel pool and fuel cask storage pool. The mechanical, material, and structural designs of the new racks have been reviewed in accordance with the applicable provisions of the NRC Guidance entitled, ''OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications,'' provided as an enclosure to Generic Letter 78–11. The rack materials used are compatible with the spent fuel assemblies and the spent fuel pool environment. The fixed neutron absorber (*i.e.*, Metamic) has been demonstrated to be acceptable for dry and wet storage applications on a generic basis. In addition, the NRC has approved Metamic for use in both wet and dry storage applications. The design of the new racks preserves the proper mar in of safety during abnormal loads such as a dropped assembly and tensile loads from stuck assembly. It has been shown that such loads will not invalidate the mechanical design and material selection to safely store fuel in a coolable and subcritical configuration.

The methodology used in the criticality analysis of the expanded spent fuel pool meets the appropriate NRC guidelines and the ANSI standards. The margin of safety for subcriticality is maintained by having Q equal to or less than 0.95 under all normal storage, fuel handling, and accident conditions, including uncertainties.

The criterion of having keff equal to or less than 0.95 during storage or fuel movement is the same as that used previously to establish criticality safety evaluation acceptance. Therefore, the accepted margin of safety remains the same.

The thermal-hydraulic and cooling evaluation of the spent fuel pool demonstrated that the pool could be maintained below the specified thermal limits under the conditions of the maximum heat load and during all credible accident sequences and seismic events. The spent fuel pool temperature will not exceed 150° F during the worst single failure of a cooling pump. The maximum local water temperature in the hot channel will remain below the boiling point. The fuel will not undergo any significant heat up after an accidental drop of a fuel assembly on top of the rack blocking the flow path. A loss of cooling to the pool will allow sufficient time (*i.e.*, 24 hours) for the operators to intervene and line up alternate cooling paths and the means of inventory make-up before the water shielding above the top of the racks falls below 10 feet. The thermal limits specified for the evaluations performed to support the proposed change are the same as those that were used in the previous evaluations.

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.

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.

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 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O–1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for 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 0–1F21, 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 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 requester/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/requestor 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. 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.

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, 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.

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).

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 Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60666, the attorney for the licensee.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to ''any matter which the Commission determines to be in controversy among the parties.''

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, ''Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors.'' Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed together with a request for hearing/petition to intervene, filed in accordance with 10 CFR 2.309. If it is determined a hearing will be held, the presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart L apply.

For further details with respect to this action, see the application for amendment dated August 18, 2004, as supplemented May 13, June 14, and August 17, 2005, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 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.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 22nd day of August, 2005.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4711 Filed 8–26–05; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 030–35228]

Issuance of Environmental Assessment and Finding of No Significant Impact Regarding a Proposed License Amendment for Endocyte Incorporated 1205 Kent Avenue Facility, West Lafayette, IN

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Gene Bonano, Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532; telephone: (630) 829–9826; fax number: (630) 515–1259; e-mail: *gab1@nrc.gov.*

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) is considering issuing a license amendment to Material License No. 13–32212–01 issued to Endocyte Incorporated (the licensee), to authorize release of its 1205 Kent Avenue facility, West Lafayette, Indiana, for unrestricted use. This Environmental Assessment (EA) is issued in support of this amendment in accordance with the requirements of 10 CFR Part 51. Based on this EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this EA/FONSI.

I. Environmental Assessment

Identification of Proposed Action

The NRC staff has prepared this EA to support the Endocyte Incorporated May 26, 2005 (ML052340684) request to release its 1205 Kent Avenue, West Lafayette, Indiana facility for unrestricted use. Endocyte's 1205 Kent Avenue facility is one of two authorized facilities listed under Material License Number 13–32212–01. The licensee transferred all licensed material from the 1205 Kent Avenue facility to its 3000 Kent Avenue facility. Endocyte was granted a license on December 9, 1999, and initiated licensed activities in April 2000 at the 1205 Kent Avenue facility. The 3000 Kent Avenue facility was added to the license on April 4, 2005. Endocyte is authorized to use byproduct material for the research and development of medical products. Endocyte identified three isotopes, which are listed in the license, with half-lives greater than 120 days (hydrogen-3, carbon-14, technetium-99), which had been used at the 1205 Kent Avenue facility. The licensee conducted surveys of the facility and provided information to the NRC to demonstrate that the radiological condition of the building is consistent with criteria specified in 10 CFR Part 20, Subpart E for unrestricted use. No radiological remediation activities are required to complete the proposed action.

Need for the Proposed Action

The licensee is requesting this license amendment because it no longer plans to conduct NRC-licensed activities at the 1205 Kent Avenue location. The NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on the proposed action for decommissioning that ensures that residual radioactivity is reduced to a level that is protective of the public health and safety and the environment.

Environmental Impacts of the Proposed Action

The NRC staff reviewed the information provided and surveys performed by Endocyte to demonstrate that the release of the 1205 Kent Avenue, West Lafayette, Indiana facility complies with radiological criterial for unrestricted use in 10 CFR 20.1402.

Alternatives to the Proposed Action

The only alternative to the proposed action of releasing the facility for unrestricted use is to take no action. Under the no-action alternative, the 1205 Kent Avenue facility would remain under an NRC license and would not be released for unrestricted use. Denial of the license amendment request would result in no change to current conditions at the facility. The no-action alternative is not acceptable because it is inconsistent with the NRC's Timeliness Rule, 10 CFR 30.36 ''Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas,'' which requires licensees who have ceased licensed activities to request termination of their radioactive materials license. This alternative also would impose an unnecessary regulatory burden and limit potential benefits from future uses of the facility.

Conclusion

The NRC staff concluded that the proposed action is consistent with the NRC's unrestricted release use specified in 10 CFR Part 20, Subpart E. The staff found that the radiological environmental impacts from the proposed action are bounded by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496). Additionally, no non-radiological or cumulative impacts were identified. Therefore, the NRC has determined that the proposed action will not have a significant effect on the quality of the human environment.

Agencies and Persons Consulted

The NRC staff has determined that the proposed action will not affect listed species or critical habitats. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, the NRC has determined that the proposed action is not a type of activity that has potential to cause effect on historic properties. Therefore, consultation under Section 106 of the National Historic Preservation Act is not required.

The NRC consulted with the Indiana State Department of Health, Indoor and Radiologic Health Division. The Indiana State Department of Health was provided the draft EA for comment on August 1, 2005, and responded back on the same day. The State did not need any additional information, and agreed with the NRC's finding of No Significant Impact for the License/Facility.

II. Finding of No Significant Impact

On the basis of the EA in support of the proposed license amendment to release the site for unrestricted use, the NRC has determined that the proposed action will not have a significant effect on the quality of the human environment. Thus, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Further Information

A copy of this document will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of the NRC's document system. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text

and image files of NRC's public documents. The following references are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). ADAMS accession numbers are located in parentheses following the reference.

1. Leamon, Christopher P., Ph.D., Radiation Safety Officer, Endocyte Incorporated, letter to U.S. Nuclear Regulatory Commission, May 26, 2005 (ML052340684).

2. Decommissioning Report (Final Status Survey Report), 1205 Kent Avenue, West Lafayette, Indiana, May 26, 2005 (ML052340684).

3. U.S. Nuclear Regulatory Commission, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs,'' NUREG–1748, August 2003.

4. U.S. Nuclear Regulatory Commission, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities,'' NUREG–1496, August 1994.

5. NRC, NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volumes 1–3, September 2003.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.* Documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 22nd day of August, 2005.

James L. Cameron,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. E5–4709 Filed 8–26–05; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting of the Interagency Steering Committee on Radiation Standards

AGENCIES: Nuclear Regulatory Commission and Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will host a meeting of the Interagency Steering Committee on Radiation Standards (ISCORS) on September, 27, 2005, in Rockville, Maryland. The purpose of ISCORS is to foster early resolution and coordination of regulatory issues associated with radiation standards. Agencies represented on ISCORS include the NRC, U.S. Environmental Protection Agency, U.S. Department of Energy, U.S. Department of Defense, U.S. Department of Transportation, the Occupational Safety and Health Administration of the U.S. Department of Labor, U.S. Department of Health and Human Services, U.S. Department of Homeland Security. Representatives from the Office of Science and Technology Policy, Defense Nuclear Facilities Safety Board, Office of Management and Budget, State Department, Illinois Bureau of Radiation Safety, and Pennsylvania Bureau of Radiation Protection may be observers at meetings. The objectives of ISCORS are to: (1) Facilitate a consensus on allowable levels of radiation risk to the public and workers; (2) promote consistent and scientifically sound risk assessment and risk management approaches in setting and implementing standards for occupational and public protection from ionizing radiation; (3) promote completeness and coherence of Federal standards for radiation protection; and (4) identify interagency radiation protection issues and coordinate their resolution. ISCORS meetings include presentations by the chairs of the subcommittees and discussions of current radiation protection issues. Committee meetings normally involve pre-decisional intra-governmental discussions and, as such, are normally not open for observation by members of the public or media. ISCORS has adopted the practice of opening one of its meetings each year to all interested members of the public. There will be time on the agenda for members of the public to provide comments. The final agenda for the September meeting will be posted on the ISCORS Web site, *http://www.iscors.org,* shortly before the meeting. Participants are encouraged to (1) notify the contact below for pre-registration and (2) allow sufficient time for security screening prior to accessing the meeting.

DATES: The meeting will be held from 1 p.m. to 5 p.m. on Tuesday, September 27, 2005.

ADDRESSES: The meeting will be held in the NRC auditorium, at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION, CONTACT: Kyung Hee (Jessica) Shin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–8117; fax 301–415–5397; e-mail *KXS1@NRC.GOV.*

SUPPLEMENTARY INFORMATION: Visitor parking around the NRC building is limited; however, the NRC auditorium is located adjacent to the White Flint Metro Station on the Red Line.

Dated at Rockville, MD, this 23rd day of August, 2005.

For the Nuclear Regulatory Commission.

Scott Flanders,

Deputy Director, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–4706 Filed 8–26–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation on Elimination of Typical License Condition Requiring Reporting of Violations of Section 2.C of Operating License Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to the elimination of the license condition involving reporting of violations of other requirements (typically in License Condition 2.C) in the operating license of some commercial nuclear power plants. The NRC staff has also prepared a model no significant hazards consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to delete the reporting requirement. Licensees of nuclear power reactors to which the models apply could then request amendments, confirming the applicability of the SE and NSHC determination to its reactors. The NRC staff is requesting comment on the model SE and model NSHC determination prior to announcing their availability for referencing in license amendment applications.

DATES: The comment period expires 30 days from date of publication in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received may be examined at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Comments may be submitted by electronic mail to *CLIIP@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: William Reckley, Mail Stop: O–7D1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1323.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency of NRC licensing processes. The CLIIP includes an opportunity for the public to comment on a proposed change to operating licenses, including the Technical Specifications, after a preliminary assessment by the NRC staff and a finding that the change will likely be offered for adoption by licensees. This notice solicits comment on a proposed change that deletes a requirement for licensees to report violations of other requirements (typically in License Condition 2.C) of its facility's operating license. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change and to either reconsider the change or announce the availability of the change for adoption by licensees. Licensees opting to apply for this proposed license amendment change are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

Applicability

This proposal to eliminate the reporting of violations of specific requirements (typically in License Condition 2.C) of facility operating licenses is applicable to any licensee that has such a provision in its facility operating license. The NRC staff notes that many operating licenses do not contain the requirement because it was never added or was removed by a license amendment before issuance of this notice. The CLIIP also addresses similar requirements if they exist in the Administrative Section of Technical Specifications. The CLIIP does not address reporting requirements contained in operating licenses other than those specifically involving reports of violations of other requirements (typically in License Condition 2.C) of the facility operating license or requirements that restate the need to submit reports in accordance with 10 CFR 50.72, ''Immediate notification requirements for operating nuclear power reactors,'' and 10 CFR 50.73, ''Licensee event report system.''

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. After evaluating the comments received as a result of this notice, the NRC staff will either reconsider the proposed change or announce the availability of the change in a subsequent notice (perhaps with some changes to the safety evaluation or the proposed NSHC determination as a result of public comments). If the NRC staff announces the availability of the change, licensees wishing to adopt the change must submit an application in accordance with applicable rules and other regulatory requirements. For each application, the NRC staff will publish a notice of consideration of issuance of amendment to facility operating licenses, a proposed NSHC determination, and a notice of opportunity for a hearing. The NRC staff will also publish a notice of issuance of an amendment for each plant that receives the requested change.

Proposed Model Safety Evaluation

U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Consolidated Line Item Improvement, Elimination of License Condition Requiring Reports of Violations of License Condition [2.C] in Facility Operating License

1.0 Introduction

By application dated [ ], [LICENSEE] (the licensee), requested an amendment to the Facility Operating License for [PLANT]. The proposed amendment would delete Section 2[X] of the Facility Operating License, which requires reporting of violations of the requirements in Section 2[C] of the Facility Operating License.

2.0 Regulatory Evaluation

A section or condition was included in the facility operating licenses issued to some nuclear power plants requiring the licensee to make reports to the Nuclear Regulatory Commission (NRC) regarding violations of other sections of the operating license (typically Section 2.C). A typical license condition reads as follows:

Except as otherwise provided in this license and its appendices, the Licensee shall report any violations of the requirements contained in Section 2.C of this license in the following manner: initial notification shall be made within 24 hours to the NRC Operations Center via the Emergency Notification System with written followup within thirty days in accordance with the procedures described in 10 CFR 50.73 (Licensee event report system).

In addition to the information provided to support licensing decisions, the NRC obtains information about plant operation, licensee programs, and other matters using a combination of inspections and reporting requirements. Routine or scheduled reports that are required to be submitted to the NRC are defined in the related regulations, specific license condition, technical specification, or an NRC-approved program document. The reporting of emergencies, unplanned events or conditions, and other special cases may also be addressed within such documents by the inclusion of reporting thresholds and are also the focus of the reporting requirements in 10 CFR 50.72, ''Immediate notification requirements for operating nuclear power reactors,'' and 10 CFR 50.73, ''Licensee event report system.'' Changes to the reporting regulations in 10 CFR 50.72 and 50.73 became effective in January 2001 (see **Federal Register** notice on October 25, 2000 (65 FR 63769) and included

extending the allowable reporting times for licensee event reports (LERs) from 30 days to 60 days.

[Optional: The Administrative Section of the Technical Specifications (TS) for [PLANT] also includes a reporting requirement that duplicates the requirements in 10 CFR 50.72 and 10 CFR 50.73, but which does not reflect subsequent changes in those regulations such as requiring LERs within 60 days instead of 30 days.]

3.0 Technical Evaluation

Section 2.[X] of the Facility Operating License requires the licensee to report any violations of the requirements of Section 2[C] of the Facility Operating License and defines the method and allowable time periods for such reports. The reporting threshold (*i.e.*, a violation) for some of the conditions included in Section 2.[C] of the Facility Operating License duplicates those defined in 10 CFR 50.72 and 10 CFR 50.73. However, the requirements in the Facility Operating License may have different deadlines than those defined in the regulations (following a rule change in 2001). This difference in reporting requirements has led to variations in reporting since many facility operating licenses do not contain the subject condition. For those licensees with a 30-day reporting requirement in the Facility Operating License, the condition has decreased the benefits of the rulemaking. For those cases where the current Facility Operating License requirement to report violations is also reportable in accordance with the regulations defined in 10 CFR 50.72 and 10 CFR 50.73, the NRC staff finds that the regulations adequately address this issue and the elimination of the duplicative requirement in the Facility Operating License is acceptable.

Some of the conditions addressed in Section 2.[C] of the Facility Operating License may address the maintenance of particular programs, administrative requirements, or other matters where a violation of the requirement would not result in a report to the NRC in accordance with 10 CFR 50.72 or 10 CFR 50.73. In most cases, there are requirements for reports to the NRC related to these conditions in other regulations, the specific license condition or technical specification, or an NRC-approved program document. In other cases, there are reports to other agencies or news releases that would prompt a report to the NRC (in accordance with 10 CFR 50.72(b)(2)(xi)). The NRC staff also assessed violations of administrative requirements that could be reportable under the current License Condition but that may not have a dupicative requirement in a regulation or other regulatory requirement. The NRC staff finds that the requirements to report such problems within 24 hours with written reports to follow using the LER process is not needed. The NRC staff is confident that the information related to such violations that is actually important to the NRC's regulatory functions would come to light in a time frame comparable to the 60-day LER requirements. The information would become available to the appropriate NRC staff through the inspection program, updates to program documents, resultant licensing actions, public announcements, or some other reliable mechanism.

The NRC staff finds that the elimination of Section 2.[X] of the Facility Operating License will not result in a loss of information to the NRC that would adversely affect either its goal to protect public health and safety or its ability to carry out its various other regulatory responsibilities.

[Optional: The reporting requirement defined in TS [5.x.x] for [PLANT] requires a report to the NRC when [REPORT REQUIREMENT]. This requirement duplicates the requirements in 10 CFR 50.72 and 10 CFR 50.73, but does not reflect subsequent changes in those regulations such as requiring LERs within 60 days instead of 30 days. The NRC staff finds the elimination of the TS requirement acceptable since the required reports are defined in an established NRC regulation that is also applicable to this licensee.]

4.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendment. The State official had no comments.

5.0 Environmental Consideration

The amendment changes recordkeeping, reporting, or administrative procedures or requirements. Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(10). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

6.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: The proposed amendment would delete Section 2.[X] of the Facility Operating License, which requires reporting of violations of the requirements in Section 2.[C] of the Facility Operating License. [The proposed amendment would also delete a reporting requirement in Technical Specifications that is duplicative of NRC regulations.]

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 change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves the deletion of a reporting requirement. The change does not affect plant equipment or operating practices and therefore does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is administrative in that it deletes a reporting requirement. The change does not add new plant equipment, change existing plant equipment, or affect the operating practices of the facility. Therefore, the 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 deletes a reporting requirement. The change does not affect plant equipment or operating practices and therefore does not involve a significant reduction in a margin of safety.

Based on the above, the NRC staff proposes that the change presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c).

Dated at Rockville, Maryland, this 22nd of August, 2005.

For the Nuclear Regulatory Commission.

William D. Reckley,

Senior Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4710 Filed 8–26–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Filing and Information Services, Washington, DC 20549

Extension: Rule 30b1–5; SEC File No. 270–520; OMB Control No. 3235–0577.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the U.S. Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

The title for the collection of information is ''Rule 30b1–5 under the Investment Company Act of 1940, Quarterly Filing of Schedule of Portfolio Holdings of Registered Management Investment Companies.''

Rule 30b1–5 under the Investment Company Act of 1940 requires registered management investment companies, other than small business investment companies registered on Form N–5, to file a quarterly report via the Commission's EDGAR system on Form N–Q, not more than sixty calendar days after the close of each first and third fiscal quarter, containing their complete portfolio holdings.

The Commission estimates that there are 9,850 management investment companies and series that are governed by the rule. The Commission estimates that the annual burden associated with the rule is 1 hour per affected investment company or series. The total burden hours for rule 30b1–5 is 9,850 per year in the aggregate (9,850 responses × 1 hour per response). Estimates of average burden hours are made solely for the purposes of the Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information under rule 30b1–5 is mandatory. The information provided under rule 30b1–5 is not kept confidential. The Commission 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F. Street, NE., Washington, DC 20549.

Dated: August 22, 2005.

Margaret H. McFarland,

Deputy Secretary,

[FR Doc. E5–4713 Filed 8–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 29, 2005:

A Closed Meeting will be held on Tuesday, August 30, 2005 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the Closed Meeting scheduled for Tuesday, August 30, 2005, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature; and an

Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: August 23, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–17165 Filed 8–24–05; 4:48 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52319; File No. SR–CBOE–2005–28]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to DPM Obligations for Maintaining Backup Autoquote Systems

August 23, 2005.

On April 1, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 8.85(a)(xi) and (xii) to remove the requirement that Designated Primary Market-Makers (''DPMs'') maintain a back-up quoting system for Hybrid and non-Hybrid option classes. The Exchange proposes a corresponding amendment to its Minor Rule Plan to remove references to Rules 8.85(a)(xi) and 8.85(a)(xii). The proposed rule change was published for comment in the **Federal Register** on July 22, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act,[4] applicable to a national securities exchange.[5] In particular, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52044 (July 15, 2005), 70 FR 42397 (''Notice'').

[4] *See* 15 U.S.C. 78f.

[5] In approving this proposed rule change, the Commission has considered its impact on

Continued

Commission believes that the proposal is consistent with Sections 6(b)(5) and 6(b)(7) of the Act,[6] which require, among other things, that an exchange have rules designed to promote just and equitable principles of trade, protect investors and the public interest, and enhance the effectiveness and fairness of the Exchange's disciplinary procedures. The Commission believes that CBOE's proposed rule changes should help to improve the efficiency of CBOE's market by eliminating unnecessary costs now borne by the Exchange's DPMs relating to the maintenance of back-up quotation systems.

As set forth in the Notice, CBOE Rules 8.85(a)(xi) and (xii) both impose an obligation on DPMs to maintain independent backup autoquote systems that can be employed in the event that a DPM's proprietary autoquote system should fail or be otherwise unavailable. Rule 8.85(a)(xi) governs non-CBOE Hybrid System (''non-Hybrid'') classes, while Rule 8.85(a)(xii) governs CBOE Hybrid System (''Hybrid'') classes.

With regard to CBOE Rule 8.85(a)(xi), the Commission notes that the Exchange has converted all of its DPM option classes to the CBOE Hybrid System. Thus, because non-Hybrid option classes no longer exist, CBOE Rule 8.85(a)(xi) has no applicability. Its repeal will have no impact on market participants.

As regards CBOE Rule 8.85(a)(xii), which requires DPMs to maintain an independent backup autoquote system that it may employ in the event its proprietary autoquote system fails, the Commission believes that the CBOE has made a reasonable determination that the backup obligation is no longer necessary. The Commission has no basis at this time to disagree with the CBOE's assessment that the recent adoption and implementation of the electronic DPM (''e-DPM'') program[7] on the Exchange should provide a more appropriate and cost effective safeguard against a DPM's inability to generate quotes in such option classes. Pursuant to the Exchange's rules governing the program, CBOE may allocate an option class that is already allocated to a DPM to one or more e-DPMs.[8] Such e-DPMs provide competing quotations accessible by CBOE market participants.

Thus, the Commission believes that, given the CBOE's current trading environment, the exchange has made a reasonable determination that the requirement to maintain a backup quotation system is unnecessary and unduly burdensome on DPMs. The proposed rule changes appear to be reasonably designed to help to put DPMs on a more equal competitive footing other market participants, including electronic DPMs, which do not have a backup quotation system maintenance requirement. Moreover, the Commission notes that deletion of the backup autoquote rules would not affect a DPM's separate obligation to provide continuous market quotations for each of its allocated classes and respective series.[9]

Finally, the Commission approves CBOE's proposal to remove references to Rules 8.85(a)(xi) and 8.85(a)(xii) in its Minor Rule Violations Plan.[10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–2005–28) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4712 Filed 8–26–05; 8:45 am]

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efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5) and 78f(b)(7).

[7] *See* Exchange Act Release Nos. 49577 (April 19, 2004), 69 FR 22576 (April 26, 2004) (order approving the process for approving e-DPMs on the Exchange); 50003 (July 12, 2004), 69 FR 25647 (July 19, 2004) (order approving e-DPM trading rules).

[8] *See* CBOE Rules 8.92 and 8.93.

[9] *See* CBOE Rule 8.85(a)(i).

[10] *See* CBOE Rule 17.50(g)(10).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52316; File No. SR–NYSE–2005–56]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to Exchange Rule 629 (''Schedule of Fees'') To Establish Processing Fees for Members, Member Organizations, and Allied Members That Are Parties to Arbitration Proceedings

August 22, 2005.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''), and Rule 19b–4[2] thereunder, notice is hereby given that on August 10, 2005, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. For purposes of Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] NYSE has designated the proposed rule change as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on its members, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Rule 629 to impose processing fees on members, member organizations, and allied members in connection with arbitration proceedings in which more than $25,000 is in dispute. Below is the text of the proposed rule change to Rule 629. Proposed new language is in *italics*; proposed deletions are in [brackets].

Rule 629 Schedule of fees

(a) through (j) No Change.

* * * * *

(k) *Arbitrator Selection and Hearing Scheduling Processing Fees*

(1) *Each member, member firm, member corporation or allied member (hereinafter referred to as any ''entity'') that is a party to an arbitration proceeding in which more than $25,000 is in dispute will pay the following non-refundable processing fees:*

(a) *An arbitrator selection fee of $750, due at the time the parties are sent the names of proposed arbitrators; and,*

(b) *A hearing scheduling fee in the applicable amount set forth in the schedule below, due when the parties are notified of the date and location of the first hearing session.*

Amount of dispute	*Hearing scheduling fee*
$1–$25,000	*$0*
$25,000.01–$50,000	*$1,000*
$50,000.01–$100,000	*$1,700*
$100,000.01–$500,000	*$2,750*
$500,000.01–$1,000,000	*$4,000*
$1,000,000.01–$5,000,000	*$5,000*
More than $5,000,000	*$5,500*
Unspecified	*$2,200*

(2) *If an associated person of an entity is a party, the entity or entities that*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

employed the associated person at the time of the events which gave rise to the dispute, claim or controversy will be charged the processing fees, even if the entity is not a party. No entity shall be assessed more than one arbitrator selection processing fee and one hearing scheduling processing fee in any arbitration proceeding.

(3) *The processing fees for arbitrator selection and hearing scheduling shall not be chargeable under 629(c) to a party other than the entity.*

* * * * *

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

1. Purpose

The proposed amendments to Rule 629 would establish certain processing fees for members, member organizations, and allied members that are parties to arbitration proceedings in which more than $25,000 is in dispute. These fees would be assessed: (1) When the names of the proposed arbitrators are sent to the parties; and (2) when the date and location of the hearing are sent to the parties. The processing fees would be assessed on the members, member organizations, and allied members when their associated person(s) are the subject of claims, even if the member, member organization, or allied member is not a party. However, no member, member organization, or allied member would be assessed more than one arbitrator selection fee and one hearing scheduling fee in any arbitration proceeding.

The processing fee, assessed when the names of the arbitrators are sent to the parties, would be fixed and not vary based on the amount in dispute. The processing fee, assessed when the date and location of the hearing are sent to the parties, would vary based on the amount in dispute. Processing fees would not be assessed on claims of $25,000 or less, as these claims are generally decided by one arbitrator on the papers, without an actual hearing being held.

These fees would be assessed only on members, member organizations, and allied members; in no circumstances would processing fees be charged to or assessed against public customers.

As the arbitration caseload has increased over the past several years, the attendant costs to the Exchange in maintaining the arbitration forum have also increased. The assessment of processing fees would offset a portion of the increased costs.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) [5] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [6] of the Act and Rule 19b–4(f)(2) [7] under the Act. The NYSE shall implement the proposed rule change thirty days after publication of the proposed rule change in the **Federal Register**.[8] At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2005–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NYSE–2005–56 and should be submitted on or before September 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4714 Filed 8–26–05; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] Telephone conversation between Karen Kupersmith, Director of Arbitration, NYSE, and Lourdes Gonzalez, Assistant Chief Counsel, Division of Market Regulation, Commission, (August 22, 2005).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 52314; File No. SR–NYSE–2005–43]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Rule 607 Relating to the Classification of Arbitrators as Public or Industry

August 22, 2005.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 17, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed amendments to its arbitration rules as described in Items I, II and III below, which items have been prepared by the NYSE. On August 4, 2005, the NYSE filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to New York Stock Exchange, Inc. Rule 607 relating to the classification of arbitrators as public or industry. The text of the proposed rule change, as amended, is available on the NYSE's Web site (*http://www.NYSE.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In arbitrations involving customers or non-members where the damages are alleged to exceed $25,000, arbitration panels are comprised of three arbitrators, two public arbitrators and one from the securities industry. The customer or non-member may request at least a majority of arbitrators from the securities industry.

Under Exchange Rule 607(a)(2), an arbitrator is currently classified as being from the securities industry if he or she: (1) Is, or within the past five years was, associated with certain entities related to the securities industry (or is retired from, or spent a substantial part of his or her career with such an entity); (2) is an attorney or other professional who devoted 20 percent or more of his or her work effort to securities industry clients within the past 2 years; or (3) is registered under the Commodity Exchange Act, or is a member of a registered futures association or any commodity exchange or is associated with any such person.

Under Exchange Rule 607(a)(3), an arbitrator who is not from the securities industry is classified as a public arbitrator. However, a person cannot be classified as a public arbitrator if he or she has a spouse or household member who is associated with certain entities related to the securities industry.

The NYSE is concerned that some arbitrators currently classified as public have affiliations with entities that have securities industry ties such as banks, insurance companies, mutual funds, holding companies and asset management firms. In an effort to enhance investor confidence in the NYSE arbitration forum, and in order to further ensure that persons serving as public arbitrators do not have ties to the securities industry or related firms, the Exchange is proposing to amend Rule 607. The proposed amendments would: (1) Expand the list of entities engaged in the securities business by adding certain membership categories not previously specifically mentioned (but, nevertheless, contemplated by the current rule), and by adding a catch-all for any ''other organization engaged in the securities business;'' (2) preclude any individual who is associated with any entity that controls, is controlled by, or is under common control with an entity on the expanded list from being classified as a public arbitrator; and (3) preclude any individual from being classified as a public arbitrator who has an immediate family member associated with an entity on the expanded list. The amendment also defines which persons are included within the term ''immediate family member.''

In order to ensure the integrity of the classification of public arbitrators, the Exchange will update and reclassify arbitrators in compliance with the amended rule, once approved.

The proposed amendments resemble a provision in the Uniform Code of Arbitration (''UCA'') developed by the Securities Industry Conference on Arbitration.[5] Aside from word choice and punctuation, the principal differences between the proposed rule change and the UCA are as follows:

- The UCA states that a person with a spouse or other member of the household who could be classified as being from the securities industry as set forth immediately above will not be classified as a public arbitrator. The NYSE proposed amendment expands the UCA provisions by excluding a person from being classified as a public arbitrator if the person has an ''immediate family member,'' which includes a spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, and anyone who shares such person's home (excluding domestic employees), associated with any of the entities in the NYSE proposed amendment as set forth immediately above.
- The NYSE proposed amendment states that a person will not be classified as a public arbitrator if the person is associated with an entity that, directly or indirectly, controls, is controlled by, or is under common control with, a member, allied member, member organization, broker/dealer, government securities broker, government securities dealer, municipal securities dealer, registered investment adviser, or other organization that is engaged in the securities business. The UCA does not have this provision.

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b) [6] of the Act in general and Section 6(b)(5) of the Act [7] in particular in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, which supplemented the original filing, the Exchange modified the implementation date for the proposed rule change and clarified certain aspects of the filing.

[5] The NASD has a rule similar to the UCA provision. *See* NASD Rule 10308(a).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The NYSE has not solicited but has received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has stated that the rule will become effective 90 days following the publication in the **Federal Register** of the Commission's approval of the rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2005–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–43 and should be submitted on or before September 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4715 Filed 8–26–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52315; File No. SR–PCX–2005–93]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Obligations of Lead Market Makers

August 22, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2005, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the PCX. The PCX has designated this proposal as ''non-controversial'' pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective immediately upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend PCX Rule 6.82 to include an additional obligation of Lead Market Makers (''LMMs'') in executing public customer orders. The text of the proposed rule change is available on the PCX's Web site (*http://www.pacificex.com*), at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX proposes to amend PCX Rule 6.82(c), Obligations of Lead Market Makers, to include a requirement that LMMs address public customer orders that are not automatically executed on the PCX because there is a better price on another exchange, by either matching the best price that is being disseminated by a competing exchange or by routing the public customer order via Intermarket Option Linkage (''Linkage'') for execution at any other exchange disseminating the best price.

Similar to rules at other exchanges, PCX rules do not allow for a public customer order to be executed at a price that is inferior to a price that may be available on another exchange. The intent of this rule is to give a public customer order the opportunity to obtain the best price available in the market at any given time. Using present procedures, attempting to obtain the

best possible price for the customer can be a time consuming process that could potentially result in the customer missing the best price that may have been available at another exchange.

Currently, PCX rules do not require LMMs to send public customer orders to other exchanges that cannot be executed on the PCX. In other words, currently an LMM may choose to reject a public customer order if the PCX is not quoting the NBBO, does not want to match the NBBO, and does not wish to route the public customer order away to the market that is quoting the NBBO. Under the proposal, an LMM will no longer be allowed to reject public customer orders in these circumstances; the LMM must either execute the public customer order immediately on the PCX (at the NBBO), or route the public customer order away via Linkage to the exchange displaying the best price available in the market. This additional LMM obligation would allow public customer orders initially routed to the PCX to be handled in a method that is consistent with the way public customer orders are handled at other options exchanges. Specifically, the proposed rule is consistent with Rule 803(c)(2) of the International Securities Exchange (''ISE''), and with obligations the PCX understands are imposed upon LMM equivalents in other options markets.

2. Statutory Basis

The PCX believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that the proposed rule change is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder[8] because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. As required under Rule 19b–4(f)(6)(iii),[9] the PCX provided the Commission with written notice of PCX's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the filing date of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative for 30 days after the date of its filing.[10] However Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay, which would make the proposed rule change operative immediately. According to the PCX, by precluding LMMs from rejecting public customer orders, the proposed rule change would enable the PCX to provide a means of executing public customer orders at the best price available in the marketplace, either by matching the better price of another exchange or by routing the order to another exchange through the Linkage. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest,[12] because the proposed rule change is substantially similar to a rule of another exchange.[13] For this reason, the Commission designates that the proposal become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] *Id.*

[11] *Id.*

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] *See* ISE Rule 803(c)(2) and Supplementary Material. *See also* Securities Exchange Act Release No. 48756 (November 7, 2003), 68 FR 65335 (November 19, 2003) (order approving the clarification of the obligations of primary market makers when addressing a public customer order when there is a better price displayed by another market) (SR–ISE–2003–03).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2005–93 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–PCX–2005–93. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish tomake available publicly. All submissions should refer to File

Number SR–PCX–2005–93 and should be submitted on or before September 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4704 Filed 8–26–05; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; U.S. Small Business Administration Region IV Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region IV Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Tuesday, September 20, 2005 at 9 a.m. The meeting will take place at the Charlotte Chamber of Commerce, Belk Action Center, 330 South Tryon Street, Charlotte, NC, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Eileen Joyce in writing or by fax, in order to be put on the agenda. Eileen Joyce, Lead Business Development Specialist, SBA, North Carolina District Office, 6302 Fairview Road, #300, Charlotte, NC 28210, phone (704) 344–6787 Extension 1136; fax (704) 344–6769, e-mail: *Eileen.joyce@sba.gov*

For more information, see our Web site at *http://www.sba.gov/ombudsman*.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–17111 Filed 8–26–05; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; U.S. Small Business Administration Region I Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region I Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Thursday, September 29, 2005, at 9 a.m. The meeting will take place at the Warwick Public Library, 600 Sandy Lane, Warwick, RI to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Normand Deragon in writing or by fax, in order to be put on the agenda. Normand Deragon, Public Information Officer, SBA, Rhode Island District Office, 380 Westminster Street, 5th Floor, Providence, RI 02903, phone (401) 528–4576, fax (401) 528–4539, e-mail: *Normand.deragon@sba.gov*.

For more information, see our Web site at *http://www.sba.gov/ombudsman*.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–17112 Filed 8–26–05; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/Office of Personnel Management (OPM))—Matches 1005, 1019, 1020, 1021

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the renewal of an existing computer matching program which is scheduled to expire on October 6, 2005.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces the renewal of an existing computer matching program that SSA is currently conducting with OPM.

DATES: SSA will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The renewal of the matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 965–8582 or writing to the Associate Commissioner, Office of Income Security Programs, 745 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Office of Income Security Programs as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: August 23, 2005.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) With the Office of Personnel Management (OPM)

A. Participating Agencies

SSA and OPM.

B. Purpose of the Matching Program

This matching program will have four separate components. The purposes of each of these parts are as follows:

[14] 17 CFR.200.30–3(a)(12).

SSA Match 1005: OPM records will be used in a matching program where SSA will match OPM's data with SSA's records to verify the accuracy of information furnished by applicants and recipients concerning eligibility factors for the Supplemental Security Income (SSI) and Special Veterans' Benefits (SVB) programs. The SSI program provides payments to individuals who have income and resources below levels established by law and regulations, and the SVB program provides special benefits to certain World War II veterans.

SSA Match 1019: SSA will match OPM's records of civil service disability benefit and payment data with SSA's records of Social Security disability insurance benefits to identify disability insurance beneficiaries whose benefits should be reduced under the Social Security Act because the disabled worker is receiving a civil service disability annuity benefit. SSA will match the OPM data to verify information provided (or identify such information that should have been provided) by the disabled worker at the time of initially applying for Social Security benefits and on a continuous basis to ensure any reduction in Social Security disability benefits is based on the current civil service disability benefit amount.

SSA Match 1020: OPM records will be used in a matching program where SSA will match OPM's civil service benefit and payment data with SSA's records for disabled and retired annuitants. These annuitants may be subject to the use of a modified benefit computation formula used by SSA under the Social Security Act for certain persons who receive both a civil service benefit and a Social Security retirement or disability benefit. SSA will use the OPM data to verify the pension or annuity information provided (or identify such information that should have been provided) directly to SSA by the retirees/annuitants.

SSA Match 1021: SSA will match OPM's civil service benefit and payment data with SSA's records of beneficiaries receiving Social Security spouse's benefits which are subject to reduction under the Social Security Act when the beneficiary is also receiving a government pension based on employment not covered under that Act. SSA will match the OPM data to verify information provided (or identify such information that should have been provided) by the SSA beneficiary at the time of initially applying for Social Security benefits and on a continuing basis to ensure that any reduction in Social Security benefits is based on the current pension amount.

C. Authority for Conducting the Matching Program

SSA Match 1005: Section 1631(e)(1)(B) and (f) of the Social Security Act (42 U.S.C. 1383(e)(1)(B) and(f)) for the SSI program; section 806 of the Social Security Act (42 U.S.C. 1006) for the SVB program.

SSA Match 1019: Section 224 of the Social Security Act (42 U.S.C. 424a).

SSA Match 1020: Sections 215(a)(7) and 215(d)(3) of the Social Security Act (42 U.S.C. 415(a)(7) and 415(d)(3)).

SSA Match 1021: Section 202(b)(4)(A), (c)(2)(A), (e)(7)(a), (f)(2)(A), and (g)(4)(A) of the Social Security Act (42 U.S.C. 402(b)(4)(A), (c)(2)(A), (e)(7)(A), (f)(2)(A) and (g)(4) (A)).

D. Categories of Records and Individuals Covered by the Match

OPM will provide SSA with an electronic file extracted from OPM's Annuity and Survivor Master File. The extracted file will contain information about each new annuitant and annuitants whose pension amount has changed. Each record on the OPM file will be matched to SSA's: (1) Master Files of Social Security Number (SSN) Holders and SSN Applications (SSA/OEEAS, 60–0058; (2) Master Beneficiary Record (SSA/OEEAS, 60–0090); or (3) Supplemental Security Income and Special Veterans' Benefits Record (SSA/OEEAS 60–0103) for the purposes described above in Section B.

E. Inclusive Dates of the Match

The matching program shall become effective upon the signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of this matching program is sent to Congress and the Office of Management and Budget or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 05–17113 Filed 8–26–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the City-County Airport, Madras, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at City-County Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before September 28, 2005.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. J. Wade Bryant, manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Rick Allen, Mayor of City of Madras, at the following address: The Honorable Rick Allen, Mayor, City of Madras, 71 SE D Street, Madras, OR 97741.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Watson, OR/ID Section Supervisor, Federal Aviation Administration, Northwest Mountain Region, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the City-County Airport under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2)).

On August 10, 2005, the FAA determined that the request to release property at City-County Airport submitted by the airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than September 28, 2005.

The following is a brief overview of the request:

City-County Airport is proposing the release of approximately 1.31 acres of airport property so the property can be sold to the business wishing to locate in the airport industrial park. The revenue

made from this sale will be used toward Airport Capital Improvement.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at City-County Airport.

Issued in Renton, Washington on August 10, 2005.

J. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 05–17078 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Pago Pago International Airport, American Samoa

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Department of Port Administration of the American Samoa Government under the provisions of Title I of the Aviation Safety and Noise Abatement Act, as amended, (Pub. L. 96–193) (hereinafter referred to as ''the Act'') and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On January 28, 2005, the FAA determined that the noise exposure maps submitted by Department of Port Administration of the American Samoa Government under Part 150 were in compliance with applicable requirements.

DATES: The effective date of the FAA's approval of the Noise Compatibility Program for Pago Pago International Airport is July 21, 2005.

FOR FURTHER INFORMATION CONTACT: Gordon Wong, Project Manager, Honolulu Airports District Office, Airports Division, Western-Pacific Region, Federal Aviation Administration, 300 Ala Moana Boulevard, 7–128, Honolulu, Hawaii 96850. Telephone: 808/541–3565. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Pago Pago International Airport, effective July 21, 2005. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979, as amended (herein after referred to as the ''Act'') [recodified as 49 U.S.C. 47504], an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Honolulu, Hawaii.

The Department of Port Administration of the American Samoa Government submitted to the FAA on December 9, 2004, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from June 2, 2003 through December 9, 2004. The Pago Pago International Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on January 28, 2005. Notice of this determination was published in the **Federal Register** on February 8, 2005.

The Pago Pago International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from (December 9, 2004 to beyond the year 2010). It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in 49 U.S.C. § 47504 (formerly Section 104(b) of the Act). The FAA began its review of the program on January 28, 2005 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained ten (10) proposed actions for noise abatement, land use management and program management on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program was approved, by the Associate Administrator for Airports, effective July 21, 2005.

Outright approval was granted for all ten (10) specific program measures. The approved measures included such items as: increase the use of Runway 8 for propeller arrivals; Amend the Draft Tualuata County Land Use Plan by adopting the Part 150 NCP as the airport noise compatibility element in the plan; Delineate an Airport Influence Area that would be incorporated in local comprehensive plans to show local planners the area around Pago Pago International Airport (PPG) that is subject to aircraft noise and periodic overflights; Initiate a formal request from the Director of Port Administration to the Department of Commerce requesting that the Assistant Director of Port Administration be formally notified for comment on all minor and major projects involving land use and zoning changes, and construction applications that the Territorial Planning Commission, Zoning Board, and Project Notification Review System (PNRS) Board receives for future development within the Airport Influence Area; During the Project Notification Review System (PNRS) review of land use permit applications, provide fair disclosure of potential noise exposure and aircraft overflights for those projects proposed within the Airport Influence Area; Offer a program of sound insulation to eligible single-family residences in the Future (2010) NEM/NCP 65+ DNL noise contour; Offer a program of voluntary acquisition to eligible single-family residences that do not meet the eligibility criteria for sound insulation within the Future (2010) NEM/NCP 65+ DNL noise contour on the north side of the Runway 5 end; Establish a new airport staff position within the Department of Port Administration, a Community Relations and Program Manager, that would be responsible for implementing the NCP; Monitoring compliance with noise abatement air traffic measures, update the airport noise contours (NEMs), and implementation assistance with the land use planning measures; and NCP review and evaluation for potential revision/update.

These determinations are set forth in detail in the Record of Approval signed by the Associate Administrator for Airports on July 21, 2005. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Department of Port Administration of the American Samoa Government. The Record of Approval also will be available online at: *http://www.faa.gov/arp/environmental/14cfr150/index14.cfm.*

Issued in Hawthorne, California, on August 12, 2005.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 05–17061 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2005–22188]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before October 28, 2005.

FOR FURTHER INFORMATION CONTACT: Otto Strassburg, Maritime Administration, 400 Seventh Street Southwest, Washington, DC 20590. Telephone: 202–366–4161; Fax: 202–366–7901; or e-mail: *Joe.strassburg@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Approval of Underwriters for Marine Hull Insurance.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0517.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: This collection of information involves the approval of marine hull underwriters to insure MARAD program vessels. Foreign and domestic applicants will be required to submit financial data upon which MARAD approval would be based.

Need and Use of the Information: This information is needed in order that MARAD officials can evaluate the underwriters and determine their suitability for providing marine hull insurance on MARAD vessels.

Description of Respondents: Marine insurance brokers and underwriters of marine insurance.

Annual Responses: 62 responses.

Annual Burden: 46 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street Southwest, Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

(Authority: 49 CFR 1.66.)

By Order of the Maritime Administrator.

Dated: August 23, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–17081 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2005–22189]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and requests for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before October 28, 2005.

FOR FURTHER INFORMATION CONTACT: T. Mitchell Hudson, Maritime Administration, 400 Seventh Street Southwest, Washington, DC 20590. Telephone: (202) 366–5320; Fax: (202) 366–7485; or E-mail: *mitch.hudson@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Eligibility of U.S.-flag Vessels 100 feet or Greater in Registered Length to Obtain a Fishery Endorsement to the Vessel's Documentation.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0530.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: In accordance with the American Fisheries Act of 1998, owners of vessels of 100 feet or greater who wish to obtain a fishery endorsement to the vessel's documentation are required to file with the Maritime Administration (MARAD) an Affidavit of United States Citizenship.

Need and Use of the Information: The information collection is necessary for MARAD to determine that a particular vessel is owned and controlled by United States citizens and is eligible to receive a fishery endorsement to its documentation.

Description of Respondents: Vessel owners, charterers, mortgages, mortgage trustees and managers of vessels of 100 feet or greater who seek a fishery endorsement for the vessel.

Annual Responses: 500 responses.

Annual Burden: 2,950 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

(Authority: 49 CFR 1.66.)

Dated: August 23, 2005.

By order of the Maritime Administrator.

Joel C. Richard

Secretary, Maritime Administration.

[FR Doc. 05–17082 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005–22184]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DELPHINUS.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005-22184 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 28, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005–22184. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DELPHINUS is:

Intended Use: ''Coastal Chartering.''

Geographic Region: East Coast (ME to FL—though likely NE Coast/New England.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–17086 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005–22186]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ORION.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the

Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–22186 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 28, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005–22186. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ORION is:

Intended Use: ''Multi-day crewed charters where customers 'learn as they vacation', earning sailing as well as Scuba Diving credentials by the end of their visit. Maximum number of passengers would be 6.''

Geographic Region: Alaska to California, West Coast of USA.

Dated: August 23, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–17079 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005–22183]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel RECHARGED.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–22183 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 28, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 22183. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RECHARGED is:

Intended Use: ''Carrying passengers for hire. 6 passengers or less. Weekend and week long sailing charter parties.''

Geographic Region: East Coast United States.

Dated: August 23, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–17084 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005–22185]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TATANKA.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–22185 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels.

If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR

23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 28, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 22185. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TATANKA is:

Intended Use: ''Day, evening and occasional overnight chartering.''

Geographic Region: ME, NH, MA, RI, CT, NY, NJ, DE, MD, VA, NC, SC, GA, FL, AL, MS, LA, TX, and U.S. Virgin Islands.

Dated: August 23, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–17085 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005–22182]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel THE GREAT ESCAPE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–22182 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 28, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 22182.Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel THE GREAT ESCAPE is:

Intended Use: ''Primary Sportsfishing and sightseeing with a six passenger max.''

Geographic Region: California to Mexico, and Gulf of Mexico including the coast of Texas, Louisiana, Mississippi, Alabama and Florida including FL Keys.

Dated: August 23, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–17083 Filed 8–26–05; 8:45 am]

BILLING CODE 4910–81–P

Federal Register

Monday,
August 29, 2005

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 301

Section 482: Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement; Proposed Rules

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–144615–02]

RIN 1545–BB26

Section 482: Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that provide guidance regarding methods under section 482 to determine taxable income in connection with a cost sharing arrangement. These proposed regulations potentially affect controlled taxpayers within the meaning of section 482 that enter into cost sharing arrangements as defined herein. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received November 28, 2005. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for November 16, 2005, at 10:00 a.m. must be received by October 26, 2005.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–144615–02), 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–144615–02), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044, or sent electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS and REG–144615–02). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jeffrey L. Parry or Christopher J. Bello, (202) 435–5265; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

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 control number assigned by the Office of Management and Budget.

The collection of information requirements are in proposed § 1.482–7(b)(1)(iv)–(vii) and (k). Responses to the collections of information are required by the IRS to monitor compliance of controlled taxpayers with the provisions applicable to cost sharing arrangements.

Estimated total annual reporting and/or recordkeeping burden: 1250 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 2.5 hours.

Estimated number of respondents and/or recordkeepers: 500.

Estimated frequency of responses: Annually.

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 October 28, 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 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.

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

Section 482 of the Internal Revenue Code generally provides that the Secretary may allocate gross income, deductions, credits, and allowances between or among two or more taxpayers that are owned or controlled by the same interests in order to prevent evasion of taxes or clearly to reflect income of a controlled taxpayer. The second sentence of section 482 added by the Tax Reform Act of 1986 enunciates the ''commensurate with income'' standard that in the case of any transfer (or license) of intangible property (within the meaning of section 936(h)(3)(B)), the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible. Public Law 99–5143, 1231(e)(1), *reprinted in* 1986–3 C.B. (Vol. 1) 1, 479–80.

Comprehensive regulations under section 482 were published in the **Federal Register** (33 FR 5849) on April 16, 1968, and were revised and updated by transfer pricing regulations in the **Federal Register** (59 FR 34971, 60 FR 65553, 61 FR 21955, and 68 FR 51171) on July 8, 1994, December 20, 1995, May 13, 1996, and August 26, 2003, respectively.

The 1968 regulations contained guidance regarding the sharing of costs and risks. See § 1.482–2A(d)(4). The 1968 regulations were replaced in 1996 by § 1.482–7 regarding the sharing of costs and risks (the 1996 regulations were further modified in 2003 with respect to stock-based compensation).

Experience in the administration of existing § 1.482–7 has demonstrated the need for additional regulatory guidance to improve compliance with, and administration of, the cost sharing rules. In particular, there is a need for additional guidance regarding the external contributions for which arm's length consideration must be provided as a condition to entering into a cost sharing arrangement. The consideration for this type of external contributions is referred to in the existing regulations as the *buy-in.* Furthermore, additional guidance is needed on methods for valuing these external contributions. The proposed regulations also provide the opportunity to address other technical and procedural issues that have arisen in the course of the administration of the cost sharing rules.

Explanation of Provisions

A. Overview

Under a cost sharing arrangement, related parties agree to share the costs and risks of intangible development in proportion to their reasonable expectations of the extent to which they will relatively benefit from their separate exploitation of the developed intangibles. The existing § 1.482–7 regulations and these proposed regulations provide rules governing cost sharing arrangements consistent with the commensurate income standard under the statute and the general arm's length standard under the section 482 regulations.

Comment letters and other information available to the Treasury Department and IRS have provided limited information on third-party arrangements that are asserted to be similar to cost sharing arrangements. Typically, in the context of discussion concerning the current § 1.482–7 regulations, information has been provided on certain arrangements involving cost plus research and development or government contracts, which, while no doubt arm's length transactions, are not viewed by the Treasury Department and IRS as analogous to cost sharing arrangements.

Thus, in accordance with § 1.482–1(b)(1), the task is to provide guidance relative to cost sharing arrangements regarding ''the results that *would have been realized* if uncontrolled taxpayers *had engaged* in the same transaction under the same circumstances.'' (Emphasis added.) This guidance is necessary because of the fundamental differences in cost sharing arrangements between related parties as compared to any superficially similar arrangements that are entered into between unrelated parties. Such other arrangements typically involve a materially different division of costs, risks, and benefits than in cost sharing arrangements under the regulations. For example, other arrangements may contemplate joint, rather than separate, exploitation of results, or may tie the division of actual results to the magnitude of each party's contributions (for example, by way of preferential returns). Those types of arrangements are not analogous to a cost sharing arrangement in which the controlled participants divide contributions in accordance with reasonably anticipated benefits from separate exploitation of the resulting intangibles.

For purposes of determining the results that would have been realized under an arm's length cost sharing arrangement, the proposed regulations adopt as a fundamental concept an *investor model* for addressing the relationships and contributions of controlled participants in a cost sharing arrangement. Under this model, each controlled participant may be viewed as making an aggregate investment, attributable to both cost contributions (ongoing share of intangible development costs) and external contributions (the preexisting advantages which the parties bring into the arrangement), for purposes of achieving an anticipated return appropriate to the risks of the cost sharing arrangement over the term of the development and exploitation of the intangibles resulting from the arrangement. In particular, the investor model frames the guidance in the proposed regulations for valuing the external contributions that parties at arm's length would not invest, along with their ongoing cost contributions, in the absence of an appropriate reward. In this regard, valuations are not appropriate if an investor would not undertake to invest in the arrangement because its total anticipated return is less than the total anticipated return that could have been achieved through an alternative investment that is realistically available to it.

The investor model is grounded in the legislative history of the Tax Reform Act of 1986 which provided in pertinent part as follows:

> In revising section 482, the conferees do not intend to preclude the use of certain bona fide cost-sharing arrangements as an appropriate method of allocating income attributable to intangibles among related parties, if and to the extent such agreements are consistent with the purposes of this provision that the income allocated among the parties reasonably reflect the actual economic activity undertaken by each. Under such a bona fide cost-sharing arrangement, the cost-sharer would be expected to bear its portion of all research and development costs, on successful as well as unsuccessful products within an appropriate product area, and the cost of research and development at all relevant developmental stages would be included. In order for cost-sharing arrangements to produce results consistent with the changes made by the Act to royalty arrangements, it is envisioned that the allocation of R&D cost-sharing arrangements generally should be proportionate to profit as determined before deduction for research and development. *In addition, to the extent, if any, that one party is actually contributing funds toward research and development at a significantly earlier point in time than the other, or is otherwise effectively putting its funds at risk to a greater extent than the other, it would be expected that an appropriate return would be provided to such party to reflect its investment.*

H.R. Conf. Rep. No. 99–841 at II–638 (1986)(emphasis supplied).

There are special implications that are derived from determining the arm's length compensation for external contributions in line with the investor model. In evaluating that arm's length compensation, it is appropriate, consistent with the investor model, to determine (1) what an investor would pay at the outset of a cost sharing arrangement for an opportunity to invest in that arrangement, and (2) what a participant with external contributions would require as compensation at the outset of a cost sharing arrangement to allow an investor to join in the investment. The appropriate ''price'' of undertaking a risky investment is typically determined at the time the investment is undertaken, based on the ex ante expectations of the investors. Given the uncertainty about whether and to what extent intangibles will be successfully developed under a cost sharing arrangement, ex post interpretations of ex ante expectations are inherently unreliable and susceptible to abuse. Accordingly, an important implication of determining the arm's length result under the investor model, reflected in the methods, is that compensation for external contributions is analyzed and valued ex ante. The ex ante perspective is fundamental to achieving arm's length results.

Accordingly, the proposed regulations provide guidance under section 482 that would replace the existing regulations under § 1.482–7 relating to cost sharing arrangements. They revise § 1.482–7 in light of the experience of both the IRS and taxpayers with the existing regulations. The proposed regulations also restructure the format of the existing regulations to be more consistent with that of the 1994 regulations (for example, §§ 1.482–3 and 1.482–4) and to add organizational clarity.

The proposed regulations begin by specifying the transactions relevant to a cost sharing arrangement. Importantly, the proposed regulations acknowledge that in a typical cost sharing arrangement, at least one controlled participant provides resources or capabilities developed, maintained, or acquired externally to the arrangement that are reasonably anticipated to contribute to the development of intangibles under the arrangement, namely what are referred to as external contributions. Thus, the proposed regulations integrate into the definition of a cost sharing arrangement both ''cost sharing transactions'' regarding the

ongoing sharing of intangible development costs as well as ''preliminary or contemporaneous transactions'' by which the controlled participants compensate each other for their external contributions to the arrangement (that is, what the existing regulations refer to as the ''buy-in''). The proposed regulations provide that § 1.482–7 only governs arrangements that are within (or which the controlled taxpayers reasonably concluded to be within) the definition of a cost sharing arrangement. Arrangements outside that definition must be analyzed under the other sections of the section 482 regulations to determine whether they achieve arm's length results.

The proposed regulations provide supplemental guidance on the valuation of the arm's length amount to be charged in a preliminary or contemporaneous transaction. The proposed regulations clarify that the valuation of the rights associated with the external contribution that is compensated in a preliminary or contemporaneous transaction cannot be artificially limited by purported conditions or restrictions. Rather, the arm's length compensation, and the applicable method used to determine that compensation, must reflect the type of transaction and contractual terms of a ''reference transaction'' by which the benefit of exclusive and perpetual rights in the relevant resources or capabilities are provided. This compensation will be determined by a method that will yield a value for the obligation of any given controlled participant that is consistent with that participant's share of the combined value of the external contribution to all controlled participants.

The proposed regulations set forth new specified methods and provide rules for application of existing specified methods, for purposes of determining the arm's length compensation due with respect to external contributions in preliminary or contemporaneous transactions. The proposed regulations also enunciate general principles governing all methods, specified and unspecified, for these purposes.

The proposed regulations provide guidance on allocations that the Commissioner may make to more clearly reflect arm's length results for the controlled taxpayers' cost sharing transactions and preliminary or contemporaneous transactions. In particular, building again on the investor model, the proposed regulations provide guidance on the periodic adjustments that the Commissioner may make in situations where the actually experienced results of a controlled participant's investment attributable to cost contributions and external contributions is widely divergent from reasonable expectations at the time of the investment. Exceptions are provided, including one under which the taxpayer may establish that the differential is due to events beyond its control that are extraordinary and not reasonably anticipated (including business growth that was not reasonably anticipated). The proposed regulations provide that periodic adjustments may only be made by the Commissioner.

Finally, the proposed regulations include provisions to facilitate administration of, and compliance with, the cost sharing rules. These include contractual provisions required for cost sharing arrangements, documentation that must be maintained (and produced upon request by the IRS), accounting requirements, and reporting requirements. Transition rules are provided for modified compliance in the case of qualified cost sharing arrangements under existing § 1.482–7, as well as rules for terminating such grandfather status. The proposed regulations also make conforming and other changes to provisions of the current regulations under sections 482 and 6662 that are related to this guidance.

B. Basic Rules Applicable to CSAs

1. General Rule—Proposed § 1.482–7(a)

Consistent with the rules governing other controlled transactions (for example, transfers of tangibles and intangibles under existing §§ 1.482–3 and 1.482–4), proposed § 1.482–7(a) provides that the arm's length amount charged in a controlled transaction reasonably anticipated to contribute to developing intangibles pursuant to a cost sharing arrangement must be determined under a method described in the proposed regulations.

The controlled participants must share intangible development costs of the intangibles developed or to be developed (the cost shared intangibles) in cost sharing transactions in proportion to their shares of reasonably anticipated benefits (RAB shares) from exploiting cost shared intangibles.

The controlled participants must also compensate other controlled participants for their external contributions in preliminary or contemporaneous transactions. The arm's length amount charged in a preliminary or contemporaneous transaction must be determined pursuant to the method or methods under the other provision or provisions of the section 482 regulations, as supplemented by proposed § 1.482–7(g), applicable to the reference transaction reflected by the preliminary or contemporaneous transaction. Such method will yield a value for the obligation of each obligor in the preliminary or contemporaneous transaction that is consistent with the product of the combined value to all controlled participants of the external contribution that is the subject of the preliminary or contemporaneous transaction multiplied by the obligor's RAB share.

Contributions to developing the cost shared intangibles made by a controlled taxpayer that is not a controlled participant in the cost sharing arrangement must be determined pursuant to § 1.482–4(f)(3)(iii) (Allocations with respect to assistance to the owner). Arm's length consideration for the transfer by a controlled participant of an interest in a cost shared intangible at any time (whether during the term, or upon or after the termination of a cost sharing arrangement) must be determined under the rules of §§ 1.482–1 and 1.482–5 through 1.482–6.

The proposed regulations provide that if an arrangement comes within the definition of a cost sharing arrangement, it is subject to § 1.482–7 (see next section of this Preamble for discussion of the definition of a cost sharing arrangement). Other arrangements that are not cost sharing arrangements (or are not treated as such) must be analyzed under the other provisions of the section 482 regulations to determine whether they achieve arm's length results.

2. Definition of a CSA—Proposed § 1.482–7(b)

a. CSA Transactions in General

Under § 1.482–1(b)(1), a ''controlled transaction meets the arm's length standard if the results of the transaction are consistent with the results that *would have been realized* if uncontrolled taxpayers *had engaged* in the same transaction under the same circumstances.'' (Emphasis added.) Thus, it is important to define with reasonable precision the category of arrangements treated as cost sharing arrangements, their terms, and the functions and risks assumed by the participants in such arrangements. The determination of what ''would have been'' the arm's length results of such transactions is based on those definitions.

Proposed § 1.482–7(b) identifies two groups of transactions that are integral

to a cost sharing arrangement—cost sharing transactions and preliminary or contemporaneous transactions. A cost sharing transaction or *CST* is a transaction in which the controlled participants share the intangible development costs of one or more cost shared intangibles in proportion to their respective shares of reasonably anticipated benefits from their individual exploitation of their interests in the cost shared intangibles that they obtain under the arrangement. CSTs reflect the results that would have been expected in a cost sharing agreement between uncontrolled taxpayers that did not bring any external contributions to the arrangement. In other words, if uncontrolled taxpayers started in a true ''green field,'' they would be expected to agree to split ongoing costs of the research in proportion to the relative value of their respective reasonably anticipated benefits from the arrangement.

The proposed regulations are premised in part, however, on the fact that at least one controlled participant typically provides external contributions to a cost sharing arrangement. Thus, the proposed regulations integrate into the definition of a cost sharing arrangement not only the CSTs for the ongoing sharing of intangible development costs, but also the preliminary or contemporaneous transactions or *PCTs* by which the controlled participants compensate one another for their respective external contributions. The necessity of PCTs in connection with cost sharing arrangements was anticipated in the legislative history of the Tax Reform Act of 1986:

> In addition, to the extent, if any, that one party is actually contributing funds toward research and development at a significantly earlier point in time than the other, or is otherwise effectively putting its funds at risk to a greater extent than the other, it would be expected that an appropriate return would be provided to such party to reflect its investment.

H.R. Conf. Rep. No. 99–841 at II–638 (1986).

b. Constituent Elements of a CSA—Proposed § 1.482–7(b)(1)

The proposed regulations define a cost sharing arrangement or *CSA* as a contractual agreement to share the costs of one or more intangibles that meet three substantive and four administrative requirements. The term *CSA*, as defined, would replace the term *qualified cost sharing arrangement* employed in the existing regulations. The substantive requirements are that the controlled participants (1) divide all interests in cost shared intangibles on a territorial basis, (2) enter into and effect all CSTs and all PCTs, and (3) as a result, individually own and exploit their respective interests in the cost shared intangibles without any further obligation to compensate one another for such interests. The administrative requirements are that the controlled participants substantially comply with (1) the CSA contractual requirements, (2) the CSA documentation requirements, (3) the CSA accounting requirements, and (4) the CSA reporting requirements.

The Treasury Department and the IRS recognize that a CSA, as defined, represents one possible arrangement by which parties may choose to share the costs, risks, and benefits of intangible development. Other arrangements, however, may involve a materially different division of costs, risks, and benefits in contrast to a CSA. For example, other arrangements may contemplate joint, rather than separate, exploitation of results, or may tie the division of actual results to the magnitude of each party's contributions (for example, by way of preferential returns), rather than divide contributions in accordance with reasonably anticipated benefits from separate exploitation. Given such differences, the guidance under § 1.482–7, as applicable to CSAs, is not appropriate to evaluate what would have been the arm's length results of these other arrangements that do not constitute CSAs when they are undertaken among controlled taxpayers. In such cases the proposed regulations direct taxpayers to guidance under other provisions of the section 482 regulations to determine whether such arrangements achieve arm's length results.

c. External Contributions and PCTs—Proposed § 1.482–7(b)(3)(i) Through (iv)

PCTs are the transactions by which the controlled participants compensate one another for their external contributions to the CSA. External contributions are any resources or capabilities which one or more controlled participants bring to a CSA that were developed, maintained, or acquired externally to the CSA (whether prior to or during the course of the CSA), and that are reasonably anticipated to contribute to developing cost shared intangibles. For example, one controlled participant may have promising in-process technology, or a developed and successful first generation technology, that may reasonably be anticipated to provide a platform for future generation technology to be developed under the CSA. As another example, one controlled participant may have an experienced research team that could reasonably be anticipated to be particularly suited to carrying out the development contemplated under the CSA. The proposed regulations exclude land, depreciable tangible property, and other resources acquired by intangible development costs, since they are compensated by CSTs. See discussion of proposed § 1.482–7(d).

The Treasury Department and the IRS believe that uncontrolled parties entering into a long term commitment to share intangible development costs would require an agreement upfront that all external contributions be made available to the fullest extent for the full period over which they are reasonably anticipated to be needed. Accordingly, the proposed regulations introduce the concept of the reference transaction or *RT* in order to ensure that compensation for external contributions to the CSA reflects the full economic value of resources or capabilities that a participant brings to the CSA. The RT is a transaction providing the benefit of all rights, exclusively and perpetually, in a resource or capability described above, apart from the rights to exploit an existing intangible without further development (see section of Preamble below regarding § 1.482–7(c) (Make-or-sell rights excluded)). The arm's length compensation pursuant to the PCT, and the applicable method used to determine such compensation, must reflect the type of transaction and contractual terms of the RT. The controlled participants must enter into a PCT as of the earliest date (whether on or after the date the CSA is entered into) on which the external contribution is reasonably anticipated to contribute to developing cost shared intangibles (the date of a PCT). The controlled participants are not required to actually enter into the RT and the compensation due from any controlled participant will be limited to its RAB share of the total value of the external contribution, the scope of which is defined by the RT.

The concept of the RT was developed in response to arguments that have been encountered in the examination experience of the IRS under the existing regulations. In numerous situations taxpayers have purported to convey only limited availability of resources or capabilities for purposes of the intangible development activity (IDA) under a CSA. An example is a short-term license of an existing technology. Under the existing regulations, such cases may, of course, be examined to assess whether the purported

limitations conform to economic substance and the parties' conduct. See § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms). In addition, even if the short-term license were respected, the continued availability of the contribution past the initial license term would require new license terms to be negotiated taking into account relevant factors, such as whether the likelihood of success of the IDA had materially changed in the interim. The proposed regulations address the problems in administering such approaches more directly by requiring an upfront valuation of all external contributions which would be much more difficult to calculate if it involved the valuation of a series of short-term licenses with terms contingent on such interim changes. Accordingly, the proposed regulations assume a reference transaction that does not allow for contingencies based on the expiration of short-term licenses that might require further renegotiation of the compensation for the external contribution. No inference is intended concerning the outcome of such limitations under the existing regulations.

Thus, for example, consider a CSA for the development of future generations of an existing technology owned by one controlled participant. The PCT compensation obligation of the other controlled participant or participants would be determined by reference to the RT consisting of the transfer of all rights to the existing technology apart from the rights to exploit the existing technology without further development (see section of Preamble below regarding § 1.482–7(c) (Make-or-sell rights excluded)). The rights transferred in the RT would include the exclusive right to use the technology for purposes of research. They would also include the right to exploit any resulting products that incorporated the technology and any resulting products the development of which is otherwise assisted by the technology. Moreover, the rights transferred in the RT would cover a term extending as long as the exploitation of future generations of the technology continued. The RT provides the basis for selection and application of the method used to value the compensation owed under the PCT by each other controlled participant. The compensation obligation is limited to each such other controlled participant's RAB share of the total value of the rights in the existing technology that would have been transferred in the RT.

Issues have arisen regarding whether an existing research team in place constitutes intangible property for which compensation is due, in addition to sharing the ongoing compensation and other costs of maintaining such team, for purposes of the buy-in provisions under the existing regulations. The Treasury Department and the IRS believe that the proper arm's length treatment is to include the obligation to compensate such external contributions of in-place research capabilities in PCTs. At arm's length, an uncontrolled taxpayer seeking to invest in a research project involving the experienced in-place researchers would require a commitment of the experienced team in place for purposes of the project, rather than assuming the risks presented by an inexperienced team. The Treasury Department and the IRS believe that a contribution of such an experienced team in place would result in the contribution of intangible property within the meaning of § 1.482–4(b) and section 936(h)(3)(B).

The proposed regulations, however, do not restrict the type of transaction that may be the subject of the RT. An RT may consist of the provision of services as well as the transfer of intangible property. For example, in the case of an experienced research team in place, therefore, the RT could be the services agreement to commit the team to the research project under the CSA.

Under the proposed regulations, the controlled participants may designate the type of transaction involved in the RT, if different economically equivalent types of RTs are possible with respect to the relevant resource or capability. If the controlled participants fail to make such a designation, the Commissioner may do so.

Exacting compensation for an external contribution pursuant to a PCT is distinguishable from charging for another's business opportunity. Any taxpayer, controlled or uncontrolled, is free to undertake the business opportunity of trying to develop an intangible on its own. In that case, the taxpayer is bearing all costs and risks, and has no obligation to compensate anyone for taking free advantage of the opportunity. Where, however, the benefit of existing resources or capabilities belonging to another are desired that are reasonably anticipated to contribute to the development effort, then, at arm's length, the supplier of such resources or capabilities would not contribute them absent appropriate compensation.

d. Form of PCT Payment and Post Formation Acquisitions—Proposed § 1.482–7(b)(3)(v) and (vi)

Under the proposed regulations, the general rule is that the consideration owing pursuant to a PCT for an external contribution, referred to as the *PCT Payments*, may take the form of fixed payments, payments contingent on the exploitation of the cost shared intangibles, or a combination of both. The selected payment form must be specified no later than the date of the PCT. The payor of PCT Payments is referred to as the *PCT Payor*, and the payee is referred to as the *PCT Payee*.

In the case of resources or capabilities developed, maintained, or acquired prior to the time they are reasonably concluded to contribute to developing cost shared intangibles (for example, resources or capabilities that predate the CSA), the controlled participants have the flexibility to structure PCT Payments in any of the available forms, subject to conforming to contractual terms, economic substance, and the parties' conduct. See § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms). A CSA generally contemplates that the participants undertake costs and risks in parallel and in proportion to their RAB shares, but this result cannot be achieved in the case of external contributions that are the product of previously incurred costs and risks. So, for such resources or capabilities, the proposed regulations allow the controlled participants to provide for the applicable payment form by the date of the PCT.

A post formation acquisition (PFA) is an external contribution representing resources or capabilities acquired by a controlled participant in an uncontrolled transaction that takes place after formation of the CSA and that, as of the date of the acquisition, are reasonably anticipated to contribute to developing cost shared intangibles. Resources or capabilities may be acquired in a PFA either directly or indirectly through the acquisition of an interest in an entity or tier of entities.

The Treasury Department and the IRS believe that the form of PCT Payments for PFAs must be consistent with the principle that allocations of cost and risk among controlled participants after a CSA has commenced should be in proportion to their respective RAB shares. Accordingly, the proposed regulations provide that the consideration under a PCT for a PFA must follow the form of payment in the uncontrolled transaction in which the PFA was acquired. For example, if subsequent to the formation of a CSA one controlled participant makes a stock acquisition of a target the assets of which consist of resources and capabilities reasonably anticipated as of the date of the acquisition to contribute to developing cost shared intangibles,

the PCT Payment by each other controlled participant must be in a lump sum. To avoid the possibility that any payments are inappropriately characterized by the participants, neither PCT Payments, nor cost sharing payments, may be paid in shares of stock in the payor.

e. Territorial Division of Interests—Proposed § 1.482–7(b)(4)

Controlled participants in a CSA own interests in the cost shared intangibles and are able to exploit those intangibles without any obligation to compensate other participants (other than pursuant to CSTs or PCTs). Controlled participants must share intangible development costs in proportion to their reasonably anticipated benefits from their individual exploitation of such interests. Taxpayers have entered into cost sharing arrangements in which the controlled participants receive nonexclusive, indivisible worldwide interests in cost shared intangibles. Taxpayers have taken the position under the existing regulations that such interests are susceptible to being individually exploited, and that the participants' respective shares of benefits from such exploitation are susceptible to being reasonably estimated.

The proposed regulations require that controlled participants receive non-overlapping territorial interests in the cost shared intangibles that in the aggregate utilize all the available territories worldwide. The proposed regulations also require that a controlled participant be entitled to the perpetual and exclusive right to cost shared intangible profits of any other controlled taxpayer in the same controlled group as the participant from transactions with uncontrolled taxpayers regarding property or services for use, consumption, or disposition within the participant's territory or territories. For example, where one controlled participant sells part of its output into a territory belonging to another controlled participant, the former must pay the latter participant arm's length compensation to ensure that the intangible profit on the sale is realized by the latter participant. These territoriality requirements facilitate the ability to individually exploit, and estimate the reasonably anticipated benefits from individual exploitation of, interests in cost shared intangibles. No inference is intended as to the permissibility of nonexclusive interests under the existing regulations.

Comments are requested concerning whether alternatives should be provided to territorial division of interests in cost shared intangibles. Proposed alternatives should further the goal of dividing the universe of interests into exclusive, non-overlapping segments to promote measurability of anticipated benefits and administrability both by taxpayers and the IRS. Comments are also requested about how to facilitate attribution of sales to territories, or other non-overlapping divisions of interests, such as in the case of sales via electronic commerce. Comments are also requested on the division, territorially or otherwise, of interests in exploiting cost shared intangibles in space.

f. CSAs in Substance or Form—Proposed § 1.482–7(b)(5)

Pursuant to proposed § 1.482–7(b)(5)(i), as under the existing regulations, the Commissioner may, consistently with § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms), apply the § 1.482–7 rules to any arrangement that in substance constitutes a CSA in accordance with the three substantive requirements enumerated in proposed § 1.482–7(b)(1)(i) through (iii), notwithstanding a failure otherwise to meet the § 1.482–7 requirements.

Provided a taxpayer has followed the formal requirements enumerated in proposed § 1.482–7(b)(1)(iv) through (vii), the Commissioner must treat the arrangement as a CSA if the taxpayer reasonably concluded the arrangement to be a CSA. The Commissioner may also treat any other arrangement as a CSA, if the taxpayer has followed such formal requirements.

3. Exclusion of Make-or-Sell Rights—Proposed § 1.482–7(c)

Disputes have arisen under the existing regulations regarding the buy-in related to a CSA to develop future generations of an intangible that is being exploited in its then current version by the PCT Payee. For example, there may be licenses of the current generation intangible to uncontrolled taxpayers, perhaps with certain rights to make adaptations for their customers. Taxpayers have asserted that a make-and-sell license of this type satisfies the requirement for a buy-in in the CSA under the current regulations. Such a position misconstrues the existing regulations, which focus the buy-in on the availability of the pre-existing intangibles ''for purposes of research in the intangible development area'' under the CSA. See § 1.482–7(g)(2).

The proposed regulations expressly exclude from the scope of a CSA any provision to the extent it relates to exploiting an existing intangible without further development, such as the right to make or sell existing products. The proposed regulations do, however, allow the aggregate valuation of controlled transactions relating to make-or-sell rights with PCT Payments, where such aggregate evaluation provides a more reliable measure of an arm's length result than a separate valuation of the transactions. See proposed § 1.482–7(g)(2)(v).

4. Intangible Development Costs—Proposed § 1.482–7(d)

The proposed regulations restate the provisions defining intangible development costs or *IDCs* that are shared pursuant to CSTs under a CSA to coordinate with the conceptual framework of the proposed regulations and with the stock-based compensation provisions added in 2003.

As discussed, CSTs and PCTs are the two major groupings of transactions entered into pursuant to a CSA. In CSTs, the controlled participants share *all* ongoing costs of developing intangibles. In contrast, in PCTs they compensate one another for resources or capabilities developed, maintained, or acquired externally to the CSA (whether prior to or during the course of the CSA). It is necessary to define IDCs shared in CSTs in a comprehensive manner that does not overlap with the definition of external contributions compensated in PCTs.

The proposed regulations, accordingly, define IDCs as all costs, in cash or in kind (including stock-based compensation), but excluding costs for land and depreciable property, in the ordinary course of business after the formation of a CSA that, based on analysis of the facts and circumstances, are directly identified with, or are reasonably allocable to, the IDA. The IDA replaces the concept of the *intangible development area* under the existing regulations. The self-contained IDC definition eliminates the need for the cross-reference to operating expenses as defined in § 1.482–5(d)(3) of the existing regulations and thus eliminates potential disputes over the interaction of these sections.

The proposed regulations also avoid overlapping definitions of IDCs and external contributions. IDCs are limited to costs in the ordinary course of business incurred after the formation of a CSA and that are directly identified with, or reasonably allocable to, the IDA. Thus, for example, the expected value over and above ongoing compensation and other costs of an experienced research team would be compensated by PCTs, but the ongoing compensation and other costs of the team attributable to the IDA would be

IDCs shared in CSTs. Moreover, costs for depreciable property, which under section 197(f)(7) would include amortization of any amortizable section 197 intangible, are carved out from IDCs. Instead, to the extent such intangibles are reasonably anticipated to contribute to developing cost shared intangibles, they would be compensated in PCTs.

Land and depreciable tangible property (for example, use of a laboratory facility) would represent an external contribution. The proposed regulations, however, continue the practical approach of the existing regulations of treating the arm's length rental charge under § 1.482–2(c) (Use of tangible property) for such land and depreciable tangible property as IDCs, since typically these items can be readily valued.

In line with the direction in the 1986 legislative history to reflect ''the actual economic activity'' undertaken pursuant to a CSA, the proposed regulations expressly provide that generally accepted accounting principles or federal income tax accounting rules may provide a useful starting point, but will not be conclusive regarding inclusion of costs in IDCs. As under the existing regulations, IDCs exclude interest expense, foreign income taxes, and domestic income taxes.

The balance of the proposed regulations restate the existing regulations with conforming changes in light of the new terminology and framework. Technical amendments were made to the special transition rule on time and manner of making the election with respect to certain stock-based compensation and the consistency rules for measurement and timing with respect to such stock-based compensation.

Except for such technical amendments, these proposed regulations incorporate the existing provisions relating to the elective method of measurement and timing permitted with respect to certain options on publicly traded stock. However, the Treasury Department and the IRS are considering extending availability of the elective method to other forms of publicly traded stock-based compensation. The Treasury Department and the IRS request comments on which forms of publicly traded stock-based compensation should be eligible for the elective method.

5. Reasonably Anticipated Benefits Share (RAB Share)—Proposed § 1.482–7(e)

Proposed § 1.482–7(e) restates existing § 1.482–7(f)(3)(i) through (iv)(A) with some technical clarifications and changes to conform to the new terminology and framework. The proposed regulations provide, as is implicit in existing § 1.482–7(b)(3), (e)(2), and (f)(3), that for purposes of determining RAB shares at any given time, reasonably anticipated benefits must be estimated over the entire period, past and future, of exploitation of the cost shared intangibles, and must reflect appropriate updates to take into account the most current reliable data regarding past and projected future results as is available at such time.

6. Changes in Participation Under a CSA—Proposed § 1.482–7(f)

Proposed § 1.482–7(f) replaces existing § 1.482–7(g)(3) and (4), as well as the third and fourth sentences of existing § 1.482–7(g)(1). This provision clarifies the application of the rules of § 1.482–7 in the event of a change in participation under a CSA. A change in participation includes the transfer between controlled participants of all or part of a participant's territorial rights coupled with the assumption by the transferee of the associated obligations under the CSA, the entry into a CSA of a new controlled participant that acquires any territorial rights and associated obligations under the CSA, and the withdrawal of a controlled participant or other relinquishment or abandonment of territorial rights and associated obligations under the CSA. In the event of a change in participation, the transferee of the territorial rights and associated obligations under the CSA succeeds to the transferor's prior history under the CSA, including IDCs borne, benefits derived, and compensation expenditures pursuant to any PCTs. The transferor must receive an arm's length amount of consideration from the transferee under the rules of §§ 1.482–1 and 1.482–4 through 1.482–6.

Proposed § 1.482–7(e)(2)(i) provides that in the case of transfers of cost shared intangibles between controlled participants, other than by way of a change in participation described in proposed § 1.482–7(f), the transferor's benefits for purposes of RAB share determination are measured on a look-through basis with reference to the transferee's benefits, disregarding any consideration paid by the transferee (such as a royalty pursuant to a license agreement).

C. Supplemental Guidance on Methods Applicable to PCTs

The Treasury Department and the IRS recognize that taxpayers and the IRS need additional guidance on the appropriate methods for valuation of external contributions to a CSA. A typical challenge to valuing nonroutine intangibles is the uncertainty as to the profitability of their exploitation. In the case of a CSA, however, there is also the uncertainty whether and to what extent any intangible will be successfully developed under the CSA. Accordingly, proposed § 1.482–7(g) provides supplemental guidance on evaluating external contributions compensated by PCTs, including general principles for specified and unspecified methods, guidance on the application of existing specified methods, and new specified methods.

The investor model informs the guidance on valuation. The guidance generally aims at valuation of the amount charged in a PCT such that a controlled participant's aggregate net investment in a CSA attributable to cost contributions and external contributions may be expected to earn a return appropriate to the riskiness of the CSA.

1. General Rule—Proposed § 1.482–7(g)(1)

As discussed, PCTs are one of two major categories of transactions (the other being CSTs) entered into pursuant to a CSA. In PCTs, the controlled participants compensate one another for their respective external contributions that they bring into a CSA, that is, the resources or capabilities they have developed, maintained, or acquired externally to (whether prior to or during the course of) the CSA that are reasonably anticipated to contribute to developing cost shared intangibles.

Pursuant to § 1.482–1(b)(2), different sections of the section 482 regulations apply to different types of transactions, such as transfers of tangible and intangible property, services, loans or advances, and rentals. The method or methods most appropriate to the calculation of arm's length results for controlled transactions in each category must be selected. When interrelated controlled transactions are of different types, the participants, depending on what produces the most reliable means of measuring arm's length results, may either (1) apply different methods to the different transactions or (2) aggregate the transactions for valuation purposes. See also § 1.482–1(f)(2)(i) and proposed § 1.482–7(g)(2)(v) regarding aggregation of transactions.

A key concept in valuing PCTs is the RT. The RT is a transaction providing the benefit of all rights, exclusively and perpetually, in a resource or capability that is the subject of the external contribution, apart from the rights to exploit an existing intangible without further development. If in fact, the resource or capability is reasonably anticipated to contribute both to developing or exploiting cost shared intangibles and to other business activities of a PCT Payee, the proposed regulations provide that the otherwise applicable value of the relevant PCT Payments may need to be prorated between the CSA and any other business activities on a reasonable basis that reflects the relative economic values of the different business activities.

For purposes of the selection of the category of method applicable to a controlled transaction pursuant to § 1.482–1(b)(2)(ii), proposed § 1.482–7(b)(3)(iii) provides that the applicable method used to determine the compensation for a PCT shall reflect the type of transaction of the RT. For example, in the case of an external contribution consisting of an in-process intangible, the RT could be a transfer of intangibles generally to be evaluated pursuant to §§ 1.482–1 and 1.482–4 through 1.482–6. As a further example, in the case of an external contribution consisting of an experienced research team in place, the RT could be the provision of services generally to be evaluated pursuant to § 1.482–2(b). If different economically equivalent types of RTs are possible with respect to the relevant resource or capability, the controlled participants may designate the type of transaction involved in the RT.

Proposed § 1.482–7(a)(2) provides that the arm's length amount charged in a PCT must be determined pursuant to the method or methods applicable to the RT under the relevant provision or provisions of the section 482 regulations (as those methods are supplemented by proposed § 1.482–7(g)). Such method will yield a value for the obligation of each obligor in the PCT (PCT Payor) consistent with the product of the combined value to all controlled participants of the external contribution that is the subject of the PCT multiplied by the PCT Payor's RAB share. Although some specified and unspecified methods may involve measuring PCT Payments with reference to the value of exploiting cost shared intangibles in one or more controlled participants' territories, the application of such methods must still yield a value that is consistent with the foregoing RAB share of the total value of the external contribution to all controlled participants.

Proposed § 1.482–7(g) sets forth new specified methods for purposes of determining the arm's length compensation due under a PCT, namely, the income method, the acquisition price method, and the market capitalization method. The proposed regulations also provide rules for application of existing specified methods, such as the comparable uncontrolled transaction method and the residual profit method. The proposed regulations also enunciate general principles governing all methods, specified and unspecified, for these purposes. Proposed § 1.482–7(g)(1) provides that each method must be applied in accordance with the provisions of § 1.482–1, including the best method rule of § 1.482–1(c), the comparability analysis of § 1.482–1(d), and the arm's length range of § 1.482–1(e), except as those provisions are modified in § 1.482–7(g).

2. General Principles—Proposed § 1.482–7(g)(2)

a. In General—Proposed § 1.482–7(g)(2)(i)

The proposed regulations provide general principles for valuing PCT Payments, applicable for both specified and unspecified methods.

b. Valuation Consistent With Upfront Contractual Terms and Risk Allocations—Proposed § 1.482–7(g)(2)(ii)

Existing § 1.482–1(d)(3)(ii) and (iii) generally provide that contractual terms and risk allocations are significant factors in evaluating the most reliable measure of arm's length results. The proposed regulations provide for particular contractual terms and allocations of risk with regard to PCTs determined no later than the date of the PCT. See, for example, proposed § 1.482–7(b)(1)(ii), (b)(3), and (k)(1). Proposed § 1.482–7(g)(ii) accordingly reiterates the requirement that any method applied at any time for purposes of valuing PCT Payments must be consistent with the applicable contractual terms and allocation of risk under the CSA and proposed § 1.482–7 as of the date of a PCT, unless there has been a change in such terms or allocation made in return for arm's length consideration.

It may be particularly important to maintain consistency with upfront contractual terms and allocation of risk for CSAs, since PCT Payments may extend over a period of years. Thus, for example, PCT Payments may become due in subsequent years when actual economic results may have departed from those reasonably anticipated as of the date of the PCT. Subject to the Commissioner's ability to make periodic adjustments (see proposed § 1.482–7(i)(6)), the method for determining the PCT Payments due in the subsequent year must remain consistent with the contractual terms and allocation of risks as of the date of the PCT. Cost sharing participants, like unrelated investors, are held to the terms of their deal at the outset of the investment. For example, under the proposed income method, this upfront contractual-risk consistency principle is illustrated by the use of the applicable rate on sales or profits determined as of the date of the PCT. Thus, while actual sales or profits may depart from projections, the upfront risk allocation continues to be respected by use of the applicable rate determined as of the date of the PCT. Note, while a taxpayer may defend the amount of its PCT Payment in a subsequent year as arm's length based on a different method than that applied in earlier years, it may only do so to the extent the other method also satisfies the upfront contractual-risk consistency principle.

Proposed § 1.482–7(b)(3)(vi) provides that the form of payment for a PCT must be specified no later than the date of the PCT. The form of payment of a PCT, that is, fixed and/or contingent payments, involves an allocation of risk among the controlled participants. In the case of PCT Payments regarding a PFA, the form of payment in the uncontrolled acquisition must be followed. However, in the case of other PCT Payments, the taxpayer has flexibility in the choice of form, subject to economic substance and the parties' conduct.

As the result of the upfront contractual-risk consistency principle, it will be possible for the taxpayer to compute a present value, as of the date of the PCT, of the total arm's length amount of all PCT Payments. Under the CSA documentation requirements in proposed § 1.482–7(k)(2)(ii)(J)(*6*) and (k)(2)(iii)(B), the taxpayer is required to maintain documentation of such upfront valuation and produce it to the IRS within 30 days of a request.

c. Projections—Proposed § 1.482–7(g)(2)(iii)

Since PCT Payments often extend over a period of years and may be contingent on items (for example, sales, costs, and operating profit) in such future periods, the valuation method, specified or unspecified, may rely on projections of such items. The reliability of the valuation method will in such

cases depend on the reliability of such projections. The proposed regulations provide that, for these purposes, projections that have been prepared for non-tax purposes are generally more reliable than projections that have been prepared solely for purposes of PCT Payment valuations.

d. Realistic Alternatives—Proposed § 1.482–7(g)(2)(iv)

Regardless of the method or methods used, evaluation of the arm's length charge for a PCT should take into account the general principle that uncontrolled taxpayers dealing at arm's length would evaluate the terms of a transaction, and would enter into a particular transaction only if none of the alternatives is preferable. See § 1.482–1(d)(3)(iv)(H) (The alternatives realistically available to the buyer and seller). Based on that principle, PCT valuations would not meet the foregoing condition where, for any controlled participant, the total anticipated value, as of the date of the PCT, is less than the total anticipated value that could have been achieved through a realistically available alternative investment (whether it is an alternative arrangement for the development of the cost shared intangibles or an alternative with a similar risk profile to the CSA). In other words, a controlled participant, like any rational investor, would not enter into an investment when a better alternative investment is available. Examples are provided illustrating the application of the realistic alternatives principle in the CSA context.

e. Aggregation of Transactions—Proposed § 1.482–7(g)(2)(v)

The proposed regulations provide that multiple PCTs, or one or more PCTs and one or more transactions not governed by proposed § 1.482–7 (such as a make-or-sell license excluded from CSA coverage by proposed § 1.482–7(c)), may be aggregated for purposes of valuation, subject to consideration of whether such aggregate valuation yields a more reliable measure of an arm's length result than would separate valuations. See also § 1.482–1(f)(2)(i) (Aggregation of transactions). For example, assume the CSA involves a PCT for an external contribution of an existing intangible for purposes of developing future generations of the intangible. Also assume that there is a license to the other controlled participants of make-and-sell rights with respect to the current generation of the intangible. The reliability of an aggregate analysis of the PCT and the license will be affected by the degree to which the relative current exploitation benefits from the existing intangible of the controlled participants may be expected to match up with the RAB shares regarding exploitation of the future generations of the intangible. Though it will not generally be necessary to allocate a reliable aggregate arm's length charge as between the various transactions, in certain cases such an allocation may be necessary, for example, in applying the periodic adjustment rules in proposed § 1.482–7(i)(6).

f. Discount Rate—Proposed § 1.482–7(g)(2)(vi)

Specified and unspecified methods for valuing PCT Payments may involve converting future or past monetary sums into a present value as of the date of a PCT. The proposed regulations recognize that there may be different risks and, hence, different discount rates associated with different activities undertaken by a taxpayer. Consistent with the investor model, for items relating to a CSA, the discount rate employed should be that which most appropriately reflects, as of the date of the PCT, the risks of development and exploitation of the intangibles anticipated to result from the CSA. In other words, this follows the approach that unrelated investors would take to making an ex ante evaluation of a prospective investment. Namely, the expected value of the investment would equal the projected future cash flows discounted using a discount rate that appropriately reflects the anticipated level of risk being undertaken.

The proposed regulations enumerate several possibilities for choosing an appropriate discount rate. Where there are publicly traded entities that would be comparables dedicated to similar development and exploitation activities, their weighted average cost of capital (WACC) may provide a reliable basis for derivation of an appropriate discount rate. Or, if the taxpayer's group's activities are dedicated to development and exploitation of the contemplated cost shared intangibles, then the taxpayer's own WACC may provide a reliable basis for derivation of an appropriate discount rate. In other cases, depending upon the facts and circumstances, a taxpayer's internal hurdle rate for investments having a comparable risk profile may provide a reliable basis for derivation of an appropriate discount rate.

g. Accounting Principles—Proposed § 1.482–7(g)(2)(vii)

The proposed regulations provide that, while allocations and valuations for accounting purposes may provide a useful starting point, they will not be determinative of PCT Payments to the extent that the accounting treatment is not consistent with economic value. For example, with respect to an acquisition of a target business consisting of wanted assets (that are reasonably anticipated to contribute to developing cost shared intangibles) and of unwanted assets (that will be abandoned immediately after the acquisition), an allocation of a portion of the acquisition price to the abandoned assets done for accounting purposes, under the proposed regulations, would not prevent the proper allocation of the entire acquisition price, in line with economic reality, to the wanted assets for purposes of PCT Payment valuation. Similarly, with respect to an acquisition of a target business consisting only of an in-process intangible and an experienced research team in place, an allocation of a portion of the acquisition price to ''goodwill'' for accounting purposes would not, under the proposed regulations, prevent the proper allocation of the entire acquisition price, in line with the economic reality, to the in-process intangible and experienced research team in place for purposes of PCT Payment valuation. On the other hand, if the target conducts an operating business with exploitation already at an advanced stage of the current generation of the intangible to be further developed under the CSA, then an accounting allocation to goodwill may suggest the need for further consideration of the reliability of an acquisition price method for valuing an external contribution whose value excluded the value of such existing goodwill.

h. Valuation Consistent With the Investor Model—Proposed § 1.482–7(g)(2)(viii)

As has been discussed, the proposed regulations require that PCT valuations be consistent with an investor model for cost sharing. Under the investor model, the amount charged in a PCT must be consistent with the assumption that each controlled participant is making a net aggregate investment, as of the date of a PCT, attributable to both external contributions and cost contributions, for purposes of achieving an anticipated return appropriate to the risks of the CSA over the entire term of development and exploitation of the intangibles resulting from the CSA.

The investor model is based on two key principles regarding PCT valuations. The first principle is that, ex ante, the aggregate investment in an IDA would be expected to yield a rate return equal to the appropriate discount rate for the CSA. If the anticipated rate of

return exceeds the appropriate discount rate for the CSA, either anticipated profits have been overstated or the amount of investment has been understated. If the projections of IDCs and profits are reliable, then the implication could be that the portion of the investment attributable to external contributions has been undervalued. Thus, a valuation method for PCTs is less likely to be reliable if it results in a rate of return to any controlled participant's aggregate investment that is not equal to the appropriate discount rate for the CSA.

The second principle is that, ex ante, the appropriate return to the aggregate investment in an IDA is measured over the entire period of development and exploitation of cost shared intangibles. Included in this principle is the concept that no part of the investment should be viewed as separately earning a return over a more limited period. As a general matter, successful completion of each step in a research program is a necessary condition for the completion of the program as a whole and its contribution continues over the entire life of the project. As an example, a project to develop a new commercial aircraft would not be considered successfully completed if all parts of the aircraft had been designed except the tail assembly. Neither does the fact that the tail assembly is completed last imply that its usefulness in the manufacture and sale of aircraft extends beyond the usefulness of any components completed earlier in the design process. Each step of the project continues to have value as long as the aircraft continues to be built and used. For this reason, each aspect of the research program must be viewed as contributing to the success of the program as a whole (and not just its success for some limited period of time). Thus, a valuation method for PCTs is likely to be less reliable if it assumes a useful life for any contribution to the CSA that does not extend through the entire anticipated period of development and exploitation.

The IRS has examined cases in which CSAs were entered into to utilize current generation intangibles as the base or platform for future generation intangibles, with buy-ins structured as declining royalties over the limited useful life of the current generation intangible. The structure of these buy-ins effectively diminish the value of the buy-in payments, such that the return to a controlled participant making the depressed buy-in payments has an expected return significantly in excess of the appropriate discount rate for the CSA. Furthermore, a buy-in based on declining royalties over a shortened useful life for the contributed intangibles, on its face, is not consistent with the principle that the return to the aggregate investment in an IDA should be measured over the entire period of development and exploitation of cost shared intangibles.

i. Coordination of Best Method Rule and Form of Payment—Proposed § 1.482–7(g)(2)(ix)

Any method for valuing the amount charged in a PCT under the proposed regulations, whether specified or unspecified, will assume a particular form of payment (method payment form) for PCT Payments. For example, as will be discussed, the proposed income method assumes contingent payments in the form of an applicable rate on sales or profits, and the market capitalization method assumes a lump sum method payment form. Except for PCT Payments in respect of PFAs, the proposed regulations allow taxpayers to convert the reasonably anticipated present value, as of the date of the PCT, of the total arm's length amount of all PCT Payments determined under the method payment form into another form of payment (specified payment form). For purposes of the best method rule of § 1.482–1(c), the analysis among competing methods will be undertaken without regard to whether their method payment forms corresponds to the taxpayer's specified payment form for PCT Payments. A best method analysis determines which valuation method is most reliable from the perspective of comparability, completeness and accuracy of the data, and reliability of the underlying assumptions. If the method payment form of the best method determined under this analysis differs from the taxpayer's specified payment form, then the Commissioner will effect a conversion of the best method results into the specified payment form on a reasonable basis, giving due regard to the taxpayer's conversion basis if the taxpayer's method was determined to be the best method as to its method payment form.

j. Coordination of the Valuations of Prior and Subsequent PCTs—Proposed § 1.482–7(g)(2)(x)

Cases may arise where, after the date of one PCT, another PCT is required for other resources or capabilities of a controlled participant which only as of a subsequent date are reasonably anticipated to contribute to the development of cost shared intangibles and therefore are external contributions only as of such subsequent date. In such cases where there are PCTs with different dates, coordination of the valuations of the prior and subsequent PCTs must be effected pursuant to a method that provides the most reliable measure of an arm's length result.

In some instances the coordination will be straightforward. As an example, in the case of a subsequent PCT entered into with respect to a PFA, the PCT Payments are determined based on the related acquisition, independent of any prior PCT. For purposes of determining PCT Payments under a prior PCT, the proposed regulations provide that the PCT Payments with respect to the subsequent PCT in this case are treated the same as unanticipated IDCs. A divergence between actual IDCs and IDCs anticipated on the date of a PCT does not change the method for determining PCT Payments with respect to that PCT. Accordingly, unanticipated payments under a subsequent PCT entered into with respect to a PFA will not affect the method for determining PCT Payments in respect of a prior PCT.

The coordination in other cases will depend on the facts and circumstances. If the external contributions that were the subjects of the respective prior and subsequent PCTs were nonroutine contributions, an approach which may be appropriate would be to determine PCT Payments both for the prior and subsequent PCTs going forward from the date of the subsequent PCT pursuant to a residual profit split method, as described in proposed § 1.482–7(g)(7). Such application of the residual profit split method would include as nonroutine contributions all of the following: the external contribution(s) that were the subject of the prior PCT(s), the external contribution that is the subject of the subsequent PCT, and the interests of the controlled participants in the portion of cost shared intangibles in process of development under the CSA that does not reflect any external contributions.

k. Proration of PCT Payments to the Extent Allocable to Other Business Activities—Proposed § 1.482–7(g)(2)(xi)

The proposed regulations provide that the otherwise applicable value of PCT Payments may need to be prorated between the CSA and any other business activities (other than current make-or-sell activities) to which the resource or capability that is the subject of the PCT is reasonably anticipated to contribute as of the date of the PCT. A proration will only be necessary if the method used for valuing the PCT Payment includes the value of the contribution of the resource or capability to the other business activities. For example, an application

of the acquisition price method is based on the full value of a resource or capability and therefore includes the value of any contributions to other business activities, whereas the CUT and CPM applications of the income method are based only on the sales or profits of exploiting cost shared intangibles, and therefore do not include any value of contributions to other business activities. For purposes of the best method rule under § 1.482–1(c), the reliability of the analysis under a method that requires proration is reduced relative to the reliability of an analysis under a method that does not require proration. Any proration must be done on a reasonable basis that reflects the relative economic values of the different business activities.

3. Comparable Uncontrolled Transaction (CUT) Method—Proposed § 1.482–7(g)(3)

The comparable uncontrolled transaction (CUT) method described in § 1.482–4(c), and the arm's length charge described in § 1.482–2(b)(3)(first sentence) based on a comparable uncontrolled transaction, may be applied to evaluate whether the amount charged in a PCT is arm's length by reference to the amount charged in a comparable uncontrolled transaction. When applied in the manner described in § 1.482–4(c), or where a comparable uncontrolled transaction provides the most reliable measure of the arm's length charge described in § 1.482–2(b)(3)(first sentence), the CUT method, or the arm's length charge in the comparable uncontrolled transaction, will typically yield an arm's length total value for the external contribution that is the subject of the PCT. That value must then be multiplied by each PCT Payor's respective RAB share in order to determine the arm's length PCT Payment due from each PCT Payor. A territorial CUT may also be reliably used to the extent the value of the PCT Payment under the territorial CUT is consistent with the RAB share of the worldwide external contribution value.

4. Income Method—Proposed § 1.482–7(g)(4)

The income method, a new specified method under the proposed regulations, follows from the realistic alternatives principle. The income method determines PCT Payments in amounts such that the present value, as of the date of the PCT, to a controlled participant of entering into a CSA equals the present value of the PCT Payee's best realistic alternative.

The proposed regulations provide two specific (but nonexclusive) applications of the income method, one based on the comparable uncontrolled transaction (CUT) method of § 1.482–4(c), and the other based on the comparable profit method (CPM) of § 1.482–5. These applications may include certain simplifying assumptions and are meant to provide examples of possible applications of the general income method, not to exclude other possible applications of this method. Both applications compute the arm's length PCT Payment for each year as the product of an applicable rate on sales or profit. The *applicable rate* is equal to the *alternative rate* less the *cost contribution adjustment.* The alternative rate represents the rate on sales or profit which the PCT Payee could have earned by exploiting cost shared intangibles in the PCT Payor's territory if the PCT Payee alone had borne the risks and costs of developing the cost share intangibles. The CUT application determines the alternative rate from the perspective of a licensor as the royalty rate it would have charged under a license to exploit the cost shared intangibles in the territory, based on comparable third party license arrangements. The CPM application determines the alternative rate from the perspective of a licensee as the royalty rate it would have paid such that it earned only a market return for its routine contributions to the exploitation of the cost shared intangibles, based on comparable returns earned by uncontrolled taxpayers engaged in similar routine activities. The cost contribution adjustment is the reduction of the alternative rate to reflect the anticipated costs and risks the PCT Payor will take on by entering into the CSA.

The income method is typically used in cases where only one controlled participant, namely the PCT Payee, brings nonroutine contributions into the CSA. In such circumstances, the other controlled participant or participants, that is, the PCT Payors, essentially only commit to bearing their respective shares of anticipated IDCs and bring only routine contributions for purposes of exploiting cost shared intangibles. Under the investor model, what is essentially a routine financing investment by the PCT Payors in the development of intangibles, represented by bearing their share of anticipated IDCs, would be expected to earn an ex ante rate of return appropriate to the risks associated with the CSA and reflected in the discount rate. The cost contribution adjustment effectively represents the appropriate return to that routine financing investment, as of the date of the PCT, expressed as a rate on sales or profit.

The use of the applicable rate on sales or profit, determined as of the date of the PCT under the income method, also reflects the principle of consistency with the original contractual allocation of risk. Thus, while actual sales may depart from projections, the upfront risk allocation continues to be respected by use of the applicable rate determined as of the date of the PCT.

Under the CUT and CPM applications of the income method, any routine contributions that are external contributions (routine external contributions) are treated similarly to cost contributions.

The reliability of the income method may decrease if more than one controlled participant brings nonroutine contributions into the CSA.

5. Acquisition Price Method—Proposed § 1.482–7(g)(5)

The acquisition price method is an application of the CUT method pursuant to § 1.482–4(c) and the arm's length charge pursuant to § 1.482–2(b)(3). This method ordinarily applies only when substantially all of the nonroutine resources and capabilities of a recently acquired target's business constitute external contributions, that is, they are reasonably anticipated to contribute to developing cost shared intangibles. Thus, when these circumstances are present, this method may be expected to be appropriate for valuing PCT Payments for PFAs.

Under the acquisition price method, the arm's length charge to each PCT Payor is the product of the adjusted acquisition price, multiplied by such PCT Payor's RAB share. The adjusted acquisition price seeks to isolate that portion of the acquisition price of the target business attributable to the external contributions. The adjusted acquisition price is equal to the acquisition price of the target, increased by relevant liabilities, and decreased by the value of tangible property (separately accounted for under proposed § 1.482–7(d)) and by the value of any other resources and capabilities not covered by PCTs. The reliability of this method is reduced to the extent the acquisition price must be adjusted to take into account significant difficult-to-value tangible property or resources or capabilities of the target not covered by a PCT.

6. Market Capitalization Method—Proposed § 1.482–7(g)(6)

The market capitalization method is also an application of the CUT method pursuant to § 1.482–4(c) and the arm's

length charge pursuant to § 1.482–2(b)(3). This method ordinarily applies only when substantially all of the nonroutine resources and capabilities of the PCT Payee's business constitute external contributions, that is, they are reasonably anticipated to contribute to developing cost shared intangibles.

Under the market capitalization method, the arm's length charge to each PCT Payor is the product of the adjusted average market capitalization, multiplied by such PCT Payor's RAB share. The adjusted average market capitalization seeks to determine that portion of the market capitalization of the PCT Payee's business attributable to the external contributions. The adjusted average market capitalization is equal to the 60-day (ending on the date of the PCT) average of the daily market capitalizations of the PCT Payee, increased by liabilities, and decreased by the value of tangible property separately accounted for under proposed § 1.482–7(d) and by the value of any other resources and capabilities not covered by PCTs. The daily market capitalization is calculated on each day the PCT Payee's stock is actively traded as the total number of shares outstanding multiplied by the stock's closing price on that day (as adjusted, for example, for dividends, stock splits, and restructurings to the extent such adjustment can be done reliably). The reliability of this method is reduced to the extent the market capitalization must be adjusted to take into account significant difficult to value tangible property or resources or capabilities of the target not covered by a PCT. The reliability of this method is also reduced to the extent the facts and circumstances demonstrate the likelihood of a material divergence between the average market capitalization of the PCT Payee and the value of its resources and capabilities for which reliable adjustments cannot be made.

7. Residual Profit Split Method—Proposed § 1.482–7(g)(7)

The proposed regulations provide needed guidance on the proper application of the residual profit split method (RPSM) of § 1.482–6 in the context of the development and exploitation of intangibles pursuant to a CSA. The guidance is necessary in order to implement the general principles of proposed § 1.482–7(g)(2), such as consistency with the upfront contractual terms and risk allocation under the CSA and with the investor model. A purported application of RPSM not in accordance with this guidance would constitute an unspecified method for purposes of the sections 482 and 6662(e) and (h) regulations.

Under the proposed regulations, the RPSM may not be applied where only one controlled participant makes significant nonroutine contributions to the development and exploitation of cost shared intangibles. (An RPSM in such a situation would be logically equivalent to the income method using an applicable rate on profit, and is best considered under that method.) The RPSM divides operating profit or loss before any expense or amortization on account of IDCs, routine external contributions, and nonroutine contributions, from developing and exploiting cost shared intangibles in a controlled participant's territory (territorial operating profit or loss) in three steps.

In the first step of the RPSM, each controlled participant is allocated an amount of income that is subtracted from its territorial operating profit or loss to provide a market return to its routine contributions, other than cost contributions (that is, a controlled participant's IDCs borne, gross of cost sharing payments made, and net of cost sharing payments received).

In the second step of the RPSM, each controlled participant is allocated a portion of the residual of its territorial profit or loss, after the first step allocation, attributable to its cost contributions. The second step cost contribution share is a fraction of such residual operating profit or loss. The numerator is the present value, determined as of the date of the PCTs, of the summation, over the entire period of developing and exploiting cost shared intangibles, of the total value of the territorial owner's total anticipated cost contributions. The denominator of the territorial owner's cost contribution fraction is the present value, determined as of the date of the PCTs, of the summation, over the same period, of the territorial owner's total anticipated territorial operating profits, reduced by a market return for routine contributions (other than cost contributions) to the relevant business activity in the territory.

The cost contribution share under the second step of the RPSM corresponds to the cost contribution adjustment under the income method. The cost contribution share under the RPSM, similar to the cost contribution adjustment under the income method, is a reflection of the investor model. What is essentially a routine financing investment in the development of intangibles by the controlled participants, represented by bearing their share of anticipated IDCs, would be expected to earn a return appropriate to the risks associated with the CSA. The cost contribution share effectively represents the appropriate return to that financing investment, as of the date of the PCTs, expressed as a share of territorial operating profit or loss.

In the third step of the RPSM, the residual territorial profit or loss remaining after the first and second step allocations is divided among all the controlled participants based on the relative value, as of the date of the PCTs, of their nonroutine contributions. The relative value of the nonroutine contributions may be measured with reference to external benchmarks that reflect their fair market value, or with reference to estimated capitalized development costs as appropriately grown or discounted so that all contributions may be valued on a comparable dollar base as of the date of the PCTs.

Any amount of a controlled participant's territorial operating profit that is allocated to another controlled participant's nonroutine external contributions under the third step of the RPSM represents the amount of the PCT Payment due to that other controlled participant for its external contributions.

Under the RPSM, the determinations as of the date of the PCT of the second step cost contribution share and the third step relative nonroutine contribution values reflect the principle of consistency with the original contractual allocation of risk. Thus, while actual territorial operating profit or loss may depart from projections, the upfront risk allocation continues to be respected through the use of the cost contribution shares and relative nonroutine contribution values determined as of the date of the PCTs.

In applying the RPSM, any routine contributions that are external contributions (routine external contributions) are treated similarly to cost contributions.

The proposed regulations set forth comparability and reliability considerations appropriate for application of the RPSM in the CSA context.

8. Unspecified Methods—Proposed § 1.482–7(g)(8)

The proposed regulations also provide general rules applicable for methods not specified in proposed § 1.482–7(g)(3) through (7).

D. Coordination With the Arm's Length Standard—Proposed § 1.482–7(h)

Transactions in connection with a CSA must produce results consistent

with the arm's length standard. The proposed regulations, therefore, dispel the misconception that cost sharing is a safe harbor.

In accordance with § 1.482–1(b)(1), the proposed regulations provide guidance appropriate in the context of a CSA regarding ''the results that *would have been realized* if uncontrolled taxpayers *had engaged* in the same transaction under the same circumstances.'' (Emphasis added.) In a CSA where the resulting intangibles may only be exploited in a controlled participant's territory, the arm's length result would require a participant to bear IDCs only in proportion to the expected relative values of its territory, that is, in proportion to its respective RAB shares. The same is true for PCTs. Where a controlled participant brings external contributions into the arrangement, at arm's length that participant would only agree to make the external contributions if it received compensation from the other participants for the anticipated benefits to their respective territories attributable to the external contributions.

Therefore, the proposed regulations provide that a CSA, and the CSTs and PCTs required in connection with a CSA, produce results that are consistent with an arm's length result within the meaning of § 1.482–1(b) if, and only if, each controlled participant's IDC share equals its RAB share, and all other requirements are satisfied, including those with respect to PCT Payments.

The Treasury Department and IRS recognize that a CSA, as defined, represents only one possible arrangement pursuant to which parties may choose to share the costs, risks, and benefits of intangible development. Other arrangements, however, may involve a different division of costs, risks, and benefits than those arising pursuant to a CSA. Given such differences, the guidance under § 1.482–7 is not appropriate to evaluate what would have been arm's length results of those other arrangements when undertaken among controlled taxpayers. As discussed, in such cases the proposed regulations instead would point taxpayers to the guidance under the other provisions of the section 482 regulations to determine whether such arrangements achieve arm's length results.

E. Allocations by the Commissioner in Connection With CSAs—Proposed § 1.482–7(i)

1. Consolidation of Existing Allocation Provisions—Proposed § 1.482–7(i)(1) Through (4)

Proposed § 1.482–7(i) assembles in one section, provisions regarding allocations by the Commissioner that currently are spread throughout existing § 1.482–7, with conforming changes to reflect the terminology and framework of the proposed regulations. Thus, under § 1.482–7(i)(1), the Commissioner is generally authorized to make allocations to adjust the results of a controlled transaction in connection with a CSA so that the results are consistent with an arm's length result.

Under proposed § 1.482–7(i)(2), the Commissioner may make appropriate adjustments to CSTs to bring IDC shares in line with RAB shares. Such adjustments include adding or removing costs from IDCs, allocating costs between the IDA and other business activities, improving the reliability of the benefits measurement basis used or the projections used to estimate RAB shares, and allocating among the controlled participants any unallocated territorial interests in cost shared intangibles. CST adjustments must be reflected in the year in which the IDCs are incurred, along with any appropriate allocation of arm's length interest to the date of payment.

Under proposed § 1.482–7(i)(3), the Commissioner may make appropriate allocations to adjust PCT Payments in accordance with the proposed regulations. Thus, the Commissioner may examine the taxpayer's method for determining the amount charged in a PCT in accordance with the provisions of the section 482 regulations as supplemented by proposed § 1.482–7(g). The Commissioner may either propose adjustments to the taxpayer's method or apply another method to adjust the results reported by the taxpayer consistent with an arm's length result.

Under proposed § 1.482–7(i)(4), the Commissioner may make appropriate allocations regarding changes in participation in accordance with proposed § 1.482–7(f).

2. Allocations When CSTs Are Consistently and Materially Disproportionate to RAB Shares—Proposed § 1.482–7(i)(5)

The fundamental requirement of a CSA with regard to CSTs is for the controlled participants to share IDCs in proportion to their respective RAB shares. Under proposed § 1.482–7(e)(1), RAB shares must be updated to account for changes in economic conditions, the business operations and practices of the participants and the ongoing development of intangibles. Such updates must reflect a comprehensive revision over the entire past and projected future period of intangible exploitation in light of the most current reliable data.

To the extent the controlled participants consistently and materially fail to bear IDC shares equal to their respective RAB shares, the Commissioner would be able to exercise its authority pursuant to existing § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms) to impute an agreement that is consistent with the controlled participants' course of conduct. Thus, a participant that bears a disproportionately greater IDC share may be allocated an undivided interest in another territory or territories of exploitation of the cost shared intangibles, and would be allocated arm's length consideration from any other controlled participant whose IDC share is less than its RAB share over time.

Current § 1.482–7(g)(5) provides that these allocations be ''after any cost allocations authorized by [§ 1.482–7(a)(2)]'' is eliminated. Some have interpreted this reference to mean that the Commissioner must make cost allocations, and failure to do so would bar the Commissioner from making an allocation pursuant to existing § 1.482–7(g)(5). This interpretation, if accepted, defeats the expectation that controlled participants must themselves act consistently with their CST deal and maintain their RAB shares current for that purpose. No inference is intended regarding the outcome under the existing regulations.

3. Periodic Adjustments—Proposed § 1.482–7(i)(6)

In 1986, Congress indicated a significant degree of skepticism about related-party transfers of high-profit potential intangibles for relatively insignificant lump sum or royalty consideration that effectively place all the intangible development downside risk in one controlled taxpayer and all the upside profit potential in another. See H.R. Rep. 99–426, at 424–25 (1985). See also Notice 88–123 (the White Paper), 1988–2 C.B. 458, 472–74, 477–480. The legislative history also notes that it is especially difficult to obtain realistic comparables with respect to such intangibles because they seldom if ever are transferred to unrelated parties. See id.

The Commissioner's ability to evaluate controlled participants' deals

with regard to high-profit potential intangibles is hampered, not only by the absence of comparables, but by an asymmetry of information vis-a-vis the taxpayer. The taxpayer is in the best position to know its business and prospects. The Commissioner faces real challenges in ascertaining the reliability of the ex ante expectations of taxpayer's initial arrangements in light of significantly different ex post outcomes. While risk and uncertain outcomes are typically the hallmarks of high-profit potential intangibles, significantly different results raise concerns whether the form of the initial arrangement matches its substance. These concerns are particularly problematic given the information asymmetry between taxpayers and the IRS. Periodic adjustments effectively permit the IRS to impute an arm's length arrangement that appropriately reflects the profit potential of transferred intangibles where the IRS believes that the taxpayers' arrangement does not appropriately reflect such profit potential. Because the guidance on periodic adjustments is intended to address the problem of information asymmetry, and because it is exceedingly unlikely that a taxpayer would use information asymmetry for anything other than a tax-advantaged result, periodic adjustments of this type can only be exercised by the Commissioner.

Accordingly, taxpayers cannot exercise periodic adjustments of this type. This prohibition is necessary for proper administration of these rules. Moreover, taxpayers are not inappropriately disadvantaged by this rule because they have the ability to structure their related-party arrangements in line with the economic prospects of their business. A taxpayer can always protect itself against periodic adjustments by adopting an arrangement that appropriately reflects the profit potential and risks associated with an intangible transfer, which it is in the best position to evaluate in an economically realistic way. There are various forms of consideration that taxpayers at arm's length might adopt in the face of uncertainty and risk. In some cases, uncontrolled taxpayers might find that projections of anticipated profits are sufficiently reliable to fix the pricing for the transaction at the outset on the basis of those projections. In other cases the uncertainty in valuing intangible property might lead them to adopt from the outset contingent terms of different varieties and degrees that allow for adjustment in light of actual profit experience. This does not mean that the taxpayer must adopt an arrangement that tilts the risks in a way that necessarily always involves reporting income without regard to later actual results. For example, contingent arrangements may appropriately reflect profit potential and yet appropriately tie in with later outcomes. In such arrangements, less income may properly result if the outcomes are less successful than reasonably anticipated, or greater income will result if the outcomes are more successful. Taxpayers simply are in the best position to structure their arrangements upfront to accommodate a range of potential outcomes.

Proposed § 1.482–7(j)(6) provides guidance on how periodic adjustments may be made in the context of a CSA. The goal is to conform the results of CSTs and PCTs to the arm's length standard. In accordance with the 1986 legislative history, achieving that goal requires that the ''income allocated among the parties reasonably reflect the actual economic activity undertaken by each'' and that ''to the extent, if any, that one party is actually contributing funds toward research and development at a significantly earlier point in time than the other, or is otherwise effectively putting its funds at risk to a greater extent than the other, *it would be expected that an appropriate return would be provided to such party to reflect its investment.*'' H.R. Conf. Rep. No. 99–841 at II–638 (1986). (Emphasis supplied.)

The proposed regulations build the CSA periodic adjustment provisions upon the previously discussed investor model. The taxpayer's arrangement will be respected so long as a controlled participant's actually experienced return ratio (AERR), equal to the present value of its actually experienced operating profits from exploiting cost shared intangibles divided by its investment in the CSA (consisting of the present value sum of its cost contributions and PCT Payments), is within a specified periodic return ratio range (PRRR). The PRRR provides a band of comfort for actual return ratios of no more than 2 and no less than ½ (unless there is a failure to substantially comply with the administrative requirements of proposed § 1.482–7(k), in which case the comfort band consists of actual return ratios of no more than 1.5 and no less than .67). Results above or below these respective thresholds typically warrant a more thorough and detailed examination of the arm's length nature of the initial taxpayer arrangement, as well as a means to impute an alternative arrangement that more reliably reflects an arm's length result, as described below.

In determining a controlled participant's AERR, the present values of its operating profits and CSA investments are measured from the period beginning on the commencement of the CSA through the end of the year of adjustment. For these purposes, present values are determined using an applicable discount rate (ADR) appropriate to the risks associated with the given CSA, as the Commissioner may determine under the guidance of proposed § 1.482–7(g)(2)(vi). Where the stock of the PCT Payor, or another company that owns stock in the PCT Payor and is in a consolidated group with the PCT Payor for financial accounting purposes is publicly traded, the Commissioner may treat the ADR as equal to the publicly traded company's weighted average cost of capital, as determined pursuant to the capital asset pricing model, subject to the taxpayer's ability to show another discount rate is more appropriate in the facts and circumstances to the satisfaction of the Commissioner. Where there is no publicly traded company in the PCT Payor group, the ADR will be determined under the general principles applicable for discount rates, subject to such adjustments as the Commissioner determines is appropriate.

In determining the AERR and, thus, whether the AERR is within or without the PRRR, it is intended that the items entering into the computation (*e.g.*, operating profits, cost contributions, and PCT Payments) are those items as adjusted (including as the result of any prior IRS adjustments).

The guidance on periodic adjustments is not intended, for example, to systematically reallocate above-market returns after-the-fact, since such returns may in whole or in part reward legitimate ex ante risk-taking by CSA investors. Accordingly, an AERR outside the PRRR does not necessarily mean that adjustments will ultimately be warranted. Rather, the PRRR provides comfort to taxpayers that within the PRRR they will not be subject to periodic adjustments. If the AERR is outside the PRRR, the proposed regulations provide exceptions pursuant to which periodic adjustments will not be made where a taxpayer can demonstrate that its deal was nevertheless arm's length. These exceptions adapt the exceptions in existing § 1.482–4(f)(2)(ii), along with three additional exceptions appropriate in the CSA context. One exception effectively would avoid ''start up'' triggers from return ratios below the low end of the PRRR by delaying low end trigger testing until after the first five years of substantial exploitation of cost

shared intangibles resulting from the CSA. A similar exception would enable a taxpayer to avoid a low end trigger that it can establish to the satisfaction of the Commissioner results from the ''cut off'' from consideration of anticipated profits, cost contributions, or PCT Payments beyond the end of the year of adjustment. For purposes of the foregoing exception, the taxpayer may assume that the yearly average of past operating profits for the years up through the year of adjustment in which there has been substantial exploitation of cost shared intangibles will continue into the future. The third additional exception would enable a taxpayer to avoid a high end trigger that it can establish to the satisfaction of the Commissioner results from routine contributions to its profitability, or from nonroutine contributions, including its own external contributions.

In the event that the AERR is outside the PRRR, and no exception applies, then the Commissioner may adjust the taxpayer's PCT Payments to the level of an equivalent stream of contingent royalties as would be determined under a modified RPSM. The modified RPSM would vary depending on whether the periodic adjustment was triggered by an AERR above the high end or below the low end of the PRRR.

In the event of a trigger above the high end of the PRRR, the arrangement going forward beginning with the year of adjustment would effectively treat the past cost contribution shares of all controlled participants as bought out and would determine new fractions for cost contribution shares as of the start of the year of adjustment (if development activity is then continuing under the CSA). Prior cost contributions and operating profits, therefore, would not be taken into account in the second step of the modified RPSM. The relative valuation of nonroutine contributions, including external contributions, in the third step of the modified RPSM would still be determined as of the original date of the PCTs, but taking into account any data relevant to such relative valuation as may be available up through the date of the periodic adjustment.

In the event of a trigger below the low end of the PRRR, the arrangement going forward beginning with the year of adjustment would effectively recompute the original cost contribution share fractions by substituting projections as revised in light of actual experience up through the date of the periodic adjustment.

For these purposes only, the residual profit split method may be used even where only one controlled participant makes significant nonroutine contributions to the CSA Activity. (As mentioned above in the discussion of the residual profit split method, applying the residual profit split method in such a situation is logically equivalent to applying the income method using an applicable rate on profit. For convenience, the proposed regulations apply the residual profit split method to all periodic adjustments rather than separately describing an equivalent modified income method for the situation in which only one controlled participant makes significant nonroutine contributions to the CSA Activity.) If only one controlled participant provides all the external contributions and other nonroutine contributions, then the third step residual profit or loss belongs entirely to such controlled participant.

It should be emphasized that the Commissioner's determination whether or not to make periodic adjustments would be informed by whether the outcome as adjusted more reliably reflects an arm's length result.

F. Definitions and Special Rules—Proposed § 1.482–7(j)

Proposed § 1.482–7(j) provides definitions and special rules relevant to CSAs.

1. Controlled Participant—Proposed § 1.482–7(j)(1)(i)

The proposed regulations incorporate the existing definitions and examples with regard to a controlled participant with conforming changes to reflect the new framework and terminology. Thus, a controlled participant is a controlled taxpayer that is a party to the CSA contractual agreement that reasonably anticipates that it will derive benefits from exploiting one or more cost shared intangibles.

The proposed regulations dispense with the possibility of an uncontrolled participant in a CSA. The Treasury Department and the IRS are not aware of any uncontrolled participants in any CSAs. The elimination of uncontrolled participants simplified various provisions of the proposed regulations. The Treasury Department and the IRS request comments in this regard.

2. Cost Shared Intangible—Proposed § 1.482–7(j)(1)(ii)

The term *cost shared intangible* replaces the term *covered intangible* from existing § 1.482–7(b)(4)(iv). A cost shared intangible means any intangible developed or to be developed as a result of the IDA. Thus, cost shared intangibles include both the intangibles that are contemplated to result from the IDA as well as any which serendipitously may result from the IDA.

Cost shared intangibles include any portion thereof that may be attributable to an external contribution and, therefore, do not simply represent the incremental results of the IDA. For example, if a new generation software resulting from the IDA incorporates elements of the prior generation software, the cost shared intangible is the total result of the prior and subsequent contributions. No inference is intended as to the outcome under the existing regulations.

3. Interest In An Intangible—Proposed § 1.482–7(j)(1)(iii)

The proposed regulations employ the same general definition of an *interest in an intangible* found in existing § 1.482–7(a)(2). It should be noted, however, that the proposed regulations provide that the interests in cost shared intangibles must be divided among the controlled participants on a territorial basis. See proposed § 1.482–7(b)(1)(i) and (b)(4).

4. Benefits—Proposed § 1.482–7(j)(1)(iv)

The proposed regulations clarify the definition of *benefits* found in existing § 1.482–7(e)(1). Benefits means the sum of additional revenue generated, plus cost savings, minus any cost increases from exploiting cost shared intangibles.

5. Reasonably Anticipated Benefits—Proposed § 1.482–7(j)(1)(v)

The proposed regulations effectively employ the same definition of *reasonably anticipated benefits* found in existing § 1.482–7(e)(2).

6. Territorial Operating Profit or Loss—Proposed § 1.482–7(j)(1)(vi)

The proposed regulations define *territorial operating profit or loss* as the operating profit or loss as separately earned by each controlled participant in its geographic territory from the CSA Activity, determined before an expense (including amortization) on account of IDCs, routine external contributions, and nonroutine contributions.

7. CSA Activity—Proposed § 1.482–7(j)(1)(vii)

The proposed regulations define *CSA Activity* as the activity of developing and exploiting cost shared intangibles.

8. Consolidated Group—Proposed § 1.482–7(j)(2)(i)

In line with existing § 1.482–7(c)(3), the proposed regulations treat all members of a U.S. group filing consolidated income tax returns as one taxpayer for purposes of the CSA provisions. The proposed regulations

would also treat all members of a foreign fiscal unity as one taxpayer for these purposes.

9. No Trade or Business and Partnership—Proposed § 1.482–7(j)(2)(ii) and (iii)

In line with existing §§ 1.482–7(a)(1) and 301.7701–1(c), the proposed regulations provide that participation in a CSA, of itself, does not constitute a U.S. trade or business or result in the creation of a partnership for federal income tax purposes.

10. Character of Payments—Proposed § 1.482–7(j)(3)

In line with existing § 1.482–7(h), the proposed regulations provide ordering rules for characterizing cost sharing payments with regard to the items they reimburse. PCT Payments will be characterized consistently with the designation of the type of transaction involved in the RT. The proposed regulations continue to provide for the netting of PCT Payments made to, and received by, a controlled participant.

G. Administrative Provisions—Proposed § 1.482–7(k)

The proposed regulations include provisions to facilitate administration of, and compliance with, the cost sharing rules. Thus, under a CSA, the controlled participants must substantially comply with certain contractual, documentation, accounting, and reporting requirements. Similar requirements are spread throughout the existing regulations in § 1.482–7(b), (c)(1), (i), and (j). In the proposed regulations, the substantial compliance standard is included in proposed § 1.482–7(b)(1)(iv) through (vii), and the specific requirements are assembled together in § 1.482–7(k).

1. CSA Contractual Requirements—Proposed § 1.482–7(k)(1)

Under proposed § 1.482–7(k)(1)(i), a CSA must be recorded in writing in a contract that is contemporaneous with the formation (and any revision) of the CSA. The written CSA must incorporate the contractual provisions set forth in proposed § 1.482–7(k)(1)(ii). Proposed § 1.482–7(k)(1)(iii) provides that a written contractual agreement is contemporaneous with the formation (or revision) of a CSA if, and only if, the controlled participants record the CSA, in its entirety, in a document that they sign and date no later than 60 days after the first occurrence of any IDC to which such agreement (or revision) is to apply. By requiring that CSAs be memorialized contemporaneously with formation (or revision), the CSA contractual provisions are more likely to reliably reflect (without hindsight) the relative risks of the controlled participants.

2. CSA Documentation Requirements—Proposed § 1.482–7(k)(2)

Under proposed § 1.482–7(k)(2)(i), the controlled participants must timely update and maintain sufficient documentation to establish that the participants have met the contractual requirements of proposed § 1.482–7(k)(1). In addition, the controlled participants must timely update and maintain documentation sufficient to establish and support the items listed in proposed § 1.482–7(k)(2)(ii) regarding the ongoing implementation of the CSA, CSTs, and PCTs. Thus, each controlled participant must at timely intervals update and maintain the documentation required by proposed § 1.482–7(k)(2)(i) and (ii) on an ongoing basis from the outset of the formation of the CSA. To the extent that additional documentation is required by the new availability of information or the occurrence of post-formation events, each controlled participant must maintain such documentation in a manner such that the controlled participant retains and supplements (but does not replace) the documentation maintained from the outset.

Proposed § 1.482–7(k)(2)(iii), which replaces existing § 1.482–7(j)(2)(ii), cross-references proposed § 1.6662–6(d)(2)(iii)(D) for the coordination of the CSA documentation rules with the specified method documentation rules under the section 6662 transfer pricing penalty regulations. Proposed § 1.6662–6(d)(2)(iii)(D) provides that satisfaction of the CSA documentation requirements satisfies the specified method principal documentation requirements with respect to the CSTs and PCTs, other than the requirements to provide a description of the relevant organizational structure and an index of principal and background documents, provided that such documentation is sufficient to establish that the taxpayer reasonably concluded that its method and application provided the most reliable measure of an arm's length result. Each controlled participant must provide such documentation to the IRS within 30 days of a request, subject to extension in the Commissioner's discretion.

3. CSA Accounting Requirements—Proposed § 1.482–7(k)(3)

Proposed § 1.482–7(k)(3)(i) tracks the existing regulations in requiring that the controlled participants establish a consistent method of accounting, translate foreign currencies on a consistent basis, and explain any material differences from U.S. generally accepted accounting principles. Under proposed § 1.482–7(k)(3)(ii), controlled participants may not rely solely upon financial accounting rules to establish satisfaction of the accounting requirements. Rather, the method of accounting must clearly reflect income.

4. CSA Reporting Requirements—Proposed § 1.482–7(k)(4)

Proposed § 1.482–(7)(k)(4)(i) requires that each controlled participant must file with the Ogden Campus a statement regarding its participation in a CSA (CSA Statement). The CSA Statement must provide the information enumerated in proposed § 1.482–7(k)(4)(ii), including the earliest date that any IDC occurred, the date on which the controlled participants formed (or revised) the CSA, and (if different from the immediately preceding date) the date on which the controlled participants recorded the CSA (or revision) in accordance with the contemporaneous recordation requirement.

Pursuant to proposed § 1.482–7(k)(4)(iii)(A), each controlled participant must file an original CSA Statement with the IRS no later than 90 days after the first occurrence of an IDC to which the newly-formed CSA applies or, in the case of a taxpayer that became a controlled participant after the formation of the CSA, no later than 90 days after such taxpayer became a controlled participant. The CSA Statement must be dated and signed, under penalties of perjury, by an officer of the controlled participant who is duly authorized (under local law) to sign the statement on behalf of the controlled participant.

In addition to the 90-day rule described above, proposed § 1.482–7(k)(4)(iii)(B) contains an annual reporting requirement. Each controlled participant must attach to its U.S. income tax return, for each taxable year for the duration of the CSA, a copy of the original CSA Statement that the controlled participant filed in accordance with the 90-day rule. Further, the annual reporting by the controlled participant must update the information reflected on the original CSA Statement by attaching a schedule that documents changes in such information over time. If a controlled participant does not file a U.S. income tax return, then it must ensure that the foregoing CSA Statement and updated schedule are attached to any Schedule M of Form 5471, to any Form 5472, or

to any Form 8865 with respect to that participant.

H. Effective Date and Transition Rule—Proposed §§ 1.482–7(l) and (m)

The proposed regulations are proposed to be applicable on the date of publication of the proposed regulations as a final regulation in the **Federal Register**. Thus, CSAs commencing on or after such date, and CSTs and PCTs occurring after such date with respect to CSAs existing as of the effective date, will be subject to § 1.482–7, as then finally revised. Conversely, other transactions not reasonably anticipated to contribute to developing intangibles pursuant to an arrangement constituting a CSA described in § 1.482–7(b)(1) or (5) will be subject to other applicable section 482 regulations. See proposed § 1.482–7(a)(3)(iii).

The proposed regulations provide transition rules under which an existing arrangement that constituted a qualified cost sharing arrangement under the regulations before the effective date will be considered a CSA and will be allowed an additional period to conform to the new rules with certain modifications. Although certain documentation requirements are delayed and certain substantive requirements concerning pre-effective date matters are relaxed for a grandfathered CSA described in the previous sentence, the controlled participants' CSTs and PCTs that occur after the effective date would have to comply with the substantive requirements of these regulations beginning immediately after such date. CSTs and PCTs occurring prior to the effective date are subject to these regulations only in the event that PCT Payments become subject to periodic adjustment under paragraph (i)(6) as a result of a subsequent PCT occurring on or after the effective date.

The proposed regulations specify circumstances under which the grandfathered status of pre-effective date arrangements would terminate. Accordingly, an otherwise grandfathered arrangement would cease to be so grandfathered from the earliest of a failure of the controlled participants to substantially comply with the regulations as transitionally modified, a material change in the scope of the CSA as contemplated in the underlying contractual arrangement (such as a material expansion of the activities undertaken in the CSA beyond those undertaken as of the effective date), or a 50 percent change in the beneficial ownership of the interests in cost shared intangibles.

I. Changes to Other Provisions

The proposed regulations make conforming changes to § 1.367(a)–1T, § 1.861–17, and §§ 1.482–1 *et seq.* of the section 482 regulations to reflect the new terminology and framework of the CSA provisions.

The proposed regulations redesignate current § 1.482–7 as § 1.482–7A which would continue to apply for dates prior to the publication of this document as a final regulation in the **Federal Register** and to the extent applicable under the transition rule of proposed § 1.482–7(m).

The proposed regulations add examples to § 1.482–8 to illustrate the application of the best method rule in connection with the new specified methods under proposed § 1.482–7(g).

As previously stated, proposed § 1.6662–6(d)(2)(iii)(D) coordinates the CSA documentation requirements of proposed § 1.482–7(k)(2) with the specified method documentation requirements of the section 6662 transfer pricing penalty regulations.

In line with the penultimate sentence of existing § 1.482–7(a)(1) and proposed § 1.482–7(j)(2)(iii), proposed § 301.7701–1(c) provides that participation in a CSA, of itself, does not give rise to a separate entity.

Special Analysis

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 has been determined also 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 collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that few small entities are expected to enter into cost sharing agreements, as defined herein, and that for those that do, the burdens imposed under proposed § 1.482–7(b)(1)(iv) through (vii) and (k) would be minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f), 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 (8) copies) that are submitted timely to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 16, 2005, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance 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 electronic or 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 October 26, 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 proposed regulations is Jeffrey L. Parry of the Office of Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are 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 1.482–7A also issued under 26 U.S.C. 482. * * *

Par 2. Section 1.367(a)–1T is amended by revising the second sentence of paragraph (d)(3) to read as follows:

§ 1.367(a)–1T Transfers to foreign corporations subject to section 367(a): In general (temporary).

* * * * *

(d) * * *

(3) *Transfer.* * * * A person's entering into a cost sharing arrangement under § 1.482–7 or acquiring rights to intangible property under such an arrangement shall not be considered a transfer of property described in section 367(a)(1). * * *

* * * * *

Par. 3. Section 1.482–7 is redesignated § 1.482–7A and an undesignated centerheading preceding § 1.482–7A is added to read as follows:

Regulations applicable on or before the date of publication of this document as a final regulation in the **Federal Register**.

Par. 4. Section 1.482–0 is amended by revising the entry for § 1.482–7 to read as follows:

§ 1.482–0 Outline of regulations under section 482.

* * * * *

§ 1.482–7 Methods to determine taxable income in connection with a cost sharing arrangement.

(a) In general.
(1) RAB share method for cost sharing transactions (CSTs).
(2) Methods for preliminary or contemporaneous transactions (PCTs).
(3) Methods for other controlled transactions.
(i) Contribution to a CSA by a controlled taxpayer that is not a controlled participant.
(ii) Transfer of interest in a cost shared intangible.
(iii) Controlled transactions not in connection with a CSA.
(b) Cost sharing arrangement (CSA).
(1) In general.
(2) CSTs.
(i) In general.
(ii) Example.
(3) PCTs.
(i) In general.
(ii) External contributions.
(iii) PCT Payments.
(iv) Reference transaction (RT).
(v) PFAs.
(vi) Form of payment.
(A) In general.
(B) PFAs.
(C) No PCT Payor stock.
(vii) Date of a PCT.
(viii) Examples.
(4) Territorial division of interests.
(i) In general.
(ii) Examples.
(5) CSAs in substance or form .
(i) CSAs in substance.
(ii) CSAs in form.
(iii) Example.
(6) Treatment of CSAs.
(c) Make-or-sell rights excluded.
(1) In general.
(2) Examples.
(d) Intangible development costs (IDCs).
(1) Costs included in IDCs.
(2) Allocation of costs.
(3) Stock-based compensation.
(i) In general.
(ii) Identification of stock-based compensation with the IDA.
(iii) Measurement and timing of stock-based compensation IDC.
(A) In general.
(*1*) Transfers to which section 421 applies.
(*2*) Deductions of foreign controlled participants.
(*3*) Modification of stock option.
(*4*) Expiration or termination of CSA.
(B) Election with respect to options on publicly traded stock.
(*1*) In general.
(*2*) Publicly traded stock.
(*3*) Generally accepted accounting principles.
(*4*) Time and manner of making the election.
(C) Consistency.
(4) IDC share.
(5) Examples.
(e) Reasonably anticipated benefit shares (RAB shares).
(1) In general.
(2) Measure of benefits.
(i) In general.
(ii) Indirect bases for measuring benefits.
(A) Units used, produced, or sold.
(B) Sales.
(C) Operating profit.
(D) Other bases for measuring anticipated benefits.
(E) Examples.
(iii) Projections used to estimate benefits.
(A) In general.
(B) Examples.
(f) Changes in participation under a CSA.
(g) Supplemental guidance on methods applicable to PCTs.
(1) In general.
(2) General principles.
(i) In general.
(ii) Valuation consistent with upfront contractual terms and risk allocations.
(iii)Projections.
(iv) Realistic alternatives.
(A) In general.
(B) Examples.
(v) Aggregation of transactions.
(vi) Discount rate.
(A) In general.
(B) Examples.
(vii) Accounting principles.
(A) In general.
(B) Examples.
(viii) Valuation consistent with the investor model.
(A) In general.
(B) Example.
(ix) Coordination of best method rule and form of payment.
(x) Coordination of the valuations or prior and subsequent PCTs.
(xi) Proration of PCT Payments to the extent allocable to other business activities.
(3) Comparable uncontrolled transaction method.
(4) Income method.
(i) In general.
(ii) Determination of arm's length charge.
(A) In general.
(B) Example.
(iii) Application of income method using a CUT.
(A) In general.
(B) Determination of arm's length charge.
(*1*) In general.
(*2*) Applicable rate.
(*3*) Alternative rate.
(*4*) Cost contribution adjustment.
(C) Example.
(iv) Application of income method using CPM.
(A) In general.
(B) Determination of arm's length charge based on sales.
(*1*) In general.
(*2*) Applicable rate.
(*3*) Alternative rate.
(*4*) Cost contribution adjustment.
(C) Determination of arm's length charge based on profit.
(*1*) In general.
(*2*) Alternative rate.
(*3*) Cost contribution adjustment.
(D) Example.
(v) Routine external contributions.
(vi) Comparability and reliability considerations.
(A) In general.
(B) Application of the income method using a CUT.
(C) Application of the income method using CPM.
(5) Acquisition price method.
(i) In general.
(ii) Determination of arm's length charge.
(iii) Adjusted acquisition price.
(iv) Reliability and comparability considerations.
(v) Example.
(6) Market capitalization method.
(i) In general.
(ii) Determination of arm's length charge.
(iii) Average market capitalization.
(iv) Adjusted average market capitalization.
(v) Reliability and comparability considerations.
(vi) Examples.
(7) Residual profit split.
(i) In general.
(ii) Appropriate share of profits and losses.
(iii) Profit split.
(A) In general.
(B) Allocate income to routine contributions other than cost contributions.

(C) Allocate residual profit.
(*1*) In general.
(*2*) Cost contribution share of residual profit or loss.
(*3*) Nonroutine contribution share of residual profit or loss.
(*4*) Determination of PCT Payments.
(*5*) Routine external contributions.
(iv) Comparability and reliability considerations.
(A) In general.
(B) Comparability.
(C) Data and assumptions.
(D) Other factors affecting reliability.
(v) Example.
(8) Unspecified methods.
(h) Coordination with the arm's length standard.
(i) Allocations by the Commissioner in connection with a CSA.
(1) In general.
(2) CST allocations.
(i) In general.
(ii) Adjustments to improve the reliability of projections used to RAB shares.
(A) Unreliable projections.
(B) Foreign-to-foreign adjustments.
(C) Correlative adjustments to PCTs.
(D) Examples.
(iii) Timing of CST allocations.
(3) PCT allocations.
(4) Allocations regarding changes in participation under a CSA.
(5) Allocations when CSTs are consistently and materially disproportionate to RAB shares.
(6) Periodic adjustments.
(i) In general.
(ii) PRRR.
(iii) AERR.
(A) In general.
(B) PVTP.
(C) PVI.
(iv) ADR.
(A) In general.
(B) Publicly traded companies.
(C) Publicly traded.
(D) PCT Payor WACC.
(E) Generally accepted accounting principles.
(v) Determination of periodic adjustments.
(vi) Exceptions to periodic adjustments.
(A) Transactions involving the same external contributions as in the PCT.
(B) Results not reasonably anticipated.
(C) Reduced AERR does not cause Periodic Trigger.
(D) Increased AERR does not cause Periodic Trigger.
(E) 10-year period.
(F) 5-year period.
(vii) Examples.
(viii) Documentation.
(j) Definitions and special rules.
(1) Definitions.
(2) Special rules.
(i) Consolidated group.
(ii) Trade or business.
(iii) Partnership.
(3) Character.
(i) In general.
(ii) PCT Payments.
(iii) Examples.
(k) CSA contractual, documentation, accounting, and reporting requirements.
(1) CSA contractual requirements.
(i) In general.
(ii) Contractual provisions.
(iii) Meaning of contemporaneous.
(A) In general.
(B) Example.
(2) CSA documentation requirements.
(i) In general.
(ii) Additional CSA documentation requirements.
(iii) Coordination rules and production of documents.
(A) Coordination with penalty regulations.
(B) Production of documentation.
(3) CSA accounting requirements.
(i) In general.
(ii) Reliance on financial accounting.
(4) CSA reporting requirements.
(i) CSA Statement.
(ii) Content of CSA Statement.
(iii) Time for filing CSA Statement.
(A) 90-day rule.
(B) Annual return requirement.
(*1*) In general.
(*2*) Special filing rule for annual return requirement.
(iv) Examples.
(l) Effective date.
(m) Transition rule.
(1) In general.
(2) Termination of grandfather status.
(3) Transitional modification of applicable provisions.

* * * * *

Par. 5. Section 1.482–1 is amended by:

1. Revising the second sentence of paragraph (b)(2)(i).
2. Revising the last sentence of paragraph (c)(1).

The revisions read as follows:

§ 1.482–1 Allocation of income and deductions among taxpayers.

* * * * *

(b) * * *
(2) * * *
(i) * * * Section 1.482–7 provides the methods to be used to evaluate whether a cost sharing arrangement produces results consistent with an arm's length result.

* * * * *

(c) * * *
(1) * * * See § 1.482–7 for the applicable methods in the case of a cost sharing arrangement.

* * * * *

Par. 6. Section 1.482–4 is amended by

1. Redesignating paragraph (f)(3)(iv) as paragraph (f)(3)(v).
2. Adding a new paragraph (f)(3)(iv).

The addition reads as follows:

§ 1.482–4 Methods to determine taxable income in connection with a transfer of intangible property.

* * * * *

(f) * * *
(3) * * *
(iv) *Cost sharing arrangements.* The rules in this paragraph (f)(3) regarding ownership and assistance with respect to cost shared intangibles and cost sharing arrangements will apply only as provided in § 1.482–7.

* * * * *

Par. 7. Section 1.482–5 is amended by revising the last sentence of paragraph (c)(2)(iv) to read as follows:

§ 1.482–5 Comparable profits method.

* * * * *

(c) * * *
(2) * * *
(iv) * * * As another example, it may be appropriate to adjust the operating profit of a party to account for material differences in the utilization of or accounting for stock-based compensation (as defined by § 1.482–7(d)(3)(i)) among the tested party and comparable parties.

* * * * *

Par. 8. Section 1.482–7 is revised to read as follows:

§ 1.482–7 Methods to determine taxable income in connection with a cost sharing arrangement.

(a) *In general.* The arm's length amount charged in a controlled transaction reasonably anticipated to contribute to developing intangibles pursuant to a cost sharing arrangement (CSA), as described in paragraph (b) of this section, must be determined under a method described in this section. Each method must be applied in accordance with the provisions of § 1.482–1, except as those provisions are modified in this section.

(1) *RAB share method for cost sharing transactions (CSTs).* The controlled participants that are parties to a cost sharing transaction (CST), as described in paragraph (b)(2) of this section, must share the intangible development costs (IDCs) of the cost shared intangibles in proportion to their shares of reasonably anticipated benefits (RAB shares). See paragraph (j)(1) of this section for the definitions of controlled participant, cost shared intangible, benefits, and reasonably anticipated benefits, and paragraphs (d) and (e) of this section regarding IDCs and RAB shares, respectively.

(2) *Methods for preliminary or contemporaneous transactions (PCTs).* The arm's length amount charged in a preliminary or contemporaneous transaction (PCT), as described in paragraph (b)(3) of this section, must be determined under the method or methods under the other section or sections of the section 482 regulations, as supplemented by paragraph (g) of this section, applicable to the reference transaction (RT) reflected by the PCT. See § 1.482–1(b)(2)(ii) (Selection of category of method applicable to

transaction), paragraph (b)(3)(iv) of this section (Reference transaction), and paragraph (g) of this section (Supplemental guidance on methods applicable to PCTs).

(3) *Methods for other controlled transactions—(i) Contribution to a CSA by a controlled taxpayer that is not a controlled participant.* If a controlled taxpayer that is not a controlled participant contributes to developing the cost shared intangibles, it must receive consideration from the other controlled participants under the rules of § 1.482–4(f)(3)(iii) (Allocations with respect to assistance provided to the owner). Such consideration will be treated as an intangible development cost for purposes of paragraph (d) of this section.

(ii) *Transfer of interest in a cost shared intangible.* If at any time (during the term, or upon or after the termination, of a CSA) a controlled participant transfers an interest in a cost shared intangible to another controlled taxpayer, the controlled participant must receive an arm's length amount of consideration from the transferee under the rules of §§ 1.482–1 and 1.482–4 through 1.482–6.

(iii) *Controlled transactions not in connection with a CSA.* This section does not apply to a controlled transaction reasonably anticipated to contribute to developing intangibles pursuant to an arrangement that is not a CSA described in paragraph (b)(1) or paragraph (b)(5) of this section. Whether the results of any such controlled transaction are consistent with an arm's length result must be determined under the applicable rules of the section 482 regulations without regard to this section. For example, an arrangement for developing intangibles in which one controlled taxpayer's costs of developing the intangibles significantly exceeds its share of reasonably anticipated benefits from exploiting the developed intangibles would not in substance be a CSA, as described in paragraphs (b)(1)(i) through (iii) or paragraph (b)(5)(i) of this section. In such a case, unless the rules of this section are applicable by reason of paragraph (b)(5)(ii) of this section, the arrangement must be analyzed under other applicable sections of the section 482 regulations to determine whether it achieves arm's length results, and if not, to determine any allocations by the Commissioner that are consistent with such other section 482 regulations.

(b) *Cost sharing arrangement (CSA)—(1) In general.* A CSA to which the provisions of this section apply is a contractual agreement to share the costs of developing one or more intangibles under which the controlled participants—

(i) At the outset of the arrangement divide among themselves all interests in cost shared intangibles on a territorial basis as described in paragraph (b)(4) of this section;

(ii) Enter into and effect CSTs covering all IDCs and PCTs covering all external contributions, as described in paragraphs (b)(2) and (b)(3) of this section, for purposes of developing the cost shared intangibles under the CSA;

(iii) As a result, individually own and exploit their respective interests in the cost shared intangibles without any further obligation to compensate one another for such interests;

(iv) Substantially comply with the CSA contractual requirements that are described in paragraph (k)(1) of this section;

(v) Substantially comply with the CSA documentation requirements that are described in paragraph (k)(2) of this section;

(vi) Substantially comply with the CSA accounting requirements that are described in paragraph (k)(3) of this section; and

(vii) Substantially comply with the CSA reporting requirements that are described in paragraph (k)(4) of this section.

(2) *CSTs*—(i) *In general.* CSTs are controlled transactions between or among controlled participants in which such participants share the IDCs of one or more cost shared intangibles in proportion to their respective RAB shares from their individual exploitation of their interests in the cost shared intangibles that they obtain under the CSA. Cost sharing payments may not be paid in shares of stock in the payor. See paragraphs (b)(4), (d), and (e) of this section for the rules regarding interests in cost shared intangibles, IDCs, and RAB shares, respectively.

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

Example. Companies C and D, who are members of the same controlled group, enter into a CSA that is described in paragraph (b)(1) of this section. In the first year of the CSA, C and D conduct the IDA, as described in paragraph (d)(1) of this section. The total IDCs in regard to such activity are $3,000,000 of which C and D pay $2,000,000 and $1,000,000, respectively, directly to third parties. As between C and D, however, their CSA specifies that they will share all IDCs in accordance with their RAB shares (as described in paragraph (e)(1) of this section), which are 60% for C and 40% for D. It follows that C should bear $1,800,000 of the total IDCs (60% of total IDCs of $3,000,000) and D should bear $1,200,000 of the total IDCs (40% of total IDCs of $3,000,000). D makes a CST payment to C of $200,000, that is, the amount by which D's share of IDCs in accordance with its RAB share exceeds the amount of IDCs initially borne by D ($1,200,000 − $1,000,000), and which also equals the amount by which the total IDCs initially borne by C exceeds its share of IDCs in accordance with its RAB share ($2,000,000 − $1,800,000). As a result of D's CST payment to C, C and D will bear amounts of total IDCs in accordance with their respective RAB shares.

(3) *PCTs*—(i) *In general.* A PCT is a controlled transaction in which each other controlled participant (PCT Payor) is obligated to compensate a controlled participant (PCT Payee) for an external contribution of the PCT Payee.

(ii) *External contributions.* An external contribution consists of the rights set forth under the reference transaction (RT) in any resource or capability that is reasonably anticipated to contribute to developing cost shared intangibles and that a PCT Payee has developed, maintained, or acquired externally to (whether prior to or during the course of) the CSA. For purposes of this section, external contributions do not include rights in depreciable tangible property or land, and do not include rights in other resources acquired by IDCs. See paragraphs (b)(2) and (d)(1) of this section.

(iii) *PCT Payments.* The arm's length amount of the compensation due under a PCT (PCT Payment) will be determined under a method pursuant to paragraphs (a)(2) and (g) of this section applicable to the RT, as described in paragraph (b)(3)(iv) of this section. The applicable method will yield a value for the compensation obligation of each PCT Payor consistent with the product of the combined value to all controlled participants of the external contribution that is the subject of the PCT multiplied by the PCT Payor's RAB share.

(iv) *Reference transaction (RT).* An RT is a transaction providing the benefits of all rights (RT Rights), exclusively and perpetually, in a resource or capability described in paragraph (b)(3)(ii) of this section, excluding any rights to exploit an existing intangible without further development. See paragraph (c) of this section (Make-or-sell rights excluded). If a resource or capability is reasonably anticipated to contribute both to developing or exploiting cost shared intangibles and to other business activities of the PCT Payee, other than exploiting an existing intangible without further development, then the PCT Payment that would otherwise be determined with reference to the RT (which generally presumes a provision of exclusive and perpetual rights) may need to be prorated as described in

paragraph (g)(2)(xi) of this section. For purposes of § 1.482–1(b)(2)(ii) and paragraph (a)(2) of this section, the controlled participants must include the type of transaction involved in the RT as part of the documentation of the RT required under paragraph (k)(2)(ii)(H) of this section. If different economically equivalent types of RTs are possible with respect to the relevant resource or capability, the controlled participants may designate the type of transaction involved in the RT. If the controlled participants fail to make this designation in their documentation, the Commissioner may make a designation consistent with the RT and other facts and circumstances. While the PCT Payee and PCT Payors must enter into the PCT providing for the relevant compensation obligation, they are not required to actually enter into the RT that is referenced for purposes of determining the magnitude of the compensation obligation under the PCT.

(v) *PFAs.* A post formation acquisition (PFA) is an external contribution that is acquired by a controlled participant in an uncontrolled transaction that takes place after the formation of the CSA and that as of the date of acquisition is reasonably anticipated to contribute to developing cost shared intangibles. Resources or capabilities may be acquired in a PFA either directly, or indirectly through the acquisition of an interest in an entity or tier of entities.

(vi) *Form of payment*—(A) *In general.* The consideration under a PCT for an external contribution other than a PFA may take one or a combination of both of the following forms—

(*1*) Payments of a fixed amount, either paid in a lump sum payment or in installment payments spread over a specified period, with interest calculated in accordance with § 1.482–2(a) (Loans or advances); or

(*2*) Payments contingent on the exploitation of cost shared intangibles by the PCT Payor. The form of payment selected for any PCT, including the basis and structure of the payments, must be specified no later than the date of that PCT.

(B) *PFAs.* The consideration under a PCT for a PFA must be paid in the same form as the uncontrolled transaction in which the PFA was acquired.

(C) *No PCT Payor Stock.* PCT Payments may not be paid in shares of stock in the PCT Payor.

(vii) *Date of a PCT.* The controlled participants must enter into a PCT as of the earliest date on or after the CSA is entered into on which the external contribution is reasonably anticipated to contribute to developing cost shared intangibles.

(viii) *Examples.* The following examples illustrate the principles of this paragraph (b)(3). In each example, Companies P and S are members of the same controlled group, and execute a CSA that is described in paragraph (b)(1) of this section. The examples are as follows:

Example 1. Company P has developed and currently markets version 1.0 of a new software application XYZ. Company P and Company S execute a CSA under which they will share the IDCs for developing future versions of XYZ. Version 1.0 is reasonably anticipated to contribute to the development of future versions of XYZ and therefore the RT rights in version 1.0 constitute an external contribution of Company P for which compensation is due from Company S pursuant to a PCT. The applicable method and determination of the arm's length compensation due pursuant to the PCT will be based on the RT. The controlled participants designate the RT as a transfer of intangibles that would otherwise be governed by § 1.482–4, if entered into by controlled parties. Accordingly, pursuant to paragraph (a)(2) of this section, the applicable method for determining the arm's length value of the compensation obligation under the PCT between Company P and Company S will be governed by § 1.482–4 as supplemented by paragraph (g) of this section. The RT in this case is the perpetual and exclusive provision of the benefit of all rights in version 1.0, other than the rights described in paragraph (c) of this section (Make-or-sell rights excluded). This includes the exclusive right to use version 1.0 for purposes of research and the right to exploit any products that incorporated the platform technology of version 1.0, and would cover a term extending as long as the uncontrolled taxpayer were to continue to exploit future versions of XYZ or any other product based on the version 1.0 platform. Though Company P and Company S are not required to actually enter into the transaction described by the RT, the value of the compensation obligation of Company S for the PCT will reflect the full value of the external contribution defined by the RT, as limited by Company S's RAB share.

Example 2. Company P and Company S execute a CSA under which they will share the IDCs for developing Vaccine Z. Company P will commit its research team that has successfully developed a number of other vaccines to the project. The expertise and existing integration of the research team is a unique resource or capability of Company P which is reasonably anticipated to contribute to the development of Vaccine Z and therefore the RT Rights in the research team constitute an external contribution for which compensation is due from Company S as part of a PCT. The applicable method and determination of the arm's length compensation due pursuant to the PCT will be based on the RT. The controlled parties designate the RT as a provision of services that would otherwise be governed by § 1.482–2(b)(3)(first sentence) if entered into by controlled parties. Accordingly, pursuant to paragraph (a)(2) of this section, the applicable method for determining the arm's length value of the compensation obligation under the PCT between Company P and Company S will be governed by § 1.482–2(b)(3)(first sentence) as supplemented by paragraph (g) of this section. The RT in this case is the perpetual and exclusive provision of the benefits by Company P of its research team to the development of Vaccine Z by the uncontrolled party. Because the IDCs include the ongoing compensation of the researchers, the compensation obligation under the PCT is only for the value of the commitment of the research team by Company P to the CSA's development efforts net of such researcher compensation. Though Company P and Company S are not required to actually enter into the transaction described by the RT, the value of the compensation obligation of Company S for the PCT will reflect the full value of provision of services described in the RT, as limited by Company S's RAB share.

Example 3. In Year 1, Company P and Company S execute a CSA under which they will share the IDCs for developing Product X. In Year 3, Company P acquires technology intangibles that it anticipates will contribute to the development of Product X from an uncontrolled party for a lump sum consideration. Because the technology intangibles are reasonably anticipated to contribute to the development on the date of the acquisition and the acquisition is an uncontrolled transaction that takes place after the formation of the CSA, the RT Rights in the technology intangibles are an external contribution acquired as part of a PFA. Accordingly, Company P and Company S must enter into a PCT in which Company S compensates Company P for the RT Rights in the technology intangibles and pursuant to paragraph (b)(3)(vi)(B) of this section, the form of payment of the PCT must mirror the lump sum form of payment of the PFA.

Example 4. Assume the same facts as in *Example 3.* In Year 4 Company P acquires Company X in a tax-free stock-for-stock acquisition. Company X is a start-up technology company with negligible amounts of tangible property and liabilities. Company X joins in the filing of a U.S. consolidated income tax return with USP and is treated as one taxpayer with Company P under paragraph (j)(2)(i) of this section. Accordingly, under paragraph (b)(3)(v) of this section, Company P's acquisition of the stock of Company X will be treated as an indirect acquisition of the resources and capabilities of Company X. The in-process technology and workforce of Company X acquired by Company P are reasonably anticipated to contribute to the development of product Z and therefore the RT Rights in the in-process technology and workforce of Company X are external contributions for which compensation is due to Company P from Company S under a PCT. Furthermore, because these external contributions were acquired by Company P in an uncontrolled transaction that took place after the formation of the CSA, they are also PFAs. Accordingly, the consideration due from S under the PCT must be paid in the same form of payment as Company's P acquisition of Company X, which was done in a lump sum payment.

Therefore, consideration for the PCT must be paid in a lump sum.

(4) *Territorial division of interests*—(i) *In general.* Pursuant to paragraph (b)(1)(i) of this section, at the outset of the CSA the controlled participants must divide among themselves all interests in cost shared intangibles on a territorial basis as follows. The entire world must be divided into two or more non-overlapping geographic territories. Each controlled participant must receive at least one such territory, and in the aggregate all the participants must receive all such territories. Each controlled participant must be entitled to the perpetual and exclusive right to the profits from transactions of any member of the controlled group that includes the controlled participant with uncontrolled taxpayers regarding property or services for use, consumption, or disposition in such controlled participant's territory or territories, to the extent that such profits are attributable to cost shared intangibles. Absent the controlled participant's or other member of its controlled group's actual knowledge or reason to know otherwise, for purposes of the preceding sentence such use, consumption, or disposition of property or services will be considered to occur at the location(s) to which notices and other communications to the uncontrolled taxpayer(s) are to be provided in accordance with the contractual provisions of the relevant transactions.

(ii) *Example.* The following example illustrates the principles of this paragraph (b)(4):

Example. Companies P and S, both members of the same controlled group, enter into a CSA to develop product Z. Under the CSA, P receives the interest in product Z in the United States and S receives the interest in product Z in the rest of the world, as described in paragraph (b)(4)(i) of this section. Both P and S have plants for manufacturing product Z located in their respective geographic territories. However, for commercial reasons product Z is nevertheless manufactured by P in the United States for sale to customers in certain locations just outside the United States in close proximity to P's U.S. manufacturing plant. Because S owns the territorial rights outside the United States, intercompany compensation must be provided for between P and S to ensure that S realizes all the cost shared intangible profits from sales of product Z to customers in such proximate areas, even though the manufacturing is done by P in the United States. The pricing of such intercompany compensation must also ensure that P realizes an appropriate manufacturing return for its efforts. Benefits projected with respect to such sales will be included for purposes of estimating S's, but not P's, RAB share.

(5) *CSAs in substance or form*—(i) *CSAs in substance.* The Commissioner may apply, consistently with the rules of § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms), the rules of this section to any arrangement that in substance constitutes a CSA described in paragraphs (b)(1)(i) through (iii) of this section, notwithstanding a failure to comply with any requirement of this section.

(ii) *CSAs in form.* Provided the requirements of paragraphs (b)(1)(iv) through (vii) are met with respect to an arrangement among controlled taxpayers,

(A) The Commissioner must apply the rules of this section to any such arrangement that the controlled taxpayers reasonably concluded to be a CSA, as described in paragraph (b)(1) of this section; and

(B) Otherwise, the Commissioner may apply the rules of this section to any other such arrangement.

(iii) *Examples.* The following examples illustrate the principles of this paragraph (b)(5). In the examples, assume that Companies P and S are both members of the same controlled group. The examples are as follows:

Example 1. (i) P owns the patent on a formula for a capsulated pain reliever, P-Cap. P reasonably anticipates, pending further research and experimentation, that the P-Cap formula could form the platform for a formula for P-Ves, an effervescent version of P-Cap. P also owns proprietary software that it reasonably anticipates to be critical to the research efforts. P and S execute a CSA by which they agree to proportionally share the costs and risks of developing a formula for P-Ves. The agreement reflects the various contractual requirements described in paragraph (k)(1) of this section and P and S comply with the documentation, accounting and reporting requirements of paragraphs (k)(2) through (4) of this section. Both the patent for P-Cap and the software are reasonably anticipated to contribute to the development of P-Ves and therefore are external contributions for which compensation is due from S as part of PCTs. Though P and S enter into a PCT for the P-Cap patent, they fail to enter into a PCT for the software.

(ii) In this case, P and S have substantially complied with the contractual requirements of paragraph (k)(1) of this section and the documentation, accounting and reporting requirements of paragraphs (k)(2) through (4) of this section and therefore have met the formal requirements of paragraphs (b)(1)(iv) through (vii) of this section. However, because they did not enter into a PCT, as required under paragraph (b)(1)(i) of this section, for the software that was reasonably anticipated to be critical to the development of P-Ves, they cannot reasonably conclude that their arrangement was a CSA. Accordingly, the Commissioner is not required under paragraph (b)(5)(ii)(A) of this section to apply the rules of this section to their arrangement. Nevertheless, pursuant to paragraph (b)(5)(ii)(B), the Commissioner may apply the rules of this section and treat P and S as entering into a PCT for the software in accordance with the requirements of paragraph (b)(1)(i) of this section, and make any appropriate allocations under paragraph (i) of this section. Alternatively, the Commissioner may decide that the arrangement is not a CSA described in paragraph (b)(1) of this section and therefore that this section's provisions do not apply in determining whether the arrangement reaches arm's length results. In this case, the arrangement would be analyzed under the methods under the section 482 regulations, without regard to this section, to determine whether the arrangement reaches such results.

Example 2. The facts are the same as *Example 1* except that P and S do enter into a PCT for the software. Although the Commissioner determines that the PCT Payments for the software were not arm's length, nevertheless, under the facts and circumstances at the time they entered into the CSA and PCTs, P and S reasonably concluded their arrangement to be a CSA. Because P and S have met the requirements of paragraphs (b)(1)(iv) through (vii) and reasonably concluded their arrangement is a CSA, pursuant to paragraph (b)(5)(ii)(A) of this section, the Commissioner must apply the rules of this section to their arrangement. Accordingly, the Commissioner treats the arrangement as a CSA and makes adjustments to the PCT Payments as appropriate under this section to achieve an arm's length result for the PCT for the software.

(6) *Treatment of CSAs.* See § 301.7701–1(c) of this chapter for the treatment of CSAs for purposes of the Internal Revenue Code.

(c) *Make-or-sell rights excluded*—(1) *In general.* Any right to exploit an existing intangible without further development, such as the right to make or sell existing products, does not constitute an external contribution to a CSA, as described in paragraph (b)(3) of this section. Thus, the arm's length compensation for such rights does not satisfy the compensation obligation under a PCT.

(2) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. P and S, who are members of the same controlled group, execute a CSA that is described in paragraph (b)(1) of this section. Under the CSA, P and S will bear their proportional shares of IDCs for developing the second generation of ABC, a computer software program. Prior to that arrangement, P had incurred substantial costs and risks to develop ABC. Concurrently with entering into the arrangement, P (as the licensor) executes a license with S (as the licensee) by which S may make and sell copies of the existing ABC. Such make-and-sell rights do not constitute an external

contribution to the CSA. The rules of §§ 1.482–1 and 1.482–4 through 1.482–6, without regard to the rules of this section, must be applied to determine the arm's length consideration in connection with the make-and-sell licensing arrangement. In certain circumstances this determination of the arm's length consideration may be done on an aggregate basis with the evaluation of compensation obligations pursuant to PCTs entered into by P and S in connection with the CSA. See paragraph (g)(2)(v) of this section.

Example 2. (i) P, a software company, has developed and currently exploits software program ABC. P and S enter into a CSA to develop future generations of ABC. The ABC source code is the platform on which future generations of ABC will be built and is therefore an external contribution of P for which compensation is due from S pursuant to a PCT. Concurrently with entering into the CSA, P licenses to S the make-and-sell rights for the current version of ABC. P has entered into similar licenses with uncontrolled parties calling for sales-based royalty payments at a rate of 20%. The current version of ABC has an expected product life of three years. P and S enter into a contingent payment agreement to cover both the PCT Payments due from S for P's external contribution and for the make-and-sell license. Based on the uncontrolled make-and-sell licenses, P and S agree on a sales-based royalty rate of 20% in Year 1 that declines on a straight line basis to 0% over the 3 year product life of ABC.

(ii) The make-and-sell rights for the current version of ABC are not external contributions, though paragraph (g)(2)(v) of this section provides for the possibility that the most reliable determination of an arm's length charge for the PCT and the make-and-sell license may be one that values the two transactions in the aggregate. A contingent payment schedule based on the uncontrolled make-and-sell licenses may provide an arm's length charge for the separate make-and-sell license between P and S, provided the royalty rates in the uncontrolled licenses similarly decline, but as a measure of the aggregate PCT and license payments it does not account for the arm's length value of P's external contributions which include the RT Rights in the source code and future development rights in ABC.

(d) *Intangible development costs (IDCs)*—(1) *Costs included in IDCs.* For purposes of this section, IDCs mean all costs, in cash or in kind (including stock-based compensation, as described in paragraph (d)(3) of this section), but excluding costs for land or depreciable property, in the ordinary course of business after the formation of a CSA that, based on analysis of the facts and circumstances, are directly identified with, or are reasonably allocable to, the activity under the CSA of developing or attempting to develop intangibles (IDA). IDCs shall also include the arm's length rental charge for the use of any land or depreciable tangible property (as determined under § 1.482–2(c) (Use of tangible property)) directly identified with, or reasonably allocable to, the IDA. Reference to generally accepted accounting principles or federal income tax accounting rules may provide a useful starting point but will not be conclusive regarding inclusion of costs in IDCs. IDCs do not include interest expense, foreign income taxes (as defined in § 1.901–2(a)), or domestic income taxes.

(2) *Allocation of costs.* If a particular cost is reasonably allocable both to the IDA and to other business activities, the cost must be allocated on a reasonable basis between the IDA and such other business activities in proportion to the relative economic value that the IDA and such other business activities are anticipated to derive over time as a result of such cost.

(3) *Stock-based compensation*—(i) *In general.* As used in this section, the term *stock-based compensation* means any compensation provided by a controlled participant to an employee or independent contractor in the form of equity instruments, options to acquire stock (stock options), or rights with respect to (or determined by reference to) equity instruments or stock options, including but not limited to property to which section 83 applies and stock options to which section 421 applies, regardless of whether ultimately settled in the form of cash, stock, or other property.

(ii) *Identification of stock-based compensation with the IDA.* The determination of whether stock-based compensation is directly identified with, or reasonably allocable to, the IDA is made as of the date that the stock-based compensation is granted. Accordingly, all stock-based compensation that is granted during the term of the CSA and, at date of grant, is directly identified with, or reasonably allocable to, the IDA is included as an IDC under paragraph (d)(1) of this section. In the case of a repricing or other modification of a stock option, the determination of whether the repricing or other modification constitutes the grant of a new stock option for purposes of this paragraph (d)(3)(ii) will be made in accordance with the rules of section 424(h) and related regulations.

(iii) *Measurement and timing of stock-based compensation IDC*—(A) *In general.* Except as otherwise provided in this paragraph (d)(3)(iii), the cost attributable to stock-based compensation is equal to the amount allowable to the controlled participant as a deduction for federal income tax purposes with respect to that stock-based compensation (for example, under section 83(h)) and is taken into account as an IDC under this section for the taxable year for which the deduction is allowable.

(*1*) *Transfers to which section 421 applies.* Solely for purposes of this paragraph (d)(3)(iii)(A), section 421 does not apply to the transfer of stock pursuant to the exercise of an option that meets the requirements of section 422(a) or 423(a).

(*2*) *Deductions of foreign controlled participants.* Solely for purposes of this paragraph (d)(3)(iii)(A), an amount is treated as an allowable deduction of a controlled participant to the extent that a deduction would be allowable to a United States taxpayer.

(*3*) *Modification of stock option.* Solely for purposes of this paragraph (d)(3)(iii)(A), if the repricing or other modification of a stock option is determined, under paragraph (d)(3)(ii) of this section, to constitute the grant of a new stock option not identified with, or reasonably allocable to, the IDA, the stock option that is repriced or otherwise modified will be treated as being exercised immediately before the modification, provided that the stock option is then exercisable and the fair market value of the underlying stock then exceeds the price at which the stock option is exercisable. Accordingly, the amount of the deduction that would be allowable (or treated as allowable under this paragraph (d)(3)(iii)(A)) to the controlled participant upon exercise of the stock option immediately before the modification must be taken into account as an IDC as of the date of the modification.

(*4*) *Expiration or termination of CSA.* Solely for purposes of this paragraph (d)(3)(iii)(A), if an item of stock-based compensation identified with, or reasonably allocable to, the IDA is not exercised during the term of a CSA, that item of stock-based compensation will be treated as being exercised immediately before the expiration or termination of the CSA, provided that the stock-based compensation is then exercisable and the fair market value of the underlying stock then exceeds the price at which the stock-based compensation is exercisable. Accordingly, the amount of the deduction that would be allowable (or treated as allowable under this paragraph (d)(3)(iii)(A)) to the controlled participant upon exercise of the stock-based compensation must be taken into account as an IDC as of the date of the expiration or termination of the CSA.

(B) *Election with respect to options on publicly traded stock*—(*1*) *In general.* With respect to stock-based compensation in the form of options on

publicly traded stock, the controlled participants in a CSA may elect to take into account all IDCs attributable to those stock options in the same amount, and as of the same time, as the fair value of the stock options reflected as a charge against income in audited financial statements or disclosed in footnotes to such financial statements, provided that such statements are prepared in accordance with United States generally accepted accounting principles by or on behalf of the company issuing the publicly traded stock.

(*2*) *Publicly traded stock.* As used in this paragraph (d)(3)(iii)(B), the term *publicly traded stock* means stock that is regularly traded on an established United States securities market and is issued by a company whose financial statements are prepared in accordance with United States generally accepted accounting principles for the taxable year.

(*3*) *Generally accepted accounting principles.* For purposes of this paragraph (d)(3)(iii)(B), a financial statement prepared in accordance with a comprehensive body of generally accepted accounting principles other than United States generally accepted accounting principles is considered to be prepared in accordance with United States generally accepted accounting principles provided that either—

(*i*) The fair value of the stock options under consideration is reflected in the reconciliation between such other accounting principles and United States generally accepted accounting principles required to be incorporated into the financial statement by the securities laws governing companies whose stock is regularly traded on United States securities markets; or

(*ii*) In the absence of a reconciliation between such other accounting principles and United States generally accepted accounting principles that reflects the fair value of the stock options under consideration, such other accounting principles require that the fair value of the stock options under consideration be reflected as a charge against income in audited financial statements or disclosed in footnotes to such statements.

(*4*) *Time and manner of making the election.* The election described in this paragraph (d)(3)(iii)(B) is made by an explicit reference to the election in the written CSA required by paragraph (k)(1) of this section or in a written amendment to the CSA entered into with the consent of the Commissioner pursuant to paragraph (d)(3)(iii)(C) of this section. In the case of a CSA in existence on August 26, 2003, the election by written amendment to the CSA may be made without the consent of the Commissioner if such amendment is entered into not later than the latest due date (with regard to extensions) of a federal income tax return of any controlled participant for the first taxable year beginning after August 26, 2003.

(C) *Consistency.* Generally, all controlled participants in a CSA taking options on publicly traded stock into account under paragraph (d)(3)(iii)(A) or (d)(3)(iii)(B) of this section must use that same method of measurement and timing for all options on publicly traded stock with respect to that CSA. Controlled participants may change their method only with the consent of the Commissioner and only with respect to stock options granted during taxable years subsequent to the taxable year in which the Commissioner's consent is obtained. All controlled participants in the CSA must join in requests for the Commissioner's consent under this paragraph. Thus, for example, if the controlled participants make the election described in paragraph (d)(3)(iii)(B) of this section upon the formation of the CSA, the election may be revoked only with the consent of the Commissioner, and the consent will apply only to stock options granted in taxable years subsequent to the taxable year in which consent is obtained. Similarly, if controlled participants already have granted stock options that have been or will be taken into account under the general rule of paragraph (d)(3)(iii)(A) of this section, then except in cases specified in the last sentence of paragraph (d)(3)(iii)(B)(*4*) of this section, the controlled participants may make the election described in paragraph (d)(3)(iii)(B) of this section only with the consent of the Commissioner, and the consent will apply only to stock options granted in taxable years subsequent to the taxable year in which consent is obtained.

(4) *IDC share.* A controlled participant's IDC share for a taxable year is equal to the controlled participant's cost contribution for the taxable year, divided by the sum of all IDCs for the taxable year. A controlled participant's cost contribution for a taxable year means all of the IDCs initially borne by the controlled participant, plus all of the cost sharing payments that the participant makes to other controlled participants, minus all of the cost sharing payments that the participant receives from other controlled participants.

(5) *Examples.* The following examples illustrate this paragraph (d):

Example 1. Foreign parent (FP) and its U.S. subsidiary (USS) enter into a CSA to develop a better mousetrap. USS and FP share the costs of FP's R&D facility that will be exclusively dedicated to this research, the salaries of the researchers, and reasonable overhead costs attributable to the project. They also share the cost of a conference facility that is at the disposal of the senior executive management of each company. Based on the facts and circumstances, the cost of the conference facility cannot be directly identified with, and is not reasonably allocable to, the IDA. In this case, the cost of the conference facility must be excluded from the amount of IDCs.

Example 2. U.S. parent (USP) and its foreign subsidiary (FS) enter into a CSA to develop intangibles for producing a new device. USP and FS share the costs of an R&D facility, the salaries of the facility's researchers, and reasonable overhead costs attributable to the project. Although USP also incurs costs related to field testing of the device, USP does not include those costs in the IDCs that USP and FS will share under the CSA. The Commissioner may determine, based on the facts and circumstances, that the costs of field testing are IDCs that the participants must share.

Example 3. U.S. parent (USP) and its foreign subsidiary (FS) enter into a CSA to develop a new process patent. USP employs researchers who perform R&D functions in connection both with the development of the new process patent and with the development of a new design patent the development of which is outside the scope of the CSA. During years covered by the CSA, USP compensates such employees with cash salaries, stock-based compensation, or a combination of both. USP and FS anticipate that the economic value attributable to such employees will be derived from the process patent and the design patent at a relative proportion of 75% and 25%, respectively. Applying the principles of paragraph (d)(2) of this section, 75% of the compensation of such employees must be allocated to the development of the new process patent and, thus, treated as IDCs. With respect to the cash salary compensation, the IDC is 75% of the face value of the cash. With respect to the stock-based compensation, the IDC is 75% of the value of the stock-based compensation as determined under paragraph (d)(3)(iii) of this section.

Example 4. Foreign parent (FP) and its U.S. subsidiary (USS) enter into a CSA to develop a new computer source code. FP's executive officers who oversee a research facility and employees dedicated solely to the IDA have additional responsibilities, including oversight of other research facilities and employees not in any way relevant to the development of the new computer source code. The full amount of the costs of the research facility and employees dedicated solely to the IDA can be directly identified with the IDA and, therefore, are IDCs. In addition, the participants determine that, of the economic value attributable to the executive officers, the new computer source code's share is 50%. Applying the principles of paragraph (d)(2) of this section, 50% of the compensation of such executives must be

allocated to the development of the new computer source code and, thus, treated as IDCs.

(e) *Reasonably anticipated benefits share (RAB share)*—(1) *In general.* A controlled participant's share of reasonably anticipated benefits (RAB share) is equal to its reasonably anticipated benefits divided by the sum of the reasonably anticipated benefits of all the controlled participants. See paragraph (j)(1)(v) of this section (defining reasonably anticipated benefits). RAB shares must be updated to account for changes in economic conditions, the business operations and practices of the participants, and the ongoing development of intangibles under the CSA. For purposes of determining RAB shares at any given time, reasonably anticipated benefits must be estimated over the entire period, past and future, of exploitation of the cost shared intangibles, and must reflect appropriate updates to take into account the most current reliable data regarding past and projected future results as is available at such time. A controlled participant's RAB share must be determined by using the most reliable estimate. In determining which of two or more available estimates is most reliable, the quality of the data and assumptions used in the analysis must be taken into account, consistent with § 1.482–1(c)(2)(ii) (Data and assumptions). Thus, the reliability of an estimate will depend largely on the completeness and accuracy of the data, the soundness of the assumptions, and the relative effects of particular deficiencies in data or assumptions on different estimates. If two estimates are equally reliable, no adjustment should be made based on differences in the results. The following factors will be particularly relevant in determining the reliability of an estimate of RAB shares—

(A) The basis used for measuring benefits, as described in paragraph (e)(2)(i) of this section; and

(B) The projections used to estimate benefits, as described in paragraph (e)(2)(iii) of this section.

(2) *Measure of benefits*—(i) *In general.* In order to estimate a controlled participant's RAB share, the amount of each controlled participant's reasonably anticipated benefits must be measured on a basis that is consistent for all such participants. See paragraph (e)(2)(ii)(E) *Example 8* of this section. If a controlled participant transfers a cost shared intangible to another controlled taxpayer, other than by way of a transfer described in paragraph (f) of this section, that participant's benefits from the transferred intangible must be measured by reference to the transferee's benefits, disregarding any consideration paid by the transferee to the controlled participant (such as a royalty pursuant to a license agreement). Reasonably anticipated benefits are measured either on a direct basis, by reference to estimated benefits to be generated by the use of cost shared intangibles, or on an indirect basis, by reference to certain measurements that reasonably can be assumed to be related to benefits to be generated. Such indirect bases of measurement of anticipated benefits are described in paragraph (e)(2)(ii) of this section. A controlled participant's reasonably anticipated benefits must be measured on the basis, whether direct or indirect, that most reliably determines RAB shares. In determining which of two bases of measurement is most reliable, the factors set forth in § 1.482–1(c)(2)(ii) (Data and assumptions) must be taken into account. It normally will be expected that the basis that provided the most reliable estimate for a particular year will continue to provide the most reliable estimate in subsequent years, absent a material change in the factors that affect the reliability of the estimate. Regardless of whether a direct or indirect basis of measurement is used, adjustments may be required to account for material differences in the activities that controlled participants undertake to exploit their interests in cost shared intangibles. See *Example 6* of paragraph (e)(2)(ii)(E) of this section.

(ii) *Indirect bases for measuring anticipated benefits.* Indirect bases for measuring anticipated benefits from participation in a CSA include the following:

(A) *Units used, produced, or sold.* Units of items used, produced, or sold by each controlled participant in the business activities in which cost shared intangibles are exploited may be used as an indirect basis for measuring its anticipated benefits. This basis of measurement will more reliably determine RAB shares to the extent that each controlled participant is expected to have a similar increase in net profit or decrease in net loss attributable to the cost shared intangibles per unit of the item or items used, produced, or sold. This circumstance is most likely to arise when the cost shared intangibles are exploited by the controlled participants in the use, production, or sale of substantially uniform items under similar economic conditions.

(B) *Sales.* Sales by each controlled participant in the business activities in which cost shared intangibles are exploited may be used as an indirect basis for measuring its anticipated benefits. This basis of measurement will more reliably determine RAB shares to the extent that each controlled participant is expected to have a similar increase in net profit or decrease in net loss attributable to cost shared intangibles per dollar of sales. This circumstance is most likely to arise if the costs of exploiting cost shared intangibles are not substantial relative to the revenues generated, or if the principal effect of using cost shared intangibles is to increase the controlled participants' revenues (for example, through a price premium on the products they sell) without affecting their costs substantially. Sales by each controlled participant are unlikely to provide a reliable basis for measuring RAB shares unless each controlled participant operates at the same market level (for example, manufacturing, distribution, etc.).

(C) *Operating profit.* Operating profit of each controlled participant from the activities in which cost shared intangibles are exploited, as determined before any expense (including amortization) on account of IDCS, may be used as an indirect basis for measuring anticipated benefits. This basis of measurement will more reliably determine RAB shares to the extent that such profit is largely attributable to the use of cost shared intangibles, or if the share of profits attributable to the use of cost shared intangibles is expected to be similar for each controlled participant. This circumstance is most likely to arise when cost shared intangibles are closely associated with the activity that generates the profit and the activity could not be carried on or would generate little profit without use of those intangibles.

(D) *Other bases for measuring anticipated benefits.* Other bases for measuring anticipated benefits may, in some circumstances, be appropriate, but only to the extent that there is expected to be a reasonably identifiable relationship between the basis of measurement used and additional income generated or costs saved by the use of cost shared intangibles. For example, a division of costs based on employee compensation would be considered unreliable unless there were a relationship between the amount of compensation and the expected income of the controlled participants from using the cost shared intangibles.

(E) *Examples.* The following examples illustrate this paragraph (e)(2)(ii):

Example 1. Foreign Parent (FP) and U.S. Subsidiary (USS) both produce a feedstock for the manufacture of various high-performance plastic products. Producing the feedstock requires large amounts of

electricity, which accounts for a significant portion of its production cost. FP and USS enter into a CSA to develop a new process that will reduce the amount of electricity required to produce a unit of the feedstock. FP and USS currently both incur an electricity cost of $2 per unit of feedstock produced and rates for each are expected to remain similar in the future. The new process, if it is successful, will reduce the amount of electricity required by each company to produce a unit of the feedstock by 50%. Therefore, the cost savings each company is expected to achieve after implementing the new process are $1 per unit of feedstock produced. Under the CSA, FP and USS divide the costs of developing the new process based on the units of the feedstock each is anticipated to produce in the future. In this case, units produced is the most reliable basis for measuring RAB shares and dividing the IDCs because each controlled participant is expected to have a similar $1 (50% of current charge of $2) decrease in costs per unit of the feedstock produced.

Example 2. The facts are the same as in *Example 1*, except that currently USS pays $3 per unit of feedstock produced for electricity while FP pays $6 per unit of feedstock produced. In this case, units produced is not the most reliable basis for measuring RAB shares and dividing the IDCs because the participants do not expect to have a similar decrease in costs per unit of the feedstock produced. The Commissioner determines that the most reliable measure of RAB shares may be based on units of the feedstock produced if FP's units are weighted relative to USS' units by a factor of 2. This reflects the fact that FP pays twice as much as USS as a percentage of its other production costs for electricity and, therefore, FP's savings of $3 per unit of the feedstock (50% reduction of current charge of $6) would be twice USS's savings of $1.50 per unit of feedstock (50% reduction of current charge of $3) from any new process eventually developed.

Example 3. The facts are the same as in *Example 2*, except that to supply the particular needs of the U.S. market USS manufactures the feedstock with somewhat different properties than FP's feedstock. This requires USS to employ a somewhat different production process than does FP. Because of this difference, it will be more costly for USS to adopt any new process that may be developed under the cost sharing agreement. In this case, units produced is not the most reliable basis for measuring RAB shares. In order to reliably determine RAB shares, the Commissioner offsets the reasonably anticipated costs of adopting the new process against the reasonably anticipated total savings in electricity costs.

Example 4. U.S. Parent (USP) and Foreign Subsidiary (FS) enter into a CSA to develop new anesthetic drugs. USP obtains the right to use any resulting patent in the U.S. market, and FS obtains the right to use the patent in the rest of the world. USP and FS divide costs on the basis of anticipated operating profit from each patent under development. USP anticipates that it will receive a much higher profit than FS per unit sold because drug prices are uncontrolled in the United States, whereas drug prices are regulated in many non-U.S. jurisdictions. In both controlled participants' territories, the operating profits are almost entirely attributable to the use of the cost shared intangible. In this case, the controlled participants' basis for measuring RAB shares is the most reliable.

Example 5. (i) Foreign Parent (FP) and U.S. Subsidiary (USS) both manufacture and sell fertilizers. They enter into a CSA to develop a new pellet form of a common agricultural fertilizer that is currently available only in powder form. Under the CSA, USS obtains the rights to produce and sell the new form of fertilizer for the U.S. market while FP obtains the rights to produce and sell the fertilizer for the rest of the world. The costs of developing the new form of fertilizer are divided on the basis of the anticipated sales of fertilizer in the controlled participants' respective markets.

(ii) If the research and development is successful, the pellet form will deliver the fertilizer more efficiently to crops and less fertilizer will be required to achieve the same effect on crop growth. The pellet form of fertilizer can be expected to sell at a price premium over the powder form of fertilizer based on the savings in the amount of fertilizer that needs to be used. This price premium will be a similar premium per dollar of sales in each territory. If the research and development is successful, the costs of producing pellet fertilizer are expected to be approximately the same as the costs of producing powder fertilizer and the same for both FP and USS. Both FP and USS operate at approximately the same market levels, selling their fertilizers largely to independent distributors.

(iii) In this case, the controlled participants' basis for measuring RAB shares is the most reliable.

Example 6. The facts are the same as in *Example 5*, except that FP distributes its fertilizers directly while USS sells to independent distributors. In this case, sales of USS and FP are not the most reliable basis for measuring RAB shares unless adjustments are made to account for the difference in market levels at which the sales occur.

Example 7. Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a CSA to develop materials that will be used to train all new entry-level employees. FP and USS determine that the new materials will save approximately ten hours of training time per employee. Because their entry-level employees are paid on differing wage scales, FP and USS decide that they should not measure benefits based on the number of entry-level employees hired by each. Rather, they measure benefits based on compensation paid to the entry-level employees hired by each. In this case, the basis used for measuring RAB shares is the most reliable because there is a direct relationship between compensation paid to new entry-level employees and costs saved by FP and USS from the use of the new training materials.

Example 8. U.S. Parent (USP), Foreign Subsidiary 1 (FS1) and Foreign Subsidiary 2 (FS2) enter into a CSA to develop computer software that each will market and install on customers' computer systems. The controlled participants measure benefits on the basis of projected sales by USP, FS1, and FS2 of the software in their respective geographic areas. However, FS1 plans not only to sell but also to license the software to unrelated customers, and FS1's licensing income (which is a percentage of the licensees' sales) is not counted in the projected benefits. In this case, the basis used for measuring the benefits of each controlled participant is not the most reliable because all of the benefits received by controlled participants are not taken into account. In order to reliably determine RAB shares, FS1's projected benefits from licensing must be included in the measurement on a basis that is the same as that used to measure its own and the other controlled participants' projected benefits from sales (for example, all controlled participants might measure their benefits on the basis of operating profit).

(iii) *Projections used to estimate benefits*—(A) *In general.* The reliability of an estimate of RAB shares also depends upon the reliability of projections used in making the estimate. Projections required for this purpose generally include a determination of the time period between the inception of the research and development activities under the CSA and the receipt of benefits, a projection of the time over which benefits will be received, and a projection of the benefits anticipated for each year in which it is anticipated that the cost shared intangible will generate benefits. A projection of the relevant basis for measuring anticipated benefits may require a projection of the factors that underlie it. For example, a projection of operating profits may require a projection of sales, cost of sales, operating expenses, and other factors that affect operating profits. If it is anticipated that there will be significant variation among controlled participants in the timing of their receipt of benefits, and consequently benefit shares are expected to vary significantly over the years in which benefits will be received, it normally will be necessary to use the present discounted value of the projected benefits to reliably determine RAB shares. See paragraph (g)(2)(vi) of this section for guidance on discount rates used for this purpose. If it is not anticipated that benefit shares will significantly change over time, current annual benefit shares may provide a reliable projection of RAB shares. This circumstance is most likely to occur when the CSA is a long-term arrangement, the arrangement covers a wide variety of intangibles, the composition of the cost shared intangibles is unlikely to change, the cost shared intangibles are unlikely to

generate unusual profits, and each controlled participant's share of the market is stable.

(B) *Examples.* The following examples illustrate the principles of this paragraph (e)(2)(iii):

Example 1. (i) Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a CSA to develop a new car model. The controlled participants plan to spend four years developing the new model and four years producing and selling the new model. USS and FP project total sales of $4 billion and $2 billion, respectively, over the planned four years of exploitation of the new model. Cost shares are divided for each year based on projected total sales. Therefore, USS bears 66⅔% of each year's IDCs and FP bears 33⅓% of such costs.

(ii) USS typically begins producing and selling new car models a year after FP begins producing and selling new car models. In order to reflect USS' one-year lag in introducing new car models, a more reliable projection of each participant's RAB share would be based on a projection of all four years of sales for each participant, discounted to present value.

Example 2. U.S. Parent (USP) and Foreign Subsidiary (FS) enter into a CSA to develop new and improved household cleaning products. Both controlled participants have sold household cleaning products for many years and have stable market shares. The products under development are unlikely to produce unusual profits for either controlled participant. The controlled participants divide costs on the basis of each controlled participant's current sales of household cleaning products. In this case, the controlled participants' RAB shares are reliably projected by current sales of cleaning products.

Example 3. The facts are the same as in *Example 2*, except that FS's market share is rapidly expanding because of the business failure of a competitor in its geographic area. The controlled participants' RAB shares are not reliably projected by current sales of cleaning products. FS's benefit projections should take into account its growth in sales.

Example 4. Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a CSA to develop synthetic fertilizers and insecticides. FP and USS share costs on the basis of each controlled participant's current sales of fertilizers and insecticides. The market shares of the controlled participants have been stable for fertilizers, but FP's market share for insecticides has been expanding. The controlled participants' projections of RAB shares are reliable with regard to fertilizers, but not reliable with regard to insecticides; a more reliable projection of RAB shares would take into account the expanding market share for insecticides.

(f) *Changes in participation under a CSA*—In the case of any change in participation under a CSA as the result of a controlled transfer of all or part of a controlled participant's territorial rights under the CSA, as described in paragraph (b)(4) of this section, along with the assumption by the transferee of the associated obligations under the CSA, the transferee will be treated as succeeding to the transferor's prior history under the CSA, including the transferor's cost contributions, benefits derived, and PCT Payments attributable to such rights or obligations. The transferor must receive an arm's length amount of consideration from the transferee under the rules of §§ 1.482–1 and 1.482–4 through 1.482–6, as described in paragraph (a)(3)(ii) of this section. For purposes of this section, such a change in participation under a CSA includes, for example, any transaction in which—

(1) A controlled participant transfers all or part of its territorial rights to another controlled participant that assumes the associated obligations under a CSA;

(2) A new controlled participant enters an ongoing CSA and acquires any territorial rights and assumes associated obligations under the CSA; or

(3) A controlled participant withdraws from an ongoing CSA, or otherwise abandons or relinquishes territorial rights and associated obligations under the CSA.

(g) *Supplemental guidance on methods applicable to PCTs*—(1) *In general.* This subsection provides supplemental guidance on applying the methods listed below for purposes of evaluating the arm's length amount charged in a PCT. Each method must be applied in accordance with the provisions of § 1.482–1, including best method rule of § 1.482–1(c), the comparability analysis of § 1.482–1(d), and the arm's length range of § 1.482–1(e), except as those provisions are modified in this subsection. The methods are—

(i) The comparable uncontrolled transaction method described in § 1.482–4(c), or the arm's length charge described in § 1.482–2(b)(3)(first sentence) based on a comparable uncontrolled transaction, further described in paragraph (g)(3) of this section;

(ii) The income method, described in paragraph (g)(4) of this section;

(iii) The acquisition price method, described in paragraph (g)(5) of this section;

(iv) The market capitalization method, described in paragraph (g)(6) of this section;

(v) The residual profit split method, described in paragraph (g)(7) of this section; and

(vi) Unspecified methods, described in paragraph (g)(8) of this section.

(2) *General principles*—(i) *In general.* The principles set forth in this paragraph (g)(2) apply, as appropriate, to the use of any of the methods set forth in this section to determine the arm's length charge for a PCT.

(ii) *Valuations consistent with upfront contractual terms and risk allocations.* The application of any method as of any time must be consistent with the applicable contractual terms and allocation of risk under the CSA and this section among the controlled participants as of the date of the PCT, unless there has been a change in such terms or allocation made in return for arm's length consideration.

(iii) *Projections.* The reliability of an estimate of the value of an external contribution in connection with a PCT will often depend upon the reliability of projections used in making the estimate. Projections necessary for this purpose may include a projection of sales, IDCs, routine operating expenses, and costs of sales. For these purposes, projections that have been prepared for non-tax purposes are generally more reliable than projections that have been prepared solely for purposes of meeting the requirements in this paragraph (g).

(iv) *Realistic alternatives*—(A) *In general.* Regardless of the method or methods used, evaluation of the arm's length charge for the PCT in question should take into account the general principle that uncontrolled taxpayers dealing at arm's length would have evaluated the terms of a transaction, and only entered into a particular transaction, if no alternative is preferable. This condition is not met, for example, where for any controlled participant the total anticipated present value from entering into the CSA to that controlled participant, as of the date of the PCT, is less than the total anticipated present value that could be achieved through an alternative arrangement realistically available to that controlled participant. When applying the realistic alternatives principle, the reliability of the respective net present value calculations may need to be considered.

(B) *Examples.* The following examples illustrate the principles of this paragraph (g)(2)(iv):

Example 1. (i) P, a corporation, and S, a wholly-owned subsidiary of P, enter into a CSA to develop a gyroscopic personal transportation device (the product). Under the arrangement, P will undertake all of the R&D, and manufacture and market the product in Country X. S will make CST payments to P for its appropriate share of P's R&D costs, and manufacture and market the product in the rest of the world. P owns existing patents and trade secrets associated with gyroscopic applications. These patents and trade secrets are reasonably anticipated to contribute to the development of the

product and are therefore the RT Rights in the patents and trade secrets are external contributions for which compensation is due from S as part of a PCT.

(ii) S's manufacturing and distribution activities under the CSA will be routine in nature, and identical to the activities it would undertake if it alternatively licensed the product from P.

(iii) Reasonably reliable estimates indicate that P could self-develop and license the product outside of the Country X for a royalty of 20% of sales. Based on reliable financial projections that include all future development costs and licensing revenue, the net present value of this licensing alternative to P for the non-Country X market (measured as of the date of the PCT) would be $500 million of operating income. Thus, based on this realistic alternative, the anticipated net present value under the CSA to P in the non-Country X market (measured as of the date of the PCT), including R&D reimbursement and PCT Payments from S, should not be less than $500 million.

Example 2. (i) The facts are the same as *Example 1,* except that there are no reliable estimates of the value to P from the licensing alternative to the CSA. However, reasonably reliable estimates indicate that S can earn a 10% mark-up on total accounting costs related to its routine manufacturing and distribution activities.

(ii) P undertakes an economic analysis that derives S's cost contributions under the CSA, based on reliable financial projections. Based on this and further economic analysis, P determines S's PCT Payment as a certain lump sum amount to be paid as of the date of the PCT.

(iii) Based on reliable financial projections that include S's cost contributions and that incorporate S's PCT Payment, and using a discount rate of D%, appropriate for the riskiness of the CSA (see paragraph (g)(2)(vi) of this section), the anticipated net present value to S under the CSA (measured at the time of the PCT) is $800 million. Of this amount, $100 million is the portion associated with the 10% markup on S's total accounting costs from its manufacturing and distribution activities, utilizing its existing investment in plant and equipment.

(iv) In evaluating the PCT under the CSA, the Commissioner concludes that the respective activities undertaken by P and S would be identical regardless of whether the arrangement was undertaken as a CSA or as a licensing arrangement. That is, under either alternative, P would undertake all research activities and S would undertake routine manufacturing and distribution activities associated with its territory. Consequently, in every year the total anticipated combined nominal profits of P and S would be identical regardless of whether the arrangement was undertaken as a CSA or as a licensing arrangement. In addition, the Commissioner considers the fact that S's economic role in the CSA (beyond its routine activities) is merely that of an investor. A similarly situated investor would be willing to invest an amount in a similar R&D project such that it earns an anticipated return on that investment of D% and therefore has a net present value of $0 on the project (not taking into account any returns to routine activities). If S were to realize a D% return on its lump sum PCT Payment, then the anticipated net present value to S of the CSA would be $100 million, equal to the $100 million anticipated net present value related to S's manufacturing and distribution activities, utilizing its existing investment in plant and equipment, plus the $0 anticipated net present value from the investment in the form of the lump sum PCT Payment in the IDA of the CSA at a D% discount rate.

(v) The lump sum PCT Payment computed by P results in S having significantly higher anticipated discounted profitability, and therefore, in this case, higher anticipated nominal profitability, than it could achieve under the licensing alternative. By implication, P must correspondingly earn lower nominal profits under the CSA than it would under the licensing alternative (that is, S's enhanced profitability under the CSA is matched dollar-for-dollar by P's reduced profitability under the CSA). Consequently, the Commissioner concludes that P is earning a lower anticipated return through the CSA than it could achieve under its realistic alternative to the CSA, and that consequently S's lump sum PCT Payment under-compensates P for its external contribution.

Example 3. (i) The facts are the same as *Example 2* except as follows. Based on reliable financial projections that include S's cost contributions and S's PCT Payment, discounted at a rate of D% to reflect the riskiness of the CSA, the anticipated net present value to S under the CSA (measured as of the date of the PCT) is $50 million. Instead of entering the CSA, S has the realistic alternative of investing in an R&D project with similar risk, at an anticipated return of D%, and manufacturing and distributing products unrelated to the gyroscopic personal transportation device to the same extent as its manufacturing and distribution under the CSA, with the same anticipated 10% mark-up on total costs.

(ii) Under its realistic alternative, at a discount rate of D%, S anticipates a present value of $100 million from the routine manufacturing and distribution and $0 from the R&D investment, for a total of $100 million.

(iii) Because the lump sum PCT Payment made by S results in S having a considerably lower anticipated net present value than S could achieve through an alternative arrangement realistically available to it, the Commissioner may conclude that the lump sum PCT Payment overcompensates P for its external contribution.

(v) *Aggregation of transactions.* In some cases, controlled participants are required to determine arm's length payments for multiple PCTs covering various external contributions or, in addition to one or more PCTs, for transactions covering resources or capabilities that are not governed by this section, such as the transfer of make-or-sell rights as described in paragraph (c) of this section. Following the principles of aggregation described in § 1.482–1(f)(2)(i), a best method analysis under § 1.482–1(c) may determine that the method that provides the most reliable measure of an arm's length charge for the multiple PCTs and other transactions not governed by this section, if any, is a method that determines the arm's length charge for the multiple transactions on an aggregate basis under this section. A section 482 adjustment may be made by comparing the aggregate arm's length charge so determined to the aggregate payments actually made for the multiple transactions. In such a case, it generally will not be necessary to allocate separately the aggregate arm's length charge as between various PCTs or as between PCTs and transactions governed by other regulations under section 482. However, such an allocation may be necessary for other purposes, such as applying paragraph (i)(6) (Periodic adjustments) of this section. An aggregate determination of the arm's length charge for multiple transactions will generally yield a payment for a controlled participant that is equal to the aggregate value of the external contributions and other resources and capabilities covered by the multiple transactions multiplied by that controlled participant's RAB share. Because RAB shares only include benefits from cost shared intangibles, the reliability of an aggregate determination of payments for multiple transactions may be reduced to the extent that it includes transactions not governed by this section covering resources and capabilities for which the controlled participants' expected benefit shares differ substantially from their RAB shares.

(vi) *Discount rate*—(A) *In general.* Some calculations set forth in this paragraph (g) and elsewhere in this section require determining a rate of return which is used to convert a future or past monetary sum associated with a particular set of activities or transactions into a present value. For this purpose, a discount rate should be used that most reliably reflects the risk of the activities and the transactions based on all the information potentially available at the time for which the present value calculation is to be performed. Depending on the particular facts and circumstances, the risk involved and thus, the discount rate, may differ among a company's various activities or transactions. Normally, discount rates are most reliably determined by reference to market information. For example, the weighted average cost of capital (WACC) of the relevant activities and transactions derived using the capital asset pricing

model might provide the most reliable discount rate. In such cases, this WACC might most reliably be based on information from uncontrolled companies whose business activities as a whole constitute comparable uncontrolled transactions. Where a company is publicly traded and its CSA involves substantially the same risk as projects undertaken by the company as a whole, then the WACC of the relevant activities and transactions might most reliably be based on the company's own WACC. Depending on comparability and reliability considerations, including the extent to which the company's hurdle rate reflects market information and is used in a similar manner in the controlled and uncontrolled transactions, in some circumstances discount rates might be most reliably determined by reference to other data such as a company's internal hurdle rate for projects of comparable risk.

(B) *Examples.* The following examples illustrate the principles of this paragraph (g)(2)(vi):

Example 1. USPharm, a publicly traded U.S. pharmaceutical company, enters into a CSA with FPharm, its wholly-owned foreign subsidiary. Under the agreement both controlled participants agree to share the research costs of developing a specific drug compound called T. USPharm is also engaged in another development project for compounds U and V, which involves different risks than the T development project and which is not part of the CSA. However, there are a large number of uncontrolled publicly traded U.S. companies, for which information can be reliably derived, that are highly comparable to USPharm but that conduct research only on compounds similar to T involving risks similar to those of the T development project. At the commencement of the CSA (Year 1), USPharm and FPharm enter into a PCT with respect to external contributions owned by USPharm in the form of the RT Rights in its pre-existing drug research. As part of the method that USPharm determines will most reliably calculate PCT Payments, a discount rate is needed to convert future monetary sums into a present value. After analysis, USPharm concludes that the discount rate is most reliably determined by calculating a WACC based on the information relating to the comparable uncontrolled companies, with suitable adjustments for factors such as differences in capital structure between USPharm and the comparables, and for the stability and other statistical properties of the beta measurement of the comparables.

Example 2. The facts are the same as in *Example 1* except that the T development project is the only business activity of USPharm and FPharm and no reliable data exists on uncontrolled companies undertaking similar activities and risk as those associated with the CSA. After analysis, USPharm concludes that the discount rate is most reliably determined by reference to its own WACC. USPharm funds its operations with debt and common stock. Debt comprises 40% of its financing and USPharm's cost of debt is 6%. Equity comprises the remaining 60% of financing. USPharm is publicly traded and its equity beta is 1.25. Using third party information, USPharm concluded that the appropriate risk-free rate and equity risk premium are X% and Y%, respectively, implying a return on USPharm's equity of Z% [X% + (1.25 × Y%)]. The weighted average cost of capital is calculated by blending and weighting the after-tax cost of debt and the cost of equity according to percentage of total financing. USPharm's weighted average cost of capital is W% [(6% × 0.4) + (Z% × 0.6)].

Example 3. Use of a documented discount rate. The facts are the same as *Example 1* except that no data exists on uncontrolled companies undertaking similar activities and risks as those associated with the CSA. USPharm has documented a hurdle rate of 12% that it uses as the minimum anticipated return for its business investments having a comparable risk profile. The Commissioner examines USPharm's documentation and concludes that the hurdle rate provides a reliable discount rate in this case.

(vii) *Accounting principles*—(A) *In general.* Allocations or other valuations done for accounting purposes may provide a useful starting point but will not be conclusive for purposes of assessing or applying methods to evaluate the arm's length charge in a PCT, particularly where the accounting treatment of an asset is inconsistent with its economic value.

(B) *Examples.* The following examples illustrate the principles of this paragraph (g)(2)(vii):

Example 1. (i) USP, a U.S. corporation and FSub, a wholly-owned foreign subsidiary of USP, enter into a CSA in Year 1 to develop software programs with application in the medical field. Company X is an uncontrolled software company located in the United States that is engaged in developing software programs that could significantly enhance the programs being developed by USP and FSub. Company X is still in a startup phase, so it has no currently exploitable products or marketing intangibles and its workforce consists of a team of software developers. Company X has negligible liabilities and tangible property. In Year 2, USP purchases Company X as part of an uncontrolled transaction in order to acquire its in-process technology and workforce for purposes of the development activities of the CSA. USP files a consolidated return that includes Company X. For accounting purposes, $50 million of the $100 million acquisition price is allocated to the in-process technology and workforce, and the residual $50 million is allocated to goodwill.

(ii) The in-process technology and workforce of Company X acquired by USP are reasonably anticipated to contribute to developing cost shared intangibles and therefore the RT Rights in the in-process technology and workforce of Company X external contributions for which FSub must compensate USP as part of a PCT. In determining whether to apply the acquisition price or another method for purposes of evaluating the arm's length charge in the PCT, relevant comparability and reliability considerations must be weighed in light of the general principles of paragraph (g)(2) of this section. The allocation for accounting purposes raises an issue as to the reliability of using the acquisition price method in this case because it indicates that a significant portion of the value of Company X's assets is allocable to goodwill, which is often difficult to value reliably and which, depending on the facts and circumstances, might not be attributable to external contributions that are to be compensated by PCTs. See paragraph (g)(5)(iv(A) of this section.

(iii) Paragraph (g)(2)(vii) of this section provides that accounting treatment may be a starting point, but is not determinative for purposes of assessing or applying methods to evaluate the arm's length charge in a PCT. The facts here reveal that Company X has nothing of economic value aside from its in-process technology and assembled workforce. The $50 million of the acquisition price allocated to goodwill for accounting purposes, therefore, is economically attributable to either or both the in-process technology and the workforce. That moots the potential issue under the acquisition price method of the reliability of valuation of assets not to be compensated by PCTs, since there are no such assets. Assuming the acquisition price method is otherwise the most reliable method, the aggregate value of Company X's in-process technology and workforce is the full acquisition price of $100 million. Accordingly, the aggregate value of the arm's length PCT Payments due from FSub to USP for the external contributions consisting of the RT Rights in Company X's in-process technology and workforce will equal $100 million multiplied by FSub's RAB share.

Example 2. (i) The facts are the same as in *Example 1*, except that Company X is a mature software business in the United States with a successful current generation of software that it markets under a recognized trademark, in addition to having the research team and new generation software in process that could significantly enhance the programs being developed under USP's and FSub's CSA. USP continues Company X's existing business and integrates the research team and the in-process technology into the efforts under its CSA with FSub. For accounting purposes, the $100 million acquisition price for acquiring Company X is allocated $50 million to existing software and trademark, $25 million to in-process technology and research workforce, and the residual $25 million to goodwill and going concern value.

(ii) In this case an analysis of the facts indicates a likelihood, consistent with the allocation under the accounting treatment (although not necessarily in the same amount), of goodwill and going concern value economically attributable to the existing U.S. software business rather than to the external contributions consisting of the

RT Rights in the in-process technology and research workforce. Accordingly, further consideration must be given to the extent to which these circumstances reduce the relative reliability of the acquisition price method in comparison to other potentially applicable methods for evaluating the PCT Payment.

Example 3. (i) USP, a U.S. corporation and FSub, a wholly-owned foreign subsidiary of USP, enter into a CSA in Year 1 to develop Product A. Company Y is an uncontrolled corporation that owns Technology X that is critical to the development of Product A. Company Y currently markets Product B, which is dependent on Technology X. USP is solely interested in acquiring Technology X, but is only able to do so through the acquisition of Company Y in its entirety for $200 million in an uncontrolled transaction in Year 2. For accounting purposes, the acquisition price is allocated as follows: $120 million to Product B and the underlying Technology X, $30 million to trademark and other marketing intangibles, and the residual $50 million to goodwill and going concern. After the acquisition of Company Y, Technology X is used to develop Product A. No other part of Company Y is utilized in any manner. Product B is discontinued and accordingly, the accompanying marketing intangibles become worthless. None of the previous employees of Company Y are retained.

(ii) The Technology X of Company Y acquired by USP is reasonably anticipated to contribute to developing cost shared intangibles and is therefore an external contribution for which FSub must compensate USP as part of a PCT. Although for accounting purposes a significant portion of the acquisition price of Company Y was allocated to items other than Technology X, the facts demonstrate that USP had no intention of using and therefore placed no economic value on any part of Company Y other than Technology X. If USP was willing to pay $200 million for Company Y solely for purposes of acquiring Technology X, then assuming the acquisition price method is otherwise the most reliable method, the value of Technology X is the full $200 million acquisition price. Accordingly, the value of the arm's length PCT Payment due from FSub to USP for the external contribution consisting of the RT Rights in Technology X will equal $200 million multiplied by FSub's RAB share.

(viii) *Valuation consistent with the investor model*—(A) *In general.* The valuation of the amount charged in a PCT must be consistent with the assumption that, as of the date of the PCT, each controlled participant's aggregate net investment in developing cost shared intangibles pursuant to the CSA, attributable to both external contributions and cost contributions, is reasonably anticipated to earn a rate of return equal to the appropriate discount rate, determined following the principles set forth in paragraph (g)(2)(vi) of this section, over the entire period of developing and exploiting the cost shared intangibles. If the cost shared intangibles themselves are reasonably anticipated to contribute to developing other intangibles, then the period in the preceding sentence includes the period of developing and exploiting such indirectly benefited intangibles.

(B) *Example.* The following example illustrates the principles of this paragraph (g)(2)(viii):

Example. (i) P, a U.S. corporation, has developed a software program, DEF, which applies certain algorithms to reconstruct complete DNA sequences from partially-observed DNA sequences. S is a wholly-owned foreign subsidiary of P. P and S enter into a CSA to develop a new generation of genetic tests, GHI, based in part on the use of DEF which is therefore an external contribution of P for which compensation is due from S pursuant to a PCT. S makes no external contributions to the CSA. GHI sales are projected to commence two years after the inception of the CSA, which is on the first day of Year 1, and then to continue for eight more years. P and S project that GHI will be replaced by a new generation of genetic testing based on technology unrelated to DEF or GHI at the end of Year 10.

(ii) For purposes of valuing the PCT for P's external contribution of DEF to the CSA, P and S apply a type of residual profit split method that is not described in paragraph (g)(7) of this section and which, accordingly, constitutes an unspecified method. See paragraph (g)(7)(i) (last sentence) of this section. The principles of this paragraph (g)(2) apply to any method for valuing a PCT, including the unspecified method used by P and S.

(iii) Under the method employed by P and S, in each Year, a portion of the income from sales of GHI in S's territory is allocated to certain routine contributions made by S. The residual of the profit or loss from GHI sales in S's territory after the routine allocation step is divided between the controlled participants pro rata to their capital stocks allocable to S's territory. Each controlled participant's capital stock is computed by growing and amortizing (in the case of P) its historical expenditures regarding DEF allocable to S's territory and (in the case of S) its ongoing cost contributions towards developing GHI. The amortization of the capital stocks is effected on a straight-line basis over an assumed four-year life for the relevant expenditures. The capital stocks are grown using an assumed growth factor which P and S consider to be appropriate. Thus, the residual profit or loss from sales of GHI in S's territory is divided between P and S pro rata to P's capital stock in DEF attributable to S's territory and to S's capital stock from its cost contributions.

(iv) The assumption that all expenditures amortize on a straight-line basis over four years does not appropriately reflect the principle that as of the date of the PCT regarding DEF, every contribution to the development of GHI, including DEF is reasonably anticipated to have value throughout the entire period of exploitation of GHI as projected to continue through Year 10. Under this method as applied by P and S, P's capital stock in DEF, and therefore the amount of profit in S's territory allocated to P as a PCT Payment from S, will decrease every year. After Year 4, P's capital stock in DEF will necessarily be $0. Thus, under this method, P will receive none of the residual profit or loss from GHI sales in S's territory after Year 4 as a PCT Payment. As a result of this limitation of the PCT Payments to be made by S, the return to S's aggregate investment in the CSA is anticipated to be significantly higher than the appropriate discount rate for the CSA. This is not consistent with the investor model principle that S should anticipate a return to its aggregate investment in the CSA equal to the appropriate discount rate over the entire period of developing and exploiting GHI. The inconsistency of the method with the investor model materially lessens its reliability for purposes of a best method analysis. See § 1.482–1(c)(2)(ii)(B).

(ix) *Coordination of best method rule and form of payment.* A method described in paragraph (g)(1) of this section evaluates the arm's length amount charged in a PCT in terms of a form of payment (method payment form). For example, the method payment form for the income method described in paragraph (g)(4)(iii) or (iv) of this section is payment contingent on the exploitation of cost shared intangibles by the PCT Payor, and the method payment form for the market capitalization method is lump sum payment. The method payment form may not necessarily correspond to the form of payment specified pursuant to paragraphs (b)(3)(vi)(A) and (k)(2)(ii)(l) of this section (specified payment form). The determination under § 1.482–1(c) of the method that provides the most reliable measure of an arm's length result is to be made without regard to whether the respective method payment forms under the competing methods correspond to the specified payment form. If the method payment form of the method determined under § 1.482–1(c) to provide the most reliable measure of an arm's length result differs from the specified payment form, then the conversion from such method payment form to such specified payment form will be made on a reasonable basis to the satisfaction of the Commissioner. For purposes of the preceding sentence, if the method described in the documentation by the controlled participants pursuant to paragraph (k)(2)(ii)(J) of this section is determined under § 1.482–1(c) to provide the most reliable measure of an arm's length result, then the Commissioner will give due consideration whether the conversion from the method payment form to the specified payment form was made by the controlled participants on a reasonable basis.

(x) *Coordination of the valuations of prior and subsequent PCTs*—(A) *In general*. In cases where PCTs are required on different dates, coordination of the valuations of the prior and subsequent PCTs must be effected pursuant to a method that provides the most reliable measure of an arm's length result. Depending on the facts and circumstances, such as whether the external contributions that were the subject of the prior and subsequent PCTs were nonroutine contributions, an approach which may be appropriate would be to determine PCT Payments both for the prior and subsequent PCTs going forward from the date of the subsequent PCT pursuant to a residual profit split method, as described in paragraph (g)(7) of this section. Such application of the residual profit split method would include as nonroutine contributions all of the following: The external contribution(s) that were the subject of the prior PCT(s), the external contribution that is the subject of the subsequent PCT, and the interests of the controlled participants in the incremental cost shared intangible development resulting from the development activities under the CSA. Paragraph (g)(2)(x)(B) of this section specifies the appropriate coordination with a prior PCT in the case of a subsequent PCT the subject of which is a PFA.

(B) *Coordination with regard to PFAs*. PCT Payments for a subsequent PCT that is derived from a PFA are determined independently of any prior PCTs. Such PCT Payments will be treated, for purposes of the application of the method used for evaluating a prior PCT, the same as IDCs, the actual amounts of which may not correspond to those projected on the date of the prior PCT. A divergence between actual and anticipated IDCs does not require alteration in the application of the method used to value PCT Payments. Similarly, a subsequent PCT derived from a PFA will not require alteration in the application of the method used to value PCT Payments for a prior PCT.

(xi) *Proration of PCT Payments to the extent allocable to other business activities*. If a resource or capability that is the subject of a PCT is reasonably anticipated to contribute both to developing or exploiting cost shared intangibles and to other business activities of the PCT Payee (other than exploiting an existing intangible without further development), then to the extent it can be demonstrated that a portion of the value of the relevant PCT Payments otherwise determined under this section is attributable to such other business activities, the PCT Payments must be prorated. Such proration will be done on a reasonable basis in proportion to the relative economic value, as of the date of the PCT, reasonably anticipated to be derived from the resource or capability by the CSA Activity as compared to such other business activities of the PCT Payee. In the case of an aggregate valuation done under the principles of paragraph (g)(2)(v) of this section that includes payment for rights to exploit an existing intangible without further development, the prorated aggregate payments must take into account the economic value attributable to such exploitation rights as well. For purposes of the best method rule under § 1.482–1(c), the reliability of the analysis under a method that requires proration pursuant to this paragraph is reduced relative to the reliability of an analysis under a method that does not require proration.

(3) *Comparable uncontrolled transaction method*. The comparable uncontrolled transaction (CUT) method described in § 1.482–4(c), and the arm's length charge described in § 1.482–2(b)(3) (first sentence) based on a comparable uncontrolled transaction, may be applied to evaluate whether the amount charged in a PCT is arm's length by reference to the amount charged in a comparable uncontrolled transaction. When applied in the manner described in § 1.482–4(c), or where a comparable uncontrolled transaction provides the most reliable measure of the arm's length charge described in § 1.482–2(b)(3) (first sentence), the CUT method, or the arm's length charge in the comparable uncontrolled transaction, will typically yield an arm's length total value for the external contribution that is the subject of the PCT. That value must then be multiplied by each PCT Payor's respective RAB share in order to determine the arm's length PCT Payment due from each PCT Payor. The reliability of a CUT that yields a value for the external contribution only in the PCT Payor's territory will be reduced to the extent that value is not consistent with the total worldwide value of the external contribution multiplied by the PCT Payor's RAB share.

(4) *Income method*—(i) *In general*. The income method evaluates whether the amount charged in a PCT is arm's length by reference to the controlled participants' realistic alternatives to entering into a CSA.

(ii) *Determination of arm's length charge*—(A) *In general*. Under this method, the arm's length charge for a PCT Payment will be an amount such that a controlled participant's present value, as of the date of the PCT, of entering into a CSA equals the present value of its best realistic alternative. Paragraphs (g)(4)(iii) and (iv) of this section describe two specific applications of the income method, but do not exclude other possible applications of this method.

(B) *Example*. The following example illustrates the principles of this paragraph (g)(4)(ii):

Example. (i) USP, a U.S. manufacturer, has developed a new, lightweight fabric for sleeping bags. In Year 1 USP enters into a CSA with its wholly-owned foreign subsidiary, FSub, to develop an improved version of this fabric. Under the CSA, USP will own the rights to exploit improved versions of the fabric in the United States and FSub will own the rights to exploit improvements in the rest of the world (ROW). The rights to further develop the fabric are reasonably anticipated to contribute to the development of future improved versions and therefore the RT Rights in the fabric are external contributions for which compensation is due pursuant to a PCT. USP does not transfer the right to exploit its current fabric to FSub. FSub does not furnish any external contributions. If USP did not participate in the CSA, its next best realistic alternative would be to develop future versions of the fabric on its own, exploit those versions in the United States and license such versions for exploitation outside the United States to FSub. In Year 1, USP estimates that its present value of this alternative (including arm's length royalties on sales in the ROW) is $100 million. Under the CSA, USP projects U.S. sleeping bag sales with improved versions of the fabric to amount to $80 million (present value in Year 1). The costs (other than IDCs) plus the routine return to such costs associated with the U.S. sales are anticipated to be $10 million. USP's anticipated cost contributions under the CSA are $10 million (present value in Year 1). FSub projects that in the ROW, future sales should amount to $100 million (present value in Year 1).

(ii) An arm's length contingent PCT Payment under the income method is a sales-based royalty at a rate, p, such that the present value to USP of the next best realistic alternative is equal to the present value to USP of participating in the CSA. In other words, the rate is such that $100 million (value of licensing alternative) = $80 million (anticipated U.S. sales) − $10 million (anticipated costs, other than IDCs, plus routine return) − $10 million (anticipated cost contribution) + (p * $100 million (anticipated ROW sales)), or 40%. Accordingly, FSub should pay USP a royalty of 40% of actual ROW sales annually when the two begin to exploit future generations of the fabric.

(iii) *Application of income method using a CUT*—(A) *In general*. This application of the income method is typically used in cases where only one controlled participant furnishes nonroutine contributions, as described in paragraph (g)(7)(iii)(C)(*1*) of this section. This application assumes that

the best reasonable alternative of the PCT Payee to entering into the CSA would be to develop the cost shared intangibles on its own, bearing all the IDCs itself, and then to license the cost shared intangibles to the other controlled participants.

(B) *Determination of arm's length charge*—(*1*) *In general.* An arm's length PCT Payment under this application of the income method is represented as an applicable rate on sales from exploiting the cost shared intangibles, determined as of the date of the PCT.

(*2*) *Applicable rate.* The applicable rate is equal to the alternative rate less the cost contribution adjustment.

(*3*) *Alternative rate.* The alternative rate is the constant rate the PCT Payee would charge an uncontrolled licensee over the period the cost shared intangibles are anticipated to be exploited if the PCT Payee had developed the cost shared intangibles on its own and licensed them to the uncontrolled licensee. The alternative rate is determined using the comparable uncontrolled transaction method, as described in § 1.482–4(c)(1) and (2).

(*4*) *Cost contribution adjustment.* The cost contribution adjustment is equal to a fraction, the numerator of which is the present value of the PCT Payor's total anticipated cost contributions and the denominator of which is the present value of the PCT Payor's total anticipated sales from exploiting the cost shared intangibles.

(C) *Example.* The following example illustrates the principles of this paragraph (g)(4)(iii):

Example. (i) USP, a software company, has developed version 1.0 of a new software application which it is currently marketing. In Year 1 USP enters into a CSA with its wholly-owned foreign subsidiary, FS, to develop future versions of the software application. Under the CSA, USP will have the rights to exploit the future versions in the United States, and FS will have the rights to exploit them in the rest of the world (ROW). The future rights in version 1.0, and USP's development team, are reasonably anticipated to contribute to the development of future versions and therefore the RT Rights in version 1.0 are external contributions for which compensation is due from FS as part of a PCT. USP does not transfer the current exploitation rights in version 1.0 to FS. FS does not furnish any external contributions. FS anticipates sales of $100 million (present value in Year 1) in its territory and anticipates cost contributions of $40 million (present value in Year 1). The arm's length rate USP would have charged an uncontrolled licensee for a license of future versions of the software had USP further developed version 1.0 on its own is 60%, as determined under the comparable uncontrolled transaction method in § 1.482–4(c).

(ii) An arm's length contingent PCT Payment under the income method is an applicable rate equal to the alternative rate less the cost contribution adjustment. In this case the alternative rate is 60%, the arm's length rate determined under § 1.482–4(c). The cost contribution adjustment is 40%, the present value to FS of its anticipated cost contribution over the present value of its anticipated sales of future versions of the software, that is, $40 million / $100 million. The applicable rate, which represents an arm's length contingent PCT Payment, payable by the FS to USP on all actual ROW sales of the future versions of the software therefore is 20%, which is equal to the alternative rate of 60% less the cost contribution adjustment of 40%.

(iv) *Application of income method using CPM*—(A) *In general.* This application of the income method is typically used in cases where only one controlled participant furnishes nonroutine contributions. Under this application, the present value of the anticipated PCT Payments is equal to the present value, as of the date of the PCT, of the PCT Payor's anticipated profit from developing and exploiting cost shared intangibles. This PCT Payment ensures that PCT Payors who do not furnish any external contributions subject to a PCT receive an appropriate ex ante risk adjusted return on their investment in the CSA.

(B) *Determination of arm's length charge based on sales*—(*1*) *In general.* An arm's length PCT Payment under this application of the income method is represented as an applicable rate on sales from exploiting the cost shared intangibles, determined as of the date of the PCT.

(*2*) *Applicable rate.* The applicable rate is equal to the alternative rate less the cost contribution adjustment.

(*3*) *Alternative rate.* The alternative rate is determined using the comparable profits method described in § 1.482–5 and is estimated as a fraction. The numerator of the fraction is the present value of the PCT Payor's total anticipated territorial operating profit, as defined in paragraph (j)(1)(vi) of this section, reduced by a market return for the routine contributions (other than cost contributions) to the relevant business activity in the relevant territory. The denominator of the fraction is the discounted present value of the PCT Payor's total anticipated sales from exploiting the cost shared intangibles.

(*4*) *Cost contribution adjustment.* The cost contribution adjustment is equal to a fraction the numerator of which is the present value of the PCT Payor's total anticipated cost contributions and the denominator of which is the present value of the PCT Payor's total anticipated sales from exploiting the cost shared intangibles.

(C) *Determination of arm's length charge based on profit*—(*1*) *In general.* An arm's length PCT Payment under this application of the income method may also be represented as an applicable rate on territorial operating profit, as defined in paragraph (j)(1)(vi) of this section, reduced by a market return for the routine contributions (other than cost contributions) to the relevant business activity in the relevant territory. This is done following the calculations described in paragraph (g)(4)(iv)(B) of this section, substituting anticipated territorial operating profit, reduced by a market return for the routine contributions (other than cost contributions) to the relevant business activity in the relevant territory, wherever anticipated sales appear in the calculations.

(*2*) *Alternative rate.* Substituting territorial operating profits, reduced by a market return for the routine contributions (other than cost contributions) to the relevant business activity in the relevant territory, for sales in the calculation of the alternative rate results in a fraction with both a numerator and denominator equal to the present value of the PCT Payor's total anticipated territorial operating profit, as defined in paragraph (j)(1)(vi) of this section, reduced by a market return for the routine contributions (other than cost contributions) to the relevant business activity in the relevant territory. Therefore the alternative rate under this application is 1, or 100%.

(*3*) *Cost contribution adjustment.* Substituting territorial operating profit, reduced by a market return for the routine contributions (other than cost contributions) to the relevant business activity in the relevant territory, for sales results in a cost contribution adjustment equal to a fraction the numerator of which is the present value of the PCT Payor's total anticipated cost contributions and the denominator of which is the present value of the PCT Payor's total anticipated territorial operating profit, as defined in paragraph (j)(1)(vi) of this section, reduced by a market return for the routine contributions (other than cost contributions) to the relevant business activity in the relevant territory.

(D) *Example.* The following example illustrates the principles of this paragraph (g)(4)(iv):

Example. (i) USP, a U.S. pharmaceutical company, invests in research and development to begin developing a vaccine for disease K. In Year 1, USP enters into a CSA with its wholly-owned foreign subsidiary, FS, to complete the development

of the vaccine. Under the CSA, USP will have the rights to exploit the vaccine in the United States, and FS will have the rights to exploit it in the rest of the world. The partially developed vaccine owned by USP, and USP's development team, are reasonably anticipated to contribute to the development of the final vaccine and therefore the RT Rights in the vaccine and the development team are external contributions for which compensation is due from FS as part of a PCT. FS does not furnish any external contributions. The total anticipated IDCs under the CSA are $100 million (in Year 1 dollars). USP and FS each have total projected sales of $100 million (in Year 1 dollars) of the vaccine, which they use as the basis for determining RAB shares. Accordingly, they divide the development costs based on 50/50 RAB shares, $50 million (in Year 1 dollars) paid by each participant. Based on an analysis under the comparable profits method under § 1.482–5, FS's anticipated territorial operating profit, as reduced by a market return for its routine contributions to exploiting the vaccine in its territory, is $80 million (in Year 1 dollars).

(ii) An arm's length contingent PCT Payment under the income method is an applicable rate equal to the alternative rate less the cost contribution adjustment. In this case the alternative rate is 80% (($80 million territorial operating profit/$100 million sales). The cost contribution adjustment is 50%, the present value to FS of its anticipated cost contributions over the present value of its anticipated sales of the vaccine, that is, $50 million/$100 million. The applicable rate, which represents an arm's length contingent PCT Payment, payable by the FS to the USP over the period the vaccine is exploited therefore is 30%, which is equal to the alternative rate of 80% less the cost contribution adjustment of 50%.

(iii) An arm's length contingent PCT Payment based on territorial operating profits under the income method is an applicable rate equal to the alternative rate less the cost contribution adjustment. In this case the alternative rate is 100% (($80 million territorial operating profit /$80 million territorial operating profit). The cost contribution adjustment is 62.5%, the present value to FS of its anticipated cost contributions over the present value of its anticipated territorial profits from sales of the vaccine, that is, $50 million/$80 million. The applicable rate on territorial operating profit, which represents an arm's length contingent PCT Payment, payable by the FS to the USP over the period the vaccine is exploited therefore is 37.5%, which is equal to the alternative rate of 100% less the cost contribution adjustment of 62.5%.

(v) *Routine external contributions.* For purposes of this paragraph (g)(4), any routine contributions that are external contributions (routine external contributions), the valuation and PCT Payments for which are determined and made independently of the income method, are treated similarly to cost contributions. Accordingly, wherever the term cost contributions appears in this paragraph (g)(4) it shall be read to include net routine external contributions. Net routine external contributions are defined as a controlled participant's total anticipated routine external contributions, plus its anticipated PCT Payments to other controlled participants in respect of their routine external contributions, minus the anticipated PCT Payments it is to receive from other controlled participants in respect of its routine external contributions.

(vi) *Comparability and reliability considerations*—(A) *In general.* Whether results derived from this method are the most reliable measure of the arm's length result is determined using the factors described under the best method rule in § 1.482–1(c). Thus, comparability and the quality of data and assumptions must be considered in determining whether this method provides the most reliable measure of an arm's length result. Consistent with those considerations, the reliability of applying the income method as a measure of the arm's length charge for a PCT Payment is typically less reliable to the extent that more than one controlled participant furnishes nonroutine contributions.

(B) *Application of the income method using a CUT.* If the income method is applied using a CUT, as described in paragraph (g)(4)(iii) of this section, any additional comparability and reliability considerations stated in § 1.482–4(c)(2) may apply.

(C) *Application of the income method using CPM.* If the income method is applied using CPM, as described in paragraph (g)(4)(iv) of this section, any additional comparability and reliability considerations stated in § 1.482–5(c) apply.

(5) *Acquisition price method*—(i) *In general.* The acquisition price method applies the comparable uncontrolled transaction method of § 1.482–4(c), or the arm's length charge described in § 1.482–2(b)(3)(first sentence) based on a comparable uncontrolled transaction, to evaluate whether the amount charged in a PCT, or group of PCTs, is arm's length by reference to the amount charged (the acquisition price) for the stock or asset purchase of an entire organization or portion thereof (the target) in an uncontrolled transaction. The acquisition price method is ordinarily used only where substantially all the target's nonroutine contributions (as described in paragraph (g)(7)(iii)(C)(1) of this section) to the PCT Payee's business activities are covered by a PCT or group of PCTs.

(ii) *Determination of arm's length charge.* Under this method, the arm's length charge for a PCT or group of PCTs covering resources and capabilities of the target is equal to the adjusted acquisition price, as divided among the controlled participants according to their respective RAB shares.

(iii) *Adjusted acquisition price.* The adjusted acquisition price is the acquisition price of the target increased by the value of the target's liabilities on the date of the acquisition, other than liabilities not assumed in the case of an asset purchase, and decreased by the value of the target's tangible property on that date and by the value on that date of any other resources and capabilities not covered by a PCT or group of PCTs.

(iv) *Reliability and comparability considerations.* The comparability and reliability considerations stated in § 1.482–4(c)(2) apply. Consistent with those considerations, the reliability of applying the acquisition price method as a measure of the arm's length charge for the PCT Payment normally is reduced if—

(A) A substantial portion of the target's nonroutine contributions to the PCT Payee's business activities is not required to be covered by a PCT or group of PCTs, and that portion of the nonroutine contributions cannot reliably be valued; or

(B) A substantial portion of the target's assets consists of tangible property that cannot reliably be valued.

(v) *Example.* The following example illustrates the principles of this paragraph (g)(5):

Example. USP, a U.S. corporation, and its newly incorporated, wholly-owned foreign subsidiary (FS) enter into a CSA in Year 1 to develop Group Z products. Under the CSA, USP and FS will have the exclusive rights to exploit the Group Z products in the U.S. and the rest of the world, respectively. Based on RAB shares, USP will bear 60% and FS will bear 40% of the costs incurred during the term of the agreement. USP acquires Company X in Year 2 for cash consideration worth $110 million. Company X joins in the filing of a U.S. consolidated income tax return with USP. Under paragraph (j)(2)(i) of this section, Company X and USP are treated as one taxpayer. Accordingly, the RT Rights in any of Company X's resources and capabilities that are reasonably anticipated to contribute to the development activities of the CSA will be considered external contributions furnished by USP. Company X's resources and capabilities consist of its workforce, certain technology intangibles, $15 million of tangible property and other assets and $5 million in liabilities. The technology intangibles, as well as Company X's workforce, are reasonably anticipated to contribute to the development of the Group Z products under the CSA and therefore the RT Rights in the technology intangibles and the workforce are external contributions by way of a PFA for which FS must make a PCT

Payment to USP. None of Company X's existing intangible assets or any of its workforce are anticipated to contribute to activities outside the CSA. Applying the acquisition price method, the value of USP's external contributions is the adjusted acquisition price $100 million ($110 million acquisition price plus $5 million liabilities less $15 million tangible property and other assets). FS must make a PCT Payment to USP for these external contributions in an amount of $40 million, which is the product of $100 million (the value of the external contributions) and 40% (FS's RAB share).

(6) *Market capitalization method*—(i) *In general.* The market capitalization method applies the comparable uncontrolled transaction method of § 1.482–4(c), or the arm's length charge described in § 1.482–2(b)(3)(first sentence) based on a comparable uncontrolled transaction, to evaluate whether the amount charged in a PCT, or group of PCTs, is arm's length by reference to the average market capitalization of a controlled participant (PCT Payee) whose stock is regularly traded on an established securities market. The market capitalization method is ordinarily used only where substantially all of the PCT Payee's nonroutine contributions (as described in paragraph (g)(7)(iii)(C)(*1*) of this section) to the PCT Payee's business are covered by a PCT or group of PCTs.

(ii) *Determination of arm's length charge.* Under the market capitalization method, the arm's length charge for a PCT or group of PCTs covering resources and capabilities of the PCT Payee is equal to the adjusted average market capitalization, as divided among the controlled participants according to their respective RAB shares.

(iii) *Average market capitalization.* The average market capitalization is the average of the daily market capitalizations of the PCT Payee over a period of time beginning 60 days before the date of the PCT and ending on the date of the PCT. The daily market capitalization of the PCT Payee is calculated on each day its stock is actively traded as the total number of shares outstanding multiplied by the adjusted closing price of the stock on that day. The adjusted closing price is the daily closing price of the stock, after adjustments for stock-based transactions (dividends and stock splits) and other pending corporate (combination and spin-off) restructuring transactions for which reliable arm's length adjustments can be made.

(iv) *Adjusted average market capitalization.* The adjusted average market capitalization is the average market capitalization of the PCT Payee increased by the value of the PCT Payee's liabilities on the date of the PCT and decreased by the value on such date of the PCT Payee's tangible property and of any other resources and capabilities of the PCT Payee not covered by a PCT or group of PCTs.

(v) *Reliability and comparability considerations.* The comparability and reliability considerations stated in § 1.482–4(c)(2) apply. Consistent with those considerations, the reliability of applying the comparable uncontrolled transaction method using the adjusted market capitalization of a company as a measure of the arm's length charge for the PCT Payment normally is reduced if—

(A) A substantial portion of the PCT Payee's nonroutine contributions to its business activities is not required to be covered by a PCT or group of PCTs, and that portion of the nonroutine contributions cannot reliably be valued;

(B) A substantial portion of the PCT Payee's assets consists of tangible property that cannot reliably be valued; or

(C) Facts and circumstances demonstrate the likelihood of a material divergence between the average market capitalization of the PCT Payee and the value of its resources and capabilities for which reliable adjustments cannot be made.

(vi) *Examples.* The following examples illustrate the principles of this paragraph (g)(6):

Example 1. (i) USP, a publicly traded U.S. company, and its newly incorporated wholly-owned foreign subsidiary (FS) enter into a CSA on Date 1 to develop software. Under the CSA, USP and FS will have the exclusive rights to exploit all future generations of the software in the United States and the rest of the world, respectively. Based on RAB shares, USP will bear 70% and FS will bear 30% of the costs incurred during the term of the CSA. USP's assembled team of researchers and its entire existing and in-process software are reasonably anticipated to contribute to the development of the software under the CSA and the RT Rights in the research team and existing and in-process software are therefore external contributions for which compensation is due from FS. USP separately enters into a license agreement with FS for make-and-sell rights for all existing software in the rest of the world. This license of current make-and-sell rights is a transaction that is governed by § 1.482–4. However, after analysis, it is determined that the PCT Payments and the arm's length payments for the make-and-sell license may be most reliably determined in the aggregate using the market capitalization method, under principles described in paragraph (g)(2)(v) of this section.

(ii) On Date 1, USP had an average market capitalization of $205 million, tangible property and other assets that can be reliably valued worth $5 million and no liabilities. Applying the market capitalization method, the aggregate value of USP's external contributions and the make-and-sell rights in its existing software is $200 million ($205 million average market capitalization of USP less $5 million of tangible property and other assets). The total arm's length value of the PCT Payments and license payments FS must make to USP for the external contributions and current make-and-sell rights is $60 million, which is the product of $200 million (the value of the external contributions and the make-and-sell rights) and 30% (FS's share of anticipated benefits of 30%).

Example 2. The facts are the same as *Example 1* except that USP also makes significant nonroutine contributions that are difficult to value to several other mature business divisions it operates that are not reasonably anticipated to contribute software development that is the subject of the CSA and are therefore not external contributions and accordingly not required to be covered by a PCT. The reliability of using the market capitalization method to determine the value of USP's external contributions to the CSA is significantly reduced in this case because it would require adjusting USP's average market capitalization to account for the significant nonroutine contributions that are not required to be covered by a PCT.

(7) *Residual profit split method*—(i) *In general.* The residual profit split method evaluates whether the allocation of combined operating profit or loss attributable to one or more external contributions subject to a PCT is arm's length by reference to the relative value of each controlled participant's contribution to that combined operating profit or loss. The combined operating profit or loss must be derived from the most narrowly identifiable business activity of the controlled participants for which data are available that include the developing and exploiting of cost shared intangibles (relevant business activity). The residual profit split method may not be used where only one controlled participant makes significant nonroutine contributions to the development and exploitation of the cost shared intangibles. The provisions of § 1.482–6 shall apply to CSAs only to the extent provided and as modified in this paragraph (g)(7). Any other application to a CSA of a residual profit method not described below will constitute an unspecified method for purposes of sections 482 and 6662(e) and the regulations thereunder.

(ii) *Appropriate share of profits and losses.* The relative value of each controlled participant's contribution to the success of the relevant business activity must be determined in a manner that reflects the functions performed, risks assumed, and resources employed by each participant in the relevant business activity, consistent with the comparability provisions of § 1.482–1(d)(3). Such an allocation is intended to correspond to the division of profit or

loss that would result from an arrangement between uncontrolled taxpayers, each performing functions similar to those of the various controlled participants engaged in the relevant business activity. The profit allocated to any particular controlled participant is not necessarily limited to the total operating profit of the group from the relevant business activity. For example, in a given year, one controlled participant may earn a profit while another controlled participant incurs a loss. In addition, it may not be assumed that the combined operating profit or loss from the relevant business activity should be shared equally, or in any other arbitrary proportion.

(iii) *Profit split*—(A) *In general.* Under the residual profit split method, each controlled participant's territorial operating profit or loss, as defined in paragraph (j)(1)(vi) of this section, is allocated between the controlled participants that each furnish significant nonroutine contributions to the relevant business activity in that territory following the three step process set forth in paragraphs (g)(7)(iii)(B) and (C) of this section.

(B) *Allocate income to routine contributions other than cost contributions.* The first step allocates an amount of income to each controlled participant that is subtracted from its territorial operating profit or loss to provide a market return for the controlled participant's routine contributions (other than cost contributions) to the relevant business activity in its territory. Routine contributions are contributions of the same or a similar kind to those made by uncontrolled taxpayers involved in similar business activities for which it is possible to identify market returns. Routine contributions ordinarily include contributions of tangible property, services and intangibles that are generally owned or provided by uncontrolled taxpayers engaged in similar activities. A functional analysis is required to identify these contributions according to the functions performed, risks assumed, and resources employed by each of the controlled participants. Market returns for the routine contributions should be determined by reference to the returns achieved by uncontrolled taxpayers engaged in similar activities, consistent with the methods described in §§ 1.482–3, 1.482–4, and1.482–5, or with the arm's length charge described in § 1.482–2(b)(3) (first sentence) based on a comparable uncontrolled transaction.

(C) *Allocate residual profit*—(*1*) *In general.* The allocation of income to each controlled participant's routine contributions in the first step will not reflect profit or loss attributable to that controlled participant's cost contributions, nor reflect the profit or loss attributable to any controlled participant's nonroutine contributions to the relevant business activity. Nonroutine contributions include nonroutine external contributions, and other nonroutine contributions, to the relevant business activity in the relevant territory. The residual territorial profit or loss after the allocation of income in the first step in paragraph (g)(7)(iii)(B) of this section is further allocated under the second and third steps in paragraphs (g)(7)(iii)(C)(*2*) and (*3*) of this section.

(*2*) *Cost contribution share of residual profit or loss.* Under the second step, a portion of each controlled participant's residual territorial profit or loss after the first step allocation is allocated to that controlled participant's cost contributions (cost contribution share). A controlled participant's cost contribution share is equal to the following fraction of such residual territorial profit or loss. The numerator is the present value, determined as of the relevant date, of the summation, over the entire period of developing and exploiting cost shared intangibles, of the total value of such controlled participant's total anticipated cost contributions. The denominator is the present value, determined as of the relevant date, of the summation, over the same period, of such controlled participant's total anticipated territorial operating profits, as defined in paragraph (j)(1)(vi) of this section, reduced by a market return for the routine contributions (other than cost contributions) to the relevant business activity in the relevant territory. For these purposes, the relevant date is the date of the PCTs.

(*3*) *Nonroutine contribution share of residual profit or loss.* Under the third step, the remaining share of each controlled participant's residual territorial profit or loss after the first and second step allocations generally should be divided among all of the controlled participants based upon the relative value, determined as of the date of the PCTs, of their nonroutine contributions to the relevant business activity in the relevant territory. The relative value of the nonroutine contributions of each controlled participant may be measured by external market benchmarks that reflect the fair market value of such nonroutine contributions. Alternatively, the relative value of nonroutine contributions may be estimated by the capitalized cost of developing the nonroutine contributions and updates, as appropriately grown or discounted so that all contributions may be valued on a comparable dollar basis as of the same date. If the nonroutine contributions by a controlled participant are also used in other business activities (such as the exploitation of make-or-sell rights described in paragraph (c) of this section), an allocation of the value of the nonroutine contributions must be made on a reasonable basis among all the business activities in which they are used in proportion to the relative economic value that the relevant business activity and such other business activities are anticipated to derive over time as the result of such nonroutine contributions.

(*4*) *Determination of PCT Payments.* Any amount of a controlled participant's territorial operating profit or loss that is allocated to another controlled participant's external contributions to the relevant business activity in the relevant territory under the third step represents the amount of the PCT Payment due to that other controlled participant for its such external contributions.

(*5*) *Routine external contributions.* For purposes of this paragraph (g)(7), routine external contributions, the valuation and PCT Payments for which are determined and made independently of the residual profit split method, are treated similarly to cost contributions. Accordingly, wherever used in this paragraph (g)(7), the term routine contribution shall not be read to include routine external contributions and the term cost contribution shall be read to include net routine external contributions, as defined in paragraph (g)(4)(v) of this section.

(iv) *Comparability and reliability considerations*—(A) *In general.* Whether results derived from this method are the most reliable measure of the arm's length result is determined using the factors described under the best method rule in § 1.482–1(c). Thus, comparability and the quality of data and assumptions must be considered in determining whether this method provides the most reliable measure of an arm's length result. The application of these factors to the residual profit split in the context of the relevant business activity of developing and exploiting cost shared intangibles is discussed in paragraphs (g)(7)(iv)(B), (C), and (D) of this section.

(B) *Comparability.* The first step of the residual profit split relies on market benchmarks of profitability. Thus, the comparability considerations that are relevant for the first step of the residual profit split are those that are relevant for the methods that are used to determine

market returns for the routine contributions.

(C) *Data and assumptions.* The reliability of the results derived from the residual profit split is affected by the quality of the data and assumptions used to apply this method. In particular, the following factors must be considered—

(*1*) The reliability of the allocation of costs, income, and assets between the relevant business activity and the controlled participants' other activities will affect the reliability of the determination of the territorial operating profit and its allocation among the controlled participants. See § 1.482–6(c)(2)(ii)(C)(*1*);

(*2*) The degree of consistency between the controlled participants and uncontrolled taxpayers in accounting practices that materially affect the items that determine the amount and allocation of operating profit affects the reliability of the result. See § 1.482–6(c)(2)(ii)(C)(*2*); and

(*3*) The reliability of the data used and the assumptions made in valuing the nonroutine contributions by the controlled participants. In particular, if capitalized costs of development are used to estimate the value of intangible property, the reliability of the results is reduced relative to the reliability of other methods that do not require such an estimate, for the following reasons. In any given case, the costs of developing the intangible may not be related to its market value. In addition, the calculation of the capitalized costs of development may require the allocation of indirect costs between the relevant business activity and the controlled participant's other activities, which may affect the reliability of the analysis.

(D) *Other factors affecting reliability.* Like the methods described in §§ 1.482–3, 1.482–4, and 1.482–5, or with the arm's length charge described in § 1.482–2(b)(3) (first sentence) based on a comparable uncontrolled transaction, the first step of the residual profit split relies exclusively on external market benchmarks. As indicated in § 1.482–1(c)(2)(i), as the degree of comparability between the controlled participants and uncontrolled transactions increases, the relative weight accorded the analysis under this method will increase. In addition, to the extent the allocation of profits in the third step is not based on external market benchmarks, the reliability of the analysis will be decreased in relation to an analysis under a method that relies on market benchmarks. Finally, the reliability of the analysis under this method may be enhanced by the fact that all the controlled participants are evaluated under the residual profit split. However, the reliability of the results of an analysis based on information from all the controlled participants is affected by the reliability of the data and the assumptions pertaining to each controlled participant. Thus, if the data and assumptions are significantly more reliable with respect to one of the controlled participants than with respect to the others, a different method, focusing solely on the results of that party, may yield more reliable results.

(v) *Example.* The following example illustrates the principles of this paragraph (g)(7):

Example. (i) USP, a U.S. nanotech company, has partially developed technology for nanomotors which are used to provide mobility for nanodevices. At the same time, USP's wholly-owned subsidiary, FS, a foreign nanotech company, has partially developed technology for nanosensors which provide sensing capabilities for nanodevices. At the beginning of Year 1, USP enters into a CSA with FS to develop NanoBuild, a technology which will be used to build a wide range of fully functioning nanodevices. The partially developed nanomotor and nanosensor technologies owned by USP and FS, respectively, are reasonably anticipated to contribute to the development of NanoBuild and therefore the RT Rights in the nanomotor and nanosensor technologies constitute external contributions of USP and FS for which compensation is due under PCTs. Under the CSA, USP will have the right to exploit NanoBuild in the United States, while FS will have the right to exploit NanoBuild in the rest of the world. USP's and FS's RAB shares are 40% and 60% respectively.

(ii) The present value of the total projected IDCs for the CSA is $10 billion (as of the date of the PCTs). Based on RAB shares, USP expects to bear 40%, or $4 billion, of these IDCS and FS expects to bear 60%, or $6 billion. For accounting purposes, USP and FS project a combined operating profit from exploitation of the NanoBuild of $11 billion (in Year 1 dollars), taking into account the $10 billion of projected IDCs. However, for purposes of applying the residual profit split method, combined operating profit is determined without taking into account IDCs. Therefore, USP and FS redetermine their combined operating profits for purposes of the residual profit split method to equal $21 billion (adding $10 billion of IDCs back to the accounting profit of $11 billion). Of this amount, 40% or $8.4 billion is expected to be generated by USP in the U.S. and 60% or $12.6 billion is expected to be generated by FS in the rest of the world.

(iii) USP and FS each undertake routine distribution activities in their respective markets that constitute routine contributions to the relevant business activity of exploiting NanoBuild. They estimate that the total market return (costs plus a market return on those costs) on these routine contributions will amount to $1 billion, (in Year 1 dollars). Of this amount, USP's anticipated routine return is $400 million and FS's anticipated routine return is $600 million. After deducting the routine return, USP's total anticipated residual operating profit is $8 billion ($8.4 billion–$0.4 billion) and FS's total anticipated residual operating profit equals $12 billion ($12.6 billion–$0.6 billion).

(iv) After analysis, USP and FS determine that the relative values of the nanomotor and nanosensor technologies are most reliably measured by their respective capitalized costs of development. Some of the factors considered in this analysis include the similar nature and success, and the relatively contemporaneous timing, of the nanoengineering research done to develop both the nanomoter and nanosensor technologies and the lack of external market benchmarks. The capitalized costs of the nanomotor and nonsensor technologies are $3 billion and $5 billion, respectively.

(v) Under the residual profit split method, in each taxable year USP and FS will allocate the operating income they each separately report in their territory (territorial operating income) between their routine contributions, their cost contribution share and their nonroutine contributions, in this case the nanomotor and nanosensor technologies.

(vi) In step one of the residual profit split, USP and FS each allocate an amount of income that is subtracted from their actual territorial operating income for the taxable year to provide a market return for their actual routine contributions in that year.

(vii) In step two, a portion of residual territorial operating profit or loss after accounting for the allocation of income to routine contributions in step one, will be allocated by USP and FS to their cost contribution shares. The percentage allocable to the cost contribution share in this case is equal to the each participant's share of total anticipated IDCs divided by the difference between its total anticipated operating profits in its territory and the total anticipated routine return in its territory. It follows that the cost contribution shares of USP and FS are as follows: USP = 50% ($4 billion/$8 billion) and FS = 50% ($6 billion/$12 billion).

(viii) In step three, USP and FS each allocate a portion of their residual territorial operating income remaining after application of steps one and two between their respective nonroutine contributions. USP and FS have estimated relative values for USP's nanomotor technology at $3 billion and FS's nanosensor technology at $5 billion. The percentage of each participant's residual territorial operating income that is allocated to the nanomotor technology is therefore 37.5% ($3 billion/($3 billion + $5 billion)) and the percentage allocated to the nanosensor technology is 62.5% ($5 billion/($3 billion + $5 billion)).

(ix) USP will owe a PCT Payment to FS equal to the amount of its territorial operating profit or loss that is allocated in step three to FS's nanosensor technology and FS will owe a PCT Payment to USP equal to the amount of its territorial operating iprofit or loss that is allocated in step three to USP's nanomotor technology. The PCT Payments owed each year by USP and FS, respectively, will be netted against each other, so that only

one participant will make a net PCT Payment.

(8) *Unspecified methods.* Methods not specified in paragraphs (g)(3) through (7) of this section may be used to evaluate whether the amount charged for a PCT is arm's length. Any method used under this paragraph (g)(8) must be applied in accordance with the provisions of § 1.482–1 and of paragraph (g)(2) of this section. Consistent with the specified methods, an unspecified method should take into account the general principle that uncontrolled taxpayers evaluate the terms of a transaction by considering the realistic alternatives to that transaction, and only enter into a particular transaction if none of the alternatives is preferable to it. Therefore, in establishing whether a PCT achieved an arm's length result, an unspecified method should provide information on the prices or profits that the controlled participant could have realized by choosing a realistic alternative to the CSA. As with any method, an unspecified method will not be applied unless it provides the most reliable measure of an arm's length result under the principles of the best method rule. See § 1.482–1(c). In accordance with § 1.482–1(d) (Comparability), to the extent that an unspecified method relies on internal data rather than uncontrolled comparables, its reliability will be reduced. Similarly, the reliability of a method will be affected by the reliability of the data and assumptions used to apply the method, including any projections used.

(h) *Coordination with the arm's length standard.* A CSA produces results that are consistent with an arm's length result within the meaning of § 1.482–1(b)(1) if, and only if, each controlled participant's IDC share (as determined under paragraph (d)(4) of this section) equals its RAB share (as required by paragraph (a)(1) of this section), and all other requirements of this section are satisfied.

(i) *Allocations by the Commissioner in connection with a CSA*—(1) *In general.* The Commissioner may make allocations to adjust the results of a controlled transaction in connection with a CSA so that the results are consistent with an arm's length result, in accordance with the provisions of this paragraph (i).

(2) *CST allocations*—(i) *In general.* The Commissioner may make allocations to adjust the results of a CST so that the results are consistent with an arm's length result, including any allocations to make each controlled participant's IDC share, as determined under paragraph (d)(4) of this section, equal to that participant's RAB share, as determined under paragraph (e)(1) of this section. Such allocations may result from, for purposes of CST determinations, adjustments to—

(A) Redetermine IDCs by adding any costs (or cost categories) that are directly identified with, or are reasonably allocable to, the IDA, or by removing any costs (or cost categories) that are not IDCs;

(B) Reallocate costs between the IDA and other business activities;

(C) Improve the reliability of the selection or application of the basis used for measuring benefits for purposes of estimating a controlled participant's RAB share;

(D) Improve the reliability of the projections used to estimate RAB shares, including adjustments described in paragraph (i)(2)(ii) of this section; and

(E) Allocate among the controlled participants any unallocated interests in cost shared intangibles.

(ii) *Adjustments to improve the reliability of projections used to estimate RAB shares*—(A) *Unreliable projections.* A significant divergence between projected benefit shares and benefit shares adjusted to take into account any available actual benefits to date (adjusted benefit shares) may indicate that the projections were not reliable for purposes of estimating RAB shares. In such a case, the Commissioner may use adjusted benefit shares as the most reliable measure of RAB shares and adjust IDC shares accordingly. The projected benefit shares will not be considered unreliable, as applied in a given taxable year, based on a divergence from adjusted benefit shares for every controlled participant that is less than or equal to 20% of the participant's projected benefits share. Further, the Commissioner will not make an allocation based on such divergence if the difference is due to an extraordinary event, beyond the control of the controlled participants, which could not reasonably have been anticipated at the time that costs were shared. The Commissioner generally may adjust projections of benefits used to calculate benefit shares in accordance with the provisions of § 1.482–1. In particular, if benefits are projected over a period of years, and the projections for initial years of the period prove to be unreliable, this may indicate that the projections for the remaining years of the period are also unreliable and thus should be adjusted. For purposes of this paragraph, all controlled participants that are not U.S. persons are treated as a single controlled participant. Therefore, an adjustment based on an unreliable projection of RAB shares will be made to the IDC shares of foreign controlled participants only if there is a matching adjustment to the IDC shares of controlled participants that are U.S. persons. Nothing in this paragraph (i)(2)(ii)(A) prevents the Commissioner from making an allocation if taxpayer did not use the most reliable basis for measuring anticipated benefits. For example, if the taxpayer measures its anticipated benefits based on units sold, and the Commissioner determines that another basis is more reliable for measuring anticipated benefits, then the fact that actual units sold were within 20% of the projected unit sales will not preclude an allocation under this section.

(B) *Foreign-to-foreign adjustments.* Adjustments to IDC shares based on an unreliable projection also may be made solely among foreign controlled participants if the variation between actual and projected benefits has the effect of substantially reducing U.S. tax.

(C) *Correlative adjustments to PCTs.* Correlative adjustments will be made to any PCT Payments of a fixed amount that were determined based on RAB shares which are subsequently adjusted on a finding that they were based on unreliable projections. No correlative adjustments will be made to contingent PCT Payments regardless of whether RAB shares were used as a parameter in the valuation of those payments.

(D) *Examples.* The following examples illustrate the principles of this paragraph (i)(2)(ii):

Example 1. U.S. Parent (USP) and Foreign Subsidiary (FS) enter into a CSA to develop new food products, dividing costs on the basis of projected sales two years in the future. In Year 1, USP and FS project that their sales in Year 3 will be equal, and they divide costs accordingly. In Year 3, the Commissioner examines the controlled participants' method for dividing costs. USP and FS actually accounted for 42% and 58% of total sales, respectively. The Commissioner agrees that sales two years in the future provide a reliable basis for estimating benefit shares. Because the differences between USP's and FS's adjusted and projected benefit shares are less than 20% of their projected benefit shares, the projection of future benefits for Year 3 is reliable.

Example 2. The facts are the same as in *Example 1,* except that in Year 3 USP and FS actually accounted for 35% and 65% of total sales, respectively. The divergence between USP's projected and adjusted benefit shares is greater than 20% of USP's projected benefit share and is not due to an extraordinary event beyond the control of the controlled participants. The Commissioner concludes that the projected benefit shares were unreliable, and uses adjusted benefit shares as the basis for an adjustment to the cost shares borne by USP and FS.

Example 3. U.S. Parent (USP), a U.S. corporation, and its foreign subsidiary (FS) enter a CSA in Year 1. They project that they will begin to receive benefits from covered intangibles in Years 4 through 6, and that USP will receive 60% of total benefits and FS 40% of total benefits. In Years 4 through 6, USP and FS actually receive 50% each of the total benefits. In evaluating the reliability of the controlled participants' projections, the Commissioner compares the adjusted benefit shares to the projected benefit shares. Although USP's adjusted benefit share (50%) is within 20% of its projected benefit share (60%), FS's adjusted benefit share (50%) is not within 20% of its projected benefit share (40%). Based on this discrepancy, the Commissioner may conclude that the controlled participants' projections were not reliable and may use adjusted benefit shares as the basis for an adjustment to the cost shares borne by USP and FS.

Example 4. Three controlled taxpayers, USP, FS1 and FS2 enter into a CSA. FS1 and FS2 are foreign. USP is a United States corporation that controls all the stock of FS1 and FS2. The controlled participants project that they will share the total benefits of the covered intangibles in the following percentages: USP 50%; FS1 30%; and FS2 20%. Adjusted benefit shares are as follows: USP 45%; FS1 25%; and FS2 30%. In evaluating the reliability of the controlled participants' projections, the Commissioner compares these adjusted benefit shares to the projected benefit shares. For this purpose, FS1 and FS2 are treated as a single controlled participant. The adjusted benefit share received by USP (45%) is within 20% of its projected benefit share (50%). In addition, the non-US controlled participants' adjusted benefit share (55%) is also within 20% of their projected benefit share (50%). Therefore, the Commissioner concludes that the controlled participants' projections of future benefits were reliable, despite the fact that FS2's adjusted benefit share (30%) is not within 20% of its projected benefit share (20%).

Example 5. The facts are the same as in *Example 4.* In addition, the Commissioner determines that FS2 has significant operating losses and has no earnings and profits, and that FS1 is profitable and has earnings and profits. Based on all the evidence, the Commissioner concludes that the controlled participants arranged that FS1 would bear a larger cost share than appropriate in order to reduce FS1's earnings and profits and thereby reduce inclusions USP otherwise would be deemed to have on account of FS1 under subpart F. Pursuant to paragraph (i)(2)(ii)(B) of this section, the Commissioner may make an adjustment solely to the cost shares borne by FS1 and FS2 because FS2's projection of future benefits was unreliable and the variation between adjusted and projected benefits had the effect of substantially reducing USP's U.S. income tax liability (on account of FS1 subpart F income).

Example 6. (i)(A) Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a CSA in 1996 to develop a new treatment for baldness. USS's interest in any treatment developed is the right to produce and sell the treatment in the U.S. market while FP retains rights to produce and sell the treatment in the rest of the world. USS and FP measure their anticipated benefits from the cost sharing arrangement based on their respective projected future sales of the baldness treatment. The following sales projections are used:

SALES

[In millions of dollars]

Year	USS	FP
1	5	10
2	20	20
3	30	30
4	40	40
5	40	40
6	40	40
7	40	40
8	20	20
9	10	10
10	5	5

(B) In Year 1, the first year of sales, USS is projected to have lower sales than FP due to lags in U.S. regulatory approval for the baldness treatment. In each subsequent year USS and FP are projected to have equal sales. Sales are projected to build over the first three years of the period, level off for several years, and then decline over the final years of the period as new and improved baldness treatments reach the market.

(ii) To account for USS's lag in sales in the Year 1, the present discounted value of sales over the period is used as the basis for measuring benefits. Based on the risk associated with this venture, a discount rate of 10 percent is selected. The present discounted value of projected sales is determined to be approximately $154.4 million for USS and $158.9 million for FP. On this basis USS and FP are projected to obtain approximately 49.3% and 50.7% of the benefit, respectively, and the costs of developing the baldness treatment are shared accordingly.

(iii) (A) In Year 6 the Commissioner examines the cost sharing arrangement. USS and FP have obtained the following sales results through the Year 5:

SALES

[In millions of dollars]

Year	USS	FP
1	0	17
2	17	35
3	25	41
4	38	41
5	39	41

(B) USS's sales initially grew more slowly than projected while FP's sales grew more quickly. In each of the first three years of the period the share of total sales of at least one of the parties diverged by over 20% from its projected share of sales. However, by Year 5 both parties' sales had leveled off at approximately their projected values. Taking into account this leveling off of sales and all the facts and circumstances, the Commissioner determines that it is appropriate to use the original projections for the remaining years of sales. Combining the actual results through Year 5 with the projections for subsequent years, and using a discount rate of 10%, the present discounted value of sales is approximately $141.6 million for USS and $187.3 million for FP. This result implies that USS and FP obtain approximately 43.1% and 56.9%, respectively, of the anticipated benefits from the baldness treatment. Because these adjusted benefit shares are within 20% of the benefit shares calculated based on the original sales projections, the Commissioner determines that, based on the difference between adjusted and projected benefit shares, the original projections were not unreliable. No adjustment is made based on the difference between adjusted and projected benefit shares.

Example 7. (i) The facts are the same as in *Example 6*, except that the actual sales results through Year 5 are as follows:

SALES

[In millions of dollars]

Year	USS	FP
1	0	17
2	17	35
3	25	44
4	34	54
5	36	55

(ii) Based on the discrepancy between the projections and the actual results and on consideration of all the facts, the Commissioner determines that for the remaining years the following sales projections are more reliable than the original projections:

SALES

[In millions of dollars]

Year	USS	FP
6	36	55
7	36	55
8	18	28
9	9	14
10	4.5	7

(iii) Combining the actual results through Year 5 with the projections for subsequent years, and using a discount rate of 10%, the present discounted value of sales is approximately $131.2 million for USS and

$229.4 million for FP. This result implies that USS and FP obtain approximately 35.4% and 63.6%, respectively, of the anticipated benefits from the baldness treatment. These adjusted benefit shares diverge by greater than 20% from the benefit shares calculated based on the original sales projections, and the Commissioner determines that, based on the difference between adjusted and projected benefit shares, the original projections were unreliable. The Commissioner adjusts costs shares for each of the taxable years under examination to conform them to the recalculated shares of anticipated benefits.

(iii) *Timing of CST allocations.* If the Commissioner makes an allocation to adjust the results of a CST, the allocation must be reflected for tax purposes in the year in which the IDCs were incurred. When a cost sharing payment is owed by one controlled participant to another controlled participant, the Commissioner may make appropriate allocations to reflect an arm's length rate of interest for the time value of money, consistent with the provisions of § 1.482–2(a) (Loans or advances).

(3) *PCT allocations.* The Commissioner may make allocations to adjust the results of a PCT so that the results are consistent with an arm's length result in accordance with the provisions of the applicable sections of the section 482 regulations, as determined pursuant to paragraph (a)(2) of this section.

(4) *Allocations regarding changes in participation under a CSA.* The Commissioner may make allocations to adjust the results of any controlled transaction described in paragraph (f) of this section, if the controlled participants do not reflect arm's length results in relation to any such transaction.

(5) *Allocations when CSTs are consistently and materially disproportionate to RAB shares.* If a controlled participant bears IDC shares that are consistently and materially greater or lesser than its RAB share, then the Commissioner may conclude that the economic substance of the arrangement between the controlled participants is inconsistent with the terms of the CSA. In such a case, the Commissioner may disregard such terms and impute an agreement that is consistent with the controlled participants' course of conduct, under which a controlled participant that bore a disproportionately greater IDC share received additional interests in the cost shared intangibles. See § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms) and § 1.482–4(f)(3)(ii) (Identification of owner). Such additional interests will consist of partial undivided interests in another controlled participant's territory. Accordingly, that controlled participant must receive arm's length consideration from any controlled participant whose IDC share is less than its RAB share over time, under the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6.

(6) *Periodic adjustments*—(i) *In general.* Subject to the exceptions in paragraph (i)(6)(vi) of this section, the Commissioner may make periodic adjustments with respect to all PCT Payments for an open taxable year (the Adjustment Year), and for all subsequent taxable years for the duration of the CSA Activity, if the Commissioner determines that, for a particular PCT (the Trigger PCT), a particular controlled participant that owes or owed a PCT Payment relating to that PCT (the PCT Payor) has realized an Actually Experienced Return Ratio (AERR) that is outside the Periodic Return Ratio Range (PRRR). The satisfaction of the condition stated in the preceding sentence is referred to as a Periodic Trigger. See paragraph (i)(6)(ii) through (vi) of this section regarding the PRRR, the AERR, and periodic adjustments. In determining whether to make such adjustments, the Commissioner may consider whether the outcome as adjusted more reliably reflects an arm's length result under all the relevant facts and circumstances, including any information known as of the Determination Date. The Determination Date is the date of the relevant determination by the Commissioner. The failure of the Commissioner to determine for an earlier taxable year that a PCT Payment was not arm's length will not preclude the Commissioner from making a periodic adjustment for a subsequent year. A periodic adjustment under this paragraph may be made without regard to whether the taxable year of the Trigger PCT or any other PCT remains open for statute of limitations purposes.

(ii) *PRRR.* Except as provided in the next sentence, the PRRR will consist of return ratios that are not less than ½ nor more than 2. Alternatively, if the controlled participants have not substantially complied with the documentation requirements referenced in paragraph (k) of this section, as modified, if applicable, by paragraph (m)(3) of this section, the PRRR will consist of the return ratios that are not less than .67 nor more than 1.5.

(iii) *AERR.* (A) *In general.* The AERR is the Present Value of Total Profits (PVTP) divided by the Present Value of Investment (PVI). In computing PVTP and PVI, present values are computed using the Applicable Discount Rate (ADR), and all information available as of the Determination Date is taken into account.

(B) *PVTP.* The PVTP is the present value, as of the earliest date that any IDC described in paragraph (d)(1) of this section occurred (the CSA Start Date), of the PCT Payor's actually experienced territorial operating profits, as defined in paragraph (j)(1)(vi) of this section, from the CSA Start Date through the end of the Adjustment Year.

(C) *PVI.* The PVI is the present value, as of the CSA Start Date, of the PCT Payor's investment associated with the CSA Activity, defined as the sum of its cost contributions and its PCT Payments, from the CSA Start Date through the end of the Adjustment Year. For purposes of computing the PVI, PCT Payments means all PCT Payments due from a PCT Payor before netting against PCT Payments due from other controlled participants.

(iv) *ADR*—(A) *In general.* Except as provided in paragraph (i)(6)(iv)(B) of this section, the ADR is the discount rate pursuant to paragraph (g)(2)(vi) of this section, subject to such adjustments as the Commissioner determines appropriate.

(B) *Publicly traded companies.* If the PCT Payor meets the conditions of paragraph (i)(6)(iv)(C) of this section, the ADR is the PCT Payor WACC as of the date of the trigger PCT. However, if the Commissioner determines, or the controlled participants establish to the Commissioner's satisfaction, that a discount rate other than the PCT Payor WACC better reflects the degree of risk of the CSA Activity as of such date, the ADR is such other discount rate.

(C) *Publicly traded.* A PCT Payor meets the conditions of this paragraph (i)(6)(iv)(C) if—

(*1*) Stock of the PCT Payor is publicly traded; or

(*2*) Stock of the PCT Payor is not publicly traded, provided—

(*i*) The PCT Payor is included in a group of companies for which consolidated financial statements are prepared; and

(*ii*) A publicly traded company in such group owns, directly or indirectly, stock in PCT Payor. Stock of a company is publicly traded within the meaning of this paragraph (i)(6)(iv)(C) if such stock is regularly traded on an established United States securities market and the company issues financial statements prepared in accordance with United States generally accepted accounting principles for the taxable year.

(D) *PCT Payor WACC.* The PCT Payor WACC is the WACC of the PCT Payor or the publicly traded company

described in paragraph (i)(6)(iv)(C)(*2*) of this section, as the case may be.

(E) *Generally accepted accounting principles.* For purposes of paragraph (i)(6)(iv)(C) of this section, a financial statement prepared in accordance with a comprehensive body of generally accepted accounting principles other than United States generally accepted accounting principles is considered to be prepared in accordance with United States generally accepted accounting principles provided that the amounts of debt, equity and interest expense are reflected in the reconciliation between such other accounting principles and United States generally accepted accounting principles required to be incorporated into the financial statement by the securities laws governing companies whose stock is regularly traded on United States securities markets.

(v) *Determination of periodic adjustments.* In the event of a Periodic Trigger, subject to paragraph (i)(6)(vi) of this section, the Commissioner may make periodic adjustments with respect to all PCT Payments between all PCT Payors and PCT Payees for the Adjustment Year and all subsequent years for the duration of the CSA Activity pursuant to the residual profit split method as provided in paragraph (g)(7) of this section, subject to the further modifications in this paragraph (i)(6)(v).

(A) If the AERR is less than the PRRR, then the cost contribution share of residual profit or loss under paragraph (g)(7)(iii)(C)(*2*) of this section is determined as follows:

(*1*) The relevant date specified in that paragraph is the CSA Start Date. However, the effect of using such relevant date is modified as specified in paragraphs (i)(6)(vi)(A)(*2*) and (i)(6)(vi)(A)(*3*) of this section.

(*2*) The discount rate to be used in paragraph (g)(7)(iii)(C)(*2*) of this section is determined as of the relevant date, but taking into account any data relevant to such determination that may become available up through the Determination Date.

(*3*) The present values of the summations described in paragraph (g)(7)(iii)(C)(*2*) of this section are determined by substituting actual results up through the Determination Date, and future results anticipated on that date, for the results anticipated on the relevant date. It is possible that, because of these substitutions, the resulting fraction determined in that paragraph will be greater than one.

(B) If the AERR is greater than the PRRR, then the cost contribution share of residual profit or loss under paragraph (g)(7)(iii)(C)(*2*) of this section is determined as follows:

(*1*) The relevant date specified in that paragraph is the first day of the Adjustment Year. However, the effect of using such relevant date is modified as specified in paragraphs (i)(6)(vi)(B)(*2*) and (i)(6)(vi)(B)(*3*) of this section.

(*2*) The discount rate to be used in paragraph (g)(7)(iii)(C)(*2*) of this section is determined as of the relevant date, but taking into account any data relevant to such determination that may become available up through the Determination Date.

(*3*) In computing the fraction described in paragraph (g)(7)(iii)(C)(*2*) of this section, the summation period described in that paragraph is modified to start on the first day of the Adjustment Year; thus, the summations described in that paragraph that are used to determine that fraction will not include any items relating to periods before the first day of the Adjustment Year.

(C) The relative value of nonroutine contributions in paragraph (g)(7)(iii)(C)(*3*) of this section are determined as described in that paragraph, but taking into account any data relevant to such determination that may become available up through the Determination Date.

(D) For these purposes, the residual profit split method may be used even where only one controlled participant makes significant nonroutine contributions to the CSA Activity. If only one controlled participant provides all the external contributions and other nonroutine contributions, then the third step residual profit or loss belongs entirely to such controlled participant.

(vi) *Exceptions to periodic adjustments*—(A) *Transactions involving the same external contribution as in the PCT.* If—

(*1*) The same external contribution is furnished to an uncontrolled taxpayer under substantially the same circumstances as those of the relevant RT (as defined in paragraph (b)(3)(iii) of this section) and with a similar form of payment as the PCT;

(*2*) This transaction serves as the basis for the application of the comparable uncontrolled transaction method described in § 1.482–4(c), or the arm's length charge described in § 1.482–2(b)(3)(first sentence) based on a comparable uncontrolled transaction, in the first year in which substantial PCT Payments relating to this PCT were required to be paid; and

(*3*) The amount of those PCT Payments in that year was arm's length; then no periodic adjustment that uses that PCT as the Trigger PCT will be made under paragraphs (i)(6)(i) and (i)(6)(v) of this section.

(B) *Results not reasonably anticipated.* If the controlled participants establish to the satisfaction of the Commissioner that the differential between the AERR and the nearest bound of the PRRR is due to extraordinary events beyond its control and that could not reasonably have been anticipated at the time of the Trigger PCT, then no periodic adjustment will be made under paragraphs (i)(6)(i) and (i)(6)(v) of this section.

(C) *Reduced AERR does not cause Periodic Trigger.* If the controlled participants establish to the satisfaction of the Commissioner that the Periodic Trigger would not have occurred had the PCT Payor's operating profits used to calculate its PVTP excluded those operating profits attributable to the PCT Payor's routine contributions to its exploitation of cost shared intangibles, and nonroutine contributions to the CSA Activity, then no periodic adjustment will be made under paragraphs (i)(6)(i) and (i)(6)(v) of this section.

(D) *Increased AERR does not cause Periodic Trigger*—(*1*) If the controlled participants establish to the satisfaction of the Commissioner that the Periodic Trigger would not have occurred had the operating profits of the PCT Payor used to calculate its PVTP included its reasonably anticipated operating profits after the Adjustment Year from the CSA Activity, including from routine contributions to that activity, and had the cost contributions and PCT Payments of the PCT Payor used to calculate its PVI included its reasonably anticipated cost contributions and PCT Payments after the Adjustment Year, then no periodic adjustment will be made under paragraphs (i)(6)(i) and (i)(6)(v) of this section. The reasonably anticipated amounts in the previous sentence are determined based on all information available as of the Determination Date.

(*2*) For purposes of this paragraph (i)(6)(vii)(D) of this section, the controlled participants may, if they wish, assume that the average yearly operating profits for all taxable years prior to and including the Adjustment Year, in which there has been substantial exploitation of cost shared intangibles resulting from the CSA (exploitation years), will continue to be earned in each year over a period of years equal to 15 minus the number of exploitation years prior to and including the Determination Date.

(E) *10-year period.* If the AERR determined is within the PRRR for each year of the 10-year period beginning

with the first taxable year in which there is substantial exploitation of cost shared intangibles resulting from the CSA is, then no periodic adjustment in a subsequent year will be made under paragraphs (i)(6)(i) and (i)(6)(v) of this section.

(F) *5-year period.* For any year of the 5-year period beginning with the first taxable year in which there is substantial exploitation of cost shared intangibles resulting from the CSA, no Periodic Trigger will be considered to occur as a result of a determination that the AERR falls below the lower bound of the PRRR.

(vii) *Examples.* The following examples illustrates the principles of this paragraph (i)(6):

Example 1. (i) At the beginning of Year 1, USP, a publicly traded U.S. company, and FS, its wholly-owned foreign subsidiary, enter into a CSA to develop new technology for wireless cell phones. As part of a PCT, USP furnishes an external contribution, the RT Rights for an in-process technology that when developed will improve the clarity of cell to cell calls, for which compensation is due from FS. FS furnishes no external contributions to the CSA. The weighted average cost of capital of the controlled group that includes USP and FS in Year 1 is 15%. In Year 10, the Commissioner audits Years 1 through 8 of the CSA to determine whether or not any periodic adjustments should be made. USP and FS have substantially complied with the documentation requirements of this section.

(ii) FS derives the following actual cash flow from its participation in the CSA. The cash flows include the lump sum PCT of $100 million made by FS to USP. The derivation of such PCT Payment was based on financial projections undertaken in Year 1 (not shown). (All amounts in this table and the tables that follow are in millions.)

Year	Sales	Non-IDC costs	IDCs	PCT payments	Total inv. costs	Operating profits (accounting)	Exploitation profits	AERR
1	0	0	15	100	115	−115	0	
2	0	0	17	0	17	−17	0	
3	0	0	18	0	18	−18	0	
4	780	562	20	0	20	198	218	
5	936	618	22	0	22	296	318	
6	1,123	680	24	0	24	420	444	
7	1,179	747	27	0	27	405	432	
8	1,238	822	29	0	29	387	416	
NPV through Year 5	1,048	722	69	100	169	157	326	1.9
NPV through Year 6	1,606	1,060	81	100	181	365	546	3.0
NPV through Year 7	2,116	1,383	92	100	192	541	733	3.8

(iii) Because USP is publicly traded in the United States and is a member of the controlled group to which the PCT Payor, FS, belongs, for purposes of calculating the AERR for FS, the present values of its PVTP and PVI are determined using an ADR of 15%, the weighted average cost of capital of the controlled group. At a 15% discount rate, the PVTP, calculated in Year 8 as of Year 1, and based on actual profits realized by FS through Year 7 from exploiting the new wireless cell phone technology developed by the CSA, is $733 million. The PVI, based on FS's IDCs and its compensation expenditures pursuant to the PCT, is $192 million. The AERR for FS is equal to its PVTP divided by its PVI, $733 million/$192 million, or 3.8. There is a Periodic Trigger because FS's AERR of 3.8 falls outside the PRRR of ½ to 2, the applicable PRRR for controlled participants complying with the documentation requirements of this section.

(iv) At the time of the Determination Date, it is determined that the first Adjustment Year in which a Periodic Trigger occurred was Year 6, when the AERR of FS was determined to be 3.0. It is also determined that none of the exceptions to periodic adjustments described in paragraph (i)(6)(vi) of this section applies. It follows that the arm's length PCT Payments made by FS from Year 6 forward shall be determined each taxable year using the residual profit split method described in paragraph (g)(7) of this section as modified by paragraph (i)(6)(v) of this section. Periodic adjustments will be made to the extent the PCT Payments actually made by FS differ from the PCT Payment calculation under the residual profit split.

(v) Actual and projected IDCs, territorial operating profits and returns to routine contributions for the remainder of the exploitation of the cost shared intangibles, determined as of the beginning of Year 6 are as follows:

Year	IDCs	Territorial operating profits	Return to routine contributions	Profits less routine return
6	24	444	68	376
7	27	432	75	357
8	29	416	82	334
9 (Projected)	32	396	90	305
10 (Projected)	35	370	99	271
Total PV as of Year 6	116	1666	326	1340

(vi) Under step one of the residual profit split method, for each taxable year, FS will be allocated a portion of its actual territorial operating income for the taxable year to provide a market return for its actual routine contributions in that year. As a result of a transfer pricing analysis, the Commissioner determines that the return to FS's routine activities, based on the return for comparable routine functions undertaken by comparable unrelated companies, is 10% of non-IDC costs. The allocations of actual territorial profits in Years 6 through 8 are as follows:

Year	Territorial operating profits	Return to routine contributions	Residual profits after step 1
6	444	68	376
7	432	75	357
8	416	82	334

(vii) Under step two, a portion of the residual territorial operating profit or loss after the allocation of profit to routine contributions in step one will be allocated by FS to its cost contribution share. The percentage allocable to the cost contribution share is equal to FS's share of the total anticipated IDCs divided by its total anticipated territorial operating profits reduced by total expected return to its routine contributions to the exploitation of the cost shared technology in its territory. All amounts are determined as present values as of the first day of Year 6, using an appropriate discount rate on that date, and do not include any amounts relating to periods before the first day of Year 6. Following these rules, it is determined that the present value of FS's share of the total anticipated IDCs after the first day of Year 6 is $116 million and its total anticipated territorial operating profits reduced by the return to its routine contributions is $1,340 million. It follows that the percentage of residual territorial operating profit or loss allocated to FS's cost contribution share is 8.6% ($116/$1,340). The allocation of actual residual profits after Step 1 in Years 6 through 8 is as follows:

Year	Residual profits after step 1	Step 2 profits allocated to FS	Residual profits after step 2
6	376	32	344
7	357	31	327
8	334	29	305

(viii) In step three, because USP provided the only nonroutine contributions to the CSA Activity, 100% of FS's residual operating income after steps one and two is allocated to USP's external contributions and therefore represents the amount of the PCT Payment due from FS to USP for the particular taxable year. Also because USP provided the only nonroutine contributions to the CSA Activity, none of its residual territorial operating profit or loss is attributable to FS, therefore no offsetting PCT Payment is due from USP to FS. The PCT Payments due and adjustments made in Years 6 through 8 are as follows:

Year	Residual profits after step 2	PCT payment due from FS to USP	Actual PCT payment made	Adjustment
6	344	344	0	344
7	327	327	0	327
8	305	305	0	305

Example 2. The facts are the same as *Example 1* paragraphs (i) through (iii). At the time of the Determination Date, it is determined that the first Adjustment Year in which a Periodic Trigger occurred was Year 6, when the AERR of FS was determined to be 3.0. Upon further investigation as to what may have caused the high return in FS's market, the Commissioner learns that, in Year 4, significant health risks were linked to the use of wireless cell phones of USP's leading competitors. No such health risk was linked to the cell phones developed by USP and FS under the CSA. This resulted in a significant increase in USP's and FS's market share for cellular phones. Further analysis determines that it was this unforeseen occurrence that was primarily responsible for the AERR trigger. Based on paragraph (i)(6)(vi)(B) of this section, the Commissioner concludes that no adjustments are warranted, as FS simply has earned the premium return that any such investor would earn under the circumstances.

(j) *Definitions and special rules*—(1) *Definitions.* For purposes of this section:

(i) *Controlled participant* means a controlled taxpayer, as defined under § 1.482–1(i)(5), that is a party to the contractual agreement that underlies the CSA, and that reasonably anticipates that it will derive benefits, as defined in paragraph (j)(1)(iv) of this section, from exploiting one or more cost shared intangibles.

(ii) *Cost shared intangible* means any intangible, within the meaning of § 1.482–4(b), developed or to be developed as a result of the IDA, as described in paragraph (d)(1) of this section, including any portion of such intangible that reflects an external contribution, as described in paragraph (b)(3)(ii) of this section.

(iii) An *interest in an intangible* includes any commercially transferable interest, the benefits of which are susceptible of valuation.

(iv) *Benefits* mean the sum of additional revenue generated, plus cost savings, minus any cost increases from exploiting cost shared intangibles.

(v) A controlled participant's *reasonably anticipated benefits* mean the aggregate benefits that reasonably may be anticipated to be derived from exploiting cost shared intangibles.

(vi) *Territorial operating profit or loss* means the operating profit or loss as separately earned by each controlled participant in its geographic territory, described in paragraph (b)(4) of this section, from the CSA activity, determined before any expense (including amortization) on account of IDCs, routine external contributions, and nonroutine contributions.

(vii) The *CSA Activity* is the activity of developing and exploiting cost shared intangibles.

(viii) *Examples.* The following examples illustrate the principles of this paragraph (j)(1):

Example 1. Controlled participant. Foreign Parent (FP) is a foreign corporation engaged in the extraction of a natural resource. FP has a U.S. subsidiary (USS) to which FP sells supplies of this resource for sale in the United States. FP enters into a CSA with USS to develop a new machine to extract the natural resource. The machine uses a new extraction process that will be patented in the United States and in other countries. The CSA provides that USS will receive the rights to exploit the machine in the extraction of the natural resource in the United States, and

FP will receive the rights in the rest of the world. This resource does not, however, exist in the United States. Despite the fact that USS has received the right to exploit this process in the United States, USS is not a controlled participant because it will not derive a benefit from the exploiting the intangible developed under the CSA.

Example 2. Controlled participants. (i) U.S. Parent (USP), one foreign subsidiary (FS), and a second foreign subsidiary constituting the group's research arm (R+D) enter into a CSA to develop manufacturing intangibles for a new product line A. USP and FS are assigned the exclusive rights to exploit the intangibles respectively in the United States and the rest of the world, where each presently manufactures and sells various existing product lines. R+D is not assigned any rights to exploit the intangibles. R+D's activity consists solely in carrying out research for the group. It is reliably projected that the RAB shares of USP and FS will be 66⅔% and 33⅓%, respectively, and the parties' agreement provides that USP and FS will reimburse 66⅔% and 33⅓%, respectively, of the IDCs incurred by R+D with respect to the new intangible.

(ii) R+D does not qualify as a controlled participant within the meaning of paragraph (j)(1)(i) of this section, because it will not derive any benefits from exploiting cost shared intangibles. Therefore, R+D is treated as a service provider for purposes of this section and must receive arm's length consideration for the assistance it is deemed to provide to USP and FS, under the rules of paragraph (a)(3) of this section and § 1.482–4(f)(3)(iii). Such consideration must be treated as IDCs incurred by USP and FS in proportion to their RAB shares (*i.e.*, 66⅔% and 33⅓%, respectively). R+D will not be considered to bear any share of the IDCs under the arrangement.

Example 3. Cost shared intangible. U.S. Parent (USP) has developed and currently exploits an antihistamine, XY, which is manufactured in tablet form. USP enters into a CSA with its wholly-owned foreign subsidiary (FS) to develop XYZ, a new improved version of XY that will be manufactured as a nasal spray. XYZ is a cost shared intangible under the CSA.

Example 4. Cost shared intangible. The facts are the same as in *Example 3*, except that instead of developing XYZ, the controlled participants develop ABC, a cure for the common cold. ABC is a cost shared intangible under the CSA.

Example 5. Reasonably anticipated benefits. Controlled parties A and B enter into a cost sharing arrangement to develop product and process intangibles for an already existing Product P. Without such intangibles, A and B would each reasonably anticipate revenue, in present value terms, of $100M from sales of Product P until it became obsolete. With the intangibles, A and B each reasonably anticipate selling the same number of units each year, but reasonably anticipate that the price will be higher. Because the particular product intangible is more highly regarded in A's market, A reasonably anticipates an increase of $20M in present value revenue from the product intangible, while B reasonably anticipates only an increase of $10M. Further, A and B each reasonably anticipate spending an extra $5M present value in production costs to include the feature embodying the product intangible. Finally, A and B each reasonably anticipate saving $2M present value in production costs by using the process intangible. A and B reasonably anticipate no other economic effects from exploiting the cost shared intangibles. A's reasonably anticipated benefits from exploiting the cost shared intangibles equal its reasonably anticipated increase in revenue ($20M) plus its reasonably anticipated cost savings ($2M) minus its reasonably anticipated increased costs ($5M), which equals $17M. Similarly, B's reasonably anticipated benefits from exploiting the cost shared intangibles equal its reasonably anticipated increase in revenue ($10M) plus its reasonably anticipated cost savings ($2M) minus its reasonably anticipated increased costs ($5M), which equals $7M. Thus A's reasonably anticipated benefits are $17M and B's reasonably anticipated benefits are $7M.

(2) *Special rules*—(i) *Consolidated group.* For purposes of this section, all members of the same consolidated group shall be treated as one taxpayer. For purposes of this paragraph (j)(2)(i), the term *consolidated group* means all members of a group of controlled entities created or organized within a single country and subjected to an income tax by such country on the basis of their combined income.

(ii) *Trade or business.* A participant that is a foreign corporation or nonresident alien individual will not be treated as engaged in a trade or business within the United States solely by reason of its participation in a CSA described in paragraph (b)(1) of this section. See generally § 1.864–2(a).

(iii) *Partnership.* A CSA, or an arrangement to which the Commissioner applies the rules of this section, will not be treated as a partnership to which the rules of subchapter K of the Internal Revenue Code apply. See § 301.7701–1(c) of this chapter.

(3) *Character*—(i) *In general.* CST payments generally will be considered costs of developing intangibles of the payor and reimbursements of the same kind of costs of developing intangibles of the payee. For purposes of this paragraph (j)(3), a controlled participant's payment required under a CSA is deemed to be reduced to the extent of any payments owed to it under the CSA from other controlled participants. Each payment received by a payee will be treated as coming pro rata from payments made by all payors. Such payments will be applied pro rata against deductions for the taxable year that the payee is allowed in connection with the CSA. Payments received in excess of such deductions will be treated as in consideration for use of the land and tangible property furnished for purposes of the CSA by the payee. For purposes of the research credit determined under section 41, cost sharing payments among controlled participants will be treated as provided for intra-group transactions in § 1.41–6(e). Any payment made or received by a taxpayer pursuant to an arrangement that the Commissioner determines not to be a CSA will be subject to the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6. Any payment that in substance constitutes a cost sharing payment will be treated as such for purposes of this section, regardless of its characterization under foreign law.

(ii) *PCT Payments.* A PCT Payor's payment required under paragraphs (b)(1)(ii) and (b)(3) of this section is deemed to be reduced to the extent of any payments owed to it under such paragraphs from other controlled participants. Each PCT Payment received by a PCT Payee will be treated as coming pro rata out of payments made by all PCT Payors. PCT Payments will be characterized consistently with the designation of the type of transaction involved in the RT pursuant to paragraph (b)(iv) of this section. Depending on such designation, such payments will be treated as either consideration for a transfer of an interest in intangible property or for services.

(iii) *Examples.* The following examples illustrate this paragraph (j)(3):

Example 1. U.S. Parent (USP) and its wholly owned Foreign Subsidiary (FS) form a CSA to develop a miniature widget, the Small R. Based on RAB shares, USP agrees to bear 40% and FS to bear 60% of the costs incurred during the term of the agreement. The principal IDCs are operating costs incurred by FS in Country Z of 100X annually, and costs incurred by USP in the United States also of 100X annually. Of the total costs of 200X, USP's share is 80X and FS's share is 120X. The payment will be treated as a reimbursement of 20X of USP's costs in the United States. Accordingly, USP's Form 1120 will reflect an 80X deduction on account of activities performed in the United States for purposes of allocation and apportionment of the deduction to source. The Form 5471 for FS will reflect a 100X deduction on account of activities performed in Country Z, and a 20X deduction on account of activities performed in the United States.

Example 2. The facts are the same as in *Example 1*, except that the 100X of costs borne by USP consist of 5X of costs incurred by USP in the United States and 95X of arm's length rental charge, as described in paragraph (d)(1) of this section, for the use of a facility in the United States. The depreciation deduction attributable to the U.S. facility is 7X. The 20X net payment by FS to USP will first be applied in reduction

pro rata of the 5X deduction for costs and the 7X depreciation deduction attributable to the U.S. facility. The 8X remainder will be treated as rent for the U.S. facility.

Example 3. (i) Four members A, B, C, and D of a controlled group form a CSA to develop the next generation technology for their business. Based on RAB shares, the participants agree to bear shares of the costs incurred during the term of the agreement in the following percentages: A 40%; B 15%; C 25%; and D 20%. The arm's length values of the external contributions they respectively own are in the following amounts for the taxable year: A 80X; B 40X; C 30X; and D 30X. The provisional (before offsets) and final PCT Payments among A, B, C, and D are shown in the table as follows:

[All amounts stated in X's]

	A	B	C	D
Payments	<40>	<21>	<37.5>	<30>
Receipts	48	34	22.5	24
Final	8	13	<15>	<6>

(ii) The first row/first column shows A's provisional PCT Payment equal to the product of 100X (sum of 40X, 30X, and 30X) and A's RAB share of 40%. The second row/first column shows A's provisional PCT receipts equal to the sum of the products of 80X and B's, C's, and D's RAB shares (15%, 25%, and 20%, respectively). The other entries in the first two rows of the table are similarly computed. The last row shows the final PCT receipts/payments after offsets. Thus, for the taxable year, A and B are treated as receiving the 8X and 13X, respectively, pro rata out of payments by C and D of 15X and 6X, respectively.

(k) *CSA contractual, documentation, accounting, and reporting requirements*—(1) *CSA contractual requirements*—(i) *In general.* A CSA that is described in paragraph (b)(1) of this section must be recorded in writing in a contract that is contemporaneous with the formation (and any revision) of the CSA and that includes the contractual provisions described in this paragraph (k)(1).

(ii) *Contractual provisions.* The written contract described in this paragraph (k)(1) must include provisions that—

(A) List the controlled participants and any other members of the controlled group that are reasonably anticipated to benefit from the use of the cost shared intangibles, including the address of each domestic entity and the country of organization of each foreign entity;

(B) Describe the scope of the IDA to be undertaken, including each cost shared intangible or class of cost shared intangibles that the controlled participants intend to develop under the CSA;

(C) Specify the functions and risks that each controlled participant will undertake in connection with the CSA;

(D) Divide among the controlled participants all interests in cost shared intangibles and specify each controlled participant's territorial interest in the cost shared intangibles, as described in paragraph (b)(4) of this section, that it will own and exploit without any further obligation to compensate any other controlled participant for such interest;

(E) Provide a method to calculate the controlled participants' RAB shares, based on factors that can reasonably be expected to reflect the participants' shares of anticipated benefits, and require that such RAB shares must be updated, as described in paragraph (e)(1) of this section (see also paragraph (k)(2)(ii)(F) of this section);

(F) Enumerate all categories of IDCs to be shared under the CSA;

(G) Specify that the controlled participants must use a consistent method of accounting to determine IDCs and RAB shares, as described in paragraphs (d) and (e) of this section, respectively, and must translate foreign currencies on a consistent basis;

(H) Require the controlled participants to enter into CSTs covering all IDCs, as described in paragraph (b)(2) of this section, in connection with the CSA;

(I) Require the controlled participants to enter into PCTs covering all external contributions, as described in paragraph (b)(3) of this section, in connection with the CSA; and

(J) Specify the duration of the CSA, the conditions under which the CSA may be modified or terminated, and the consequences of a modification or termination (including consequences described under the rules of paragraph (f) of this section).

(iii) *Meaning of contemporaneous*—(A) *In general.* For purposes of this paragraph (k)(1), a written contractual agreement is contemporaneous with the formation (or revision) of a CSA if, and only if, the controlled participants record the CSA, in its entirety, in a document that they sign and date no later than 60 days after the first occurrence of any IDC described in paragraph (d) of this section to which such agreement (or revision) is to apply.

(B) *Example.* The following example illustrates the principles of this paragraph (k)(1)(iii):

Example. Companies A and B, both of which are members of the same controlled group, commence an IDA on March 1, Year 1. Company A pays the first IDCs in relation to the IDA, as cash salaries to A's research staff, for the staff's work during the first week of March, Year 1. A and B, however, do not sign and date any written contractual agreement until August 1, Year 1, whereupon they execute a ''Cost Sharing Agreement'' that purports to be ''effective as of'' March 1 of Year 1. The arrangement fails the requirement that the participants record their arrangement in a written contractual agreement that is contemporaneous with the formation of a CSA.

(2) *CSA documentation requirements*—(i) *In general.* The controlled participants must timely update and maintain sufficient documentation to establish that the participants have met the CSA contractual requirements of paragraph (k)(1) of this section and the additional CSA documentation requirements of this paragraph (k)(2).

(ii) *Additional CSA documentation requirements.* The controlled participants to a CSA must timely update and maintain documentation sufficient to—

(A) Identify the cost shared intangibles that the controlled participants have developed or intend to develop under the CSA, together with each controlled participant's interest therein;

(B) Establish that each controlled participant reasonably anticipates that it will derive benefits from exploiting cost shared intangibles;

(C) Describe the functions and risks that each controlled participant has undertaken during the term of the CSA;

(D) Provide an overview of each controlled participant's business segments, including an analysis of the economic and legal factors that affect CST and PCT pricing;

(E) Establish the amount of each controlled participant's IDCs for each taxable year under the CSA, including all IDCs attributable to stock-based compensation, as described in

paragraph (d)(3) of this section (including the method of measurement and timing used in determining such IDCs, and the data, as of the date of grant, used to identify stock-based compensation with the IDA);

(F) Describe the method used to estimate each controlled participant's RAB share for each year during the course of the CSA, including—

(*1*) All projections used to estimate benefits;

(*2*) All updates of the RAB shares in accordance with paragraph (e)(1) of this section; and

(*3*) An explanation of why that method was selected and why the method provides the most reliable measure for estimating RAB shares;

(G) Describe all external contributions, as described in paragraph (b)(3)(ii) of this section;

(H) Describe the RT for each PCT or group of PCTs;

(I) Specify the form of payment due under each PCT or group of PCTs;

(J) Describe and explain the method selected to determine the arm's length payment due under each PCT, including—

(*1*) An explanation of why the method selected constitutes the best method, as described in § 1.482–1(c)(2), for measuring an arm's length result;

(*2*) The economic analyses, data, and projections relied upon in developing and selecting the best method, including the source of the data and projections use;

(*3*) Each alternative method that was considered, and the reason or reasons that the alternative method was not selected;

(*4*) Any data that the controlled participant obtains, after the CSA takes effect, that would help determine if the controlled participant method selected has been applied in a reasonable manner;

(*5*) The discount rate, where applicable, used to value each payment due under a PCT, and a demonstration that the discount rate used is consistent with the principles of paragraph (g)(2)(vi) of this section;

(*6*) The estimated arm's length values of any external contributions as of the dates of the relevant PCTs, in accordance with paragraph (g)(2)(ii) of this section;

(*7*) A discussion, where applicable, of why transactions were or were not aggregated under the principles of paragraph (g)(2)(v) of this section;

(*8*) The method payment form and any conversion made from the method payment form to the specified payment form, as described in paragraph (g)(2)(ix) of this section; and

(*9*) If applicable under paragraph (i)(6)(iv) of this section, the WACC of the controlled group that includes the controlled participants.

(iii) *Coordination rules and production of documents*—(A) *Coordination with penalty regulations.* See § 1.6662–6(d)(2)(iii)(D) regarding coordination of the rules of this paragraph (k) with the documentation requirements for purposes of the accuracy-related penalty under section 6662(e) and (h).

(B) *Production of documentation.* Each controlled participant must provide to the Commissioner, within 30 days of a request, the items described in paragraphs (k)(2) and (3) of this section. The time for compliance described in this paragraph (k)(2)(iii)(B) may be extended at the discretion of the Commissioner.

(3) *CSA accounting requirements*—(i) *In general.* The controlled participants must maintain books and records (and related or underlying data and information) that are sufficient to—

(A) Establish that the controlled participants have used (and are using) a consistent method of accounting to measure costs and benefits;

(B) Translate foreign currencies on a consistent basis; and

(C) To the extent that the method materially differs from U.S. generally accepted accounting principles, explain any such material differences.

(ii) *Reliance on financial accounting.* For purposes of this section, the controlled participants may not rely solely upon financial accounting to establish satisfaction of the accounting requirements of this paragraph (k)(3). Rather, the method of accounting must clearly reflect income. *Thor Power Tools Co.* v. *Commissioner,* 439 U.S. 522 (1979).

(4) *CSA reporting requirements*—(i) *CSA Statement.* Each controlled participant must file with the Internal Revenue Service, in the manner described in this paragraph (k)(4), a ''Statement of Controlled Participant to § 1.482–7 Cost Sharing Arrangement'' (CSA Statement) that complies with the requirements of this paragraph (k)(4).

(ii) *Content of CSA Statement.* The CSA Statement of each controlled participant must—

(A) State that the participant is a controlled participant in a CSA;

(B) Provide the controlled participant's taxpayer identification number;

(C) List the other controlled participants in the CSA, the country of organization of each such participant, and the taxpayer identification number of each such participant;

(D) Specify the earliest date that any IDC described in paragraph (d)(1) of this section occurred; and

(E) Indicate the date on which the controlled participants formed (or revised) the CSA and, if different from such date, the date on which the controlled participants recorded the CSA (or any revision) contemporaneously in accordance with paragraphs (k)(1)(i) and (iii) of this section.

(iii) *Time for filing CSA Statement*—(A) *90-day rule.* Each controlled participant must file its original CSA Statement with the Internal Revenue Service Ogden Campus, no later than 90 days after the first occurrence of an IDC to which the newly-formed CSA applies, as described in paragraph (k)(1)(iii)(A) of this section, or, in the case of a taxpayer that became a controlled participant after the formation of the CSA, no later than 90 days after such taxpayer became a controlled participant. A CSA Statement filed in accordance with this paragraph (k)(4)(iii)(A) must be dated and signed, under penalties of perjury, by an officer of the controlled participant who is duly authorized (under local law) to sign the statement on behalf of the controlled participant.

(B) *Annual return requirement*—(*1*) *In general.* Each controlled participant must attach to its U.S. income tax return, for each taxable year for the duration of the CSA, a copy of the original CSA Statement that the controlled participant filed in accordance with the 90-day rule of paragraph (k)(4)(iii)(A) of this section. In addition, the controlled participant must update the information reflected on the original CSA Statement annually by attaching a schedule that documents changes in such information over time.

(*2*) *Special filing rule for annual return requirement.* If a controlled participant is not required to file a U.S. income tax return, the participant must ensure that the copy or copies of the CSA Statement and any updates are attached to Schedule M of any Form 5471, any Form 5472, or any Form 8865, filed with respect to that participant.

(iv) *Examples.* The following examples illustrate this paragraph (k)(4). In each example, Companies A and B are members of the same controlled group. The examples are as follows:

Example 1. A and B, both of which file U.S. tax returns, agree to share the costs of developing a new chemical formula in accordance with the provisions of this section. On March 30, Year 1, A and B record their agreement in a written contract styled, ''Cost Sharing Agreement.'' The contract applies by its terms to IDCs occurring after

March 1, Year 1. The first IDCs to which the CSA applies occurred on March 15, Year 1. To comply with paragraph (k)(4)(iii)(A) of this section, A and B individually must file separate CSA Statements no later than 90 days after March 15, Year 1 (June 13, Year 1). Further, to comply with paragraph (k)(4)(iii)(B) of this section, A and B must attach copies of their respective CSA Statements to their respective Year 1 U.S. income tax returns.

Example 2. The facts are the same as in *Example 1,* except that a year has passed and C, which files a U.S. tax return, joined the CSA on May 9, Year 2. To comply with the annual filing requirement described in paragraph (k)(4)(iii)(B) of this section, A and B must each attach copies of their respective CSA Statements (as filed for Year 1) to their respective Year 2 income tax returns, along with a schedule updated appropriately to reflect the changes in information described in paragraph (k)(4)(ii) of this section resulting from the addition of C to the CSA. To comply with both the 90-day rule described in paragraph (k)(4)(iii)(A) of this section and the annual filing requirement described in paragraph (k)(4)(iii)(B) of this section, C must file a CSA Statement no later than 90 days after May 9, Year 2 (August 7, Year 2), and must attach a copy of such CSA Statement to its Year 2 income tax return.

(l) *Effective date.* This section applies on the date of publication of this document as a final regulation in the **Federal Register**.

(m) *Transition rule*—(1) *In general.* Subject to paragraph (m)(2) of this section, an arrangement in existence before the date of publication of this document as a final regulation in the **Federal Register** will be considered a CSA, as described under paragraph (b) of this section, if, prior to such date, it was a qualified cost sharing arrangement under the provisions of § 1.482–7 (as contained in the 26 CFR part 1 edition revised as of January 1, 1996, hereafter in this section referred to as ''former § 1.482–7''), but only if the written contract, as described in paragraph (k)(1) of this section, is amended, if necessary, to conform with the provisions of this section, as modified by paragraph (m)(3) of this section, by the close of the 120th day after the date of publication of this document as a final regulation in the **Federal Register**.

(2) *Termination of grandfather status.* Notwithstanding paragraph (m)(1) of this section, an arrangement otherwise therein described will not be considered a CSA from the earliest of—

(i) A failure of the controlled participants to substantially comply with the provisions of this section, as modified by paragraph (m)(3) of this section;

(ii) A material change in the scope of the arrangement, such as a material expansion of the activities undertaken beyond the scope of the intangible development area, as described in former § 1.482–7(b)(4)(iv), as of the date of publication of this document as a final regulation in the **Federal Register**; or

(iii) The date 50 percent or more of the value of the interests in cost shared intangibles are owned directly or indirectly by a person or persons that were not direct or indirect owners of such interests as of the date of publication of this document as a final regulation in the **Federal Register**.

(3) *Transitional modification of applicable provisions.* For purposes of this paragraph (m), conformity and substantial compliance with the provisions of this section shall be determined with the following modifications:

(i) CSTs and PCTs occurring prior to the date of publication of this document as a final regulation in the **Federal Register** shall be subject to the provisions of former § 1.482–7 rather than this section. Notwithstanding the foregoing, PCTs of a CSA will be subject to the provisions of this section if there is a Periodic Trigger for such CSA for which a subsequent PCT, occurring on or after the date of publication of this document as a final regulation in the **Federal Register**, is the Trigger PCT.

(ii) Paragraph (b)(1)(i) and paragraph (b)(4) of this section shall not apply.

(iii) Paragraph (k)(1)(ii)(D) of this section shall not apply.

(iv) Paragraph (k)(1)(ii)(H) and paragraph (k)(1)(ii)(I) of this section shall be construed as applying only to transactions entered into on or after the date of publication of this document as a final regulation in the **Federal Register**.

(v) The deadline for recordation of the revised written contractual agreement pursuant to paragraph (k)(1)(iii) of this section shall be no later than the 120th day after the date of publication of this document as a final regulation in the **Federal Register**.

(vi) Paragraphs (k)(2)(ii)(G) through (J) of this section shall be construed as applying only with reference to PCTs entered into on or after the date of publication of this document as a final regulation in the **Federal Register**.

(vii) Paragraph (k)(4)(iii)(A) shall be construed as requiring a CSA Statement with respect to the revised written contractual agreement described in paragraph (m)(3)(iv) of this section no later than the 180th day after the date of publication of this document as a final regulation in the **Federal Register**.

(viii) Paragraph (k)(4)(iii)(B) shall be construed as only applying for taxable years ending after the filing of the CSA Statement described in paragraph (m)(3)(vii) of this section.

Par. 9. Section 1.482–8 is amended by adding *Examples 10* through *15* at the end of the section to read as follows:

§ 1.482–8 Examples of the best method rule.

* * * * *

Example 10. Preference for acquisition price method. (i) USP develops, manufacturers, and distributes ethical pharmaceutical products. USP and FS, USP's wholly-owned subsidiary, enter into a CSA to develop a new oncological drug, Oncol. Immediately prior to entering into the CSA, USP acquires Company X, an unrelated U.S. pharmaceutical company. Company X is solely engaged in oncological pharmaceutical research, and its only significant resources and capabilities are its workforce and its sole patent, which is associated with Compound Y, a promising molecular compound derived from a rare plant, which USP reasonably anticipates will contribute to developing Oncol. All of Company X researchers will be engaged solely in research that is reasonably anticipated to contribute to developing Oncol as well. The RT Rights in the Compound X and the commitment of Company X's researchers to the development of Oncol are external contributions for which compensation is due from FS as part of a PCT. Under the terms of the CSA, USP is to be compensated for its external contributions on a lump sum basis.

(ii) In this case, the acquisition price method, based on the lump sum price paid by USP for Company X, is likely to provide a more reliable measure of an arm's length PCT Payment due to USP than the application of any other method.

Example 11. Preference for market capitalization method. (i) Company X is a publicly traded U.S. company solely engaged in oncological pharmaceutical research and its only significant resources and capabilities are its workforce and the its sole patent, which is associated with Compound Y, a promising molecular compound derived from a rare plant. Company X has no marketable products. Company X enters into a CSA with FS, a newly-formed foreign subsidiary, to develop a new oncological drug, Oncol, derived from Compound Y. Compound X is reasonably anticipated to contribute to developing Oncol. All of Company X researchers will be engaged solely in research that is reasonably anticipated to contribute to the developing Oncol under the CSA. The RT Rights in Compound Y and the commitment of Company X's researchers are external contributions for which compensation is due from FS as part of a PCT. Under the terms of the CSA, Company X is to be compensated for its external contributions on a lump sum basis.

(ii) In this case, given that Company X's external contributions covered by PCTs relate to its entire economic value, the application of the market capitalization method, based on the market capitalization of Company X, is likely to provide a more reliable measure of an arm's length result for Company X's PCTs

to the CSA than the application of any other method.

Example 12. Preference for market capitalization method. (i) MicroDent, Inc. (MDI) is a publicly traded company that developed a new dental surgical microscope ScopeX–1, which drastically shortens many surgical procedures. On January 1 of Year 1, MDI entered into a CSA with a wholly-owned foreign subsidiary (FS) to develop ScopeX–2, the next generation of ScopeX–1. The RT Rights associated with ScopeX–1, as well as MDI's research capabilities are reasonably anticipated to contribute to the development of ScopeX–2 and are therefore external contributions for which compensation is due from FS as part of a PCT. Under the terms of the CSA, MDI is to be compensated for its external contributions on a lump sum basis. At the time of the PCT, MDI's only product was the ScopeX-I microscope, although MDI was in the process of developing ScopeX–2. Concurrent with the CSA, MDI separately transfers exclusive and perpetual exploitation rights associated with ScopeX–1 to FS in the same specified geographic area as assigned to FS in the CSA.

(ii) Although the transactions between MDI and FS under the CSA are distinct from the transactions between MDI and FS relating to the exploitation rights for ScopeX–1, it is likely to be more reliable to evaluate the combined effect of the transactions than to evaluate them in isolation. This is because the combined transactions between MDI and FS relate to all of the economic value of MDI (that is, the exploitation rights and research rights associated with ScopeX–1, as well as the research capabilities of MDI). In this case, application of the market capitalization method, based on the enterprise value of MDI on January 1 of Year 1, is likely to provide a more reliable measure of an arm's length payment for the aggregated transactions than the application of any other method.

(iii) Notwithstanding that the market capitalization method provides the most reliable measure of the aggregated transactions between MDI and FS, see paragraph (g)(2)(v) of this section for further considerations of when further analysis may be required to distinguish between the remuneration to MDI associated with PCTs under the CSA (for research rights and capabilities associated with ScopeX–1) and the remuneration to MDI for the exploitation rights associated with ScopeX–1.

Example 13. Income method (CPM-based) preferred to acquisition price method. The facts are the same as *Example 10*, except that the acquisition occurred significantly in advance of formation of the CSA, and reliable adjustments cannot be made for this time difference. In addition, Company X has other valuable molecular patents and associated research capabilities, apart from Compound Y, that are not reasonably anticipated to contribute to the development of Oncol and that cannot be reliably valued. Under the terms of the CSA, USP will undertake all R&D (consisting of laboratory research and clinical testing) and manufacturing associated with Oncol, as well as the distribution activities for its assigned area (the United States). FS will distribute Oncol in its assigned area (the rest of the world). FS's distribution activities are routine in nature, and the profitability from its activities may be reliably determined from third-party comparables. FS does not furnish any external contributions. At the time of the PCT, reliable (ex ante) financial projections associated with the development of Oncol and its separate exploitation in each of USP's and FSub's assigned geographical territories are undertaken. In this case, application of the income method is likely to provide a more reliable measure of an arm's length result than application of the acquisition price method based on the price paid by USP for Company X.

Example 14. Evaluation of alternative methods. (i) The facts are the same as *Example 10*, except that the acquisition occurred sometime prior to the CSA, and Company X has some areas of promising research that are not reasonably anticipated to contribute to developing Oncol. In general, the Commissioner determines that the acquisition price data is useful in informing the arm's length price, but not necessarily determinative. Under the terms of the CSA, USP will undertake all R&D (consisting of laboratory research and clinical testing) and manufacturing associated with Oncol, as well as the distribution activities for its assigned area (the United States). FS will distribute Oncol in its assigned area (the rest of the world). FS's distribution activities are routine in nature, and the profitability from its activities may be reliably determined from third-party comparables. At the time of the PCT, financial projections associated with the development of Oncol and its separate exploitation in each of USP's and FSub's assigned geographical territories are undertaken.

(ii) Under the facts, it is possible that the acquisition price method or the CPM-based income method might reasonably be applied. Whether the acquisition price method or the income method provides the most reliable evidence of the arm's length price of USP' contributions depends on a number of factors, including the reliability of the financial projections, the reliability of the discount rate chosen, and the extent to which the acquisition price of Company X can be reliably adjusted to account for changes in value over the time period between the acquisition and the formation of the CSA and to account for the value of the in-process research done by Company X that does not constitute external contributions to the CSA.

Example 15. Evaluation of alternative methods. (i) The facts are the same as *Example 14*, except that FS has a patent on Compound Y, which the parties reasonably anticipate will be useful in mitigating potential side effects associated with Compound X and thereby contribute to the development of Oncol. The RT Rights in Compound Y constitute an external contribution for which compensation is due from USP as part of a PCT. The value of FS's external contribution cannot be reliably measured by market benchmarks.

(ii) Under the facts, it is possible that either the acquisition price method and the income method together or the residual profit split method might reasonably be applied to determine the arm's length PCT Payments due between USP and FS. Under the first option the PCT Payment for the external contributions related to Company X's workforce and Compound X would be determined using the acquisition price method referring to the lump sum price paid by USP for Company X. Because the value of these external contributions can be determined by reference to a market benchmark they are considered routine external contributions. Accordingly, under this option, the external contribution related to Compound Y would be the only nonroutine external contribution and the relevant PCT Payment is determined using the income method. Under the second option, rather than looking to the acquisition price for Company X, all the external contributions are considered nonroutine and the RPSM is applied to determine the PCT Payments for each external contribution. Under either option, the PCT Payments will be netted against each other.

(iii) Whether the acquisition price method together with the income method or the residual profit split method provides the most reliable evidence of the arm's length price of the external contributions of USP and FS depends on a number of factors, including the reliability of the determination of the relative values of the external contributions for purposes of the RPSM, and the extent to which the acquisition price of Company X can be reliably adjusted to account for changes in value over the time period between the acquisition and the formation of the CSA and to account for the value of the RT Rights in the in-process research done by Company X that does not constitute external contributions to the CSA. In these circumstances, it is also relevant to consider whether the results of each method are consistent with each other, or whether one or both methods are consistent with other potential methods that could be applied.

Par. 10. Section 1.861–17 is amended by revising paragraph (c)(3)(iv) to read as follows:

§ 1.861–17 Allocation and apportionment of research and experimental expenditures.

* * * * *

(c) * * *

(3) * * *

(iv) *Effect of cost sharing arrangements.* If the corporation controlled by the taxpayer has entered into a cost sharing arrangement, in accordance with the provisions of § 1.482–7, with the taxpayer for the purpose of developing intangible property, then that corporation shall not reasonably be expected to benefit from the taxpayer's share of the research expense.

* * * * *

Par. 11. Section 1.6662–6 is amended by:

1. Removing the third and fourth sentence of paragraph (d)(2)(i).

2. Adding paragraph (d)(2)(iii)(D).

The addition reads as follows:

§ 1.6662–6 Transaction between persons described in section 482 and net section 482 transfer price adjustments.

* * * * *

(d) * * *

(2) * * *

(iii) * * *

(D) Satisfaction of the documentation requirements described in § 1.482–7(k)(2) for the purpose of complying with the rules for CSAs under § 1.482–7 also satisfies all of the documentation requirements listed in paragraph (d)(2)(iii)(B) of this section, except the requirements listed in paragraphs (*2*) and (*10*) of such paragraph, with respect to CSTs and PCTs described in § 1.482–7(b)(2) and (3), provided that the documentation also satisfies the requirements of paragraph (d)(2)(iii)(A) of this section.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 12. The authority for part 301 continues to read, in part, as follows:

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

Par. 13. Section 301.7701–1 is amended by revising paragraph (c) to read as follows:

§ 301.7701–1 Classification of organizations for federal tax purposes.

* * * * *

(c) *Cost sharing arrangements.* A cost sharing arrangement that is described in § 1.482–7 of this chapter, including any arrangement that the Commissioner treats as a CSA under § 1.482–7(b)(5) of this chapter, is not recognized as a separate entity for purposes of the Internal Revenue Code. See § 1.482–7 of this chapter for the rules regarding CSAs.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–16626 Filed 8–22–05; 2:48 pm]

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Federal Register

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Part III

Department of Labor

Office of Labor-Management Standards

29 CFR Part 404

Labor Organization Officer and Employee Reports; Proposed Rules

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 404

RIN 1215–AB49

Labor Organization Officer and Employee Reports

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Employment Standards Administration (ESA) of the Department of Labor (Department) is proposing to revise the Form LM–30 and its instructions. The Form LM–30 implements section 202 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), 29 U.S.C. 432, whose purpose is to require officers and employees of labor organizations to publicly disclose possible conflicts between their personal financial interests and their duty to the labor union and its members. The proposed rule would clarify the Form LM–30, and its instructions, by explaining key terms and providing examples of the financial matters that must be reported, eliminate exemptions in the current Form LM–30 that permit filers to not report financial matters that would otherwise be required to be reported under the Act, and improve the usability of the reports by union members and the public. The Department invites general and specific comment on any aspect of the rule; it also invites comment on specific points, as noted throughout the text of this preamble.

DATES: Comments must be received on or before October 28, 2005.

ADDRESSES: You may submit comments, identified by RIN 1215–AB49, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov.

E-mail: OLMS–REG–1215–AB49@dol.gov.

FAX: (202) 693–1340. To assure access to the FAX equipment, only comments of five or fewer pages will be accepted via FAX transmittal, unless arrangements are made prior to faxing, by calling the number below and scheduling a time for FAX receipt by the Office of Labor-Management Standards (OLMS).

Mail: Mailed comments should be sent to Kay Oshel, Director of the Office of Policy, Reports and Disclosure Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5605, Washington, DC 20210. Because the Department continues to experience delays in U.S. mail delivery due to the ongoing concerns involving toxic contamination, you should take this into consideration when preparing to meet the deadline for submitting comments.

OLMS recommends that you confirm receipt of your comment by contacting (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877–8339 (TTY/TDD).

Comments will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For further information contact Kay H. Oshel, Director of the Office of Policy, Reports and Disclosure, at: Kay H. Oshel, U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, 200 Constitution Avenue NW., Room N–5605, Washington, DC 20210, *olms-public@dol.gov,* (202) 693–1233 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

The Form LM–30 is used by officers and employees of labor organizations subject to the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act). The Act requires public disclosure of certain financial interests held, income received, and transactions engaged in by labor organization officers and employees and their spouses and minor children. Subject to certain exclusions, these interests, incomes, and transactions include: (1) Payments or benefits from, or interests in, an employer whose employees the filer's union represents or is actively seeking to represent; (2) transactions involving interests in, or loans to or from, an employer whose employees the filer's union represents or is actively seeking to represent; (3) interests in, income from, or transactions with a business a substantial part of which consists of dealing with an employer whose employees the filer's union represents or is actively seeking to represent; (4) interests in, income from, or transactions with a business that deals with the filer's union or a trust in which the filer's union is interested; (5) transactions or arrangements with an employer whose employees the filer's union represents or is actively seeking to represent; and (6) payments from an employer or labor relations consultant.

The Form LM–30, which implements in part the financial disclosure provisions of Title II of the LMRDA, has remained essentially unchanged in the more than 40 years since 1963, when the Labor Department first approved the form LM–30. Over the past several years, the Department has engaged in a process to improve the administration of the LMRDA, including the design and usefulness of the financial reports required by the Act. In the course of this process, a number of problems were identified with Form LM–30. This proposed rule would address these problems by

- Clarifying the instructions by explaining the key terms used in the Act and instructions, and by providing examples of the financial matters that must be reported under each subsection of the Act;
- Eliminating exemptions that permit filers to not report financial matters that would otherwise be required to be reported under the Act, and which present the potential of conflicts of interests for union officers and employees;
- Improving disclosure by creating a summary table on the front page of the report, supported by schedules, for disclosing (1) The filer's interests, payments, loans, transactions or arrangements, (2) the other party to these financial practices, and (3) the dealings, if any, between the party and the filer's labor organization or the employer whose employees the filer's labor organization represents or actively seeks to represent.

The Department invites comment on this proposed rule with respect to the benefits of these changes, the ease or difficulty with which labor organization officers and employees will be able to comply with these changes, and whether the changes will be meaningful, useful, and in accordance with the purposes of the LMRDA, which are to disclose to union members and the public information about certain financial interests of union officials. Interested parties and the public are invited to draw upon their experience with similar conflict and disclosure standards in other settings such as government employment, accounting, corporate governance, legal and judicial practice, medicine, and journalism. The Department invites general and specific comment on any aspect of the rule; it also invites comment on specific points, as noted throughout the text of this preamble.

A. Financial Transparency

This proposed rule seeks to revise the Form LM–30, the form used by labor

organization officers and employees to file the annual financial reports required by section 202 of the LMRDA, 29 U.S.C. 432. The rulemaking continues the Department's efforts over the past four years to improve voluntary compliance with, and enforcement of, the LMRDA. In response to requests from union members, members of Congress, public interest groups, and others, the Department:

- Launched a new disclosure web site (*http://www.union-reports.dol.gov*), where individuals may view union financial reports and conduct data searches;
- Added reports filed by labor union officers and employees, employers, and labor relations consultants (Forms LM–10, LM–20, LM–21, and LM–30) to the disclosure web site;
- Modernized the annual financial disclosure report (Form LM–2) filed by the largest labor organizations (see 68 FR 58374, Oct. 9, 2003);
- Raised the filing threshold for Form LM–2, thereby increasing the number of labor organizations that may file a simplified version of the annual financial disclosure report;
- Enhanced compliance assistance programs for filers; and
- Increased the investigative resources of OLMS field offices to facilitate enforcement of the Act.

The Secretary also created a new annual financial disclosure report (Form T–1) for use by the largest labor organizations to report on the financial operations of certain trusts in which they are interested (see 68 FR 58374, Oct. 9, 2003), but the requirement that union file this information report was vacated by the District of Columbia Circuit on appeal. See *American Federation of Labor and Congress of Indus. Organizations* v. *Chao*, 409 F. 3d 377 (D.C. Cir. May 31, 2005), petition for rehearing and rehearing en banc filed July 15, 2005. The goal of these initiatives, like this proposal, has been to achieve more detailed and transparent reporting of the financial information that Congress, in enacting the LMRDA, intended to be made public for the benefit of union members and the public. Such transparency allows union members to obtain information needed by them to monitor their union's affairs and to make informed choices about the leadership of their union and its direction. At the same time, this transparency promotes the unions' own interests as democratic institutions and the interests of the public and the government. Financial transparency also deters fraud and self-dealing, and facilitates the discovery of such misconduct when it does occur. In these ways, the Department's reforms advance the LMRDA's declared purpose ''that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations.'' LMRDA § 2(a), 29 U.S.C. 401(a).

B. The History of the LMRDA

In enacting the LMRDA in 1959, a bipartisan Congress expressed the conclusion that in the labor and management fields ''there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.'' LMRDA § 2(a), 29 U.S.C. 401(a).

The legislation was the direct outgrowth of a Congressional investigation conducted by the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, chaired by Senator John McClellan of Arkansas. In 1957, the committee began a highly publicized investigation of union racketeering and corruption; and its findings of financial abuse, mismanagement of union funds, and unethical conduct provided much of the impetus for enactment of the LMRDA's remedial provisions. See generally Benjamin Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harv. L. Rev. 851, 851–55 (1960). During the investigation, the committee uncovered a host of improper financial arrangements between officials of several international and local unions and employers (and labor consultants aligned with the employers) whose employees were represented by the unions in question or might be organized by them. Similar arrangements also were found to exist between union officials and the companies that handled matters relating to the administration of union benefit funds. See generally Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, S. Report No. 85–1417 (1957) (''Interim Report of the McClellan Committee''). For examples of some of the improper arrangements directly or indirectly involving officials of these unions, see pp. 42–86, 122–30, 150–57, 222–55, 376–420, 441–50. See *also* Robert F. Kennedy, *The Enemy Within* (1960) (discussing the committee's investigation).

The statute was designed to remedy these various ills through a set of integrated provisions aimed at union governance and management. These include a ''bill of rights'' for union members, which provides for equal voting rights, freedom of speech and assembly, and other basic safeguards for union democracy, see LMRDA §§ 101–105, 29 U.S.C. 411–415; financial reporting and disclosure requirements for unions, union officers and employees, employers, labor relations consultants, and surety companies, see LMRDA §§ 201–206, 211, 29 U.S.C. 431–436, 441; detailed procedural, substantive, and reporting requirements relating to union trusteeships, see LMRDA §§ 301–306, 29 U.S.C. 461–466; detailed procedural requirements for the conduct of elections of union officers, see LMRDA §§ 401–403, 29 U.S.C. 481–483; safeguards for unions, including bonding requirements, the establishment of fiduciary responsibilities for union officials and other representatives, criminal penalties for embezzlement from a union, loans by a union to officers or employees, employment by a union of certain convicted felons, and payments to employees for prohibited purposes by an employer or labor relations consultant, see LMRDA §§ 501–505, 29 U.S.C. 501–505; and prohibitions against extortionate picketing and retaliation for exercising protected rights, see LMRDA §§ 601–611, 29 U.S.C. 521–531.

The reporting requirement for officers and employees operates in tandem with the Act's establishment of a fiduciary duty for union officials and representatives. 29 U.S.C. 501. Congress addressed conflicts of interest in both section 202 and section 501(a) of the Act. 29 U.S.C. 432, 501(a). The latter provides in part:

> The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the

organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization.

29 U.S.C. 501(a). Both provisions address the potential and actual conflict between a union representative's personal interests and his or her duty to the union and its members. See Theodore Clark, Jr., *The Fiduciary Duties of Union Officials under Section 501 of the LMRDA*, 52 Minn. L. Rev. 437, 458–60 (1962).

The need for the officer and employee disclosure provisions was not seriously debated during the consideration of the LMRDA legislation. The McClellan Committee hearings disclosed a history of self-dealing by certain union officials, often at the expense of their union's membership. Then Senator John F. Kennedy was the chief sponsor of the Senate bill, S. 505, which served as the foundation for the LMRDA. In introducing the bill for the Senate's consideration, Senator Kennedy addressed concerns about the involvement of union officials in matters that blurred their personal interests and their union's interests, which would be remedied by the legislation. Senator Kennedy used the experience of the Teamsters union, as revealed by the investigation of the McClellan Committee, to underscore the purposes to be achieved by the Act:

First. It will no longer be possible for the dues of Teamster members to be paid out to hoodlums posing as business agents, or be invested in improper or risky racetrack or real estate deals, or to be used by [the union's] officers to build their own personal financial empires without the knowledge of the members themselves—or without investigation by the press and public authorities.

Second. [A union official] would be required to disclose all his business dealings with insurance agents handling the union's welfare funds, his private arrangements with employers, his hidden partnerships in business ventures foisted upon his members, and all other possible conflicts of interest.

* * * * * * *

Sixth. [Union officials] will find future collusion with employers vastly restricted—with no more loans from employer groups, no more attacks on rival unions through middlemen * * *, and no more secrecy shrouding the use of union funds to bail out a collaborating employer.

105 Cong. Rec. S817 (daily ed. Jan. 20, 1959), reprinted in 2 NLRB Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (''Leg. History''), at 969. The improper dealings by the Teamster officials, to which Senator Kennedy refers, are detailed in the Interim Report of the McClellan Committee, at, *e.g.*, 48, 59–60, 64–86, 222–54, 443–50. These dealings, like those identified by officials of other unions in the Interim Report, included actions undertaken by national officers, or others acting at their behest, involving matters affecting not only the national union's operation but also matters of importance to local and intermediate bodies of their union. See *e.g.*, Interim Report, at 4–7, 46–49, 51, 55, 59–60, 63, 69, 74, 81, 87, 122–25, 128, 130, 179, 186–87, 224, 228, 230–40, 244, 250, 252, 284–85, 295, 297, 300, 444–48, 264–66, 268, 281. See also *The Enemy Within*, at 97, 99, 104–05, 106, 221–24.

The Senate Committee Report provided an overview of section 202 of the LMRDA:

[This section] requires a union officer or employee to disclose any securities or other interest which he has in a business whose employees his labor union represents or ''seeks to represent'' in collective bargaining. When a prominent union official has an interest in the business with which the union is bargaining, he sits on both sides of the table. He is under temptation to negotiate a soft contract or to refrain from enforcing working rules so as to increase the company's profits. This is unfair to both union members and competing businesses.

S. Rep. No. 187 (''Senate Report'') (1959), at 15, reprinted in 2 Leg. History, at 411. As explained in the Senate Report: ''The hearings before the McClellan committee brought to light a number of instances in which union officials gained personal profit from a business which dealt with the very same employer with whom they engaged in collective bargaining on behalf of the union.'' *Id.* The committee endorsed the concern expressed in the AFL–CIO's ethical practices code that the union official ''may be given special favors or contracts by the employer in return for less than a discharge of his obligations as a trade-union leader.'' *Id.*

In explaining the purpose of the disclosure rules for union officers and employees, the Senate Report presented ''three reasons for relying upon the milder sanction of reporting and disclosure [relative to establishing criminal penalties] to eliminate improper conflicts of interest,'' which can be summarized as follows:

- Disclosure discourages questionable practices. ''The searchlight of publicity is a strong deterrent.'' Disclosure rules should be tried before more severe methods are employed.
- Disclosure aids union governance. Reporting and publication will enable unions ''to better regulate their own affairs. The members may vote out of office any individual whose personal financial interests conflict with his duties to members,'' and reporting and disclosure would facilitate legal action by members against ''officers who violate their duty of loyalty to the members.''
- Disclosure creates a record. The reports will furnish a ''sound factual basis for further action in the event that other legislation is required.''

Senate Report, at 16, reprinted in 1 Leg. History, at 412. The Report further stated:

The committee bill attacks the problem [of conflicts of interest] by requiring union officers and employees to file reports with the Secretary of Labor disclosing to union members and the general public any investments or transactions in which their personal financial interests may conflict with their duties to the members. The bill requires only the disclosure of conflicts of interest as defined therein. The other investments of union officials and their sources of income are not matters of public concern. No union officer or employee is obliged to file a report unless he holds a questionable interest in or has engaged in a questionable transaction. The bill is drawn broadly enough, however, to require disclosure of any personal gain which an officer or employee may be securing at the expense of the union members.

Senate Report, at 14–15, reprinted in 1 Leg. History, at 410–11. The House Committee Report (''House Report''), H.R. Rep. No. 741 (1959), at 11, reprinted in 1 Leg. History, at 769, conveyed the same message. Both the Senate and House Reports recognize that a reportable interest is not necessarily an illegal practice. As the House Report stated:

In some instances matters to be reported are not illegal and may not be improper but may serve to disclose conflicts of interest. Even in such instances, disclosure will enable the persons whose rights are affected, the public, and the Government, to determine whether the arrangements or activities are justifiable, ethical, and legal.

House Report, at 4, reprinted in 1 Leg. History, at 762. See Senate Report, at 38, reprinted in 1 Leg. History, at 434 (''By requiring reports * * *, the committee is not to be construed as necessarily condemning the matters to be reported if they are not specifically declared to be improper or made illegal under other provisions of the bill or other laws.''). ''Reports are required as to matters which should be public knowledge so that their propriety can be explored in the light of known facts and conditions.'' *Id.* As stated by Senator Barry Goldwater after the Act had been passed:

Briefly, what must be reported are holdings of interest in or the receipt of economic benefits from employers who deal or might deal with such union official's union, or

holdings in or benefits from enterprises which do business with such union official's union.

105 Cong. Rec. A8512 (daily ed. Oct. 2, 1959), reprinted in 2 Leg. History, at 1846.

Conflict of interest standards, including disclosure obligations of individuals and entities occupying positions of trust, are well grounded in U.S. law. As stated in the House Report, repeating almost verbatim the same point in the Senate Report:

For centuries the law of fiduciaries has forbidden any person in a position of trust subject to such law to hold interests or enter into transactions in which self-interest may conflict with complete loyalty to those whom he serves. Such a person may not deal with himself, or acquire adverse interests, or make any personal profit as a result of his position. The same principle has long been applied to trustees, to agents, and to bank directors. It should be equally applicable to union officers and employees [quoting the AFL–CIO's ethical practices code]: ''[A] basic ethical principle in the conduct of union affairs is that no responsible trade union official should have a personal financial interest which conflicts with the full performance of his fiduciary duties as a worker's representative.''

Senate Report, at 11, reprinted in 1 Leg. History, at 769. See generally Restatement (Second) of Trusts (1959) §§ 170, 173; Restatement (Second) of Agency (1958) §§ 381, 387–98.

Section 202 is an effort, in part, to make effective the disclosure requirements associated with the fiduciary standards applied to union officials in Title V of the LMRDA, which, in turn, reflect the requirements of the extensive code voluntarily adopted by the AFL–CIO in 1957 and applied to its affiliated unions and officials. See Senate Report, at 12–16, reprinted in 1 Leg. History, at 408–12; House Report, at 9–12, reprinted in 1 Leg. History, at 767–70. See also Archibald Cox, *Internal Affairs of Labor Unions under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 824–29 (1960). The following excerpts from this code demonstrate the nexus between the voluntary code and the disclosure requirements of section 202.

[A] basic ethical principle in the conduct of trade union affairs is that no responsible trade union official should have a personal financial interest which conflicts with the full performance of his fiduciary duties as a workers' representative.

* * * * *

[U]nion officers and agents should not be prohibited from investing their personal funds in their own way in the American free enterprise system so long as they are scrupulously careful to avoid any actual or potential conflict of interest.

* * * * *

In a sense, a trade union official holds a position comparable to that of a public servant. Like a public servant, he has a high fiduciary duty not only to serve the members of his union honestly and faithfully, but also to avoid personal economic interest which may conflict or appear to conflict with the full performance of his responsibility to those whom he serves.

* * * * *

There is nothing in the essential ethical principles of the trade union movement which should prevent a trade union official, at any level, from investing personal funds in the publicly traded securities of corporate enterprises unrelated to the industry or area in which the official has a particular trade union responsibility.

* * * * *

The policies * * * apply to: (a) all officers of the AFL–CIO and all officers of national and international unions affiliated with the AFL–CIO, (b) all elected or appointed staff representatives and business agents of such organizations, and (c) all officers of subordinate bodies of such organizations who have any degree of discretion or responsibility in the negotiation of collective bargaining agreements or their administration.

* * * * *

[These principles] apply not only where the investments are made by union officials, but also where third persons are used as blinds or covers to conceal the financial interests of union officials.

Ethical Practices Code IV: Investments and business interests of union officials (''AFL–CIO Ethical Practices Code''), 105 Cong. Rec.*16379 (daily ed. Sept. 3, 1959), reprinted in 2 Leg. History, at 1408.

The Department intends by the proposals set forth herein to better achieve the purposes of the LMRDA, as demonstrated by the legislative history. To that end, and by this reform, the Department will increase compliance with the financial disclosure requirements in the Act, clarify the form and instructions by use of examples and defined terms, remove counterproductive exemptions to the filing requirements, and organize the information in a more useful format.

C. Statutory Language

Section 202 provides in its entirety:

SEC. 202. (a) Every officer of a labor organization and every employee of a labor organization (other than an employee performing exclusively clerical or custodial services) shall file with the Secretary a signed report listing and describing for his preceding fiscal year—

(1) Any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child derived directly or indirectly from, an employer whose employees such labor organization represents or is actively seeking to represent, except payments and other benefits received as a bona fide employee of such employer;

(2) Any transaction in which he or his spouse or minor child engaged, directly or indirectly, involving any stock, bond, security, or loan to or from, or other legal or equitable interest in the business of an employer whose employees such labor organization represents or is actively seeking to represent;

(3) Any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent;

(4) Any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, a business any part of which consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with such labor organization;

(5) Any direct or indirect business transaction or arrangement between him or his spouse or minor child and any employer whose employees his organization represents or is actively seeking to represent, except work performed and payments and benefits received as a bona fide employee of such employer and except purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer; and

(6) Any payment of money or other thing of value (including reimbursed expenses) which he or his spouse or minor child received directly or indirectly from any employer or any person who acts as a labor relations consultant to an employer, except payments of the kinds referred to in section 302(c) of the Labor Management Relations Act, 1947, as amended.

(b) The provisions of paragraphs (1), (2), (3), (4), and (5) of subsection (a) shall not be construed to require any such officer or employee to report his bona fide investments in securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934, in shares in an investment company registered under the Investment Company Act or in securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, or to report any income derived therefrom.

(c) Nothing contained in this section shall be construed to require any officer or employee of a labor organization to file a

report under subsection (a) unless he or his spouse or minor child holds or has held an interest, has received income or any other benefit with monetary value or a loan, or has engaged in a transaction described therein.

29 U.S.C. 432.

D. Increases in Sophistication and Complexity of Financial Practices

The Form LM–30 has remained essentially unchanged since 1963, when the Department first approved the Form LM–30. See 28 FR 14384 (Dec. 27, 1963). During this time the operations of unions have changed and financial matters affecting institutions and individuals have become more sophisticated. While the same statutory disclosure standard applies now as it did when the Act took effect, the financial activities of individuals and organizations have increased exponentially in scope, complexity and interdependence over the past four decades.

For example, many unions manage benefit plans for their members, maintain close business relationships with financial service providers such as insurance companies and investment firms, operate revenue-producing subsidiaries, and participate in foundations and charitable activities. The complexity of union financial practices, including business relationships with outside firms and vendors, increases the likelihood that union officers and employees may have interests in, or receive income from, these businesses. As more labor organizations conduct their financial activities through sophisticated trusts, increased numbers of businesses have commercial relationships with such trusts, creating financial opportunities for union officers and employees who may operate, receive income from, or hold an interest in such businesses. In addition, employers also have fostered multi-faceted business interests, creating further opportunities for financial relationships between employers and union officers and employees. In this context, disclosure is critical to promoting good union governance, fostering ethical behavior, and deterring and detecting self-dealing.

Moreover, present-day concerns about the intersection of personal interest and professional responsibilities are no longer associated only with traditional trustees, but are matters of central importance to the securities industry, corporate governance, and, among other professional groups, lawyers, physicians, accountants, researchers, journalists, and government employees.

The Department believes that the purposes of the Act could be better accomplished by promoting increased compliance with the financial disclosure requirements in the Act, clarifying the form and instructions by use of examples and defined terms, removing counterproductive exemptions to the filing requirements, and organizing the information in a more useful format. By improving the form and promoting compliance with reporting requirements, union members will obtain a more accurate picture of the personal financial interests of their union's officers and employees, as those interests may bear upon their actions on behalf of the union and its members. Publicly available information concerning potential conflicts of union officials allows union members to better understand any financial incentives or disincentives faced by their union's officers and employees, and to make informed choices about the leadership of their union and its management of the union. Additional disclosure promotes the unions' own interests as democratic institutions responsive to the concerns of union members, and deters, as well as facilitates the discovery of, fraud and self-dealing.

E. The Current Form LM–30

The Department initiated its enforcement of the section 202 reporting requirements within months of the enactment of the LMRDA in 1959, and a regulation making the Form LM–30 effective was published in 1963. See 28 FR 14384 (Dec. 27, 1963).

The current Form LM–30 consists of four sections: a section for identifying data about the filer, and Parts A through C. (The current form and instructions are available at www.olms.dol.gov.) Part A of the form seeks transactions that would be reportable under sections 202(a)(1), (a)(2), and (a)(5). See 29 U.S.C. 432(a)(1), (2), (5). Part A thus generally requires reporting of holdings in, transactions and arrangements with, and income and loans from the employer whose employees the filer's labor organization represents or actively seeks to represent. Part B attempts to implement sections 202(a)(3), and (a)(4). See 29 U.S.C. 432(a)(3), (4). Part B thus generally captures holdings in and income from businesses that deal either with the labor organization, a trust in which the labor organization is interested, or the employer whose employees the filer's labor organization represents or actively seeks to represent. Part C attempts to implement section 202(a)(6). See 29 U.S.C. 432(a)(6). Part C thus generally requires reporting of payments of money or other things of value from employers and labor relations consultants.

Specifically, the first section gathers basic information about the filer, including the name of the organization in which the filer is an officer or employee, the filer's position with the organization, and the fiscal year covered by the report.

In the ''General Instructions'' filers are informed: ''You do not have to report any sporadic or occasional gifts, gratuities, or loans of insubstantial value, given under circumstances or terms unrelated to the recipient's status in a labor organization, or anything excluded in the specific instructions in Parts A, B, or C below.''

Part A instructs the filer: ''Complete [this part] if you (1) held an interest in, (2) engaged in transactions (including loans) with, or (3) derived income or other economic benefit of monetary value from, an employer whose employees your organization represents or is actively seeking to represent. Complete a separate Part A for each such employer and for each such interest, transaction, or item of income or other economic benefit connected with that employer.'' For each such interest, transaction, or income, the filer is requested to disclose its nature, value, and date of receipt. With regard to the nature of a discloseable transaction, the instructions provide as examples: ''Continuing use of automobile for personal purposes, gift of refrigerator, payment for services.'' Additional examples provided include: ''Loan of money from employer, rental of loft building, located at X street, Y city, Z State, to employer.'' The instructions provide additional information for reporting interests in, and transactions involving, stocks, bonds, securities, options and similar interests.

After identifying the matters that have to be reported, the instructions advise the potential filer that he or she should not report holdings of, transactions in, or income from bona fide investments in registered securities; holdings of, transactions in, or income from other securities if they are of ''insubstantial value or amount'' (defined as holdings or transactions of $1,000 or less and income of $100 or less in any one security) and occur under terms unrelated to the filer's status in the labor organization; transactions involving purchases and sales of goods and services in the regular course of business at prices generally available to any employee of the employer; and ''payments and benefits received as a bona fide employee of the employer for past or present services, including wages, payments or benefits received under a bona fide health, welfare, pension, vacation, training or other

benefit plan; and payments for periods in which such employee engaged in activities other than productive work, if the payments for such period of time are: (a) Required by law or a bona fide collective bargaining agreement, or (b) made pursuant to a custom or practice under such a collective bargaining agreement, or (c) made pursuant to a policy, custom, or practice with respect to employment in the establishment which the employer has adopted without regard to any holding by such employee of a position with a labor organization.''

Part B instructs the filer to report ''an interest in or * * * income or other economic benefit with monetary value, including reimbursed expenses, from a business (1) a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with the business of an employer whose employees your labor organization represents or is actively seeking to represent, or (2) any part of which consists of buying from or selling or leasing directly or indirectly to, or otherwise dealing with your labor organization or a trust in which your labor organization is interested.'' Filers are instructed that they are not required to report any of the interests or income identified in two exceptions to Part A (holdings in, transactions in, and income from bona fide investments in registered securities and insubstantial holdings in, transactions in, and income from other securities). The filer must identify the name and address of the business involved, describe the type of organization the business deals with (employer, labor organization, trust), enter the nature of the dealings between the two parties and the value of these dealings, enter the interest held or income received by the filer, and the dollar amount of such income or interest.

In Part C, the filer is advised to ''Complete Part C if you received from any employer (other than an employer covered under Parts A and B above), or from any labor relations consultant to an employer, any payment of money or other thing of value.'' The instructions identify the following as items that are not required to be reported: (1) Payments of the kind referred to in section 302(c) of the Labor Management Relations Act (LMRA); (2) bona fide loans, interest or dividends from banks, other bona fide credit institutions, and insurance companies; and (3) interest on bonds or dividends on stock, provided such interest or dividends are received, and such bonds or stock have been acquired, under circumstances and terms unrelated to the recipient's status in a labor organization and the issuer of such securities is not an enterprise in competition with the employer whose employees the filer's labor organization represents or actively seeks to represent. The instructions then advise that notwithstanding the exceptions, the filer must report any payments ''(1) not to organize employees; (2) to influence employees in any way with respect to their rights to organize; (3) to take any action with respect to the status of employees or others as members of a labor organization; and (4) to take any action with respect to bargaining or dealing with employers whose employees [the filer's] organization represents or seeks to represent.'' For each interest or transaction to be reported under Part C, filers must identify the name of the employer or labor relations consultant and the nature and amount of the payment.

The LMRA section 302(c) exclusions are not explained in the instructions. Instead, the instructions provide a full-page quotation of that section. As a general rule, the section 302(c) exclusions make the following payments non-reportable: (1) Any money or other thing of value payable by an employer to (a) an employee whose established duties include acting openly for the employer in matters of labor relations or personnel administration, or (b) any officer or employee of a labor organization who also is an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) money or other thing of value payable in satisfaction of a judgment, arbitral award, settlement or release of any claim in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to deductions from wages in payment of dues in a labor organization by written assignment; (5) with respect to money or other thing of value paid to a trust fund established by the representative of an employer's employees for the sole benefit of these employees, their families and dependents to pay for medical care, pensions, compensation for occupational injury, unemployment benefits, life insurance, disability insurance or accident insurance; (6) with respect to money or other thing of value paid by any employer to a trust fund established by the representative of the employer's employees for the purpose of pooled vacation, holiday, severance or similar benefits, or apprenticeship or training programs; (7) with respect to money or other thing of value paid by any employer to an individual or pooled trust fund for the purpose of (a) educational scholarships for the benefit of employees, families, and dependents, (b) child care centers, or (c) employee housing; (8) with respect to money or other thing of value paid by any employer to a trust for defraying the costs of legal services; or (9) with respect to money or other thing of value paid by any employer to a labor management committee.

F. Number of Current Form LM–30's Filed

Prior to initiating this rulemaking, the Department sought to determine the number of Form LM–30s filed, and the number of union officers and employees. The following table represents all reports filed in fiscal years 2001 through 2004:

Fiscal year	Number of reports filed
2001	59
2002	49
2003	41
2004	95
Total	244

Next, the Department attempted to identify the universe of people who are potentially subject to the reporting requirements by calculating the number of union officers and employees. The only source reasonably available to the Department was reports filed on Forms LM–2, LM–3 and LM–4. These reports are filed by labor organizations to disclose their financial conditions and operations, as well as limited information concerning officers and employees. The following table sets forth the Form LM–30 data gleaned from the FY 2002 LM reports:

Source of data	Number of officers or employees reported
LM–2 Officers	66,749
LM–2 Employees	47,371
LM–3 Officers	86,808
LM–4 Officers	3,706
Total	204,634

Using these 2002 figures and the annual average of approximately 61 Form LM–30 filings for this 4-year period, the Department computed a filing rate for Form LM–30 of 0.03% ($61/204{,}634 \times 100 = 0.03\%$). The Form LM–2, used by the largest labor organizations, requires the filer to list all the union's officers and the employees

who received more than $10,000 in salary, allowances, and other direct and indirect disbursements from the union. Form LM–3, used by unions with under $200,000 in annual receipts (raised to $250,000 for fiscal years beginning July 1, 2004 and thereafter), requires the filer to list all the union's officers, but report employees who received more than $10,000 in salary, allowances, and other direct and indirect disbursements from the union only in the additional information item on the form. This information is not available in the OLMS disclosure database. Form LM–4 filers (unions with annual receipts of less than $10,000) do not report either officers or employees. Form LM–4 is signed by two officers of the union. Although an estimate, the 0.03 percentage can be used to gauge the filing rate in the absence of more precise figures.

Recently, OLMS evaluated a small number of union employees to determine how many may have been required to file Form LM–30, but failed to do so. Employees of unions with titles identifying them as legal professionals, mostly lawyers, legislative affairs specialists, and lobbyists, were culled from information derived from Form LM–2 reports filed in FY 2002. Legal professionals were selected because it is possible, using Internet-based data, to investigate links between these employees or their spouses and firms that do business with the union, thereby indicating a potentially reportable interest under section 202(a)(4). None of the 438 employees had filed Form LM–30. These 438 individuals' full names were used in Internet searches for information indicating that they had outside legal employment. The use of the surname, coupled with other Internet-based biographical data, on one or two occasions revealed that an official's spouse had such outside legal employment. Then, an Internet search of the name of the outside employer was conducted to determine whether the employer listed the union official's union as a client, or otherwise indicated that it provided services to the union official's union. OLMS contacted eight individuals who, based on the Internet research, appeared to have received, or whose spouse appeared to have received, payments from an employer that dealt with the individual's union. Through these contacts, OLMS sought additional information from them to determine whether the individuals should have filed the Form LM–30 based on a reportable interest under section 202(a)(4). Of these eight, six completed and filed a Form LM–30 following the OLMS contact. Three of the six reports had to be returned to the filers for revisions or additional information. Review of the final amended reports confirmed that these six individuals had disclosed reportable interests. When asked, some filers did not give a reason for failing to earlier file the reports. Others said they had been unaware of the reporting requirements. Of the remaining two individuals, one had severed his relationship with the employer before becoming a union employee. In the final case, it was determined that the individual did not receive any benefits other than from the two unions that employed him. The filing rate for this group was 1.37% ($6/438 \times 100 = 1.37\%$). This filing rate is probably understated for the 438 employees because OLMS was able to research only potential section 202(a)(4) reporting situations. Others in the group may well have owed reports based on payments from, transactions with, or holdings in, employers or businesses that deal with an employer whose employees the labor organization represents or is actively seeking to represent.

Available data does not allow the Department to precisely measure the current filing rate of union officers and employees or predict what that rate would be if all individuals with reportable interests or transactions filed Form LM–30. The individuals covered by the informal inquiry discussed above may or may not be indicative of a typical union employee. Legal professionals may be more likely or less likely to engage in financial activities covered by the Form LM–30 than union employees in other professions. Further, the circumstances of these professionals may be different from those of union officers. As earlier mentioned, the number of estimated union officers and employees is necessarily understated, in that mid-size unions report in a readily available manner only officers, not employees, on their Form LM–3, small unions list only two signatory officers on their Form LM–4, and employees who receive $10,000 or less in a year are not reported on any of these forms. Certainly, the Department recognizes that not all union officers or employees have reportable interests or transactions. Nevertheless, it is clear that the identified employees had not filed Form LM–30 until they were contacted by OLMS, and half of them did not complete the report correctly on their first attempt. If union legal professionals had to be informed of their obligation to file the reports and failed to correctly complete the report, it is reasonable to conclude, in the Department's view, that other employees are similarly unaware of their obligation to file and similarly confused by the form. The Department will continue to research the extent to which current Form LM–30 submissions are deficient, and requests comment on further data on this question.

On many other occasions, OLMS has discovered during an audit or investigation that a union officer or employee was engaged in a reportable situation but had not filed the required Form LM–30 until OLMS became involved. For example:

- A local president owned 50% of a business that resurfaced the union's parking lot. Over two years, the business received $9,000 from the union. See section 202(a)(4), 29 U.S.C. 432(a)(4).
- A union designated certain attorneys to represent injured members. Some of these attorneys, who were employers, furnished cash or items of value such as trips and golf clubs to union officials. See section 202(a)(6), 29 U.S.C. 432(a)(6).
- A union hired the accounting firm of an employee's spouse. The firm received over $29,000 from the union over two years. See section 202(a)(4), 29 U.S.C. 432(a)(4).
- An officer of a union, whose members worked at a theater, formed a business with two partners. He put his share of the business in his wife's name although he actually managed the business which employed members of his local to work for the theater. He and his wife received almost $75,000 in profits, expense reimbursements, and salary from the business. See section 202(a)(1), 29 U.S.C. 432(a)(1).
- A union president owned the building in which the union rented office space. See section 202(a)(4), 29 U.S.C. 432(a)(4).
- A union officer's spouse owned a janitorial business that provided daily janitorial services to the union at $800 per month. See section 202(a)(4), 29 U.S.C. 432(a)(4).
- A union employee's spouse owned an advertising company which printed materials for the union and its funds. In one year, the company received over $245,000 from the union and the funds. See section 202(a)(4), 29 U.S.C. 432(a)(4).
- Four local officers formed a company that provided payroll services to the local as well as to theatrical companies that employed members of the local. Two other officers of the local received over $20,000 as employees of the company. See section 202(a)(4), 29 U.S.C. 432(a)(4) (due to services provided to the local union); section

202(a)(3), 29 U.S.C. 432(a)(3) (due to services provided to the theatrical company employers).

• The spouse of a union officer owned a company that provided cleaning and maintenance services to the union and its trust. In one year, the company received over $94,000 from the union and the trust. See section 202(a)(4), 29 U.S.C. 432(a)(4)

• During a campaign for a state government office, a business agent received contributions from employers who were covered by the union's collective bargaining agreement. See section 202(a)(1), 29 U.S.C. 432(a)(1)

• A union officer was part-owner, along with his wife and daughter, of a copier supply company. He was the officer of several unions, including one which employed his daughter as a benefit representative and union trustee. All of the unions purchased office equipment and services from the family's company. See section 202(a)(4), 29 U.S.C. 432(a)(4)

• A union employee owned a heating and air conditioning business that performed HVAC work for the union. See section 202(a)(4), 29 U.S.C. 432(a)(4)

In these instances, compliance with the Form LM–30 requirements would have provided union members with valuable information concerning the finances of their unions' employees and officers. This would have assisted union members in evaluating the efficacy of the work performed by union employees and the leadership provided by union officers. The information would have alerted them to potential conflicts of interests, and guided them as to which actions or decisions of their officers and employees might require greater scrutiny, to determine whether the conflicts have affected the union official's service to the union. Armed with this information, union members could express their concerns at membership meetings, see 29 U.S.C. 411(a), cast a more informed vote at the next internal union election, see 29 U.S.C. 481–483, employ union procedures for removal of officers guilty of serious misconduct, see 29 U.S.C. 481(h), or exercise their right to obtain judicial relief for violations of the fiduciary responsibilities of union officials, see 29 U.S.C. 501(b).

In other instances, compliance with Form LM–30 requirements would have revealed criminal conduct. For example, the president of a national union had the sole authority to appoint or remove attorneys from a list of ''Designated Legal Counsel.'' These attorneys represented injured union members who sought compensation from the railroad for on-the-job injuries. Rather than selecting attorneys on the basis of their skills, the president awarded the designation to attorneys who paid the union president with cash or other things of value. In another instance, contractors were hired to make repairs and improvements to the offices of a local union. The contractors also performed work on the officers' homes. However, all the expenses of the work, including about $1.2 million for work on the officers' homes, was charged to and paid by the union. A third example involves a contractor, an investment firm that managed pension and investment accounts for unions. This company collapsed in September 2000, costing its clients about $355 million. The company's former chairman was indicted on counts of fraud, money laundering, witness tampering and making illegal payments to union benefit plan trustees. As part of its scheme to buy the influence of pension fund trustees, who were union officers, the investment firm hired relatives of pension trustees as well as provided plan trustees with gifts including rifles, season tickets to sporting events, and fishing and hunting trips to various locations in the western U.S., Canada, Africa, Argentina and Mexico.

OLMS expects that by clarifying the form and instructions, adding examples to the instructions, eliminating administrative exemptions, and providing extensive compliance assistance, the filing rate will increase. During the course of a meeting held under E.O. 12866, a stakeholder asserted that the Department receives few Form LM–30 reports because union officers and employees engage in few covered transactions. The Department invites comments concerning the number of union officers and employees, and the number of union officers and employees who have not filed a Form LM–30 but who have engaged in a transaction, or held an interest that required them to do so.

The Department seeks comments on whether to promulgate a regulation that requires labor organizations to notify their officers and employees of the annual reporting obligations under the LMRDA. No notification obligation currently exists under the Department's regulations, and the regulation proposed herein does not contain such a provision. Notification by labor organizations would, nevertheless, help ensure that officers and employees are aware of their reporting obligations under the LMRDA. An increase in awareness by union officers and employees could increase the number of reports filed each year, enabling union members and the public to learn more about financial transactions in which the union's officers and employees are involved and, as needed, further inquire into the circumstances of these dealings to ensure that the interests of the members and the public are properly being served.

Under one option, each labor organization would be required to inform its officers and employees, excluding those employed solely in clerical or custodial positions, of their obligation to annually file a Form LM–30 if they, their spouse, or minor children, hold any interests, receive any payments, or engage in any transactions or arrangements covered by section 202 of the Act. *See* 29 U.S.C. 432. Notification would have to be in writing and inform officers and employees that, subject to certain exemptions, they must file a report with the Department if they have interests in, receive payments or income from, or engage in transactions or arrangements with (1) an employer whose employees the labor organization represents or actively seeks to represent, (2) a business that deals with the labor organization, or a trust in which the labor organization is interested, (3) a business a substantial part of which consists of dealing with the business of an employer whose employees the labor organization represents or is actively seeking to represent, (4) any employer, or (5) a labor relations consultant to an employer. The union would inform its officers and employees that if they have any questions concerning which financial matters are reportable and whether they are required to file a report, they should consult the Form LM–30 and its instructions, and the union would provide the web site address where the form and instructions may be found. Notification would be provided by the union to an officer within 30 days of installation into office and to an employee within 30 days of the date of hire. Initial notification would be provided to officers and employees within 60 days of the effective date of the regulation, and thereafter to each on an annual basis. A labor organization could meet this requirement by providing employees and officers with a copy of the Form LM–30 and its instructions. E-mail notification might be considered an acceptable means of informing officers and employees.

An alternative to providing a separate notice to each officer and employee would be to provide a general notice in a union publication that is addressed to every officer and employee.

The Federal government informs employees at the time of their hire and reminds them on a regular basis

thereafter about their various ethical responsibilities, including conflict of interest rules and disclosure requirements. *See* E.O. 12674 (Apr. 12, 1989), as modified by E.O. 12731 (Oct. 17, 1990). The Department seeks comments on whether a similar approach is taken by other organizations and professions. The public is asked to comment on other ways in which employers and professional associations educate their employees and association members about their obligation to disclose possible conflicts between their personal interests and the interests of their employer or clients.

The Department invites comments as to the need for and efficacy of a regulation that requires labor organizations to notify their officers and employees of the annual reporting obligations under the LMRDA. In this connection, it would be helpful to learn what steps are now being taken by labor organizations to inform their officers and employees about conflict-of-interest situations, including disclosure and reporting requirements to the union and its members. Is such information typically provided by an international or national union to all its affiliates? Is it typically contained in a national or international constitution or some other document, such as a handbook for officers and employees, or training materials? Do local and intermediate unions include such information in their constitutions or bylaws—or in other documents? What information is provided to union officials by trusts in which a union has an interest? Under what circumstances and how often have allegations of officer or employee conflicts of interests led to internal or judicial proceedings?

During the course of a meeting held under E.O. 12866, a stakeholder questioned the Department's authority to require labor organizations to notify their officers and employees of their disclosure obligations. The public is invited to comment on this issue.

G. Deficiencies in the Reports Filed Using the Current Form LM–30

OLMS examined each of the 244 Form LM–30 reports filed during fiscal years 2001, 2002, 2003, and 2004 and determined that a majority of filers did not complete the form correctly. For example, although Part A is separate and distinct from Parts B and C, 100 filers erroneously filled out Part A in addition to the appropriate and intended disclosure of an interest, transaction, income, or arrangement in Part B or C. A total of 136 filers who completed Part B failed to indicate whether the business they had an interest in, transaction with, or income from dealt with a labor organization, trust, or employer. A total of 117 of the filers who completed Part B provided no information or incomplete and insufficient information about the nature and approximate value of the dealings between the business and the employer, labor organization or trust. Further, 59 of the filers provided no information or inadequate information about the nature of the interest they held in, or the income they received from, the business.

In addition to the deficiencies described above, numerous other errors occurred that resulted in inadequate and incomplete disclosure. For example, most filers failed to answer one or more required questions. In three instances, children of an officer or employee filed Form LM–30 rather than the officer or employee. Six filers did not specify their position within the union, four filers failed to report the fiscal year that was covered by the report, two filers did not sign the form, and one form was signed by the union official's spouse. In Part A, 22 filers provided no information or inadequate information about the nature and amount of the interest in, transaction with, or income from an employer whose employees their union represented or was actively seeking to represent.

The Department believes that the errors discussed above can be reduced by clarifying the form and instructions, adding examples to the instructions, and providing extensive compliance assistance. This rulemaking, further, is part of an overall initiative that includes greater scrutiny of Form LM–30 reports, and union financial records, as well as increased enforcement. The Department believes that these efforts will further reduce the error rate. The Form LM–30 will be more useful to union members and the public when the reports that are filed are responsive to the questions asked, and can thus be meaningfully compared with the reports of other union officials. This will permit union members to understand the nature of the financial matter being reported, and its significance. This will allow union members to make informed decisions as to the leadership and management of their union. During the course of a meeting held under E.O. 12866, a stakeholder asserted that errors in filed reports could be reduced solely by increased compliance assistance by the Department. We will continue to research the extent to which current Form LM–30 submissions are deficient, and request comments on further data that may help the Department explore this question. The Department invites comments concerning all methods that would reduce the number of errors made in completing Form LM–30.

H. Significant Proposed Changes to the Form LM–30, and Request for Comments Concerning Filing Exemptions Created by the Department

1. Definitions, Examples and Administrative Exemptions

Definitions: The proposal defines key terms. The current instructions do not explain terms that are essential to the form's completion. The revised instructions define: actively seeks to represent, arrangement, benefit with monetary value, bona fide employee, bona fide investment, dealing, directly or indirectly, filer/reporting person/you, income, labor organization, labor organization employee, labor organization officer, legal or equitable interest, minor child, payer, publicly traded securities, substantial part, and trust in which a labor organization is interested.

In defining the term ''labor organization,'' the instructions clarify that an officer or employee of a local union must file reports when he or she engages in transactions with a business that deals with his or her affiliated national labor organization, or engages in transactions with an employer whose employees the national labor organization is actively seeking to represent. Similarly, an officer or employee of a national union must file reports when he or she engages in transactions with a business that deals with an affiliated subordinate labor organization, or engages in transactions with an employer whose employees a subordinate labor organization is actively seeking to represent. By the same token, when determining whether a report must be filed due to payments from, or interests held in, a business that deals with a trust in which a labor organization is interested, the term ''labor organization'' will retain this expanded meaning. Thus, for example, an officer of a local union must file reports when he or she engages in transactions with a business that deals with a trust in which his or her affiliated national labor organization is interested.

Similarly, in defining ''bona fide employee,'' the revised Form LM–30 would require the reporting of payments received by union officers from an employer for work performed for the union. A typical example involves a ''no docking'' arrangement where an employer allows a union steward or union officer to resolve grievances, often on an ''as-needed'' basis, without a loss

of pay. In other instances, a union official is paid by an employer while working full time on union business.

A full discussion of the new definitions is provided below in the discussion of the instructions.

Examples: The proposal provides examples to help filers determine what must be reported under each subsection of section 202. These examples will provide illustrations of reportable and non-reportable interests, payments, income, transactions, and arrangements. A full discussion of the examples is provided below in the discussion of the instructions.

Administrative Exemptions and Special Reports: The proposed instructions also eliminate some exemptions in the current form. These exemptions permit filers to omit certain financial matters from disclosure that would otherwise be reportable if engaged in by the filer or the filer's spouse or minor child. These exemptions are discussed below, along with other exemptions that the Department does not propose to remove. Comments are invited on both the exemptions that the Department proposes to remove and the exemptions that are not proposed to be removed.

Under the existing instructions, filers are notified: ''You do not have to report any sporadic or occasional gifts, gratuities, or loans of insubstantial value, given under circumstances or terms unrelated to the recipient's status in a labor organization.'' The LMRDA Interpretative Manual (''LMRDA Manual''), revised in March 2005, states that ''anything with a value of $25 or less will be considered 'de minimis' and therefore not reportable if it is given under circumstances unrelated to the recipient's status in a labor organization.'' LMRDA Manual, § 241.700.

The Department seeks comments regarding whether this exemption should be retained or removed. This exemption applies by its terms to all reports due under section 202. It does not provide guidance as to when a gift, gratuity, or loan is ''unrelated to the recipient's status in the labor organization.'' The statute calls for disclosure of ''any'' stock, bond or other interest, ''any'' income, ''any'' loan, and ''any'' payment or other thing of value. See 29 U.S.C. 432(a)(1)–(6). This language could indicate that Congress did not intend to exempt certain gifts, gratuities, or loans based on their dollar value. Further, Congress imposed a substantiality test in section 202(a)(3) (''any business a substantial part of which consists of * * * dealing with the business of an employer''), but did not do so, at least expressly, in describing the holdings, transactions, and income that is reportable under section 202. See 29 U.S.C. 432(a).

At the same time, exceptions based on insubstantiality are commonly read into statutes that do not expressly contain them. See *Wisconsin Dept. of Revenue* v. *William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992) (''the venerable maxim *de minimis non curat lex* ('the law cares not for trifles') is part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept.''). Furthermore, other reporting and disclosure systems do not require reports of small value items. For the purposes of comparison, one may look to the treatment of gifts in the financial disclosure reports for certain Federal Government employees. Employees with general schedule positions of grade 15 and below whose duties may involve potential conflicts of interest must file Office of Government Ethics (OGE) Confidential Financial Disclosure Report 450 (OGE Form 450). The form has a range of standards for reporting different interests and transactions. Gifts totaling $285 or less from any one source need not be reported, and gifts valued at $114 or less need not be included in determining whether the $285 threshold has been exceeded. Federal employees in positions above GS–15 and in certain other positions of confidential or policymaking character must file a Public Financial Disclosure Report (SF 278). This form treats gifts in a manner similar to the OGE Form 450. Gifts totaling $260 or less from any one source need not be reported, and gifts valued at $104 or less need not be included in determining whether the $260 threshold has been exceeded. Similar to the current Form LM–30's requirement that a *de minimis* gift be reported if the gift is related to the filer's status in the union, under the government's disclosure regime, gifts to a filer's spouse or dependent child must be disclosed ''to the extent the gift was not given to him or her totally independent of the relationship to you.'' See SF 278, p. 12; OGE 450, p5. Unlike the Form LM–30, government employees must report gifts from any source, unless a specific exemption applies, while union officers and employees must report gifts received only from certain businesses and employers. See SF 278, p. 12–13; OGE 450, p5. In one significant regard, government filers are permitted to exclude from their reports gifts of ''hospitality (food, lodging and entertainment) on the donor's personal or family premises.'' See SF 278, p. 12–13; OGE 450, p5.

Under the OGE Form 450, loans of $10,000 or less are not reportable, and there are four exceptions for loans exceeding the threshold, including mortgages on personal residences, and loans for personal automobiles, household furnishings, or appliances, where the loan does not exceed the purchase price. The loan reporting requirements of the SF 278 are very similar. A copy of both of these forms and instructions are available at the OGE Web site at: *http://www.usoge.gov.*

The Department seeks comment on whether the term ''insubstantial'' left without further explanation in the instructions could be applied to shield from disclosure some financial transactions that would be of interest to union members. The Department could augment the existing instructions to define ''insubstantial value'' so that filers are able to distinguish between reportable and non-reportable gifts, gratuities, or loans based on a clearly articulated standard, like that in the Interpretative Manual or those in the Federal employee disclosure forms. The Department seeks comment on whether the $25 threshold set out in the LMRDA Interpretative Manual is an appropriate one, whether the burden to report small interests and transactions is reasonable, and whether it would be preferable to require reporting of all transactions and allow union members to assess whether a particular holding or transaction is substantial enough to possibly present a conflict between private interest and union responsibilities. During the course of a meeting held under E.O. 12866, some stakeholders stated that the exemption for insubstantial transactions in the existing instructions should be clarified, and that the threshold for disclosure be increased. The public is invited to comment on all aspects of this issue.

Part A of the current instructions exempts from reporting

(ii) Holding of, transactions in, or income from, securities [that are not traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934, in shares in an investment company registered under the Investment Company Act of 1940, or in securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935], provided any such holding, or transaction, or receipt of income is of insubstantial value or amount and occurs under terms unrelated to your status in a labor organization. For purposes of this exclusion, holdings or transactions involving $1,000 or less and receipt of income of $100

or less in any one security shall be considered insubstantial;

(iii) Transactions involving purchases and sales of goods and services in the regular course of business at prices generally available to any employee of the employer.

(iv) Payments and benefits received as a bona fide employee of the employer for past or present services, including wages, payments or benefits received under a bona fide health, welfare, pension, vacation, training or other benefit plan; and payments for periods in which such employee engaged in activities other than productive work, if the payments for such period of time are: (a) Required by law or a bona fide collective bargaining agreement, or (b) made pursuant to a custom or practice under such a collective bargaining agreement, or (c) made pursuant to a policy, custom, or practice with respect to employment in the establishment which the employer has adopted without regard to any holding by such employee of a position with a labor organization.

The Department does not propose to remove exemption (ii), but seeks comment on whether to remove or retain this exemption. This exception, which was created administratively, apparently was intended to discourage reporting of ''insubstantial'' matters unrelated to the filer's position in the union. In like fashion, the LMRDA Manual provides an example of the application of this exception and states that a $400 purchase of stock, traded over the counter by an employee (and thus otherwise reportable) of a company that supplies his union over $1 million annually in goods and services need not be reported where the market value of the stock is $1000 or less and the yearly income from the stock is $100 or less and the holdings and interest are unrelated to the individual's employment by the union. LMRDA Manual, § 246.700 (but also noting that the Department may always require a special report that disclosed the purchase).

As discussed above, exceptions based on insubstantiality are commonly applied. Further, there is precedent for a similar use of reporting thresholds. Under the SF 278, stocks, bonds and securities from one source need not be reported if they total $1,000 or less in value. Investment income of $200 or less need not be reported. Under the OGE Form 450, investments with a value greater than $1,000 or which produce more than $200 in income are reportable.

On the other hand, the exemption deals with unregistered securities, or securities sold through an unregistered exchange, which Congress considered reportable. See 29 U.S.C. 432(b). Further, unlike the federal disclosure forms, section 202 of the Act requires reporting only on financial matters that were considered to be potential conflicts for union officers and employees by Congress and identified in the statute. Likewise, section 202 does not require reports of financial matters that do not pose this danger, no matter how large the value of the holding or transaction. In this context, an exemption based on insubstantiality or union status factors could arguably result in nondisclosure of transactions that present conflicts of interests for union officials and were identified by Congress as reportable, denying union members relevant information to evaluate their officers and employees not only at the time of union elections but throughout their tenure. The Department seeks comment on whether this exemption should be removed or retained.

Exemption (iii) is a statutory exemption for transactions involving purchases and sales of goods and services in the regular course of business at prices generally available to any employee of the employer. The statutory language applies by its terms to financial matters reportable under section 202(a)(5), not to section 202(a)(1) or 202(a)(2). Section 202(a)(5) requires union officers and employees to report any ''business transaction or arrangement'' with an employer whose employees the union represents or is actively seeking to represent. It is for this reporting obligation alone that section 202 applies the exception for ''purchases and sales of goods and services in the regular course of business at prices generally available to any employee of such employer.''

Sections 202(a)(1) and (a)(2) require union officers and employees to report (1) holdings in an employer whose employees the union represents or is actively seeking to represent, (2) transactions in such holdings, (3) loans to or from such employers, and (4) income or any other benefit with monetary value (including reimbursed expenses) received from such an employer. Sections 202(a)(1) and (a)(2) do *not* include the ''regular-course-of-business'' exception.

The instructions for Part A of the current form combine the separate reporting obligations of sections 202(a)(1), (a)(2), (a)(5) into a single query. In so doing, the instructions also apply the statutory exceptions applicable to each obligation to the other obligations. Thus, the current form applies the ''regular-course-of-business'' exception to sections 202(a)(1) and (a)(2)'s requirement that union officers and employees report (1) holdings, (2) transactions in holdings, (3) loans, and (4) income or any other benefit with monetary value (including reimbursed expenses).

The Department's proposal adheres to the statutory design and thus proposes to remove the exemption for reports due under section 202(a)(1) and 202(a)(2). The proposed form would thus eliminate the application of the ''regular course of business'' exception to reports, due under sections 202(a)(1) and (a)(2), of (1) holdings in an employer whose employees the union represents or is actively seeking to represent, (2) transactions in such holdings, (3) loans to or from such employers, and (4) income or any other benefit with monetary value (including reimbursed expenses) received from such an employer. Rather, the proposed form applies the ''regular-course-of-business'' exception only to reports, due under section 202(a)(5), of any ''business transaction or arrangement'' with an employer whose employees the union represents or is actively seeking to represent.

Union members have an interest in knowing of such holdings, transactions in holdings, loans, and income so they can evaluate whether each is significant enough, or of such a nature, to constitute a conflict of interest. The statutory exemption for payments and other benefits received as a bona fide employee of the employer is sufficient to exempt all the ordinary payments received as part of an employment relationship; the exemption in the current form, the Department believes, may provide a means to exclude other items that present conflicts of interest for union officials. For example, a union officer who receives income from the employer of union members for contract work could, at least arguably, avoid disclosing the payment by relying on this ''regular-course-of-business'' exemption. Also, it is conceivable that a union employee who purchases certain types of ownership interests could avoid disclosing the holding by relying on this exemption. A union official with an employer as a client has a conflict between personal interests and union loyalties, as does an official with an ownership interest in the employer. The change is consistent with the plain language of the statute, which applies the ''regular-course-of-business'' exception only to financial matters reportable under section 202(a)(5), not to section 202(a)(1) or 202(a)(2). The elimination of this exemption will result in more detailed and transparent reporting of financial information that union members may find helpful in determining whether their union's officers and employees are subject to financial pressures inconsistent with

their responsibilities to the union and the union members.

Similarly, the first part of exemption (iv) (up to the semicolon) (dealing with payments and benefits received as a bona fide employee of the employer) is created by statute. Under the statute, it applies to reports due under sections 202(a)(1) and 202(a)(5). Section 202(a)(1) requires union officers and employees to report (1) holdings in an employer whose employees the union represents or is actively seeking to represent, and (2) income or any other benefit with monetary value (including reimbursed expenses) from such an employer. As discussed above, section 202(a)(5) requires union officers and employees to report any ''business transaction or arrangement'' with such an employer. Sections 202(a)(1) and (a)(5) both contain an exception for ''payments and other benefits received as a bona fide employee of such employer.''

Section 202(a)(2) requires union officers and employees to report (1) transactions in holdings in an employer whose employees the union represents or is actively seeking to represent, and (2) loans to or from such an employer. Section 202(a) does *not* include the ''bona fide employee'' exception.

By combining these separate reporting obligations—sections 202(a)(1), (a)(2), (a)(5)—into a single query, the instructions for Part A of the current form also apply the statutory exceptions applicable to each obligation to all three obligations. Thus, the current form applies the ''bona fide employee'' exception to section 202(a)(2)'s requirement that union officers and employees to report (1) transactions in holdings, and (2) loans.

The proposed form applies the ''bona fide employee'' exception only to reports, due under sections 202(a)(1) and (a)(5), of (1) holdings in an employer whose employees the union represents or is actively seeking to represent, (2) income or any other benefit with monetary value (including reimbursed expenses) from such an employer, and (3) business transactions or arrangements with such an employer.

The proposed form would eliminate the application of the ''bona fide employee'' exception to reports, due under sections 202(a)(2), of (1) transactions in holdings in an employer whose employees the union represents or is actively seeking to represent, and (2) loans to or from such an employer.

Union members have an interest in knowing all transactions of union officers and employees involving transactions in ownership interests in, and loans to or from, the employer, so they can evaluate whether such matters are significant enough, or of such a nature, to constitute a conflict of interest. Under the current form, a union officer could avoid reporting a loan received from the employer on the ground that the loan was a benefit received as a bona fide employee, despite the union members' legitimate interest in knowing whether the person who negotiates the terms and conditions of their employment is beholden to the employer. Removal of the exemption would thus provide union members with important information concerning the financial activities of their officers and employees. Further, sales and purchases of ownership interest in the employer are highly unlikely to constitute payments received as a bona fide employee, and, in any event, a union member would likely be interested to learn whether their union officers or employees availed themselves of the opportunity to purchase or divest in employer holdings. The exemption in the current form is all but superfluous in the context of ownership interests, and to the extent that it is not superfluous, it is counterproductive. The presence of a largely useless exemption can create confusion and complicate enforcement. Finally, the change is consistent with the plain language of the statute, which applies the ''bona fide employee'' exception only to financial matters reportable under sections 202(a)(1) and 202(a)(5), not to section 202(a)(2).

Following the statutory framework, the Department, therefore, proposes to eliminate this exemption for reports due under section 202(a)(2). Further, as discussed in greater detail in IV.B.2.b, below, the portion of the exemption that excludes payments for periods in which such employee engaged in activities other than productive work will also be removed.

Part B of the current instructions adopts exemption (ii) from Part A. This exemption was created by the Department, and, for the reasons discussed above, the Department seeks comment on whether the exemption should be retained, but does not propose to remove this exemption.

Part C of the current instructions contains the following exemptions:

(ii) Bona fide loans, interest or dividends from national or state banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions.

(iii) Interest on bonds or dividends on stock, provided such interest or dividends are received, and such bonds or stock have been acquired, under circumstances and terms unrelated to the recipient's status in a labor organization and the issuer of such securities is not an enterprise in competition with the employer whose employees your labor organization represents or actively seeks to represent.

The Department proposes to eliminate these two exemptions. Section 202(a)(6) requires union officers and employees to report ''any payment of money or other thing of value (including reimbursed expenses)'' received from ''any employer'' or any labor relations consultant to an employer.

Part C (Items 13 and 14) of the current form implements the statutory requirement for reporting payments received from an employer or a labor relations consultant to an employer. The first exemption permits union officers and employees to *not* report bona fide loans, interest or dividends from bona fide credit institutions. The proposed form would eliminate this exemption.

The exemption operates as a barrier to disclosure. In one case, a credit union controlled by a local union made 61% of the credit union's loans to four loan officers, three of whom were officers of the local. By eliminating this exemption, union officers and employees will be required to disclose such loans, interest payments, or dividends. Disclosure of these loans would have benefited the union members. The actions of these officials were not in the best interest of the credit union, or the labor organization that established it, because of the potential consequences of not spreading lending risk among multiple loan recipients and the granting of loans for reasons related to union status rather than ability to repay.

The exemption in the current form is not required by the statute, which is silent on this issue. Indeed, the exemption tracks one that Congress chose to include in reports of employers, but omitted from the reports of union officers and employees. Compare 29 U.S.C. 433(a) with 29 U.S.C. 432(a)(6). Further, this exemption leaves the filer to determine, without further guidance, whether a loan is bona fide.

Exemption (iii) of Part C will also be eliminated under the Department's proposal. This exemption is similar in certain respects to the statutory exemption of section 202(b), but unlike section 202(b), it exempts from reporting bonds and stocks that are not registered with the SEC or traded on a registered securities exchange. Further, section 202(a)(6), to which this exemption applies, already contains an exemption ''with respect to the sale and purchase of an article or commodity at the prevailing market price in the

regular course of business.'' To the extent that the exemption in the current form excludes from reporting transactions that fail to meet the statutory section 202(a)(6) exemption, it sanctions nondisclosure of transactions at below-market prices made outside of the regular course of business—the most suspect transactions. Union members would have an interest in knowing whether a union official has received a benefit not available to others on similar terms, in order to evaluate where the union official's loyalties may lie and whether any divided loyalties could affect the official's ability to represent the union members. Further, this exemption invites abuse by permitting the filer to make an unguided determination on whether the bonds and stocks have been acquired under circumstances unrelated to the recipient's status in a labor organization. The exemption is not required by the statute, and its removal is consistent with it.

The exceptions described above are not required by the statutory language and despite their apparent design to simplify reporting, they have added a layer of complexity to the proper understanding of the section 202 reporting obligations. The exemptions are lengthy, and require study in addition to that needed to understand the reporting obligations. They are ambiguous, and may lead filers to believe that reportable transactions may be omitted from the form.

Exemptions (ii) and (iv) of Part A, and exemptions (ii) and (iii) of Part C were not expected to be invariably available. See 29 CFR 404.4. A special report was intended to be used to obtain such exempted information upon demand of the Department, although the special report provision has proved useless in practice, in part because the Department cannot know when important information has been omitted and that a special report would be revealing. See 29 CFR 404.4. The Department proposes to delete the special report provision. As mentioned above, at the time the Form LM–30 was created, the Department acted under the impression that more complete reporting could be realized through an ad hoc special report, and could be selectively required by the Secretary. See 29 CFR 404.4. These reports would allow the Secretary to require the disclosure of the information that was exempted from disclosure by operation of the four administrative exemptions discussed above. *Id.* No procedures were established, however, to govern the imposition of a special report; nor did the Department ever issue or seek a special report. The special report regulation is an acknowledgement that one or more of the exemptions potentially permit the non-reporting of conflict-of-interest transactions, but leaves no realistic method by which the Department can identify these cases and require more detailed reporting. Further, in today's regulatory and statutory environment, which mandates numerous time consuming procedures and analyses before a reporting form may be issued or revised, the Department's ability to implement a special report for a particular set of union officers and employees is questionable.

In essence, the exemptions proposed to be eliminated render non-reportable transactions that by statute are subject to disclosure, a deficiency that has not been effectively eliminated through the use of a special report procedure. In addition to being not required by statute, the exemptions proposed to be removed necessarily reduce the information available to union members *to evaluate their union officials*. Instead of the Department determining in advance that entire categories of financial holdings or transactions should not be disclosed, the better course may be to require reporting so that union members may decide for themselves whether the financial matters are of concern. The resulting increased transparency will permit union members to obtain information needed by them to monitor their union's affairs and to make informed choices about the leadership of their union and its direction. At the same time this increased transparency will promote the unions' own interests as democratic institutions and the interests of the public and the government. The increased financial transparency will also deter fraud and self-dealing, and facilitate the discovery of such misconduct when it does occur.

2. Restructured Form

The broad purpose of the Form LM–30 is to disclose possible conflicts between the personal financial interests of a union officer or employee and his union. A union member or other person reviewing a report should be able to easily discern the financial interests of the filer. The current form is not arranged to quickly provide such information. The current form does not provide a summary of the data on the report. The viewer must examine all the Parts A, B, and C that are filed; review the payers in all Items 6, 8, and 13; and sum the amounts in all Items 7b, 12b, and 14b to obtain an overview of what has been reported. Union members reviewing the report of a filer with multiple reportable transactions and interests from several sources would thus have to sort through numerous pages of the report to discern who had paid the filer and perform the math themselves.

To remedy this problem, the Department's proposal contains a summary information schedule that may satisfy the needs of many users of the report without need for greater detail. In the revised form, for convenience and ease of understanding, the term ''payer'' is used to describe the employer, business, or labor relations consultant that is financially involved with the filer. Using this terminology, a Payer Summary Schedule on the first page of the report shows the name of every payer from which the filer received money or in which the filer held an interest, and the total monetary value the filer derived from each payer. Each payer is numbered to correspond to the appropriate Payer Detail Page. Anyone interested in further information regarding the interests and transactions can skip directly to the appropriate detail page.

The proposed form will call for additional contact information about the filer and his or her labor organization, including the e-mail address of each filer, and the telephone number, web site address, state of incorporation or registration, and state business identification number of each payer. The purpose of this additional contact information is to allow those who view the report to accurately identify the filer and, more important, accurately identify and further research the business with which the filer has a financial relationship. Ambiguous information about the filer or the source of payments to the filer can negate the utility of the report, by denying members sufficient information to assess the conflict situation. Comments are solicited on the significance of this information to readers of the reports and whether a filer has reasonable access to this information.

A labor organization schedule will be added to the form allowing a filer to list the unions that the filer is employed by or an officer of, thus negating the need for filers to submit multiple reports. Continuation pages ease completion of the form, and facilitate search and retrieval.

The proposal also organizes all the reported financial interests and transactions into tables. This will allow a member or other user to perform an electronic search on the OLMS disclosure database. Upon promulgation of a final rule, this database will be

configured in a way that will facilitate such searches.

The Department seeks comments on the proposed notice requirement, clarification of the form, use of examples to guide filers, removal of the administrative exemptions, deletion of the special report procedures, and restructuring of the form.

III. Authority

A. Legal Authority

The legal authority for the notice of proposed rulemaking is sections 202 and 208 of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. 432, 438.

B. Departmental Authorization

Section 208 of the LMRDA provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under Title II of the Act and such other reasonable rules and regulations as she may find necessary to prevent the circumvention or evasion of the reporting requirements. 29 U.S.C. 438. Secretary's Order 4–2001, issued May 24, 2001, and published in the **Federal Register** on May 31, 2001 (66 FR 29656), continued the delegation of authority and assignment of responsibility to the Assistant Secretary for Employment Standards in Secretary's Order 5–96 of those functions to be performed by the Secretary of Labor under the LMRDA.

IV. Overview of the Regulations and Instructions

The discussion that follows describes the Department's proposal to revise its regulations implementing section 202(a) of the LMRDA, 29 CFR part 404, and the Form LM–30 and its accompanying instructions, which are incorporated into the regulations by reference. 29 CFR 404.3. The following discussion highlights the key elements of each subsection of section 202 and the significant changes between the proposed and current regulations, form, and instructions.

A. The Regulations

1. The proposal would amend section 404.4 of the regulations, 29 CFR 404.4, relating to special reports. This section provides that the Secretary may require the filer to file special reports on certain matters pertinent to an officer's or employee's holdings or interests covered by section 202, specifically including four categories of holdings, transactions, and payments that would be reportable but for four administrative exemptions. These include two administrative exemptions to Part A. The first permits the filer to exclude holdings of, transactions in, or income from non-registered securities of insubstantial value that are unrelated to the filer's status in the labor organization. See Instructions, Part A, exclusion (ii). The second consists of an expansion of the statutory exclusion for payments and benefits received as a bona fide employee to include ''payments for periods in which such employee engaged in activities other than productive work.'' See Instructions, Part A, exclusion (iv). They also include two administrative exemptions to Part C. The first specified Part C exemption excludes bona fide loans, interest, or dividends from banks, insurance companies and other bona fide credit institutions. See Instructions, Part C, exclusion (ii). The second concerns interest on bonds or dividends on stock, provided such interest or dividends are received, and such bonds or stock have been acquired, under circumstances and terms unrelated to the recipient's status in a labor organization and the issuer of such securities is not an enterprise in competition with the employer whose employees the filer's labor organization represents or actively seeks to represent. See Instructions, Part C, exclusion (iii). Although the special report provision will be deleted, the Department notes that it maintains statutory authority to assess each report for sufficiency, require amended reports, and to commence investigations where it is necessary to determine whether any person has or is about to violate any provision of the Act. 29 U.S.C. 440, 521.

2. In addition, the Department proposes to amend section 404.7, which requires the maintenance and preservation of records. The language has been revised to better identify some of the documents that must be retained and to address the fact that records now may be maintained in electronic format. The Department intends no substantive change in meaning, as the revised language merely clarifies and makes explicit the retention requirements that have always been imposed by the regulation and statute. See 29 CFR 404.7; 29 U.S.C. 436.

3. The Department proposes to amend section 404.1 to add definitions for the following terms: *Benefit with monetary value, dealing, income, labor organization, minor child*, and *trust in which a labor organization is interested.* See 29 CFR 404.1. In addition, the existing definitions for the terms ''labor organization officer,'' and ''labor organization employee'' will be modified. These are terms that appear in 29 CFR 404, and it is thus appropriate to define the terms in the regulations themselves. The terms and their definitions will also appear in the instructions, as will other terms, discussed below, that appear only in the instructions. This approach is used in the existing regulations and instructions.

To be as effective as possible, a reporting and disclosure statute such as section 202(a) depends on a known and easily applied standard regarding what must be reported. Such a standard is important not only for union officials who must comply with the reporting requirements and for the administrative agency that enforces compliance, but also, because of the special objectives of the LMRDA, for union members and the general public who rely on disclosure and need to know what the disclosure or its absence represents.

B. The Instructions

The following discussion tracks the major sections of the proposed instructions. The proposed instructions, in turn, correspond roughly with the layout of the existing instructions. We identify the changes between the proposed and existing instructions; these changes also are reflected in the revised layout and design of the form itself. The proposed layout of the form is based on other updated OLMS financial disclosure reports and includes a summary schedule.

1. General Changes

The myriad types of financial transactions made reportable by section 202 complicate the design of a ''self-explanatory'' form. The filer must rely on the instructions to accurately complete the form. We invite comments as to the layout of the instructions, their clarity, and suggestions about how to better explain the reporting obligations.

2. Introductory Section of the Instructions

a. The first heading of the proposed instructions: ''Why file'' is identical to the current form. Like the current form it delineates the basic reporting obligations. However, the proposal adds more information to better place the filing obligation in the larger context of the LMRDA. We identify the elements of the statute and explain that the basic purpose of the section 202 report is to publicly identify any actual or apparent conflict between the personal financial interests of a filer, spouse, or minor child and the filer's obligation to the union and its members. The proposal also clarifies that no report need be filed unless the filer, spouse, or minor child

held a covered interest or engaged in a covered transaction during the reporting period.

b. The second heading of the proposed instructions is ''Definitions.'' This is a new section of the instructions.

The terms defined include: *actively seeking to represent, arrangement, benefit with monetary value, bona fide employee, bona fide investment, dealing, directly or indirectly, filer/reporting person/you, income, labor organization, labor organization employee, labor organization officer, legal or equitable interest, minor child, payer, publicly traded securities, substantial part,* and *trust in which a labor organization is interested.*

The meaning of many of these terms is left unclear by the current instructions. By defining and explaining the key terms used by section 202, a filer will better understand his or her reporting obligations, which, in turn, will improve the likelihood of filing and the accuracy of the reports. Providing information that should be disclosed, based on statutory requirements, will aid union members in assessing whether their union's officers and employees have entered into financial arrangements with employers, businesses, and others that could potentially compromise the officials' ability to act in the best interests of, and achieve the best results for, the union and its members.

Actively seeking to represent, as proposed, means that a labor organization has taken steps to become the bargaining representative of the employees of an employer, including but not limited to:

- Sending organizers to an employer's facility;
- Placing an individual in a position as an employee of an employer that is the subject of an organizing drive and paying that individual subsidies to assist in the union's organizing activities;
- Circulating a petition for representation among employees;
- Soliciting employees to sign membership cards;
- Handing out leaflets;
- Picketing; or
- Demanding recognition or bargaining rights or obtaining or requesting an employer to enter into a neutrality agreement (whereby the employer agrees not to take a position for or against union representation of its employees), or otherwise committing labor or financial resources to seek representation of employees working for the employer.

This definition, in large part, is based on a statement from the legislative history. See Senate Report, at 15, reprinted in 1 Leg. History, at 411 (The phrase ''actively seeking to represent'' denotes ''more than that the union hopes some day to become the bargaining representative of a group of employees or claims jurisdiction to organize them. It requires specific organizational activities such as sending organizers into a community, handing out leaflets, picketing, or demanding recognition and bargaining rights''); House Report, at 11; reprinted in 1 Leg. History, at 769. The examples are concrete actions commonly associated with attempts to organize a workforce. Comments are invited as to the merit and clarity of the enumerated activities and whether other examples would be helpful. In the Department's view, the term ''actively seek to represent'' seeks to distinguish between situations where a union has taken steps to organize and those where the union merely has an interest in organizing employees of the employer in question. For example, a union may wish to represent employees of a certain employer, and may even have finalized an organizing plan, but has not yet begun to implement the plan. Such a union is not actively seeking to represent employees of this employer. Comments are sought as to whether it is appropriate to trigger the reporting obligation on the decision to organize an employer's workforce distinct from taking the first concrete step to organize. The Department recognizes that some organizing activities are initiated without notice to the public or an employer, but there would appear to be few, if any, situations, where the disclosure of a reported interest on the Form LM–30 would be the first open acknowledgment of the union's active efforts to represent employees. Commenters are asked to address this assumption.

Arrangement, as proposed, means any agreement or understanding, tacit or express, or any plan or undertaking, commercial or personal, by which the filer, spouse, or minor child will obtain a benefit, directly or indirectly, with an actual or potential monetary value.

The term encompasses both personal and business transactions, including an unwritten understanding. For example, if an employer's representative during the reporting period solicits a union officer to accept a job with the employer, the filer must report the solicitation, unless the filer rejects the offer. A standing job offer must be reported because it carries the potential of monetary value to the filer. Another example of a situation requiring a report would be one in which a covered employer provides insider information about a stock or other investment opportunity, unless the filer rejects the advice and takes no steps to act on it.

Certain senior government officers and employees are required to file publicly available reports (SF 278) disclosing their financial interests as well as the interests of their spouse and dependent children. The SF 278 requires a filer to report ''arrangements'' including ''(1) future employment; (2) a leave of absence during [the filer's] period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.'' The form notes that disclosure ''includes any agreements or arrangements with a future employer entered into by a termination filer.'' SF 278, p. 15; See also OGE 450, p. 4.

In addition, senior government filers ''must disclose any negotiations for future employment from the point you and a potential non-Federal employer have agreed to your future employment by that employer whether or not you have settled all of the terms, such as salary, title, benefits, and date employment is to begin.'' SF 278, p. 15.

Benefit with monetary value, as proposed, means anything of value, tangible or intangible, including any interest in personal or real property, gift, insurance, retirement, pension, license, copyright, forbearance, bequest or other form of inheritance, office, options, agreement for employment or property, or property of any kind.

This definition is adopted from disclosure regulations applicable to federal employment. See 5 CFR 2634.105(h); 5 CFR 2634.302(b)(1).

Bona fide employee, as proposed, is an individual who performs work for, and subject to the control of, the employer.

In considering the meaning to be given *bona fide employee*, the Department considered the purposes of the LMRDA, and the following point in the AFL–CIO's Ethical Practices Code: ''No responsible trade union official should accept kickbacks, under-the-table payments, gifts of other than nominal value, or any personal payment of any kind other than regular pay and benefits for work performed as an employee from an employer or business enterprise with which his union bargains collectively.'' AFL–CIO Ethical Practices Code, 105 Cong. Rec.*16379 (daily ed. Sept. 3, 1959), reprinted in 2 Leg. History, at 1408. The Department

has also considered the disclosure form (SF 278) required to be completed by senior government officials and employees. The instructions for the SF 278 require filers to report earned income, including ''fees, salaries, commissions, compensation for personal services, retirement benefits, and honoraria,'' excluding ''income from employment by the United States government.'' SF 278, p. 8. Finally, the Department recognizes that numerous federal agencies, including the Department, continue the pay of union representatives engaged in the conduct of union-management business. See Agreement between Local 12, AFGE, AFL–CIO and the U.S. Department of Labor, Article 45 (Effective March 20, 2005).

Under the proposed definition, to be exempt from reporting, payments and other benefits received as a bona fide employee of the employer must be attributable to work performed for, and subject to the control of, the employer. See *Nationwide Mut. Ins. Co.* v. *Darden*, 503 U.S. 318, 322–24 (1992). Such payments and other benefits are non-reportable, even if they represent compensation for such work previously performed, such as earned or accrued wages, payments or benefits received under a bona fide health, welfare, pension, vacation, training or other benefit plan, leave for jury duty, and all payments required by law. In contrast, compensation for work performed as an independent contractor does not constitute payments or benefits to a bona fide employee, even if the individual also serves as a bona fide employee while performing other work. Most fundamentally, compensation paid to an individual who is carried on the employer's payroll but who does not work (a ''no-show employee'') is not compensation to a bona fide employee.

By its terms, the proposed definition excludes payments for work performed for an individual other than the employer, or work performed outside the control of the employer. This definition will, thus, require reporting of at least two types of compensation that are currently excluded from reporting as ''payments and other benefits received as a bona fide employee.'' See Instructions, Part A, exclusion (iv). These compensation types are ''union leave'' and ''no docking'' payments. Under a union-leave policy, the employer continues the pay and benefits of an individual who works full time for a union. Under a no-docking policy, the employer permits individuals to devote portions of their day or workweek to union business, such as processing grievances, with no loss of pay. Continuation of pay in this context is not ''payments or other benefits received as a bona fide employee'' because the payments are not attributable to work performed for, and subject to the control of, the employer. Rather, the pay is for services performed for, and subject to the control of, the union. The payments are, therefore, reportable. See 29 U.S.C. 432(a)(1), (a)(5).

The current instructions treat as non-reportable payments for ''activities other than productive work,'' depending in part on the collective bargaining agreement and the employer's practices. Specifically, exemption (iv) of Part A of the current form excludes ''payments for periods in which such employee engaged in activities other than productive work, if the payments for such period of time are: (a) Required by law or a bona fide collective bargaining agreement, or (b) made pursuant to a custom or practice under such a collective bargaining agreement, or (c) made pursuant to a policy, custom, or practice with respect to employment in the establishment which the employer has adopted without regard to any holding by such employee of a position with a labor organization.'' See Instructions, Part A, exemption (iv). The LMRDA Manual discusses the situation when a union officer ''is excused from his regular work to handle grievances and [is] paid his regular wages while handling grievances.'' It states: ''Such a situation will not normally require reports from the union officer * * * on the theory that the employee officer is being paid for work performed of value to the employer who is interested in seeing to it that grievances are immediately adjusted.'' LMRDA Manual, § 248.005.

The Department proposes to change this rule. Under the Department's proposed instructions, an officer or employee would have to report any payments for other than ''productive work,'' including union-leave and no-docking payments. These payments are not received as a bona fide employee of the employer; they are received as a representative or employee of the union. The employer's perception that an employee's work for the union is valuable, a fact relied on by the LMRDA Manual, does not seem relevant. The question is whether the payment is received as a bona fide employee, not whether the employer considers the money well spent. The payments also represent a potential conflict of interest. Members have an interest in knowing how much union officers or employees are paid by the employer for time spent on union business. This information would be significant for members in assessing the effectiveness of union officers and employees and in evaluating candidates for union office. For example, during collective bargaining negotiations, an officer who enjoys union-leave or no-docking payments may agree, or feel pressure to agree, to reduced benefits for employees in exchange for increases in his or her employer payments. Similarly, a union employee may feel pressure to not zealously pursue a grievance on behalf of a union member for fear of alienating the employer and jeopardizing his or her payments. The exemption in the current form is not required by statute, which is silent on this issue.

In discussing the legality of ''no-docking'' payments under the Labor Management Relations Act, one circuit judge wrote, ''Congress was concerned about any form of payment that could upset the balance between labor and management. The payments at issue in this case do exactly that. They create a conflict of interest for union negotiators who may agree to reduced benefits for the employees in exchange for financial support for the union.'' See *Caterpillar* v. *United Auto Workers*, 107 F.3d 1052 (3rd Cir. 1997) (*en banc*) (emphasis in original) (Mansmann, J., dissenting), *cert. granted*, 521 U.S. 1152, *dismissed as moot*, 523 U.S. 1015 (1998). The Department finds this reasoning persuasive in the context of section 202 of the LMRDA, and the proposed interpretation to be more consistent with the language of the statute than the current approach. These payments present a potential for conflicts of interest. By exempting these payments from reporting, the Department has deprived union members of information they may need to make an informed judgment on whether their union officers and employees are subject to financial incentives that could hinder them in fulfilling the trust that has been placed in them. The Department acknowledges that this proposal is a departure from the Department's past practice and invites comment about the problems (or their absence) that have arisen by allowing such payments to go unreported. The Department also seeks comment about whether disclosure is always appropriate for ''no docking'' situations and, if not, suggestions as to whether quantitative (such as number of hours) or qualitative (such as discussing a grievance with a supervisor or management official) distinctions should affect the disclosure obligation.

Bona fide investment, as proposed, means personal assets of the filer held to generate profit not acquired by improper means or as a gift from an

employer, a business that deals with the filer's union or a trust in which the filer's union is interested, a business a substantial part of which consists of dealing with an employer whose employees the filer's union represents or is actively seeking to represent, or a labor relations consultant to an employer. *See publicly traded securities.*

The primary purpose of this definition is to alert filers that stock or other securities received as a gift will not constitute a ''bona fide investment,'' under the provision that exempts from reporting bona fide investments in publicly traded securities when the gift is received from an employer, certain businesses, or a labor relations consultant. See discussion of *publicly traded securities*, below. A union officer or employee who receives a gift of publicly traded stock from an employer, for example, must therefore disclose the holding, unless another reporting exemption applies.

Dealing, as proposed, means to engage in a transaction (bargain, sell, purchase, agree, contract) or to in any way traffic or trade.

In the course of providing compliance assistance to union officers and employees, OLMS has been asked if payments from a union to a trust in which the union is interested constitute ''dealing[s]'' between the trust and the union under section 202(a)(4) of the Act, which creates a reportable relationship when a union officer or employee receives a payment from a business engaged in ''buying from, selling or leasing to, or otherwise dealing, with'' the union. OLMS has been asked whether dealings between a union and a union related trust exist when payments are made by an employer to the trust pursuant to a collective bargaining agreement negotiated by the union. In addition, the public has asked whether contributions by a union to a charitable, social, educational, or political organization constitute dealings between the union and the organization. The Department's current and proposed instructions do not speak explicitly to this issue, and the government's reporting system is not directly on point. See OGE 450, p. 14 (''If you receive food, transportation, lodging, and entertainment or a reimbursement of official travel expenses from a non-profit tax-exempt institution categorized by the IRS as one falling within the terms of 26 U.S.C. 501(c)(3), you must report the name of the organization, a brief description of the in-kind services or the reimbursement and the value.'') The Department seeks comments on these issues, and the related issue of whether trusts and such organizations constitute, or can constitute, ''business[es]'' under sections 202(a)(3) and (a)(4), or ''employers'' under section 202(a)(6), so that payments from such organizations to union officials would be reportable. What activities or transactions between trusts and other organizations and the union would rise to the level of dealings? What factors, if any, should the Department consider when determining if trusts and other organizations are businesses or employers? Finally, commenters are asked to consider these questions in regard to labor organizations and labor management committees. Can these entities constitute businesses under sections 202(a)(3) and (a)(4), or constitute employers under section 202(a)(6), and, if so, what type of activities and transactions between such entities and the filer's union should be considered dealings?

Directly or indirectly, as proposed, means by any course, avenue, or method. *Directly* encompasses holdings and transactions in which the filer, spouse, or minor child receives a payment or other benefit without the intervention or involvement of another party. *Indirectly* includes any payment or benefit which is intended for the filer, spouse, or minor child or on whose behalf a transaction or arrangement is undertaken, even though the interest is held by a third party, or was received through a third party.

The purpose of this definition is to clarify that filers must disclose any benefits received by them (or their spouse or minor child) from a third party where the third party is acting on the behalf, or at the behest, of an employer or business where the benefit would have to be reported if made by it directly to the filers (or their spouse or minor child). Benefits received from an employee, agent, or representative of an employer or business, or other entity acting on behalf of the employer or business, should be considered to be received from the employer or business. Payments to a third party to be held for the use or benefit of the filer are also reportable. The definition is deliberately drawn broadly, consistent with the legislative history ''to require disclosure of any personal gain which an officer or employee may be securing at the expense of union members.'' Senate Report, at 15, reprinted in 1 Leg. History, at 411. See also AFL–CIO Ethical Practices Code, reprinted in 2 Leg. History, at 1406 (''[The ethical principles] apply not only where the investments are made by union officials, but also where third parties are used as blinds or covers to conceal the financial interests of union officials'')

Filer/Reporting Person/You, as proposed, mean any officer or employee of a labor organization who is required to file Form LM–30. These terms are used synonymously and interchangeably throughout the instructions and, when referring to reportable interests, income, or transactions, these terms include interests, income, or transactions involving the union officer's or employee's spouse or minor child.

Income, as proposed, means all income from whatever source derived, including, but not limited to, compensation for services, fees, commissions, wages, salaries, interest, rents, royalties, copyrights, licenses, dividends, annuities, honorarium, income and interest from insurance and endowment contracts, capital gains, discharge of indebtedness, share of partnership income, bequests or other forms of inheritance, and gifts, prizes or awards.

This definition is designed to help filers identify the types of financial matters that are subject to the reporting requirements. The list is adopted from disclosure regulations applicable to federal employment. See 5 CFR 2634.105(j); 5 CFR 2634.302.

Labor organization, as proposed, means the local, intermediate, or national or international labor organization that employed the filer, or in which the filer held office, during the reporting period, and any parent or subordinate labor organization of the filer's labor organization.

Under sections 202(a)(1) through (a)(5), union officers and employees must report payments from, holdings in, or transactions with the following entities:

(1) An employer whose employees the filer's labor organization represents or is actively seeking to represent;

(2) A business a substantial part of which consists of dealing with an employer whose employees the filer's labor organization represents or is actively seeking to represent; or

(3) A business that deals with the filer's labor organization or a trust in which the filer's labor organization is interested.

The reporting obligation thus depends on what organization constitutes the filer's labor organization. Many labor organizations consist of a three-tier hierarchy, such as a local labor organization, an intermediate body, and a national or international labor organization.

The current instructions are silent about the obligation of an officer or employee to report, under section

202(a)(4), interests or income from businesses that deal with parent or subordinate labor organizations within the filer's labor organization. See 29 U.S.C. 432(a)(4). In the same way, the instructions are silent as to whether labor organizations affiliated with that of the union officer or employee are encompassed by the phrase ''an employer whose employees such labor organization represents or is actively seeking to represent.'' See 29 U.S.C. 202(a)(1), (2), (5). For example, one reading of the statute would mean that payments by an employer to a union official would not be reportable if a different labor union within the same overall union hierarchy was the entity actively seeking to represent the employees of the employer. As currently written, a filer would have to contact the Department or obtain a copy of the LMRDA Manual to learn that the obligation extends beyond the immediate organization in which the filer is an officer or employee. As provided in the LMRDA Manual: ''An international union officer must report his income from [a] business [that has dealings with an employer whose employees a local union represents] even though he is not an officer of the local which represents the employees of the business, and even though his duties as an international officer do not include representation activities.'' LMRDA Manual, § 241.100.

Union members have an interest in knowing benefits their officers or employees receive from businesses that deal with their parent or subordinate unions or with employers whose employees their parent or subordinate unions represent, or are actively seeking to represent, so they can evaluate whether these benefits are significant enough, or of such a nature, to constitute a conflict of interest. For example, union members have an interest in knowing if a spouse of a local union officer owns a travel agency that does business with the national union. Likewise, under the current instructions, and unless the filer was familiar with the interpretative manual, union members would not know if a president of a national labor organization owns a printing company that provides services to many of the national union's subordinate local labor organizations. Yet, employees of local unions may choose to patronize this printing company to seek favor with, or avoid alienating, the national president, despite less expensive services available elsewhere.

The statutory language itself is ambiguous on this point. However, as discussed above, Senator Kennedy's statement about how the Act would remedy the improper actions by certain high ranking international union officers evinces Congressional concern about the conflict posed by a union official's personal interests and the official's obligation to all the union's members and constituent units, not merely concern about matters relating solely to the particular tier of the union in which the filer serves as an officer or employee. As discussed above, the McClellan Committee's investigation disclosed a myriad of arrangements whereby union officials, whose personal interests were intertwined with those of employers and benefit providers, suborned the interests of their affiliated locals and their members to the officials' personal interests and the interests of the officials' financial benefactors. Confident that Congress would not have intended to ignore the serious problems identified by the McClellan Committee's investigation, the Department's proposal clarifies the reach of the disclosure obligation to include conflicts that arise between a union official and his responsibility to both the immediate unit of the union that he serves and any parent or subordinate unit of that unit.

Labor organization employee, as proposed, means any individual (other than an individual performing exclusively clerical or custodial services) employed by a labor organization within the meaning of any law of the United States relating to the employment of employees.

By statute, an employee ''means an individual employed by an employer''. 29 U.S.C. 402(f). An employer is broadly defined to include ''an employer within the meaning of any law of the United States relating to the employment of employees.'' 29 U.S.C. 402(e). Under the common law, any individual working at the control and direction of a labor organization will be an employee of the organization. The common law contains various formulations and factors to be considered in determining the employment status of an individual. See *Nationwide Mut. Ins. Co.* v. *Darden*, 503 U.S. at 318, 322–24 (1992). The contractual relationship between an individual and the labor organization and the actual duties of the individual, not the labels ''independent contractor'' or ''consultant,'' will determine whether an individual is a labor organization employee. A hired individual is an employee if the union has the right to control the manner and means by which the work product is accomplished. Among the other factors relevant to this inquiry are the skill required to perform the job; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the union and the individual; whether the union has the right to assign additional projects to the individual; the extent of the individual's discretion over when and how long to work; the method of payment; the individual's role in hiring and paying assistants; whether the work is part of the individual's regular business; the provision of employee benefits; and the tax treatment of the individual. *Id.*

Under this analysis, professionals who work ''in house,'' on more than an episodic basis, alongside other individuals employed by the union, typically are employees. For example, an accountant would be an employee of the labor organization if the labor organization determines the manner by which the accounting duties are performed, and the accountant is paid regularly by salary for his or her work activities. However, an accountant hired from a private firm for a fixed fee for a specific, non-recurring project likely would be an independent contractor. If the filer has any doubt about his or her status as an employee or independent contractor, the filer should consult a private attorney for legal advice or OLMS for further information.

Although unions are required to report on their financial disclosure forms employees who receive more than $10,000 a year, 29 U.S.C. 431(b), there is no similar earnings threshold for reporting by labor union employees. A labor organization employee who earns less than $10,000 is subject to the reporting requirements.

The source of payment is not dispositive of whether an individual is a labor organization employee. An individual who is paid by the employer to perform union work, either under a ''union leave'' or ''no docking'' policy, is an employee of the union if the individual performs services for, and under the control of, the union. See discussion above, under the definition of ''bona fide employee.'' The mere fact that payment is made by the employer does not eliminate the individual's status as an employee of the union. Thus, individuals who receive payments from an employer, either under a ''union leave'' or ''no docking'' policy, for work performed for, and under the control of, the union must file a Form LM–30.

Labor organization officer, as proposed, means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing

body. An officer is (1) a person identified as an officer by the constitution and bylaws of the labor organization; (2) any person authorized to perform the functions of president, vice president, secretary, or treasurer; (3) any person who in fact has executive or policy-making authority or responsibility; and (4) a member of a group identified as an executive board or a body which is vested with functions normally performed by an executive board.

An officer thus includes a trustee appointed to oversee the union. A steward may not be identified in the union constitution as an officer, but may perform executive duties, and thus be an officer.

This proposed definition tracks the definition of officer at section 3(n) of the LMRDA, 29 U.S.C. 402(n), and adds a new second sentence to the current regulation's definition, 29 CFR 404.1(b). The LMRDA Manual applies the definition to trustees appointed to oversee a labor organization. See LMRDA Manual, 241.200. Comments are invited as to whether the proposed definition of ''officer'' is clear and, if not, how it may be improved. Title V of the LMRDA, like section 202, establishes a conflict of interest standard for union officials that extends to officers and other ''representatives'' of the union. Commenters are requested to address the Department's determination that the reporting obligation does not reach all the union officials who are covered by the Act's application of fiduciary standards to union officials and representatives. 29 U.S.C. 501.

Legal or equitable interest, as proposed, means any property or benefit, tangible or intangible, that has an actual or potential monetary value for the filer, spouse, or minor child without regard to whether the filer, spouse, or minor child holds possession or title to the interest.

Minor child, as proposed, means a son, daughter, stepson, or stepdaughter less than 21 years of age.

The current instructions, like the LMRDA, are silent about the age at which a child reaches his or her majority. There is no federal statute that prescribes a definition of ''minor child'' that would have application to section 202(a) of the LMRDA. It is possible to construe the term ''minor child'' by reference to the law of the specific state where the action occurred, rather than construing the term to have a uniform, nationwide federal definition. State law definitions for the legal concept of childhood and age of majority differ from state to state but also may differ widely from legal context to legal context within the same state. Moreover, the general rule as set forth in *Mississippi Band of Choctaw Indians* v. *Holyfield*, 490 U.S. 30 (1989), is ''in the absence of a plain indication to the contrary, * * * Congress when it enacts a statute is not making the application of the federal act dependant on state law.'' Id. at 43, citing *Jerome* v. *United States*, 318 U.S. 101, 104 (1943).

There is a need for a uniform, nationwide meaning of ''minor child'' under the LMRDA and without such a uniform definition the objective of the LMRDA will be frustrated. In this connection, not only do state law definitions for the legal concept of childhood and age of majority differ from state to state but also may differ widely from legal context to legal context within the same state. Thus, the same state may have differing age limitations for contracting, driving, marriage, child support and custody, voting, abortion, responsibility for medical care, taxes, tort law, welfare, and numerous other contexts. See generally Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 Hofstra L. Rev. 547 (2000). Further, court decisions are not always in agreement regarding how to determine which state's law should apply in specific situations; i.e., a conclusion regarding a child's age of majority may differ depending upon whether the situs of the activity or property, the actors' residence, the actors' domicile, or some other factor is controlling. See generally 42 Am. Jur.2d Infants § 13, p. 21; 43 C.J.S. Infants § 109, pp. 372–73. Decisions regarding which state law would be applicable to the age of majority of a specific ''minor child'' may also be made more difficult because of the significant changes in structure, scope, and complexity that labor organizations have undergone in recent decades. Such uncertainty as to which state law to apply and whether a report would be required would certainly function as obstacles to efficient and effective compliance, enforcement, and use of reports. A union member may be an officer of a local union, an intermediate union, and an international union, each located in a different state. Further, a rule that made the filing requirements vary by state could make an interest reportable by one officer in one state non-reportable by a different officer in another state. Both filers and union members who view filed reports require a known and easily applied single standard regarding when reports are required, and what a disclosure or its absence represents.

In 1959 when the LMRDA was enacted, it was well established that at common law the age at which a person reached his or her majority in the states was twenty-one years. See, e.g., 5 Samuel Williston and Richard A. Lord, *A Treatise on the Law of Contracts* § 9:3 n.15 (4th ed. 1993 & Supp. 1999). The Department has concluded that in 1959 when Congress used the term ''minor child'' in section 202(a) of the Act, Congress intended a uniform federal standard to apply and referred to the general common law meaning at that time, which was a person who had not yet reached the age of twenty-one years. We also believe that twenty-one is more suitable than an earlier age to distinguish between a child's relative dependence upon, and independence from, the finances of a parent.

Although the Department is not aware of any federal statute or policy counseling against the proposed definition, the Department acknowledges that 18 often is considered a threshold age, and that this age is sometimes used in federal statutes and regulations, *e.g.,* 18 U.S.C. 25(a)(2) (crimes of violence using minors); 20 U.S.C. 1228c(d)(5) (disclosure requirements for federal education activities); 42 U.S.C. 619 (block grants for temporary assistance for needy families); 42 U.S.C. 1396r–1a(b)(1) (grants to states for medical assistance programs); 42 U.S.C. 5106g(1) (child abuse treatment and prevention program); 5 CFR 843.102 (administration of death benefits and employee refunds under federal retirement system); 34 CFR 263.3 (grant administration provision relating to professional development of certain educators allowing dependent allowance for care of children). Other statutes and regulations apply a state's (or tribe's) age of majority, *e.g.,* 38 CFR 1.464 (age of consent for certain medical treatment); 43 CFR 4.201 (testamentary interests of Native Americans). At the same time, other federal statutes and regulations, notably those with a focus on the financial dependency of an individual on his or her parents, apply a test that looks to both the individual's age and circumstances. See, *e.g.,* 5 U.S.C. 8441 (survivor annuities for Federal employees); 26 U.S.C. 152(c)(3) (Internal Revenue Code); 28 U.S.C. 376(a)(5) (survivor annuities for Federal judges); 38 CFR 3.57 (veterans' benefits); 20 CFR 645.120 (administration of welfare-to-work grants); 20 CFR 416.1101 (supplemental security income). The SF 278 public disclosure form for senior government officials and employees defines the term ''dependent

child'' to mean a filer's ''son, daughter, stepson, or stepdaughter if such person is either: (1) Unmarried, under age 21, and living in your household, or (2) a 'dependent' of yours within the meaning of section 152 of the Internal Revenue Code of 1986.'' SF 278, p. 2. The OGE 450, the confidential financial disclosure reports used by certain government employees at or below the GS–15 grade level, uses the same definition. OGE 450, p. 1. The Department, therefore, invites comments as to the appropriate age, particular circumstances, or both when financial holdings of, or transactions by, a child should no longer be reportable.

Payer, as proposed, means:

(1) An employer whose employees the filer's labor organization represents or is actively seeking to represent;

(2) A business a substantial part of which consists of dealing with an employer whose employees the filer's labor organization represents or is actively seeking to represent;

(3) A business that deals with the filer's labor organization or a trust in which the labor organization is interested; or

(4) Any employer or any person who acts as a labor relations consultant to an employer.

The term *payer* is not used in the statute or the current form. In the revised form, the term ''payer'' is used to describe the employer, business, or labor relations consultant that is financially involved with the filer. The Department recognizes that the term is imperfect, in that in common parlance a business in which a filer holds an interest would not ordinarily be consider a ''payer'' of the filer. But the term, the Department believes, well describes an entity that provides income or other benefit, and adequately describes an entity that disburses the proceeds of a loan. It is thus used in the instructions as a shorthand description of the third party involved in a potential conflict-of-interest situation (as defined, ''payer'' combines the key elements of section 202) and allows the filer to report on a single schedule all the reportable holdings and transactions which the filer had with a particular individual or entity. The Department requests comments on whether the term ''payer'' is potentially confusing, in that some reportable events are not payments and the involved third party makes no disbursement, such as when a union officer holds an interest in the business of an employer. Comments are invited as to whether another word or short term would better describe the parties whose relationship to the filer triggers the reporting obligation.

Publicly traded securities, as proposed, means bona fide investments in (1) securities traded on a registered national securities exchange under the Securities Exchange Act of 1934, (2) in shares in an investment company registered under the Investment Company Act of 1940, or (3) in securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, and income derived from such securities. The American Stock Exchange, Boston Stock Exchange, Chicago Board Options Exchange, Chicago Stock Exchange, International Securities Exchange, National Stock Exchange (formerly the Cincinnati Stock Exchange), New York Stock Exchange, Pacific Exchange, and Philadelphia Stock Exchange are registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934. The NASDAQ stock market is not a registered national securities exchange. As registration status may change, the filer should seek current information. Public investment companies comprise certain mutual funds, closed end funds, and unit investment trusts. Interstate public utility holding companies are engaged, through subsidiaries, in the electric utility business or in the retail distribution of natural or manufactured gas. A filer may determine whether an exchange is registered with the SEC by making inquiries with the exchange or by consulting the SEC. A list of registered exchanges is maintained by the SEC on its web site. A filer may determine whether an investment company or public utility holding company is registered with the SEC by making inquiries to the companies, checking any prospectus, or consulting the SEC. A list of registered public utility companies is maintained by the SEC on its web site.

The statute treats certain securities differently than other holdings or transactions that trigger a reportable interest. Many securities, including certain stocks and bonds, are excluded from the reporting requirements, even when a security represents an ownership interest in an employer of the employees represented by the labor organization or in a business that deals with such an employer or with the filer's labor organization, if the security constitutes a public traded security. Filers should also be aware that the security must also be a bona fide investment to be non-reportable. See discussion of *bona fide investment* above. Stock received as a gift, regardless of the exchange on which it is traded or its registration with the SEC, will not constitute a ''bona fide investment,'' under the provision that exempts from reporting bona fide investments in publicly traded securities when the gift is received from an employer, certain businesses, or a labor relations consultant. See discussion of bona fide investment, above. A union officer or employee who receives a gift of publicly traded stock from an employer, for example, must therefore disclose the holding, unless another exemption applies. A filer who is uncertain about whether a particular security must be reported should consult a securities specialist or OLMS. The SEC maintains a web site with general information about securities and how the public may contact the Commission for assistance: *http://www.sec.gov.*

The Senate Report addresses the ''publicly traded securities'' exclusion as follows:

[T]he reporting requirements contained in paragraphs (1) [through] (5) * * * shall not apply to publicly traded securities and other securities that are publicly regulated * * * [T]he committee believes that the holding of publicly traded or regulated stock can hardly lead to conflicts of interest because of the unlikelihood that such holdings will amount to a substantial or controlling interest. Existing public regulation of such securities held in such quantities provide sufficient safeguards of disclosure.

Senate Report, at 38, reprinted in 1 Leg. History, at 434. The House Report does not discuss an exclusion for publicly traded securities; however, the bill that was passed by the House contains the same exception for publicly traded securities as contained in both the Senate bill and the Act as passed. See H.R. 8400, reprinted in 1 Leg. History, at 619, 639, and 2 Leg. History, at 1691–92.

The publicly traded securities exception echoes a point in the AFL–CIO's ethical practices code:

The [restrictions on the holding of interests in a company that has substantial business with an employer whose employees are represented by the union or the latter's competitors] do not apply in the case of an investment in the publicly traded securities of widely held corporations which investment does not constitute a substantial enough holding to affect or influence the course of corporate decision.

AFL–CIO Ethical Practices Code, reprinted in 105 Cong. Rec. S16378 (daily ed. Sept. 3, 1959) and 2 Leg. History, at 1408.

The SF 278 instructions inform senior government employees to report the ''identity and category of valuation of any interest in property (real or personal) held by you, your spouse or dependent child in a trade or business,

or for investment or the production of income which has a fair market value which exceeds $1,000 as of the close of the reporting period. These interests include, but are not limited to, stocks, bonds, pension interests and annuities, futures contracts, mutual funds, IRA assets, tax shelters, beneficial interests in trusts, personal savings or other bank accounts, real estate, commercial crops, livestock, accounts or other funds receivable, and collectible items held for resale or investment.'' There is no exception for bona fide investments in publicly traded securities. SF 278, p. 6–7. The confidential form used by government employees of lower rank has comparable requirements, requiring reports of all assets that have a value greater than $1000 or that produce income over $200, although the filer need not report the value of the asset or the amount of income generated. OGE 450, p. 2.

The proposed instructions contain examples to highlight the differences among securities. The Department invites comments about its determination that a filer must report investments in securities that are traded on NASDAQ and any suggestions regarding the reporting of over-the-counter trades or similar transactions. Comments also are invited, as discussed above, as to whether some interests, income, and transactions in non-publicly traded securities should be exempt from reporting, provided any such interests, income and transactions are of insubstantial value or amount and occur under terms unrelated to the filer's status in a labor organization.

Substantial part, as proposed, means 5% or more. Where a business's receipts from an employer whose employees the filer's labor organization represents or is actively seeking to represent constitute 5% or more of its annual receipts, a substantial part of the business consists of dealing with this employer.

Substantial part, as used in section 202(a)(3) of the LMRDA and the instructions for (a)(3), refers to the magnitude of the business transacted between the business and the employer whose employees the filer's labor organization represents or is actively seeking to represent, as a percentage of all business transacted by the business. The threshold for substantiality is met when the business's receipts from the employer constitutes 5% or more of the annual receipts of the business. The purpose of section 202(a)(3)'s substantial-part provision is to relieve union officials from having to report income or transactions that do not have potential conflict-of-interest implications. An official who has an interest in, or receives income from, a business that receives 5% or more of its income from the employer of the union members may well face a conflict. A business with 5% of its receipts from a single client will have the opportunity and inclination to make demands or offer inducements to retain that business. In negotiations with the union, the employer could use its relationship with the business as a bargaining tool, either threatening to end the relationship or promising to provide additional business opportunities. This presents the possibility that a union official may, for example, be coerced or have a financial incentive to accede to terms in negotiations with the employer of the union's members that the official would otherwise reject. These possibilities counsel the disclosure of these relationships between the business and the employer, and the extent of the officer or employee's interest in or income from the business. Disclosure of these relationships and financial interests and transactions will provide union members with important information about potential financial conflicts and will deter fraud and self-dealing, which can occur when an individual is subject to improper influence in the performance of official duties. This disclosure, like the other reforms proposed herein, will help union members ensure that their union officers and employees act on their behalf, and not give preferential treatment to any private business, employer, or individual.

In proposing the 5% threshold, the Department has considered thresholds established by or under other statutes and regulations, *e.g.,* 26 U.S.C. 72 (5% owners of an entity subject to different tax treatment under rules applicable to employee annuities and distributions); 5 CFR 550.143(c) (a substantial part of a tour of duty constitutes at least 25%); 20 CFR 416.211 (payment of a substantial part of an individual's care means more than 50% for the purposes of reducing supplemental security income payments); 20 CFR 628.405 (substantial part of labor market to be defined by state ''but shall not be less than 10% of the population of a labor market area''); 26 U.S.C. 501(c)(3) (''an organization shall be exempt from taxation if, among other things, it is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.''); 26 CFR 1.501(c)(3)–1 (In determining whether the prohibited activities of an organization are ''substantial,'' all the surrounding facts and circumstances, including the articles and activities of the organization, are to be considered); *Haswell* v. *U.S.*, 500 F.2d 1133, 1146 (Ct. Cl. 1974) (although finding percentage test inappropriate, court determines that where 20.5% of association's expenditures in 1967 were for political activities, and 19.27% of total expenditures in 1968 were for political activities, political activities were a substantial part of association's operations); *Seasongood* v. *Comm'r*, 227 F.2d 907, 912 (6th Cir. 1955) (where less than 5 percent of time and effort of organization was devoted to political activities these activities were not a substantial part of the organization's activities, and therefore contributions to the organization were tax deductible).

A larger number of statutes and regulations leave ''substantial'' undefined or provide a qualitative factor in establishing its reach, *e.g.*, 18 U.S.C. 1093 (defining substantial as ''such numerical significance,'' the loss of which would destroy ''group as a viable entity''). The Department acknowledges that none of the statutes or regulations compels 5% or any other percentage as the threshold for defining substantiality of business dealings under the LMRDA, but, we believe that 5%, or something close to that figure, represents the appropriate level of business activity that may pose conflict of interest concerns and should be disclosed. The Department also believes that it is better to set the threshold at the lower end of the range of reasonableness in order to alert filers of the need to monitor their conduct to avoid actual conflict of interest situations.

The Department seeks comments on whether a percentage threshold should be imposed, whether the percentage threshold should be higher or lower, whether a percentage of receipts is the appropriate consideration, whether union officials with holdings in, or income from, a business would be able to determine the percentage of the business's income that comes from dealings with the employer, and whether a dollar amount threshold could lawfully be imposed, and, if so, what figure would represent an appropriate dollar threshold.

Trust in which a labor organization is interested, as proposed, means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and

(2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

This definition is provided by section 3(l) of the LMRDA. 29 U.S.C. 402(l). The inclusion of the definition in the instructions is meant to assist filers who otherwise might not recognize that the LMRDA prescribes a specific meaning to the term.

c. The third heading of the proposed instructions is ''Who Must File.'' It combines the second and third categories of the existing form. The proposal restates the short description of the reporting obligation in the current form, but the proposal differs from the existing instruction in two ways. First, the proposal no longer provides for a ''Special Report.'' As discussed, the special report was designed to inform filers that the Secretary could require additional information from them, specifically including certain information that the Secretary, by crafting administrative exclusions, had removed from the reporting obligation. Due to its lack of utility, the Department proposes to eliminate the provision regarding ''Special Reports.''

Second, as discussed above, the proposed instructions inform the filer that reports must include information about a spouse and minor child even if his or her status changes during the fiscal year, for example, by divorce or a child reaching age 21.

3. The proposed instructions identify each subsection of section 202 by heading and explain the nature of the information that must be reported and any exceptions or exclusions under that particular subsection. Examples are provided to illustrate the application of each subsection.

The revised instructions define the transactions that must be reported under this subsection. The Department expects that a more straightforward approach with clear examples will help eliminate the errors in previously filed Form LM–30 reports, as discussed above, and increase compliance with the reporting requirements.

Subsection 202(a)(1)

The proposed instructions state:

[A1] Payments or Benefits From, or Holdings in, an Employer Whose Employees Your Union Represents or Is Actively Seeking To Represent

You must complete Form LM–30 if you or your spouse or your minor child, directly or indirectly, held a stock, bond, security, or other interest, legal or equitable, in, or derived any income or any other benefit with monetary value (including reimbursed expenses) from, an employer whose employees your labor organization represents or is actively seeking to represent.

Exceptions

You are not required to report:

- Payments and benefits received as a bona fide employee of the employer. See definition of *bona fide employee,* above.
- Holdings of, transactions in, or income from, bona fide investments in publicly traded securities. See definition of *publicly traded securities.*
- Holdings of, transactions in, or income from, bona fide investments in securities that are not publicly traded provided any such holding, or transaction, or income is of insubstantial value or amount and occurs under terms unrelated to your status in a labor organization. Holdings or transactions involving $1,000 or less and receipt of income of $100 or less in any one security shall be considered insubstantial. See definition of *publicly traded securities.*

Discussion: Under section 202(a)(1) of the LMRDA, officers and employees of a labor organization shall file with the Secretary a signed report listing and describing for the filer's preceding fiscal year—''any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child derived directly or indirectly from, an employer whose employees such labor organization represents or is actively seeking to represent, except payments and other benefits received as a bona fide employee of such employer.'' 29 U.S.C. 432(a)(1).

Three exclusions apply to reports under section 202(a)(1). The first is contained within 202(a)(1) and concerns payments received as a bona fide employee of the employer. See discussion of this exemption following the definition of *bona fide employee.*

A second exclusion is prescribed by section 202(b) for publicly traded securities held as a bona fide investment. See discussion of this exemption following the definition of *publicly traded securities.* A third exclusion concerns insubstantial holdings, transaction, and income relating to securities that are not publicly traded. See discussion at section I.H.1, above.

Insofar as section 202(a)(1) is concerned, the legislative history instructs:

> Section [202(a)(1)] requires a union officer or employee to disclose any securities or other interest which he has in a business whose employees his labor union represents or ''seeks to represent'' in collective bargaining. When a prominent union official has an interest in the business with which the union is bargaining, he sits on both sides of the table. He is under temptation to negotiate a soft contract or to refrain from enforcing working rules so as to increase the company's profits. This is unfair to both union members and competing businesses. The same danger exists when the union official is interested in a business which his union is ''actively seeking to represent'' for the purposes of collective bargaining.

Senate Report, at 15, reprinted in 1 Leg. History, at 411. The text of the House Report repeats these points, virtually verbatim. House Report, at 11, reprinted in 1 Leg. History, at 769.

To assist the filer, the instructions contain definitions of several terms used in this subsection, including *legal or equitable interests, directly or indirectly, benefit with monetary value, actively seeking to represent, bona fide employee, and publicly traded securities.* None of these key terms is explained in the current instructions.

As discussed in section I.H.2., the Department proposes to remove an exemption found in the current instructions: Part A, exemption (iii) (dealing with goods and services in the regular course of business). Exemption (iv) (dealing with payments received as a bona fide employee) has been changed, as discussed above in connection with the definition of *bona fide employee.*

The proposed instructions provide the following examples to help officers and employees identify interests and transactions that must be reported under this subsection.

Example 1

You are a union officer and truck driver who is paid for five days of work by the employer, even though you only drive a truck one day a week and spend the rest of the week handling union member grievances or other union-related work. You must report the pay and benefits received from the employer for the time spent performing union work under this subsection.

Example 2

You are an officer of a union that represents Widget Company employees. To help prepare for your retirement, you purchase 5,000 shares of Widget Company stock over the New York Stock Exchange or another registered stock exchange. You need not report the shares under this subsection, under the exception for bona fide investments in publicly traded securities.

Example 3

You are an officer of a union that represents Widget Company employees. Your wife owns 5,000 shares of Widget Company stock that Widget's CEO gave

her on Mother's Day two years ago. This stock is traded on the New York Stock Exchange or another registered stock exchange. You must report the shares under this subsection because the holding of this interest is reportable regardless of when it was obtained and, as a gift, the exclusion for bona fide investments in publicly traded securities does not apply.

Example 4

You are a full-time officer of a union that represents employees of several different employers. One of the employers pays your expenses on a trip with management officials to a plant in another part of the country to view some new equipment that the employer is considering purchasing. You must report the travel expenses under this subsection.

Example 5

You are an employee of a union that represents actors. You own a production company whose employees are represented by your union. You must report your interests in the production company under this subsection.

Example 6

You are an employee of union and your spouse works as a producer for a dinner theater that employs actors represented by your labor organization. She works 40 to 50 hours a week, producing shows and is paid a yearly salary. You do not have to report her earnings under this subsection because her payments are received as a bona fide employee of the theater company.

Example 7

You are a union officer and you receive payments under an ERISA qualified pension plan. The payments relate to your past employment for an employer whose employees your labor organization represents. These payments are received as a bona fide employee of the employer, and you do not have to report these payments under this subsection.

The Department invites comments on this subsection and encourages commenters to propose additional examples that would help filers comply with the requirements of the Act.

Subsection 202(a)(2)

The proposed instructions state:

[A2] Transactions Involving Loans From and Holdings in an Employer Whose Employees Your Union Represents or Is Actively Seeking To Represent

You must complete Form LM–30 if you or your spouse or your minor child, directly or indirectly, engaged in any transaction involving any stock, bond, security, or loan to or from, or other legal or equitable interest in the business of an employer whose employees your labor organization represents or is actively seeking to represent.

Exception

You are not required to report:

- Holdings of, transactions in, or income from, bona fide investments in publicly traded securities. See definition of publicly traded securities.
- Holdings of, transactions in, or income from, bona fide investments in securities that are not publicly traded provided any such holding, or transaction, or income is of insubstantial value or amount and occurs under terms unrelated to your status in a labor organization. Holdings or transactions involving $1,000 or less and receipt of income of $100 or less in any one security shall be considered insubstantial. See definition of publicly traded securities.

Special Note: [A2] covers situations where a union officer or employee or his or her spouse or minor child held an interest during the reporting year but sold, transferred or otherwise liquidated it prior to the end of the fiscal year. Such an interest must be reported under this subsection.

Discussion: Under section 202(a)(2) of the LMRDA, officers and employees of a labor organization shall file with the Secretary a signed report listing and describing for the filer's preceding fiscal year—''any transaction in which he or his spouse or minor child engaged, directly or indirectly, involving any stock, bond, security, or loan to or from, or other legal or equitable interest in the business of an employer whose employees such labor organization represents or is actively seeking to represent.'' 29 U.S.C. 432(a)(2).

The legislative history explains that this subsection is designed to capture transactions during the reporting period of any matters that would be covered if the holdings or other property remained at the close of the reporting period. In virtually identical language, the committee reports stated: ''[S]ection [202(a)(2)] is ancillary to [section [202(a)(1)]. * * * Its chief purpose is to prevent dishonest persons from circumventing [202(a)(1)] by transferring securities out of their names on the date of their report but this provision also covers other transactions such as loans from the employer.'' Senate Report, at 15 (quoted), reprinted in 1 Leg. History, at 411; House Report, at 11; reprinted in 1 Leg. History, at 769.

The proposed instructions inform filers that the obligation to report loans includes any transaction in which a payer acted as a guarantor of a loan. See LMRDA Manual, §§ 244.170; 253.041. [A2] covers only loans to or from the employer whose employees his organization represents or is actively seeking to represent. Loans from other employers are to be considered under [A6], discussed below.

As discussed in section I.H.2., above, the Department proposes to remove exemption (iii) (dealing with goods and services in the regular course of business). Similarly, the Department proposes to eliminate exemption (iv) (dealing with payments received as a bona fide employee), now contained in the current instructions, as to reports under this subsection.

The proposed instructions provide the following examples to help officers and employees identify interests and transactions that must be reported under this subsection.

Example 1

You are a union officer and after the beginning of the fiscal year, you are allowed to participate in the purchase of stock options at a preferred rate for a new business enterprise launched by the employer. Three weeks before the end of your fiscal year, you exercise the options to purchase the stock and then immediately sell it to realize a gain of $25,000. This transaction must be reported under this subsection even though you no longer own the stock.

Example 2

You are a union employee and your minor child receives 100 shares of stock as a high school graduation gift from an employer whose employees your union represents. She immediately sells it to assist with college expenses. Both transactions, the receipt and the sale, must be reported under this subsection.

Example 3

You are a union officer, and like all employees of the employer whose members your union represents, you hold an ownership interest in the business of the employer. In this fiscal year, you sell this interest to the employer. Although the holding of this interest is not reportable under section 202(a)(1) because it is a benefit received as a bona fide employee, the sale of the interest is reportable under this subsection.

Example 4

You are a union officer and your husband receives a loan from an employer whose employees your union represents. The loan must be reported under this subsection.

Example 5

You are a union employee. Your wife is a partner of a package delivery company. The company receives a loan from Easy Credit Limited that was

arranged with the assistance of an employer whose employees are represented by your union. The loan must be reported under this subsection.

The Department invites comments on this subsection and encourages commenters to propose additional examples that would help filers comply with the requirements of the Act.

Subsection 202(a)(3)

The proposed instructions state:

[A3] Holdings in or Transactions With a Business that Deals with an Employer Whose Employees Your Union Represents or Is Actively Seeking To Represent

You must complete Form LM–30 if you, your spouse or your minor child, directly or indirectly, held an interest in, or received any income or other benefit with monetary value (including reimbursed expenses) from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees your labor organization represents or is actively seeking to represent.

Exception

You are not required to report:

- Holdings of, transactions in, or income from, bona fide investments in publicly traded securities. See definition of *publicly traded securities.*
- Holdings of, transactions in, or income from, bona fide investments in securities that are not publicly traded provided any such holding, or transaction, or income is of insubstantial value or amount and occurs under terms unrelated to your status in a labor organization. Holdings or transactions involving $1,000 or less and receipt of income of $100 or less in any one security shall be considered insubstantial. See definition of *publicly traded securities.*

Discussion: Under section 202(a)(3) of the LMRDA, officers and employees of a labor organization shall file with the Secretary a signed report listing and describing for the filer's preceding fiscal year—''any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent.'' 29 U.S.C. 432(a)(3).

Apart from paraphrasing the language of section 203(a)(3), the committee reports noted only that the McClellan Committee hearings disclosed ''a number of instances in which union officials gained personal profit from a business which dealt with the very same employer with whom they engaged in collective bargaining on behalf of the union.'' Senate Report, at 15 (quoted), reprinted in 1 Leg. History, at 411; see House Report, at 12 (virtually the same), reprinted in 1 Leg. History, at 770. The Senate and House committees each endorsed the concern expressed in the AFL–CIO's Ethical Practices Code that the union official ''may be given special favors or contracts by the employer in return for less than a discharge of his obligations as a trade-union leader.'' Senate Report, at 15, reprinted in 1 Leg. History, at 411; House Report, at 12, reprinted in 1 Leg. History, at 770.

The proposed instructions explain the key terms of this provision, most of which have been discussed in connection with [A1] and [A2]. The term *substantial part* is unique to [A3]. As discussed above, in the definition of this term, where a business's receipts from an employer whose employees the filer's labor organization represents or is actively seeking to represent constitute 5% or more of its annual receipts, a substantial part of the business consists of dealing with this employer.

The interest in, or income derived from the business must be disclosed in full. A filer is not permitted to reduce the amount reported by, for example, a percentage proportionate to the amount of work performed by the business for the employer.

The proposed instructions provide the following examples to help officers and employees identify interests and transactions that must be reported under this subsection.

Example 1

You are a union officer. You own a small machine parts business. The employer of the employees your union represents purchased a large quantity of machine parts from your business. The employer's purchases represented 10% of the total receipts of your business that year. You must report, under this subsection, your interest in the machine parts business and the dealings between the business and the employer.

Example 2

You are an officer of an international union. Your wife owns an accounting firm and last year 20% of the receipts of her firm were from an employer whose employees are represented by a local union that is subordinate to your international union. You must report, under this subsection, your wife's interest in the accounting firm and the dealings between her business and the employer.

Example 3

You are a union officer and part owner of a copier supply company. Your union represents employees of employers A, B, and C. Last year 3% of the company's receipts were from employer A, 2% were from employer B, and 4% were from employer C. You must report under this subsection because a total of 9% of the company's receipts was from employers whose employees your labor organization represents. You must report your interests in the copier supply company, and its dealings with each of the employers.

Example 4

You are the business manager of a local union that represents stage technicians. You have a business supplying lighting and other equipment to companies putting on shows and conventions within the jurisdiction of your local. These companies employ members of your union, and 5% or more of your business is derived from these companies. You must report, under this subsection, your interest in your business and its dealings with the companies that hire the union members.

Example 5

You are the president of a union that represents employees of a trucking company. In addition to his full time job, your spouse moonlighted part-time last year and earned $9,000 cleaning business offices on Sundays. Once a month, the trucking company paid your spouse $80 to clean its office space, for an annual total of $960, about 10% of his company's business. You must report the $9,000 in income under this subsection, as well as the dealings between the cleaning business and the trucking company.

Example 6

You are an employee of a union that has a collective bargaining agreement with trade show contractors. You were also a seasonal employee of a company that received 5% of its receipts last year from leasing fork lifts to these contractors. You must report, under this subsection, your income or other benefits with monetary value (including reimbursed expenses) received from the company and the dealings between the company and the contractors.

Example 7

You are the treasurer of a union that has a collective bargaining agreement with trade show contractors. You are the owner of a company that gets 100% of its income from providing laborers to those contractors for handling empty

crates. You must report, under this subsection, your ownership interest in the company and its dealing with the trade show contractors.

Example 8

You are a union employee. Your wife is an employee of a law firm that received 10% of its income last year from an employer whose employees your union represents. You must report, under this subsection, your wife's income or other benefits with monetary value (including reimbursed expenses) received from the law firm, and the dealing between the law firm and the employer.

The Department invites comments on this subsection and encourages comments proposing additional examples that would help filers comply with the requirements of the Act. The Department specifically requests comments on the threshold set to establish a ''substantial part'' of a company's business.

Subsection 202(a)(4)

The proposed instructions state:

[A4] Holdings in or Transactions With a Business That Deals With Your Union or a Trust in Which Your Union Is Interested

You must complete Form LM–30 if you or your spouse or your minor child, directly or indirectly, held an interest in, or received any income or other benefit with monetary value (including reimbursed expenses) from, a business any part of which consists of buying from, selling or leasing to, or otherwise dealing with, your labor organization or a trust in which your labor organization is interested.

Exception

You are not required to report:

- Holdings of, transactions in, or income from, bona fide investments in publicly traded securities. See definition of *publicly traded securities.*
- Holdings of, transactions in, or income from, bona fide investments in securities that are not publicly traded provided any such holding, or transaction, or income is of insubstantial value or amount and occurs under terms unrelated to your status in a labor organization. Holdings or transactions involving $1,000 or less and receipt of income of $100 or less in any one security shall be considered insubstantial. See definition of *publicly traded securities.*

Discussion: Under section 202(a)(4) of the LMRDA, officers and employees of a labor organization shall file with the Secretary a signed report listing and describing for the filer's preceding fiscal year—''any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, a business any part of which consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with such labor organization.''

The committee reports use nearly identical language to explain this subsection:

Section [202(a)(4)] requires a union officer or employee to report any interests which he has in, or income which he derives from, a business which buys from, sells or leases to, or otherwise deals with, a labor organization.

Senate Report, at 15, reprinted in 1 Leg. History, at 411; House Report, at 12 (virtually verbatim), reprinted in 1 Leg. History, at 770. As an illustration of the practice, the committees described a situation where an ''officer of a local union charged with purchasing supplies or services might be tempted to favor a firm in which he owned a dominant interest.'' Senate Report, at 16, reprinted in 1 Leg. History, at 412; House Report, at 12 (virtually verbatim), reprinted in 1 Leg. History, at 770.

The committee reports provide as an additional illustration, a situation in which ''an officer charged with placing the union's insurance would be tempted to place it through a firm of insurance brokers in which he owned an interest.'' *Id.*

The breadth of this subsection was described by Senator Goldwater as ''cover[ing] every conflict-of-interest situation.'' Senate Report, at 90, reprinted in 1 Leg. History, at 486. This subsection uses no terms that have not been earlier discussed. Its chief difference from the other subsections is that its focus is on interests or income derived from a business that deals with the filer's labor organization.

As in the current form, the Department proposes to retain the requirement that transactions with businesses that deal with trusts in which the filer's labor organization is interested are reportable. See Instructions, Part B.

The interest in, or income derived from the business must be disclosed in full. A filer is not permitted to reduce the amount reported by, for example, a percentage proportionate to the amount of work performed by the business for the employer.

The proposed instructions provide the following examples to help officers and employees identify interests and transactions that must be reported under this subsection.

Example 1

You are an officer of a district council. Your spouse owns and operates a small catering business. Your union purchases catering services from your spouse's business during the fiscal year. You must report, under this subsection, your spouse's ownership interest in the catering business, and its dealings with the union.

Example 2

You are a union officer. You work part time for a business that did maintenance work on the heating and air conditioning system at the union hall. You must report, under this subsection, the income and other benefits with monetary value (including reimbursed expenses) received from the maintenance business, and its dealings with the union.

Example 3

You are a business manager of a local union. You work on a contract basis for a plumbing supply company that sold tools and other supplies to the union and its training funds. You must report your income and other benefits with monetary value (including reimbursed expenses) received from the plumbing supply company under this subsection, and the dealings between the supply company, the union, and the training funds.

Example 4

You are an officer of a national union. You and your husband own a printing company that prints the union newsletters for a local union of the same national union. You must report, under this subsection, your and your husband's ownership interest in the printing company and its dealing with the union.

Example 5

You are an officer of a joint board and run a snow plowing business. The joint board is subordinate to an international union. The international union contracted with the business to plow the parking lot of its headquarters. You must report your interest in the snow plowing business under this subsection, in addition to the business's interest with the international union.

Example 6

You are the president of a local union and a partner in a company that was hired to resurface the union's parking lot. You must report, under this subsection, your interest in the business and its dealings with the union.

Example 7

You are an employee of a national union. Your wife works for a travel agency that handles all the travel

arrangements by officers and employees of the national union. In addition to your wife's employment compensation from the travel agency, she also receives rebates from hotels for bookings made for the union. You must report your wife's income and other benefits with monetary value (including reimbursed expenses) received from that business, and the value of the rebates she received under this subsection, as well as the dealings between the travel agency and the union.

Example 8

You are the president of a local union and your 19-year old son works for a business that produces customized t-shirts, caps, and jackets. Your local union buys logo items from his business. You must report your son's income and other benefits with monetary value (including reimbursed expenses) received from this business under this subsection, and the dealing between the business and the union.

Example 9

You are a business representative of a local union that represents shipyard workers. You and two other business representatives own a company that does medical testing of local members, which is paid for by a health benefit plan that is a trust in which your local is interested. You must report your interest in the medical testing company under this subsection, and the dealings between the testing company and the health benefit plan.

Example 10

You are an employee of a union. Each year your union holds an annual workers' summer school at a private university whose space and services are rented by the union. You go to the summer school as an instructor and bring your wife and two minor children. At no extra charge to you, the university provides accommodations for you, your wife and minor children, rather than the single room typically provided instructors. The use of the additional space and its fair market value must be reported under this subsection, in addition to the dealings between the university and the union.

Example 11

You are the president of a local union and own a building, which has numerous tenants, including your local. The ownership and income received from the operation of the building and the dealings between you and the union must be reported under this subsection.

Example 12

You are a national union president and a trustee of a jointly administered health care trust that insures union members through an insurance company. Premiums for coverage are paid by the trust to the insurance company. You are a member of the board of directors of the health insurance company, which pays you an annual fee and reimburses expenses for your attendance at board meetings. In your capacity as a trustee of the health care trust, you recuse yourself from all decisions concerning the health insurance company. As the insurance company is doing business with a trust in which your union is interested, you must report your annual fee and reimbursed expenses under this subsection. The dealings between the health insurance company and the trust must also be reported.

Example 13

You are an employee of a national union and your husband works for a law firm that represents a local union that is affiliated with your national union. You must report, under this subsection, your husband's income and other benefits with monetary value (including reimbursed expenses) received from the law firm, and the dealings between the law firm and the local union.

Example 14

You are a national union president and director of a registered investment company that offers investment opportunities to unions or trusts in which unions are interested. Your union has invested several thousand dollars in fixed income or equity funds managed by the company. You receive no gratuities, compensation, or reimbursement for your duties as a director, but you are insured against personal liability for your actions as a director under a policy paid for by the company. The investment company paid for this insurance coverage. You must report the payment under this subsection, and the dealings between the investment company and the union.

The Department invites comments on this subsection and encourages commenters to propose additional examples that would help filers comply with the requirements of the Act.

Subsection 202 (a)(5)

The proposed instructions state:

[A5] Transactions or Arrangements With an Employer Whose Employees Your Union Represents or Is Actively Seeking To Represent

You must complete Form LM–30 if you or your spouse or your minor child had any direct or indirect business transaction or arrangement with any employer whose employees your labor organization represents or is actively seeking to represent.

Exceptions

You are not required to report:

- Payments and benefits received as a bona fide employee of the employer. See definition of *bona fide employee*.
- Holdings of, transactions in, or income from, bona fide investments in securities that are not publicly traded provided any such holding, or transaction, or income is of insubstantial value or amount and occurs under terms unrelated to your status in a labor organization. Holdings or transactions involving $1,000 or less and receipt of income of $100 or less in any one security shall be considered insubstantial. See definition of *publicly traded securities*.
- Purchases and sales of goods or services at prices generally available to any employee of the employer.
- Holdings of, transactions in, or income from, bona fide investments in publicly traded securities. See definition of *publicly traded securities*.

Special Note: You must report special discounts, special rates and other special treatment that you or your spouse or your minor child receives from an employer whose employees your labor organization represents or is actively seeking to represent. See definitions of *labor organization* and *actively seeking to represent*. A filer who purchases an item at a reduced price generally available to employees of the employer must nevertheless report the discount, and may not claim the exemption, unless the filer is an employee of the employer providing the discount.

Discussion: Under section 202(a)(5) of the LMRDA, officers and employees of a labor organization shall file with the Secretary a signed report listing and describing for the filer's preceding fiscal year—''any direct or indirect business transaction or arrangement between him or his spouse or minor child and any employer whose employees his organization represents or is actively seeking to represent, except work performed and payments and benefits received as a bona fide employee of such employer and except purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer.''

The Senate and House Reports explained this provision in nearly identical language:

[This subsection] requires a union official to disclose any business transaction with an employer with whom his organization deals.

The aim of this subsection is to prevent loans, under-the-table payments, special discounts, and other personal allowances which might influence a union official in the conduct of an organizational campaign or collective bargaining with the employer. The testimony before the McClellan committee demonstrates the need to compel disclosure. Normal transactions such as the payment of wages and the purchase and sale of goods or services at prices available to employees generally are excepted.

Senate Report, at 12 (quoted), reprinted in 1 Leg. History, at 412; House Report, at 12 (virtually verbatim), reprinted in 1 Leg. History, at 770. The only difference between the reports is that the House tied the exception to a product's availability ''on the open market'' in place of the Senate's qualification of the rule as ''generally.'' Id. The LMRDA Manual addresses (a)(5) as follows:

Section 205(a)(5) is designed to pick up any direct or indirect business transactions between the union officer (or his wife or minor child) and the employer whose employees the union officer's organization represents. There are two very important statutory exceptions, namely payments of bona fide wages to the union officer for regular work performed, and purchases and sales in the regular course of business at prices generally available to any employee of the employer.

LMRDA Manual, § 247.300. The LMRDA Manual continues: Where a union official ''is a regular employee on the assembly line,'' he does not need to report a 20% discount on a new automobile that is available to any regular employee, but if the official is not a regular employee he must report the purchase. Id. Under the current instructions, however, the ''regular course of business'' exception appears to apply generally, without regard to whether the individual obtaining the discount is an employee of the employer providing the discount. Instructions, Part A, exclusion (iii). The proposed instructions clarify that the only individuals who may avoid reporting employee discounts are employees of the employer.

[A5] covers only business transactions with the employer whose employees the filer's organization represents or is actively seeking to represent. Payments of money or other things of value are to be considered under section [A6], discussed below.

As discussed in section I.H.2., above, exemption (iv) (dealing with payments received as a bona fide employee) has been modified, as discussed following the definition of bona fide employee.

The proposed instructions provide the following examples to help officers and employees identify interests and transactions that must be reported under this subsection.

Example 1

You are an officer of an international union affiliated with a local union that represents employees at an automobile plant. The employer permits you to participate in an executive purchase plan under which management executives are permitted to purchase vehicles produced by the employer at a discount and at a lower interest rate. The transaction must be reported under this subsection.

Example 2

You are an employee of a union that represents employees at Acme Warehouse. At your request, Acme allows your neighbor to store his company's inventory at a rate below the customary storage rate. Your neighbor, in turn, shows his gratitude by allowing you to use his luxury box at a sporting event. You must report this arrangement.

The Department invites comments on its interpretation of this subsection and encourages commenters to propose additional examples that would help filers comply with the requirements of the Act.

Subsection 202(a)(6)

The proposed instruction states:

[A6] Payments of Money or Other Thing of Value From Any Employer or Labor Relations Consultant

You must file Form LM–30 if you or your spouse or your minor child received, directly or indirectly, any payment of money or other thing of value (including reimbursed expenses) from any employer or any labor relations consultant to an employer.

The types of payments that must be reported under this subsection include any payment from an employer or a labor relations consultant to an employer for the following purposes:

- Not to organize employees
- To influence employees in any way with respect to their rights to organize
- To take any action with respect to the status of employees or others as members of a labor organization; and
- To take any action with respect to bargaining or dealing with employers whose employees your organization represents or seeks to represent.

Special Note: If you received a payment or other thing of value, including reimbursed expenses, from an employer whose employees your union represents or actively seeks to represent, or a business that consists in substantial part of dealing with such an employer, or a business that has any dealings with your union, the payment should be reported under sections [A1]–[A5]. Section 202(a)(6) covers payments and other things of value, including reimbursed expenses, from businesses and employers that are not covered by the more specific provisions of sections 202(a)(1)–(5). Thus, for example, if a transaction concerns a payment to you from the employer whose employees your labor organization represents or actively seeks to represent, or a business that deals with such an employer or your labor organization, the payment should be reported under the appropriate subsection in section 202(a)(1)–(5).

Exception

You are not required to report:

- Payments of the kinds referred to in LMRA section 302(c), summarized below:

Discussion: Under section 202(a)(6) of the LMRDA, officers and employees of a labor organization shall file with the Secretary a signed report listing and describing for the filer's preceding fiscal year—''any payment of money or other thing of value (including reimbursed expenses) which he or his spouse or minor child received directly or indirectly from any employer or any person who acts as a labor relations consultant to an employer, except payments of the kinds referred to in section 186(c) of this title,'' 29 U.S.C. 186(c) (also known as section 302 of the Labor Management Relations Act, 1947).

The committee reports described subsection (a)(6) in identical language as follows:

Section [202(a)(6)] requires a union official to disclose any payment received from an employer or from any person who acts as a labor relations consultant for an employer except payments permitted by section 302 of the Labor-Management Relations Act of 1947, as amended. The purpose of this paragraph, among other things, is to reach the union official who may receive a payment from an employer not to organize [its] employees.

Senate Report, at 16, reprinted in 1 Leg. History, at 412; House Report, at 12 (virtually verbatim), reprinted in 1 Leg. History, at 770. As described by the LMRDA Manual, the subsection is designed to capture ''situations that pose conflict of interest problems which are not covered in the previous five sections of 202.'' LMRDA Manual, § 248.005. By way of example, it continues: ''A union officer must report under section 202(a)(6), if he receives any payment by way of dividends or otherwise from a firm which is competitive to one which has collective bargaining agreements with his own union.'' *Id.*

Subsection (a)(6) has been interpreted consistent with its description as a ''catch-all'' for transactions with employers not reportable under subsections (a)(1) through (a)(5). Language unique to section (a)(6) is found in the exception it provides for ''payments of the kinds referred to in

section 302(c) of the Labor Management Relations Act, 1947, as amended.'' Section 302(c) contains a number of categories with exceptions and provisos that limit their general availability.

In explaining the reference to 302(c), the Senate Report stated:

> [T]he general ban in section 302 upon employer payments to unions is not to apply to money deducted from the wages of employees pursuant to a collective bargaining agreement in the form of periodic payments to a union in lieu of membership dues, not to employer payments to trust funds for pooled vacation, holiday, severance or similar benefits, or apprentice or other employee training programs.

Senate Report, at 44 (discussing comparable language addressing an employer's reporting obligation), reprinted in Leg. History, at 440; compare House Report, at 35 (no discussion beyond noting exception of ''payments of the kinds referred to in section 302(c)''), reprinted in 1 Leg. History, at 793.

The current instructions do not attempt to characterize the categories or assist the filer in applying them to his or her completion of the Form LM–30. Instead, the current instructions simply set out the entire text of section 302(c), verbatim.

The Department's proposed instructions describe the types of payments that, as a general rule, need not be reported under section (a)(6):

- (1) Any money or other thing of value payable by an employer to
  - —(a) An employee acting openly for the employer in matters of labor relations or personnel administration, or
  - —(b) Any officer or employee of a labor organization who also is an employee or former employee of such employer, as compensation for or by reason of, his service as an employee of such employer;
- (2) Money or other thing of value payable in satisfaction of a judgment, arbitral award, settlement or release of any claim in the absence of fraud or duress;
- (3) With respect to the sale or purchase of an item at the prevailing market price in the regular course of business;
- (4) With respect to deductions in payment of labor union dues from wages by written assignment;
- (5) With respect to money or other thing of value paid to a trust fund established by the representative of an employer's employees for the sole benefit of these employees, their families and dependents for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance;
- (6) With respect to money or other thing of value paid by any employer to a trust fund established by the representative of the employer's employees for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs;
- (7) With respect to money or other thing of value paid by any employer to an individual or pooled trust fund for providing scholarships for the benefit of employees, families, and dependents, child care centers, or financial assistance for employee housing;
- (8) With respect to money or other thing of value paid by any employer to a trust for defraying the costs of legal services; or
- (9) With respect to money or other thing of value paid by any employer to a labor-management committee.

Under the proposed instructions, filers are cautioned that this exception applies *only* to the holdings and transactions reportable under section 202(a)(6).

As discussed in section I.H.2., above, the current instructions provide for two additional exemptions that will not appear in the revised instructions. Filers need not report ''bona fide loans, interest or dividends from national or state banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions,'' and ''(i)nterest on bonds or dividends on stock, provided such interest or dividends are received, and such bonds or stock have been acquired, under circumstances and terms unrelated to the recipient's status in a labor organization and the issuer of such securities is not an enterprise in competition with the employer whose employees your labor organization represents or actively seeks to represent.'' See Instructions, Part C, exemptions (ii) and (iii). The Department invites comments on the elimination of these exemptions, and the effect of such action. The Department seeks comments on whether the exceptions being deleted are duplicated, in any part, within the section 302(c) exceptions. Further, the Department seeks comments on whether the section 302(c) exceptions exclude from reporting ordinary payments of wages or salary of a filer's spouse or minor child when the wages or salary are paid by an employer whose employees the filer's labor organization does not represent and is not actively seeking to represent. Finally, the Department seeks comment on whether section 202(a)(6) limits the reporting obligation to only payments that present an actual conflict of interest, whether such an interpretation is a permissible reading of the statute, and, if so, how the instructions could be written to implement this interpretation, without granting impermissible discretion in the filer to determine which financial matters are reportable. LMRDA Interpretative Manual, § 248.005.

The proposed instructions provide the following examples to help officers and employees identify interests and transactions that must be reported under this subsection.

Example 1

You are a union officer and an attorney. Employers whose employees your labor organization does not represent or actively seek to represent often hire your law firm. One of those employers gives you a special gift of a three-week all-expense-paid trip to France as a reward for winning a major lawsuit. You must report the trip and its value under this subsection.

Example 2

You are a union officer and you receive payments under an ERISA qualified pension plan. The payments relate to your employment for an employer whose employees your labor organization does not represent or actively seek to represent. You do not have to report these payments.

Example 3

You are an officer of a national union. Your spouse is hired as a senior executive of an employer on the understanding that your union will not seek to organize that employer. You must report all the income and benefits your spouse receives from the employer under this subsection.

Example 4

You are a local union president. An employer outside of the jurisdiction of your local offers your 20-year-old daughter a paid summer internship on the understanding that you will seek to have your members go on strike against an employer who is one of their competitors. You must report all the benefits your daughter receives as part of the internship under this subsection.

The Department invites comments on its interpretation of this subsection and encourages commenters to propose additional examples that would help filers comply with the requirements of the Act.

C. Completion of the Form

The myriad types of financial transactions made reportable by section 202 complicate the design of a ''self-explanatory'' form. The filer must rely on the instructions to accurately complete the form. We invite comments addressing the layout and clarity of the form. Would the form benefit from adding additional text and, if so, what additions are recommended? Does the form have an intuitive feel to it? Does the form request information in logical

progression? How can the form be improved?

Item 1—LM–30 Filer Number: No changes are proposed for this item.

Item 2—Period Covered: No changes are proposed for this item.

Item 3—Contact Information of Reporting Person: Requires filers to provide their email address if they have one. This entry would not have been possible in 1963 when the existing regulation was drafted. Today, an email address is an important part of a person's contact information.

Item 4—Labor Organization Identifying Information: Combines Items 4 and 5 of the existing Form LM–30. It also requires filers to report whether they held their position in the union at the end of the reporting period. As an enforcement and compliance assistance matter, it is important to know whether the filer can still be reached at the union, and whether the filer may need to file Form LM–30 the following year.

Item 5—Signed: No changes are proposed for this item.

Payer Summary Schedule: As stated above, this schedule was created to provide a single place on the first page of the report where the filer's total transactions, benefits, and interests are reported. This schedule also allows a person reviewing the report to skip directly to a payer of interest. This schedule contains information that could be derived from the existing Form LM–30 but not in one place.

Payer Detail Page

Schedule 1—Payer Identifying Information: Combines Items 6, 8, and 13 of the existing Form LM–30. It also requires reporting of the telephone number, web site address, state of incorporation or registration, and state business identification number of each payer. This additional contact information will make it easier for a person reviewing the report to identify the payer. Finally, it requires the filer to indicate whether he or she was associated with the payer at the end of the reporting period. As an enforcement and compliance assistance matter, the Department needs to know whether the filer may be required to file a report the following year. In addition, union members have an interest in knowing whether the filer has severed his or her relationship with the payer or whether the relationship still exists, as they may wish to raise the matter within the union if the relationship still exists.

Schedule 2—Filer's Interest in, Payments or Loans From, or Transactions or Arrangements with the Payer: Combines Items 7, 12, and 14 of the existing Form LM–30. The schedule requires filers to list their interests, payments, loans, transactions, or arrangements. The schedule also requires reporting of the date and recipient of each reportable interest, payment, loan, transaction, or arrangement, which may or may not have been included by filers under the existing regulation. Finally, a column was created for filers to indicate the subsection(s) that requires the disclosure of each transaction, benefit, or interest. This function was partially accomplished in the existing regulation by the division of the form into Parts A, B, and C. The Department believes that this schedule with discrete columns and rows replacing narrative boxes will alleviate confusion on the part of filers and people reviewing the reports.

Schedule 3—Payer's Dealings with Union, Trust, or Employer: Combines and simplifies information reported in Items 9, 10, and 11 of the existing Form LM–30. For instance, filers no longer need to report the full address of a trust or employer; only a file number or zip code is required.

The current instructions provide little information to the filer about how to report the value of particular holdings or transactions. To remedy this omission, the revised instructions provide a comprehensive list of ways in which the value of an interest or transaction must be reported. The filer is told that he or she must report the exact value of an interest or transaction, if known or easily obtainable by the filer; otherwise, the filer is instructed to enter a good faith estimate of the fair market value and explain the basis for the estimate in the space provided on the form. The list is adopted from the regulations addressing the disclosure requirements of federal employees. See 5 CFR 2634.105(t).

The revised instructions identify for the filer different ways by which ''fair market value'' may be determined:

- The purchase price
- Recent appraisal
- Assessed value for tax purposes, adjusted to reflect market value if the assessed value is computed at less than 100% of that market value
- The year end book value of non-publicly traded stock, the year-end exchange rate of corporate stock, or the face value of corporate bonds or comparable securities
- The net worth of a business partnership or business venture
- The equity value of an individually-owned business or any other recognized indication of value (such as the sale price on the stock exchange at the time of the report or, for transactions, the sale price on the stock exchange at the time of the sale).

Recently, a labor organization has asserted to the Department that the current Form LM–30 can require ''the public disclosure of highly confidential and proprietary commercial information about arm's length business transactions between'' companies owned by union officers and employers with whom the union has negotiated a collective bargaining agreement, and that if confidential information were subject to the reporting requirements, ''it would have a potentially devastating impact on the [labor organization].'' The public is asked to comment on whether Form LM–30 may require the disclosure of sensitive information, whether highly confidential and proprietary commercial information should be protected, and the potential harm to union members or the public, if any, from the nondisclosure of such information. See 68 FR 58386–88 (description of how union should handle confidential information when completing Form LM–2); SF 278, p. 16 (Public Financial Disclosure Report for senior government officials and employees) (excluding information to the extent that it is considered confidential as a result of a privileged relationship established by law).

Continuation Pages

Labor Organizations in Which the Reporting Person is an Officer or Employee—Continuation Page: This continuation page allows filers to report all of the unions in which they are employed. This schedule will ease the burden on filers who are employed by or are officers of multiple unions. These individuals will no longer need to file multiple reports.

Payer Summary Schedule—Continuation Page: This continuation page allows filers to report additional payers if the five lines provided on the first page are not sufficient. The existing Form LM–30 does not contain a summary schedule.

Schedule 2—Filer's Interest in, Payments or Loans From, or Transactions or Arrangements with the Payer—Continuation Page: This continuation page allows filers to report additional interests, payments, loans, transactions, or arrangements. This replaces the continuation pages for Parts A, B, and C on the existing Form LM–30.

Schedule 3—Payer's Dealings with Union, Trust, or Employer—Continuation Page: This continuation page allows filers to report additional dealings of a payer that would trigger a reporting requirement. This replaces the

continuation pages for Parts A, B, and C on the existing Form LM–30.

Additional Information Schedule: This schedule allows filers to provide additional information or explanations about other items in the form. For instance, filers who cannot assign a value to an item in Schedule 3 must enter N/A in Column E and explain the situation in this schedule. This is similar to additional information items found on other OLMS forms, but the existing Form LM–30 does not contain such an item.

Regulatory Procedures

A. Executive Order 12866

The proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this proposed rule is not an ''economically significant'' regulatory action under section 3(f)(1) of Executive Order 12866. Based on a preliminary analysis of the data, the rule is not likely to: (1) Have an annual effect on the economy of $100 million; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. As a result, the Department has concluded that a full economic impact and cost/benefit analysis is not required for the rule under Section 6(a)(3) of the Order. However, because of its importance to the public the proposed is a significant regulatory action and was reviewed by the Office of Management and Budget.

The burden imposed by the revision of the Form LM–30 is addressed in the Paperwork Reduction Act section, below. The Paperwork Reduction Act section also describes what the Department believes are the substantial benefits of this rulemaking.

Prior to issuing this proposal, the Department sought the involvement of those individuals and organizations that will be affected by the Proposed Rule, including officers and employees of labor organizations that would be subject to the rule.

B. Small Business Regulatory Enforcement Fairness Act

For similar reasons, the Department has concluded that this proposed rule is not a ''major'' rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). It will not likely result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. Unfunded Mandates Reform

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include a Federal mandate that might result in increased expenditures by State, Local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year.

D. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism and has determined that the rule does not have federalism implications. Because the economic effects under the rule will not be substantial for the reasons noted above and because the rule has no direct effect on States or their relationship to the Federal government, the rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

E. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires agencies to prepare regulatory flexibility analyses, and to develop alternatives wherever possible, in drafting regulations that will have a significant impact on a substantial number of small entities, including ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' The rule revises the reporting obligations of union officers and employees, who, as individuals, do not constitute small business entities. Accordingly, the Proposed Rule would not have a significant economic impact on a substantial number of small business entities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to that effect. Therefore, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), a regulatory flexibility analysis is not required.

F. Paperwork Reduction Act

Summary: This proposed rule modifies the annual financial disclosure report that section 202 of the Act requires to be filed by labor organization officers and employees who have certain holdings, receive certain payments or income, or engage in certain financial transactions or arrangements. The revised paperwork requirements are necessary to reduce the errors and deficiencies in the reports that are filed under section 202, and increase the transparency of the financial practices of union officers and employees, which the Act requires to be public information. More accurate reports and increased transparency will allow union members to view the information needed by them to monitor their union's affairs and to make informed choices about the leadership of their union and its direction. Accurate disclosure and increased transparency promotes the unions' own interests as democratic institutions and the interests of the public and the government. Financial disclosure deters fraud and self-dealing, and facilitates the discovery of such misconduct when it does occur. The revised financial disclosure form will promote increased compliance with the statute by clarifying the form and instructions, offering numerous examples to guide filers, deleting exemptions that permit filers to decline to disclose financial matters made reportable by the Act, and organizing the information in a more useful format.

Published at the end of this notice are the proposed Form LM–30 and instructions that will implement the new reporting requirements. The electronic versions of the current Form LM–30 and instructions are available for download from the Department's web site at *www.olms.dol.gov.* The proposed Form LM–30 and instructions will also be made available via the Internet. Pursuant to the Paperwork Reduction Act of 1995, the information collection requirements contained in this Notice of Proposed Rulemaking have been submitted to the Office of Management and Budget for approval.

Background: The Form LM–30 is used by officers and employees of labor organizations, as the LMRDA defines that term. See 29 U.S.C. 402(i). The Act requires public disclosure of certain financial interests held, income received, and transactions and arrangements engaged in by labor organization officers and employees, who must file the reports, and their spouses and minor children. Subject to certain exclusions, these interests, incomes, transactions, and arrangement comprise: (1) Payments or benefits from, or holdings in, an employer whose employees the filer's union represents

or is actively seeking to represent; (2) transactions involving holdings in an employer whose employees the filer's union represents or is actively seeking to represent; (3) holdings in, income from, or transactions with a business a substantial part of which consists of dealing with an employer whose employees the filer's union represents or is actively seeking to represent; (4) holdings in, income from, or transactions with a business that deals with the filer's union or a trust in which the filer's union is interested; (5) transactions or arrangements with an employer whose employees filer's union represents or is actively seeking to represent; and (6) payments from an employer or labor relations consultant. See 29 U.S.C. 432.

The Current Form: The existing Form LM–30 consists of four sections. The first section calls for identifying data. This section gathers information about the filer, including the filer's name and address, the name and address of the labor organization in which the filer is an officer or employee, the filer's position with the organization, and the fiscal year covered by the report.

The second section, Part A of the current form, generally requires reporting of holdings in, transactions and arrangements with, and income and loans from the employer whose employees the filer's labor organization represents or actively seeks to represent. For each holding, transaction, arrangement, income, or loan, the filer is required to disclose its nature, value, and date of receipt.

Part A of the current form excludes certain financial matters from reporting. The instructions advise the potential filer that he or she should not report (i) holdings of, transactions in, or income from bona fide investments in registered securities; (ii) holdings of, transactions in, or income from other securities if they are of ''insubstantial value or amount'' (defined as holdings or transactions of $1,000 or less and income of $100 or less from any one security) and occur under terms unrelated to the filer's status in the labor organization; (iii) transactions involving purchases and sales of goods and services in the regular course of business at prices generally available to any employee of the employer; and (iv) ''payments and benefits received as a bona fide employee of the employer for past or present services, including wages, payments or benefits received under a bona fide health, welfare, pension, vacation, training or other benefit plan; and payments for periods in which such employee engaged in activities other than productive work, if the payments for such period of time are: (a) Required by law or a bona fide collective bargaining agreement, or (b) made pursuant to a custom or practice under such a collective bargaining agreement, or (c) made pursuant to a policy, custom, or practice with respect to employment in the establishment which the employer has adopted without regard to any holding by such employee of a position with a labor organization.''

The third section of the current form, Part B, generally requires reporting of ''an interest in or derived income or other economic benefit with monetary value, including reimbursed expenses, from a business (1) a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with the business of an employer whose employees your labor organization represents or is actively seeking to represent, or (2) any part of which consists of buying from or selling or leasing directly or indirectly to, or otherwise dealing with your labor organization or a trust in which your labor organization is interested.'' The filer must identify the name and address of the business involved, describe the type of organization the business deals with (employer, labor organization, trust), enter the nature of the dealings between these two parties and the value of these dealings, enter the interest held or income received by the filer, and the dollar amount of such income or interest.

Part B of the current form also excludes certain financial matters from reporting. Filers are instructed that they are not required to report any of the interests, transactions, or income identified in exclusions (i) and (ii) of Part A. As discussed, these non-reportable financial matters are (i) holdings in, transaction in, and income from bona fide investments in registered securities and (ii) insubstantial holdings in, transactions in, and income from other securities occurring under terms unrelated to the filer's status in the labor organization.

The fourth section of the current form, Part C, generally requires reporting of any payment of money or other thing of value received from any employer (other than an employer whose employees the filer's union represents or is actively seeking to represent) or from any labor relations consultant to an employer. For each interest or transaction to be reported under Part C, filers must identify the name of the employer or labor relations consultant and the nature and amount of the payment.

Part C of the current form also excludes certain financial matters from reporting. The instructions identify the following as items that are not required to be reported: (i) Payments of the kind referred to in section 302(c) of the Labor Management Relations Act (LMRA); (ii) bona fide loans, interest or dividends from banks, other bona fide credit institutions, and insurance companies; and (iii) interest on bonds or dividends on stock, provided such interest or dividends are received, and such bonds or stock have been acquired, under circumstances and terms unrelated to the recipient's status in a labor organization and the issuer of such securities is not an enterprise in competition with the employer whose employees the filer's labor organization represents or actively seeks to represent.

In the ''General Instructions'' filers are informed: ''You do not have to report any sporadic or occasional gifts, gratuities, or loans of insubstantial value, given under circumstances or terms unrelated to the recipient's status in a labor organization.'' This exclusion applies to financial matters reportable under Part A, B or C.

In the instructions to the current Form LM–30, the information collection burden is reported to average 35 minutes per response.

Overview of Changes to Form LM–30: The proposed Form LM–30 and instructions will define terms used in the form, provide examples to assist the filer in identifying reportable financial events, and will remove certain exclusions that permitted filers to avoid reporting certain financial matters.

The revised instructions define: *Actively seeking to represent, arrangement, benefit with monetary value, bona fide employee, bona fide investment, dealing, directly or indirectly, filer/reporting person/you, income, labor organization, labor organization employee, labor organization officer, legal or equitable interest, minor child, payer, publicly traded securities, substantial part*, and *trust in which a labor organization is interested.* These definitions clarify that certain holdings, payments, income, transactions or arrangements are reportable, and that others are non-reportable.

The definition of the term ''labor organization'' will clarify that when determining whether an employer is one ''whose employees the filer's labor organization represents or actively seeks to represent,'' or whether a business is ''dealing with [the filer's] labor organization,'' the term ''labor organization'' will not be limited to the particular local, intermediate, national or international labor organization that the filer serves as an officer or

employee, but rather will also include any parent or subordinate body of the filer's labor organization.

Similarly, in defining ''bona fide employee,'' the revised Form LM–30 would require the reporting of payments received by union officers from an employer for work performed for the union. A typical example involves a ''no docking'' arrangement where an employer allows a union steward or other officer to resolve grievances, often on an occasional ''as-needed'' basis, without a loss of pay. In other instances, a union official is paid by an employer while working full time on union business. In a related area, the definition of ''labor organization employee'' clarifies that individuals who perform work for, and under the control of, the union must file a Form LM–30. Individuals who receive payments from an employer, either under a ''union leave'' or ''no docking'' policy, for work performed for, and under the control of, the union, will come under this definition, as may some workers previously denominated ''independent contractors.''

The definition of the term ''minor child'' would require union officers to report financial matters involving a child until the child reaches 21 years of age. The definition of the term ''substantial part'' would require reports of income from a business where a business's receipts from an employer whose employees the filer's labor organization represents or is actively seeking to represent constitute 5% or more of its annual receipts. The definition of ''minor child,'' and the two other definitions discussed above, will likely increase the holdings, payments, income, transactions or arrangements that are reported.

The proposed instructions also eliminate some exemptions in the current form. These exemptions operate to make nondiscloseable financial matters that the statute requires to be reported. The elimination of these exemptions will thus tend to increase the holdings, payments, income, transactions or arrangements that will be reported.

Part A of the current instructions exempts from reporting:

(iii) Transactions involving purchases and sales of goods and services in the regular course of business at prices generally available to any employee of the employer.

(iv) Payments and benefits received as a bona fide employee of the employer for past or present services, including wages, payments or benefits received under a bona fide health, welfare, pension, vacation, training or other benefit plan; and payments for periods in which such employee engaged in activities other than productive work, if the payments for such period of time are: (a) Required by law or a bona fide collective bargaining agreement, or (b) made pursuant to a custom or practice under such a collective bargaining agreement, or (c) made pursuant to a policy, custom, or practice with respect to employment in the establishment which the employer has adopted without regard to any holding by such employee of a position with a labor organization.

The Department proposes to limit the scope of exemption (iii) Exemption (iii) is a statutory exemption that applies by its terms to financial matters reportable under section 202(a)(5), not to section 202(a)(1) or 202(a)(2). See 29 U.S.C. 432(a)(1), (2), (5). The Department's proposal adheres to the statutory design and thus ends the exemption for reports due under section 202(a)(1) and 202(a)(2), but continues it for reports due under section 202(a)(5). Similarly, the first part of exemption (iv) (up to the semicolon) is created by statute. It applies to reports due under section 202(a)(1) and 202(a)(5). See 29 U.S.C. 432(a)(1), (5). The Department proposes to eliminate this exemption for reports due under section 202(a)(2). Further, the portion of the exemption that excludes payments for periods in which such employee engaged in activities other than productive work will also be removed.

Part C of the current instructions contains the following exemptions:

(ii) Bona fide loans, interest or dividends from national or state banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions.

(iii) Interest on bonds or dividends on stock, provided such interest or dividends are received, and such bonds or stock have been acquired, under circumstances and terms unrelated to the recipient's status in a labor organization and the issuer of such securities is not an enterprise in competition with the employer whose employees your labor organization represents or actively seeks to represent.

The Department proposes to eliminate these two exemptions.

Hour and Cost Burden Estimates for the Revised Form: The following table describes the information sought by both the existing form and instructions and the proposed form and instructions, where on each form the particular information is sought, if applicable, and the amount of time estimated for completion of each item of information. The time estimates include the additional time burdens associated with the Department's proposed eliminated and curtailed administrative exemptions, and the proposed definitions.

Burden description	Current form	Proposed form	Time
Maintaining and gathering records	N/A	N/A	10 minutes.
Reading the instructions to determine whether filer must complete the form.	N/A	N/A	15 minutes.
Additional reading of the instructions to determine how to complete the form.	N/A	N/A	30 minutes.
Reporting LM–30 file number	Item 1	Item 1	30 seconds.
Reporting covered fiscal year	Item 2	Item 2	30 seconds.
Reporting filer's name, address, and contact information.	Item 3	Item 3, A through I In addition to the information sought on the existing form, the proposed form seeks filer's e-mail address and full middle name.	2 minutes.
Reporting name, file number, and address of filer's union or unions.	Item 4	Item 4, A through E Proposed form provides continuation page in which to report this information for an additional union.	2 minutes.

Burden description	Current form	Proposed form	Time
Reporting position in union	Item 5	Item 4, F through H In addition to the information sought on the existing form, the proposed form asks whether filer is an officer or employee and whether filer is with the union at end of reporting period. In addition, the proposed form provides continuation page in which to report this information for an additional union.	1 minute.
Reporting name, trade name, and address of (1) an employer whose employees the union represents or is actively seeking to represent, (2) a business that deals with such an employer, or the union, or a trust in which the union is interested, or (3) any employer or labor relations consultant.	Item 6 or Item 8 or Item 13	Schedule 1 In addition to the information sought on the existing form, the proposed form asks for a contact name, telephone number, web site address, state of incorporation or registration, state business ID number, and whether filer has an association with the business, employer, or labor relations consultant (called a payer on the proposed form) at the end of reporting period.	5 minutes.
Reporting the employer, union, or trust that the business deals with.	Item 9a (referring back to Item 4) or Item 9b/9c and Item 10.	Schedule 2, Items A and B The proposed form requires less information than the existing form by requiring only name and file number or zip code rather than complete address information for employers and trusts.	1 minute.
Reporting the nature of the dealings between the employer, union, or trust and the business.	Item 11a	Schedule 2, Item C	3 minutes.
Reporting the value of the dealings between the employer, union, or trust and the business.	Item 11b	Schedule 2, Item D In addition to the information sought on the existing form, the proposed form requires a total of the values.	3 minutes.
Reporting the nature of the interest held by the filer, the payment, income, or loan received by the filer, or the transactions and arrangements engaged by the filer.	Item 7a or Item 12a or Item 14a	Schedule 3, Items A through D In addition to the information sought on the existing form, the proposed form calls for the relevant reporting section, date of the financial matter, and whether person involved in the financial transaction was the officer, employee, spouse, or minor child.	4 minutes.
Reporting the value of the interest held by the filer, the payment, income or loan received by the filer, or the transactions and arrangements engaged by the filer.	Item 7b or Item 12b or Item 14b	Schedule 3, Item E In addition to the information sought on the existing form, the proposed form requires a total of the values.	2 minutes
Signature, date and telephone number	Item 15	Item 5	1 minute.
Completing payer summary schedule	N/A	Beyond the information sought on the existing form, the proposed form requires listing each payer, which of four classifications describes the payer (employer, business, etc.), the total value from Schedule 3, Item E, and the total of the values for all payers.	5 minutes.
Checking responses	N/A	N/A	5 minutes.
Total Burden Hour Estimate Per Filer			90 minutes.

The recordkeeping estimate of ten minutes reflects that the majority of financial books and records required to complete the report are those that respondents would maintain in the normal course of conducting business, personal, and union affairs, and thus should only take two minutes to maintain and gather. The other eight minutes has been estimated to be necessary to maintain and gather the books and records that would not ordinarily be maintained, including those concerning the dealings between a business and the filer's union, a trust in which the filer's union is interested, or an employee whose employees the union represents or is actively seeking to represent.

These figures also assume that the use of an electronic form, which is more efficient than completion of a form by hand, will reduce the burden. In addition, burden is decreased by the proposed revised Form LM–30's elimination of multiple form filings from the same filer for the same fiscal year resulting from the current form's inadequate provision for those filers who are officers and/or employees of more than one relevant labor organization.

The Department estimates that the clarification of the Form LM–30, the defined terms, the addition of examples that illustrate reportable and nonreportable transactions, and the removal of the administrative exemptions will increase the number of

individuals who file the Form LM–30. Using the best data available, the Department estimates that there are 204,634 union officers and employees. Further, based on the submittal of approximately 61 reports annually, the Department estimates a current filing rate of 0.03% (61 / 204,634 × 100 = 0.03%). Due to the reform proposed herein, as well as increased compliance assistance and enforcement initiatives, the Department estimates that the filing rate will increase to approximately 1%, or 2,046 reports filed annually. Thus, the annual reporting and recordkeeping hour burden for all filers will be 184,140 minutes (90 × 2,046 = 184,140) or 3,069 hours (184,140 / 60 = 3,069). The Department believes this estimate is consistent with the opinion of some stakeholders that relatively few union officers and employees would be engaged in covered transactions. The Department's own research also revealed little concrete evidence of the number of union officers and employees that would have to file. The Department acknowledges the considerable uncertainty in this estimate and requests comment on the number of reports that should be filed under the current requirements and that may be filed as a result of the new requirements.

Using FY 2003 data taken from annual financial reports filed by labor organizations, the Department estimates that the average annual salary earned by union officers and employees is $17,596. This data does not, however, permit the derivation of an hourly wage, as the number of part-time officers and employees is unknown, and employees who receive in the aggregate $10,000 or less are not reported. Assuming the $21.85 mean hourly earnings of those engaged in white collar occupations (based on National Compensation Survey: Occupational Wages in the United States, July 2003, Bureau of Labor Statistics, U.S. Department of Labor, August 2004), the Department estimates that the annual reporting and recordkeeping cost burden for all filers will be $ 67,058 (3,069 × 21.85), or $32.78 per filer (67,058 / 2,046).

In addition, the Department estimates that all union officers and employees will spend 15 minutes reading the revised form and instructions to determine whether they are required to file a report. By deducting the 2,046 estimated filers whose preliminary review of the form has already been counted from the estimated 204,634 union officers and employees, 202,588 officers and employees remain who will review the form but determine that they are not required to file a report. The annual reporting and recordkeeping hour burden for these officers and employees will be 3,038,820 minutes (15 × 202,588 = 3,038,820) or 50,647 hours (3,038,820 / 60 = 50,647). Using the $21.85 hourly wage, the Department estimates that the annual reporting and recordkeeping cost burden for non-filing union officers and employees will be $1,106,637 (50,647 × 21.85 = 1,106,637), or $5.46 per non-filing union officer or employee (1,106,637 / 202,588 = $5.46).

The resulting total annual reporting and recordkeeping hour burden will be 53,716 (50,647 + 3,069 = 53,716). The total annual reporting and recordkeeping cost burden will be $1,173,695 (53,716 × 21.85 = 1,173,695).

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

In accordance with Executive Order 13045, the Department has evaluated the environmental safety and health effects of the rule on children. The Department has determined that the final rule will have no effect on children.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The Department has reviewed this rule in accordance with Executive Order 13175, and has determined that it does not have ''tribal implications.'' The rule does not ''have 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.''

I. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

J. Executive Order 12988 (Civil Justice Reform)

This regulation has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

K. Environmental Impact Assessment

The Department has reviewed the final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department's NEPA procedures (29 CFR part 11). The final rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

L. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

This rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

Text of Proposed Rule

In consideration of the foregoing, the Office of Labor-Management Standards, Employment Standards Administration, Department of Labor hereby proposes to amend part 404 of title 29 of the Code of Federal Regulations as set forth below.

PART 404—LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORTS

1. The authority citation for part 404 is revised to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4–2001, 66 FR 29656 (May 31, 2001).

§ 404.1 [Amended]

2. Section 404.1 is amended by:

a. Redesignating existing paragraph (b) as new paragraph (h) and adding a new sentence at the end;

b. Add a new paragraph (b);

c. Redesignating existing paragraph (c) as new paragraph (g) and by adding new text at the end;

d. Redesignating existing paragraph (d) as new paragraph (c);

e. Redesignating existing paragraph (a) as new paragraph (d);

f. Adding a new paragraph (a);

g. Adding paragraphs (e), (f), (i) and (j).

The additions and revision read as follows:

§ 404.1 Definitions.

(a) *Benefit with monetary value* means anything of value, tangible or intangible, including any interest in personal or real property, gift, insurance, retirement,

pension, license, copyright, forbearance, bequest or other form of inheritance, office, options, agreement for employment or property, or property of any kind.

(b) *Dealing* means to engage in a transaction (bargain, sell, purchase, agree, contract) or to in any way traffic or trade with another individual or entity.

* * * * *

(e) *Income* means all income from whatever source derived, including, but not limited to, compensation for services, fees, commissions, wages, salaries, interest, rents, royalties, copyrights, licenses, dividends, annuities, honorarium, income and interest from insurance and endowment contracts, capital gains, discharge of indebtedness, share of partnership income, bequests or other forms of inheritance, and gifts, prizes or awards.

(f) *Labor organization* means a labor organization under 29 CFR 401.9 and includes the local, intermediate, or national or international labor organization that employed the filer of the Form LM–30, or in which the filer held office, during the reporting period, and any parent or subordinate labor organization.

(g) * * * within the meaning of any law of the United States relating to the employment of employees.

(h) * * * An officer is (1) a person identified as an officer by the constitution and bylaws of the labor organization;

(2) Any person authorized to perform the functions of president, vice president, secretary, or treasurer;

(3) Any person who in fact has executive or policy-making authority or responsibility; and

(4) A member of a group identified as an executive board or a body which is vested with functions normally performed by an executive board.

(i) *Minor child* means a son, daughter, stepson, or stepdaughter under 21 years of age.

(j) *Trust in which a labor organization is interested* means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

§ 404.4 [Removed and reserved]

3. Section 404.4 is removed and reserved.

§ 404.7 [Amended]

4. Section 404.7 is revised to read as follows:

§ 404.7 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, financial and investment statements, contracts, correspondence, and applicable resolutions, in electronic and paper format, and any electronic programs by which they are maintained, available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

Signed at Washington, DC this 19th day of August, 2005.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

BILLING CODE 4510–CP–P

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF LABOR-MANAGEMENT STANDARDS
WASHINGTON DC 20210

FORM LM-30 LABOR ORGANIZATION OFFICER AND EMPLOYEE ANNUAL REPORT

FORM APPROVED
OFFICE OF MANAGEMENT AND
BUDGET No. XXXX-XXXX
EXPIRES: XX-XX-XXXX

This report is mandated under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or440.

For Official Use Only

E

PLEASE READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THE REPORT.

1. LM-30 FILE NUMBER: ☐☐☐ — ☐☐☐

2. PERIOD COVERED:

	MONTH	DAY	YEAR
FROM	☐☐ /	☐☐ /	☐☐☐☐
THROUGH	☐☐ /	☐☐ /	☐☐☐☐

3. CONTACT INFORMATION OF REPORTING PERSON:

A. FIRST NAME	B. MIDDLE NAME	C. LAST NAME
D. MAILING ADDRESS (LINE 1)		
E. MAILING ADDRESS (LINE 2)		
F. CITY	G. STATE OR COUNTRY	H. ZIP CODE
I. E-MAIL ADDRESS		

4. LABOR ORGANIZATION IDENTIFYING INFORMATION:

A. NAME
B. MAILING ADDRESS (LINE 1)
C. MAILING ADDRESS (LINE 2)
D. CITY, STATE, ZIP
E. FILE NUMBER
F. OFFICER ☐ EMPLOYEE ☐
G. REPORTING PERSON'S OFFICIAL/PROFESSIONAL TITLE
H. WITH UNION AT END OF REPORTING PERIOD? YES ☐

PAYER SUMMARY SCHEDULE

A. NAME	B. VALUE
1.	
2.	
3.	
4.	
5.	
TOTAL FROM CONTINUATION PAGES (IF ANY)	
TOTAL FROM ALL PAYERS	

THE UNDERSIGNED DECLARES, UNDER PENALTY OF PERJURY AND OTHER APPLICABLE PENALTIES OF LAW, THAT ALL OF THE INFORMATION SUBMITTED IN THIS REPORT (INCLUDING THE INFORMATION CONTAINED IN ANY ACCOMPANYING DOCUMENTS) HAS BEEN EXAMINED BY THE SIGNATORY AND IS, TO THE BEST OF THE UNDERSIGNED'S KNOWLEDGE AND BELIEF, TRUE, CORRECT AND COMPLETE.

5. SIGNED:_____ ON ____/____/____ DATE (____) _____ TELEPHONE

PAYER DETAIL PAGE

LM-30 FILE NUMBER: ☐☐☐ — ☐☐☐

PAYER: _____

TOTAL NUMBER OF PAYERS: _____

SCHEDULE 1 - PAYER IDENTIFYING INFORMATION

A. LEGAL NAME OF PAYER			I. TELEPHONE NUMBER
B. CONTACT FIRST NAME	C. CONTACT MIDDLE NAME	D. CONTACT LAST NAME	J. WEB SITE ADDRESS
E. MAILING ADDRESS			K. STATE OF INCORPORATION/REGISTRATION
F. CITY	G. STATE	H. ZIP CODE	L. STATE BUSINESS ID#
M. DID YOU HAVE AN ASSOCIATION WITH THE PAYER AT THE END OF THE REPORTING PERIOD?			YES: ☐ NO: ☐

SCHEDULE 2 - FILER'S INTEREST IN, PAYMENTS OR LOANS FROM, OR TRANSACTIONS OR ARRANGEMENT WITH THE PAY

A. DATE	B. O/E/S/C	C. SUBSECTION(S)	D. DESCRIPTION OF INTEREST, PAYMENT, LOAN, TRANSACTION, OR ARRANGEMENT	E. VALUE
			TOTAL FROM CONTINUATION PAGES (IF ANY)	
			TOTAL VALUATION OF PAYMENTS, LOANS AND INTERESTS	

SCHEDULE 3 - PAYER'S DEALINGS WITH UNION(S), TRUST(S), OR EMPLOYER(S)

A. NAME OF UNION, TRUST, OR EMPLOYER	B. U/T/E	C. FILE NUMBER	D. DESCRIPTION OF DEALINGS	E. VALUE
			TOTAL FROM CONTINUATION PAGES (IF ANY)	
			TOTAL VALUE OF DEALINGS	

FORM LM-30 (REVISED 2005)

LABOR ORGANIZATIONS IN WHICH THE REPORTING PERSON IS AN OFFICER OR EMPLOYEE - CONTINUATION PAGE

LM-30 FILE NUMBER ☐☐☐ — ☐☐☐

4. LABOR ORGANIZATION IDENTIFYING INFORMATION:

A. NAME
B. MAILING ADDRESS (LINE 1)
C. MAILING ADDRESS (LINE 2)
D. CITY, STATE, ZIP
E. OFFICER OR EMPLOYEE?
F. OFFICIAL TITLE OF REPORTING PERSON
G. FILE NUMBER
H. WITH UNION AT END OF REPORTING PERIOD? YES ☐ No ☐

4. LABOR ORGANIZATION IDENTIFYING INFORMATION:

A. NAME
B. MAILING ADDRESS (LINE 1)
C. MAILING ADDRESS (LINE 2)
D. CITY, STATE, ZIP
E. OFFICER OR EMPLOYEE?
F. OFFICIAL TITLE OF REPORTING PERSON
G. FILE NUMBER
H. WITH UNION AT END OF REPORTING PERIOD? YES ☐ No ☐

4. LABOR ORGANIZATION IDENTIFYING INFORMATION:

A. NAME
B. MAILING ADDRESS (LINE 1)
C. MAILING ADDRESS (LINE 2)
D. CITY, STATE, ZIP
E. OFFICER OR EMPLOYEE?
F. OFFICIAL TITLE OF REPORTING PERSON
G. FILE NUMBER
H. WITH UNION AT END OF REPORTING PERIOD? YES ☐ No ☐

4. LABOR ORGANIZATION IDENTIFYING INFORMATION:

A. NAME
B. MAILING ADDRESS (LINE 1)
C. MAILING ADDRESS (LINE 2)
D. CITY, STATE, ZIP
E. OFFICER OR EMPLOYEE?
F. OFFICIAL TITLE OF REPORTING PERSON
G. FILE NUMBER
H. WITH UNION AT END OF REPORTING PERIOD? YES ☐ No ☐

PAYER SUMMARY SCHEDULE - CONTINUATION PAGE

LM-30 FILE NUMBER ☐☐☐ — ☐☐☐

A. PAYER NAME	C. VALUE
6.	
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CONTINUATION PAGE

FORM LM-30 (REVISED 2005)

SCHEDULE 2 - FILER'S INTEREST IN, PAYMENTS OR LOANS FROM, OR TRANSACTIONS OR ARRANGEMENT WITH THE PAYER - CONTINUATION PAGE

LM-30 FILE NUMBER ☐☐☐ — ☐☐☐

PAYER NUMBER: _______

A. DATE	B. O/E/S/C	C. UBSECTION(	D. DESCRIPTION OF REPORTABLE INTEREST	E. VALUE
			TOTAL FROM THIS PAGE	

FORM LM-30 (REVISED 2005)

CONTINUATION PAGE

SCHEDULE 3 - PAYER'S DEALINGS WITH UNION(S), TRUST(S), OR EMPLOYER(S) - CONTINUATION PAGE

LM-30 FILE NUMBER ☐☐☐ — ☐☐☐

PAYER NUMBER: _______

A. NAME OF UNION, TRUST, OR EMPLOYER	B. U/T/E	C. FILE NUMBER	D. DESCRIPTION OF DEALINGS	E. VALUE
			TOTAL FROM THIS PAGE	

FORM LM-30 (REVISED 2005)

CONTINUATION PAGE

ADDITIONAL INFORMATION SCHEDULE

LM-30 FILE NUMBER: ☐☐☐ — ☐☐☐

A. SCHEDULE/ITEM	B. ADDITIONAL INFORMATION

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CONTINUATION PAGE

Public reporting burden for this collection of information is estimated to average 90 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5605, 200 Constitution Avenue, NW, Washington, DC 20210.

INSTRUCTIONS FOR

FORM LM-30 LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORT

GENERAL INSTRUCTIONS

I. WHY FILE

The Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act), requires public disclosure of certain financial transactions and financial interests of labor organization officers and employees and their spouses and minor children. *See* 29 C.F.R. 404.1-404.9 (reports by officers and employees of labor organizations). The purpose of disclosure is to publicly identify an actual or potential conflict between the personal financial interests of a union officer or employee (sometimes referred to as a *filer* in these instructions) and his or her obligations to the union and its members. *Labor organization, labor organization officer, labor organization employee,* and other important terms are defined below.

The LMRDA includes a comprehensive statement of the basic rights of union members, including equal voting rights, freedom of speech and assembly, and other basic safeguards for union democracy, among other protections; establishes financial reporting and disclosure requirements for unions, union officers and employees, employers, and labor relations consultants; regulates union trusteeships; details procedural requirements for the conduct of union elections; and establishes a fiduciary duty on union officers, employees, and other representatives.

Pursuant to Section 202 of the LMRDA, and subject to certain exceptions, every labor organization officer or employee (other than an employee performing exclusively clerical or custodial services), who has, directly or indirectly, held any legal or equitable interest in, received any payments from, or engaged in any transactions or arrangements (including loans) with certain businesses or employers or labor relations consultants during the fiscal year must file a detailed report with the Secretary of Labor (Secretary). *See* Part II of these instructions for a detailed discussion of the types of financial matters that must be reported. No report need be filed unless the filer, or filer's spouse or minor child, held a covered interest, received a covered payment, or engaged in a covered transaction or arrangement during the reporting period.

The Department's Office of Labor-Management Standards (OLMS) has developed a comprehensive program to assist officers, employees, and members of labor organizations with LMRDA compliance, including the completion of the Form LM-30. Much of the information is available on the OLMS web site: www.olms.dol.gov. For additional contact information, *see* the final page of these instructions.

The Secretary, under the authority of the LMRDA, has prescribed the filing of the Labor Organization Officer and Employee Report, Form LM-30, for officers and employees of labor organizations to satisfy their reporting obligation. The reporting requirements of the LMRDA and of the regulations and forms issued under the Act relate only to the disclosure of specified transactions and interests. The reporting requirements do not address whether such transactions and interests are lawful or unlawful. The fact that a particular transaction or interest is or is not required to be reported is not indicative of whether it is or is not subject to any legal prohibition; this must be determined by provisions of law other than those prescribing the reports. Failure to report a covered interest or transaction may subject the filer to civil or criminal penalties, or both. *See* Part VI of these instructions.

II. WHO MUST FILE AND WHAT MUST BE REPORTED

You must file Form LM-30 if at any time during your past fiscal year:

(1) You were an officer or employee of a labor organization (other than an employee performing exclusively clerical or custodial services) as defined by the LMRDA, and
(2) You or your spouse or your minor child, directly or indirectly, held any legal or equitable interest, received any payments, or engaged in any transactions or arrangements (including loans) of the types described in the six subsections of Section 202 of the LMRDA.

As discussed in detail below, and subject to certain exceptions, reportable interests, payments, transactions and arrangements include:

(1) Payments or benefits from, or interests in, an employer whose employees your union represents or is actively seeking to represent
(2) Transactions involving interests in, or loans to or from, an employer whose employees your union represents or is actively seeking to represent
(3) Interests in, income from, or transactions with a business a substantial part of which consists of dealing with an employer whose employees your union represents or is actively seeking to represent
(4) Interests in, income from, or transactions with, a business a substantial part of which consists of dealing with your union or a trust in which your union is interested
(5) Transactions or arrangements with an employer whose employees your union represents or is actively seeking to represent
(6) Payments of money or other thing of value from any employer or labor relations consultant to an employer.

Interests held by, payments received by, and transactions and arrangements involving a minor child must be reported until the child turns 21. If the child reaches the age of 21 during the fiscal year, disclosable matters must be reported for that portion of the fiscal year before the child's 21st birthday. If you are divorced from your spouse during the fiscal year, disclosable interests and transactions must be reported for that portion of the fiscal year prior to the divorce.

In order to complete the form, you must report your own covered holdings and transactions and make reasonable efforts to report the covered holdings and transactions of your spouse and minor child and must consult them or their financial adviser before completing the form.

You do not have to report any sporadic or occasional gifts, gratuities, or loans of less than $25 in value, given under circumstances or terms unrelated to the recipient's status in a labor organization.

DEFINITIONS

For the limited purposes of completing Form LM-30, the following definitions apply:

Actively seeking to represent means that a labor organization has taken steps to become the bargaining representative of the employees of an employer, including but not limited to:

- Sending organizers to an employer's facility;
- Placing an individual in a position as an employee of an employer that is the subject of an organizing drive and paying that individual subsidies to assist in the union's organizing activities;
- Circulating a petition for representation among employees;
- Soliciting employees to sign membership cards;
- Handing out leaflets;
- Picketing; or
- Demanding recognition or bargaining rights or obtaining or requesting an employer to enter into a neutrality agreement (whereby the employer agrees not to take a position for or against union representation of it employees), or otherwise committing personnel or financial resources to seek representation of employees working for the employer.

Arrangement means any agreement or understanding, tacit or express, or any plan or undertaking, commercial or personal, by which the filer, spouse, or minor child will obtain a benefit, directly or indirectly, with an actual or potential monetary value.

Note on the definition: The term "arrangement" encompasses both personal and business transactions, including an unwritten understanding. For example, if an employer's representative during the reporting period solicits a union officer to accept a job with the employer, the filer must report the solicitation, unless the filer rejects the offer. A standing job offer must be reported because it carries the potential of monetary value to the filer. Another example of a situation requiring a report would be one in which a covered employer provides insider information about a stock or other investment opportunity, unless the filer rejects the advice and takes no steps to act on it.

Benefit with monetary value means anything of value, tangible or intangible, including any interest in personal or real property, gift, insurance, retirement, pension, license, copyright, forbearance, bequest or other form of inheritance, office, options, agreement for employment or property, or property of any kind. *See income.*

Bona fide employee is an individual who performs work for, and subject to the control of, the employer.

Note on the definition: A payment received as a bona fide employee includes wages and employment benefits received for work performed for, and subject to the control of, the employer, as well as compensation for work previously performed, such as earned or accrued wages, payments or benefits received under a bona fide health, welfare, pension, vacation, training or other benefit plan, leave for jury duty, and all payments required by law. Compensation received under a "union-leave," or "no-docking" policy is not received as a bona fide employee. Under a union-leave policy, the employer continues the pay and benefits of an individual who works full time for a union. Under a no-docking policy, the employer permits individuals

to devote portions of their day or workweek to union business, such as processing grievances, with no loss of pay. Union-leave and no-docking payments are not received as a bona fide employee of the employer; they are received as a representative or employee of the union and thus, such payments must be reported.

Bona fide investment means personal assets of an individual held to generate profit not acquired by improper means or as a gift from an employer, a business that deals with the filer's union or a trust in which the filer's union is interested, a business a substantial part of which consists of dealing with an employer whose employees the filer's union represents or is actively seeking to represent, or a labor relations consultant to an employer. *See publicly traded securities.*

Dealing means to engage in a transaction (bargain, sell, purchase, agree, contract) or to in any way traffic or trade.

Directly or indirectly means by any course, avenue, or method. *Directly* encompasses holdings and transactions in which the filer, spouse, or minor child receives a payment or other benefit without the intervention or involvement of another party. *Indirectly* includes any payment or benefit which is intended for the filer, spouse, or minor child or on whose behalf a transaction or arrangement is undertaken, even though the interest is held by a third party, or was received through a third party.

Note on the definition: Filers must disclose any benefits received by them (or their spouse or minor child) from a third party where the third party is acting on the behalf, or at the behest, of an employer or business where the benefit would have to be reported if made by it directly to the filer (or their spouse or minor child).

Filer/Reporting Person/You means any officer or employee of a labor organization who is required to file Form LM-30.

Note on the definition: These terms are used synonymously and interchangeably throughout the instructions and when referring to reportable interests, income, arrangements or transactions these terms include interests, income, arrangements or transactions involving the union officer's or employee's spouse or minor child.

Income means all income from whatever source derived, including, but not limited to, compensation for services, fees, commissions, wages, salaries, interest, rents, royalties, copyrights, licenses, dividends, annuities, honoraria, income and interest from insurance and endowment contracts, capital gains, discharge of indebtedness, share of partnership income, bequests or other forms of inheritance, prizes, or awards. *See benefit with monetary value.*

Labor organization means the local, intermediate, or national or international labor organization that employed the filer, or in which the filer held office during the reporting period, and any parent or subordinate labor organization of the filer's labor organization.

Labor organization employee means any individual (other than an individual performing exclusively custodial or clerical services) employed by a labor organization within the meaning of any law of the United States relating to the employment of employees.

Note on the definition: An individual who is paid by the employer to perform union work, either under a "union leave" or "no docking" policy, is an employee of the union for reporting purposes if the individual performs services for, and under the control of, the union. *See* discussion above, under the definition of *bona fide employee.* A hired individual is an employee of the union if the union has the right to control the manner and means by which the work product is accomplished. Among the other factors relevant to this inquiry are the skill required to perform the job; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the union and the individual; whether the union has the right to assign additional projects to the individual; the extent of the individual's discretion over when and how long to work; the method of payment; the individual's role in hiring and paying assistants; whether the work is part of the individual's regular business; the provision of employee benefits; and the tax treatment of the individual.

Labor organization officer means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body. An officer is 1) a person identified as an officer by the constitution and bylaws of the labor organization; 2) any person authorized to perform the functions of president, vice president, secretary, or treasurer; 3) any person who in fact has executive or policy-making authority or responsibility; and 4) a member of a group identified as an executive board or a body which is vested with functions normally performed by an executive board.

Note on the definition: Under this definition, an officer thus includes a trustee appointed to oversee the union. A steward may not be identified in the union constitution as an officer, but may perform executive duties, and thus be an officer.

Legal or equitable interest means any property or benefit, tangible or intangible, that has an actual or potential

monetary value for the filer, spouse, or minor child without regard to whether the filer, spouse, or minor child holds possession or title to the interest. *See* definition of *income* and *benefit with monetary value*.

Minor child means a son, daughter, stepson, or stepdaughter less than 21 years of age.

Payer means:

1) An employer whose employees the filer's labor organization represents or is actively seeking to represent;

2) A business a substantial part of which consists of dealing with an employer whose employees the filer's labor organization represents or is actively seeking to represent;

3) A business that deals with the filer's labor organization or a trust in which the labor organization is interested; or

4) Any employer or any person who acts as a labor relations consultant to an employer.

Publicly traded securities means bona fide investments in 1) securities traded on a registered national securities exchange under the Securities Exchange Act of 1934, 2) in shares in an investment company registered under the Investment Company Act of 1940, or 3) in securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, and income derived from such securities. The American Stock Exchange, Boston Stock Exchange, Chicago Board Options Exchange, Chicago Stock Exchange, International Securities Exchange, National Stock Exchange (formerly the Cincinnati Stock Exchange), New York Stock Exchange, Pacific Exchange, and Philadelphia Stock Exchange are registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934. The NASDAQ stock market is not a registered national securities exchange. As registration status may change, the filer should seek current information.

Note on the definition: Public investment companies comprise certain mutual funds, closed end funds, and unit investment trusts. Interstate public utility holding companies are engaged, through subsidiaries, in the electric utility business or in the retail distribution of natural or manufactured gas. A filer may determine whether an exchange is registered with the SEC by making inquiries with the exchange or by consulting the SEC. A list of registered exchanges is maintained by the SEC on its web site. A filer may determine whether an investment company or public utility holding company is registered with the SEC by making inquiries to the companies, checking any prospectus, or consulting the SEC. A list of registered public utility companies is maintained by the SEC on its web site. The SEC maintains a web site with general information about securities and how the public may contact the Commission for assistance: www.sec.gov.

Substantial part means 5% or more. Where a business's receipts from an employer whose employees the filer's labor organization represents or is actively seeking to represent constitute 5% or more of its annual receipts, a substantial part of the business consists of dealing with this labor organization.

Trust in which a labor organization is interested means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

There are additional selected LMRDA definitions at the end of these instructions.

Each of the six statutory subsections is discussed below, with statutory exceptions and examples.

A1 *Payments or Benefits from, or Holdings in, an Employer Whose Employees Your Union Represents or is Actively Seeking to Represent*

You must complete Form LM-30 if you or your spouse or your minor child, directly or indirectly, held a stock, bond, security, or other interest, legal or equitable, in, or derived any income or any other benefit with monetary value (including reimbursed expenses) from, an employer whose employees your labor organization represents or is actively seeking to represent.

Exceptions

You are not required to report:

- Payments and benefits received as a bona fide employee of the employer. *See* definition of *bona fide employee.*
- Holdings of, transactions in, or income from, bona fide investments in securities that are not publicly traded provided any such holding, or transaction, or income is of insubstantial value or amount and occurs under terms unrelated to your status in a labor organization. Holdings or transactions involving $1,000 or less and receipt of income of $100 or less in any one security shall be considered insubstantial. *See* definition of *publicly traded securities.*

- Holdings of, transactions in, or income from, bona fide investments in publicly traded securities. *See* definition of *publicly traded securities.*

Example 1
You are a union officer and truck driver who is paid for five days of work by the employer, even though you only drive a truck one day a week and spend the rest of the week handling union member grievances or other union-related work. You must report the income and benefits received from the employer for the time spent performing union work under this subsection.

Example 2
You are an officer of a union that represents Widget Company employees. To help prepare for your retirement, you purchase 5,000 shares of Widget Company stock over a registered stock exchange. You need not report the shares under this subsection, under the exception for bona fide investments in publicly traded securities.

Example 3
You are an officer of a union that represents Widget Company employees. Your wife owns 5,000 shares of Widget Company stock that Widget's CEO gave her on Mother's Day two years ago. This stock is traded on a registered stock exchange. You must report the shares under this subsection because the holding of this interest is reportable regardless of when it was obtained and, as a gift, the exception for bona fide investments in publicly traded securities does not apply.

Example 4
You are a full-time officer of a union that represents employees of several different employers. One of the employers pays your expenses on a trip with management officials to a plant in another part of the country to view some new equipment that the employer is considering purchasing. You must report the travel expenses under this subsection.

Example 5
You are an employee of a union that represents actors. You own a production company whose employees are represented by your union. You must report your interests in the production company under this subsection.

Example 6
You are an employee of a union and your spouse works as a producer for a dinner theater that employs actors represented by your labor organization. Your spouse works 40 to 50 hours a week, producing shows and is paid a yearly salary. You do not have to report these earnings under this subsection because the payments are received as a bona fide employee of the theater company.

Example 7
You are a union officer and you receive payments under an ERISA qualified pension plan. The payments relate to your past employment for an employer whose employees your labor organization represents. These payments are received as a bona fide employee of the employer, and you do not have to report these payments under this subsection.

A2 *Transactions Involving Loans from and Holdings in an Employer Whose Employees Your Union Represents or is Actively Seeking to Represent*

You must complete Form LM-30 if you or your spouse or your minor child, directly or indirectly, engaged in any transaction involving any stock, bond, security, or loan to or from, or other legal or equitable interest in, the business of an employer whose employees your labor organization represents or is actively seeking to represent.

Exception

You are not required to report:

- Holdings of, transactions in, or income from, bona fide investments in publicly traded securities. *See* definition of *publicly traded securities.*
- Holdings of, transactions in, or income from, bona fide investments in securities that are not publicly traded provided any such holding, or transaction, or income is of insubstantial value or amount and occurs under terms unrelated to your status in a labor organization. Holdings or transactions involving $1,000 or less and receipt of income of $100 or less in any one security shall be considered insubstantial. *See* definition of *publicly traded securities.*

Special Note: A2 covers situations where a union officer or employee or his or her spouse or minor child held an interest during the reporting year but sold, transferred or otherwise liquidated it prior to the end of the fiscal year. Such an interest must be reported under this subsection.

Example 1
You are a union officer and after the beginning of the fiscal year, you are allowed to participate in the purchase of stock options at a preferred rate for a new business enterprise launched by the employer. Three weeks before the end of your fiscal year, you exercise the options to purchase the stock and then immediately sell it to realize a gain of $25,000. This transaction must be reported under this subsection even though you no longer own the stock.

Example 2
You are a union employee and your minor child receives 100 shares of stock as a high school graduation gift from an employer whose employees your union represents. She immediately sells it to assist with college expenses. Both transactions, the receipt and the sale, must be reported under this subsection.

Example 3
You are a union officer, and like all employees of the employer whose members your union represents, you hold an ownership interest in the business of the employer pursuant to an investment plan in which all employees participate. This is a payment or benefit received as a bona fide employee and the interest is not reportable under section A1. In this fiscal year, you sell this interest to the employer. The sales transaction is reportable under section A2.

Example 4
You are a union officer and your spouse receives a loan from an employer whose employees your union represents. The loan must be reported under this subsection.

Example 5
You are a union employee. Your spouse is a partner of a package delivery company. The company receives a loan from Easy Credit Limited that was arranged with the assistance of an employer whose employees are represented by your union. The loan must be reported under this subsection.

A3 *Holdings in or Transactions with a Business that Deals with an Employer Whose Employees Your Union Represents or is Actively Seeking to Represent*

You must complete Form LM-30 if you, your spouse or your minor child, directly or indirectly, held an interest in, or received any income or other benefit with monetary value (including reimbursed expenses) from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees your labor organization represents or is actively seeking to represent.

Exception

You are not required to report:

- Holdings of, transactions in, or income from, bona fide investments in publicly traded securities. *See* definition of *publicly traded securities*.
- Holdings of, transactions in, or income from, bona fide investments in securities that are not publicly traded provided any such holding, or transaction, or income is of insubstantial value or amount and occurs under terms unrelated to your status in a labor organization. Holdings or transactions involving $1,000 or less and receipt of income of $100 or less in any one security shall be considered insubstantial. *See* definition of *publicly traded securities.*

Example 1
You are a union officer. You own a small machine parts business. The employer of the employees your union represents purchased a large quantity of machine parts from your business. The employer's purchases represented 10% of the total receipts of your machine parts business that year. You must report, under this subsection, your interest in the machine parts business and the dealings between the business and the employer.

Example 2
You are an officer of an international union. Your wife owns an accounting firm and last year 20% of the receipts of her firm were from an employer whose employees are represented by a local union that is subordinate to your international union. You must report, under this subsection, your wife's interest in the accounting firm and the dealings between her business and the employer.

Example 3
You are a union officer and part owner of a copier supply company. Your union represents employees of employers A, B, and C. Last year 3% of the company's receipts were from employer A, 2% were from employer B, and 4% were from employer C. You must report under this subsection because a total of 9% of the company's receipts was from employers whose employees your labor organization represents. You must report your interests in the copier supply company, and its dealings with each of the employers.

Example 4
You are the business manager of a local union that represents stage technicians. You have a business supplying lighting and other equipment to companies producing shows and conventions within the jurisdiction of your local. These companies employ members of your union, and 5% or more of your business is derived from these companies. You must report, under this subsection, your interest in your business and its dealings with the companies that hire the union members.

Example 5
You are the president of a union that represents employees of a trucking company. In addition to his full time job, your spouse moonlighted part-time last year and earned $9,000 cleaning business offices on Sundays. Once a month, the trucking company paid your spouse $80 to clean its office space, for an annual total of $960, about 10% of his company's business. You must report the $9,000 in income under this subsection, as well as the dealings between the cleaning business and the trucking company.

Example 6
You are an employee of a union that has a collective bargaining agreement with trade show contractors. You were a seasonal employee of a company that received 5% of its receipts last year from leasing fork lifts to these contractors. You must report, under this subsection, your income and other benefits with monetary value (including reimbursed expenses) received from the company and the dealings between the company and the contractors.

Example 7
You are the treasurer of a union that has a collective bargaining agreement with trade show contractors. You are the owner of a company that gets 100% of its income from providing laborers to those contractors for handling empty crates. You must report, under this subsection, your ownership interest in the company and its dealings with the trade show contractors.

Example 8
You are a union employee. Your spouse is an employee of a law firm that received 10% of its income last year from an employer whose employees your union represents. You must report, under this subsection, your spouse's income and other benefits with monetary value (including reimbursed expenses) received from the law firm, and the dealing between the law firm and the employer.

A4 *Holdings in or Transactions with a Business that Deals with Your Union or a Trust in which Your Union is Interested*

You must complete Form LM-30 if you or your spouse or your minor child, directly or indirectly, held an interest in, or received any income or other benefit with monetary value (including reimbursed expenses) from, a business any part of which consists of buying from, selling or leasing to, or otherwise dealing with, your labor organization or a trust in which your labor organization is interested.

Exception

You are not required to report:

- Holdings of, transactions in, or income from, bona fide investments in publicly traded securities. *See* definition of *publicly traded securities*.
- Holdings of, transactions in, or income from, bona fide investments in securities that are not publicly traded provided any such holding, or transaction, or income is of insubstantial value or amount and occurs under terms unrelated to your status in a labor organization. Holdings or transactions involving $1,000 or less and receipt of income of $100 or less in any one security shall be considered insubstantial. *See* definition of *publicly traded securities.*

Example 1
You are an officer of a district council. Your spouse owns and operates a small catering business. Your union purchases catering services from your spouse's business during the fiscal year. You must report, under this subsection, your spouse's ownership interest in the catering business, and its dealings with the union.

Example 2
You are a union officer. You work part time for a business that did maintenance work on the heating and air conditioning system at the union hall. You must report, under this subsection, your income and other benefits with monetary value (including reimbursed expenses) received from the maintenance business, and its dealings with the union.

Example 3
You are a business manager of a local union. You work on a contract basis for a plumbing supply

company that sold tools and other supplies to the union and its training funds. You must report your income and other benefits with monetary value (including reimbursed expenses) received from the plumbing supply company under this subsection, and the dealings between the supply company, and the union and the training funds.

Example 4
You are an officer of a national union. You and your spouse own a printing company that prints the union newsletters for a local union of the same national union. You must report, under this subsection, your and your spouse's ownership interest in the printing company and its dealing with the union.

Example 5
You are an officer of a joint board and run a snow plowing business. The joint board is subordinate to an international union. The international union contracted with the business to plow the parking lot of its headquarters. You must report your interest in the snow plowing business under this subsection, in addition to the business's interest with the international union.

Example 6
You are the president of a local union and a partner in a company that was hired to resurface the union's parking lot. You must report, under this subsection, your interest in the business and its dealings with the union.

Example 7
You are an employee of a national union. Your wife works for a travel agency that handles all the travel arrangements by officers and employees of the national union. In addition to your wife's income and other benefits with monetary value (including reimbursed expenses) received from, the travel agency, she also receives rebates from hotels for bookings made for the union. You must report your wife's interest in the travel agency, her income from that business, and the value of the rebates she received under this subsection, as well as the dealings between the travel agency and the union.

Example 8
You are the president of a local union and your 19-year old son works for a business that produces customized t-shirts, caps, and jackets. Your local union buys logo items from his business. You must report your son's income and other benefits with monetary value (including reimbursed expenses) received from this business under this subsection, and the dealing between the business and the union.

Example 9
You are a business representative of a local union that represents shipyard workers. You and two other business representatives own a company that does medical testing of local members, which is paid for by a health benefit plan that is a trust in which your local is interested. You must report your interest in the medical testing company under this subsection, and the dealings between the testing company and the health benefit plan.

Example 10
You are an employee of a union. Each year your union holds an annual workers' summer school at a private university whose space and services are rented by the union. You go to the summer school as an instructor and bring your wife and two minor children. At no extra charge to you, the university provides accommodations for you, your wife, and minor children, rather than the single room typically provided instructors. The use of the additional space and its fair market value must be reported under this subsection, in addition to the dealings between the university and the union.

Example 11
You are the president of a local union and own a building, which has numerous tenants, including your local. The ownership and income received from the operation of the building and the dealings between you and the union must be reported under this subsection.

Example 12
You are a national union president and a trustee of a jointly administered health care trust that insures union members through a health insurance company. Premiums for insurance coverage of union members are paid by the trust to the health insurance company. You are a member of the board of directors of the health insurance company, which pays you an annual fee and reimburses expenses for your attendance at board meetings. In your capacity as a trustee of the health care trust, you recuse yourself from all decisions concerning the health insurance company. As the health insurance company is doing business with a trust in which your union is interested, you must report your annual fee and reimbursed expenses under this subsection. The dealings between the health insurance company and the trust must also be reported.

Example 13
You are an employee of a national union and your spouse works for a law firm that represents a local union that is affiliated with your national union. You must report, under this subsection, your spouse's income and other benefits with monetary value (including reimbursed expenses) received from the law firm, and the dealings between the law firm and the local union.

Example 14
You are a director of a registered investment company that offers investment opportunities to unions or trusts in which unions are interested. Your union has invested several thousand dollars in fixed income or equity funds managed by the company. You receive no gratuities, compensation, or reimbursement for your duties as a director, but you are insured against personal liability for your actions as a director under a policy paid for by the company. The investment company paid for this insurance coverage. You must report the payment under this subsection, and the dealings between the investment company and the union.

A5 *Transactions or Arrangements with an Employer Whose Employees Your Union Represents or is Actively Seeking to Represent*

You must complete Form LM-30 if you or your spouse or your minor child had any direct or indirect business transaction or arrangement with any employer whose employees your labor organization represents or is actively seeking to represent.

Exceptions

You are not required to report:

- Payments and benefits received as a bona fide employee of the employer. *See* definition of *bona fide employee*.
- Purchases and sales of goods or services at prices generally available to any employee of the employer.
- Holdings of, transactions in, or income from, bona fide investments in publicly traded securities. *See* definition of *publicly traded securities*.
- Holdings of, transactions in, or income from, bona fide investments in securities that are not publicly traded provided any such holding, or transaction, or income is of insubstantial value or amount and occurs under terms unrelated to your status in a labor organization. Holdings or transactions involving $1,000 or less and receipt of income of $100 or less in any one security shall be considered insubstantial. *See* definition of *publicly traded securities.*

Special Note: You must report special discounts, special rates and other special treatment that you or your spouse or your minor child receives from an employer whose employees your labor organization represents or is actively seeking to represent. *See* definitions of *labor organization* and *actively seeking to represent*. A filer who purchases an item at a reduced price generally available to employees of the employer must nevertheless report the discount, and may not claim the exemption, unless the filer is an employee of the employer providing the discount.

Example 1
You are an officer of an international union affiliated with a local union that represents employees at an automobile plant. The employer permits you to participate in an executive purchase plan under which management executives are permitted to purchase vehicles produced by the employer at a discount and at a lower interest rate. The transaction must be reported under this subsection.

Example 2
You are an employee of a union that represents employees at Acme Warehouse. At your request, Acme allows your neighbor to store his company's inventory at a rate below the customary storage rate. Your neighbor, in turn, shows his gratitude by allowing you to use his luxury box at a sporting event. You must report this arrangement.

A6 *Payments of Money or Other Thing of Value from Any Employer or Labor Relations Consultant*

You must file Form LM-30 if you or your spouse or your minor child received, directly or indirectly, any payment of money or other thing of value (including reimbursed expenses) from any employer or any labor relations consultant to an employer.

The types of payments that must be reported under this subsection include, but are not limited to, any payment from an employer or a labor relations consultant working for an employer for the following purposes:

- Not to organize employees

- To influence employees in any way with respect to their rights to organize
- To take any action with respect to the status of employees or others as members of a labor organization; and
- To take any action with respect to bargaining or dealing with employers whose employees your organization represents or seeks to represent.

Special Note: If you received a payment or other thing of value, including reimbursed expenses, from an employer whose employees your union represents or actively seeks to represent, or a business that consists in substantial part of dealing with such an employer, or a business that has any dealings with your union, the payment should be reported under sections A1 - A5. Section A6 covers payments and other things of value, including reimbursed expenses, from businesses and employers that are not covered by the more specific provisions of sections A1 – A5. Thus, for example, if a transaction concerns a payment to you from the employer whose employees your labor organization represents or actively seeks to represent, or a business that deals with such an employer or your labor organization, the payment should be reported under the appropriate subsection in sectiona A1 – A5.

Exception

You are not required to report:

Payments of the kinds referred to in Labor Management Relations Act (LMRA) section 302(c), summarized below:

(1) any money or other thing of value payable by an employer to
a) an employee acting openly for the employer in matters of labor relations or personnel administration, or
b) any officer or employee of a labor organization who also is an employee or former employee of such employer, as compensation for or by reason of, his service as an employee of such employer;
(2) money or other thing of value payable in satisfaction of a judgment, arbitral award, settlement or release of any claim in the absence of fraud or duress;
(3) with respect to the sale or purchase of an item at the prevailing market price in the regular course of business;
(4) with respect to deductions in payment of labor union dues from wages by written assignment;
(5) with respect to money or other thing of value paid to a trust fund established by the representative of an employer's employees for the sole benefit of these employees, their families and dependents for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance;
(6) with respect to money or other thing of value paid by any employer to a trust fund established by the representative of the employer's employees for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs;
(7) with respect to money or other thing of value paid by any employer to an individual or pooled trust fund for providing scholarships for the benefit of employees, families, and dependents, child care centers, or financial assistance for employee housing;
(8) with respect to money or other thing of value paid by any employer to a trust for defraying the costs of legal services; or
(9) with respect to money or other thing of value paid by any employer to a labor-management committee.

Example 1
You are a union officer and an attorney. Employers whose employees your labor organization does not represent or actively seek to represent often hire your law firm. One of those employers gives you a special gift of a three-week all-expense-paid trip to France as a reward for winning a major lawsuit. You must report the trip and its value under this subsection.

Example 2
You are a union officer and you receive payments under an ERISA qualified pension plan. The payments relate to your employment for an employer whose employees your labor organization does not represent or actively seek to represent. You do not have to report these payments.

Example 3
You are an officer of a national union. Your spouse is hired as a senior executive of an employer on the understanding that your union will not seek to organize that employer. You must report all the income and benefits your spouse receives from the employer under this subsection.

Example 4
You are a local union president. An employer outside of the jurisdiction of your local offers your 20-year old daughter a paid summer internship on the understanding that you will seek to have your members go on strike against an employer who is one of their competitors. You must report all the

benefits your daughter receives as part of the internship under this subsection.

III. WHEN TO FILE

You must file Form LM-30 within 90 days after the end of your fiscal year. If, however, you were an officer or employee for only a portion of the fiscal year, you may limit this report to that portion of the fiscal year.

IV. WHERE TO FILE

You must mail the completed Form LM-30 to the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW, Room N-5616
Washington, DC 20210

V. PUBLIC DISCLOSURE

Pursuant to the LMRDA, the U.S. Department of Labor is required to make all submitted reports available for public inspection. Union officer and employee reports for the year 2000 and later may be viewed and downloaded from the Office of Labor-Management Standards (OLMS) Web site at http://www.union-reports.dol.gov. Copies of reports can also be ordered at the same Web site. Form LM-30 reports may also be examined at, and copies purchased from, the OLMS Public Disclosure Room at the address listed in Part IV of these instructions.

VI. OFFICER OR EMPLOYEE RESPONSIBILITIES AND PENALTIES

The labor organization officer or employee required to file Form LM-30 must sign the completed report and is personally responsible for its filing and accuracy. Under the LMRDA, this individual is subject to criminal penalties for willful failure to file a required report and/or for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting labor organization officer or employee is also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA (29 U.S.C. 440) provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

The officers and employees responsible for filing Form LM-30 are also subject to criminal penalties for false reporting and perjury under Sections 1001 of Title 18, 1746 of Title 28, and 1621 of Title 18 of the United States Code.

You, your spouse, and minor child and any individuals or entities associated with the covered interests and transactions may be required to provide additional information to the Department concerning reported or reportable interests.

VII. RECORDKEEPING

The labor organization officer or employee required to file Form LM-30 is responsible for maintaining records in the electronic or paper format used by the filer, spouse, or minor child that must provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be retained for at least 5 years after the date the report is filed. Any record necessary to verify, explain, or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, applicable resolutions, and any electronic programs used to complete, read, and print the report and the underlying records.

VIII. COMPLETING FORM LM-30

Read the instructions carefully

OLMS encourages all filers to complete Form LM-30 electronically. Form LM-30 is available on the OLMS Web site at www.olms.dol.gov. You can complete the form electronically or print a copy and complete it manually.

Information Entry. If you are not completing the report online, entries should be typed or clearly printed in black ink. Do not use a pencil or any other color ink.

Entering Dollars. In all items dealing with monetary values, report amounts in dollars only; do not enter cents. Round cents to the nearest dollar. Enter a single "0" in the space for reporting dollars if you have nothing to report.

Continuation Pages. If you are completing this report in paper format and there is not enough space to report all the required information and amounts, print and use the continuation pages available online. Copies of these pages may also be obtained from any OLMS office.

Enter the requested identifying information at the top of each continuation page. Totals from any continuation pages must be entered on the line provided in the schedules.

FORM LM-30 PAGE 1, ITEMS 1-5

1. **LM-30 FILE NUMBER** — Enter the five-digit file number that OLMS assigned you if you have previously filed Form LM-30. If you have never previously filed Form LM-30, leave Item 1 blank. OLMS will notify you of your assigned file number, which should be used on all future reports.

2. **PERIOD COVERED** — Enter the beginning and ending dates of the fiscal year covered by this report. Normally these dates will be identical to the dates for which you file Federal income tax returns. Your report should never cover more than a 12-month period. For example, if your 12-month fiscal year begins on January 1 and ends on December 31, do not enter a date beyond the 12-month period, such as January 1 to January 1; this is an invalid date entry. Where an officer or employee designates a new fiscal year before the end of the previously defined fiscal year, the officer or employee must file reports both for the partial year, and for the one-year period beginning on the date of the change in the fiscal year.

3. **CONTACT INFORMATION OF REPORTING PERSON** — Enter the following contact information:
   - **A – C.** Your full name (first, middle, last name).
   - **D – H.** Your complete address where mail should be sent including any building and room number.
   - **I.** Your e-mail address. If you do not have an e-mail address, enter "none" in the space provided.

4. **LABOR ORGANIZATION IDENTIFYING INFORMATION** —
   - **A — D.** Enter the full name of your labor organization including local number, if any. Enter the complete business address of the labor organization where mail should be sent including any building and room number.
   - **E.** Enter your labor organization's OLMS file number. If you cannot obtain the file number, go to http://www.union-reports.dol.gov or contact the nearest OLMS field office listed at the end of these instructions.
   - **F.** Specify your status in the labor organization by checking the appropriate box indicating whether you are an officer or an employee.
   - **G.** State your official or professional title with the labor organization. Official titles include, but are not limited to, president, vice-president, secretary, treasurer. Professional titles include, but are not limited to, business agent, bookkeeper, office secretary, shop steward, etc.
   - **H.** Check "Yes" if you were an officer or employee of the labor organization at the end of the reporting period. Check "No" if you were no longer an officer or employee.

5. **SIGNATURE** — Sign and date the completed Form LM-30. Enter the telephone number you use to conduct official business. You do not have to report a private unlisted telephone number.

GENERAL INSTRUCTIONS FOR PAYER INFORMATION

PAYER SUMMARY SCHEDULE

BEFORE COMPLETING THIS SUMMARY SCHEDULE, COMPLETE A PAYER DETAIL PAGE FOR EACH PAYER FROM WHICH YOU OR YOUR SPOUSE OR YOUR MINOR CHILD RECEIVED A REPORTABLE PAYMENT OR LOAN, ENGAGED IN A REPORTABLE TRANSACTION OR ARRANGEMENT, OR IN WHICH A REPORTABLE INTEREST IS HELD.

A. Name — Enter the legal name of each Payer as it appears in Schedule 1, Item A on the Payer Detail Page. If you are completing this report in paper format and you need additional space to complete this item, enter the additional information on the Payer Summary Schedule Continuation Page.

B. Value — Enter the total amount received directly or indirectly from the Payer, or the value of the interest held in the Payer, during the fiscal year. This is the total from Schedule 3, Column E of the Payer Detail Page for this Payer.

PAYER DETAIL PAGE

You must complete a Payer Detail Page for each Payer from whom you received a reportable payment, loan, or interest, or in which you held a reportable interest, or with whom you engaged in a reportable transaction or arrangement, as described in Part II of these instructions. At the top of each Payer Detail Page enter your file number, the number of the Payer, which should correspond with its listing in the Payer Summary Schedule, and the total number of Payers. The form does not require the reporting of any personally identifiable information relating to you, your spouse, or minor child, except as explicitly noted. Do not include information such as social security or loan numbers.

Schedule 1

Payer Identifying Information

A. Legal Name of Payer. Enter the legal name of the Payer including any alias, trade name, or "Doing Business As" designation, if applicable.
B-D. Contact Name. Enter the full name (first, middle, last name) of the contact person at the Payer to whom mail should be sent.
E.-H. Mailing Address. Enter the complete address where mail should be sent including any building and room number.
I. Telephone Number. Enter the telephone number of the contact person at the Payer, including the area code.
J. Web site Address. Enter the web site address of the Payer. If the Payer does not have a web site, enter "none."
K. State of Incorporation/Registration. Enter the state where the Payer is incorporated or the state where the Payer's registered agent is located.
L. State Business ID Number. Enter the business ID number of the Payer.
M. Association with Payer at End of Reporting Period. Indicate whether a continuing business or financial relationship existed between you (or your spouse or your minor child) and the Payer at the end of the reporting period. For example, if the Payer is a business in which you had an interest at the end of the reporting period, check "yes." If, for example, the Payer was an employer with whom you have no further relationship, check "no."

Schedule 2

Filer's Interests In, Payments or Loans From, or Transactions or Arrangements with the Payer

A. Date. Enter the date each payment, or loan was received, or each transaction was completed. If the reportable event is an arrangement, enter the date the arrangement was made. The date of interests or other holdings should be the date of receipt of the interest.
B. Officer or Employee, Spouse, or Minor Child. State whether the payment, loan, transaction, arrangement or interest was paid to, engaged in, or held by, the "O" (officer), "E" (employee), "S" (spouse) or "C" (minor child).
C. Subsection(s). *Before* completing this Column, carefully read sections A1 through A6, the exceptions, and the related examples in Part II of these instructions. (*See also, LMRDA Section 202 (a)(1)-(a)(6) [29 USC 432(a)(1)-(a)(6)]).* In this Column, enter the section, A1, A2, A3, A4, A5 or A6, under which the payment, loan, or interest is reported. For example, if you are reporting a $500 payment your minor child received for entertaining at an employee picnic for a company whose employees your union represents, you would mark "A1" in this Column. Generally only one section should be listed; however, if you received income or other benefits from a business that dealt both with an employer whose employees your union represents and with your union itself, you would enter both "A3" and "A4."
D. Description of Interest, Payment, Loan, Transaction or Arrangement. Give a detailed description of the interest, payment, loan, transaction, or arrangement.

Interest. For each interest held, identify the nature of the interest (*e.g.*, common stock, preferred stock, bonds, options, etc.) Give the total number of shares or other units held during the fiscal year. State the total cost of the acquired interest, and the manner by which you (or your spouse or your minor child) acquired the interest (*i.e.*, employee stock purchase plan, purchase on an over-the-counter market, gift, etc.) If the interest was disposed of during the fiscal year, describe the manner by which you (or your spouse or minor child) disposed of the interest (*e.g.*, sale on market, gift, exchange, etc.)
Payment or Income. Identify the nature of the payment, income, or benefit of monetary value (*e.g.*, continuing use of an automobile for personal purposes, gift of a computer, payments for services not excluded above).
Loan. Identify the terms and conditions of the loan. Include the dollar value of the remaining obligation, if any as of the end of the fiscal year (*e.g.*, unpaid balance of a loan, rentals due under the lease, amount due under a contract, etc.).
Transaction Identify the nature of the transaction, the property involved (e.g. stock, bonds, rental of property located at X address), the terms and conditions of the transaction (e.g. discount purchase of goods, sale and lease back one year, etc), and names and addresses of intermediate parties involved in any indirect transactions.
Arrangement Identify the nature of the arrangement and provide sufficient detail to identify the date, persons involved, and information as to conditions, if any, of the arrangement and the anticipated date on which the benefit will be obtained.

E. Value. This section should be completed as indicated in Schedule 2, Part D.

Schedule 3

Payer's Dealings with Union(s), Trust(s), or Employer(s)

Only filers who entered section A3 or A4, in Schedule 2, Column C, are required to complete Schedule 3.

A. Name of Union, Trust, or Employer. If the Payer has engaged in buying from, selling or leasing to, or otherwise dealing with your union, with a trust in which your union is interested, or with an employer whose employees your union represents or is actively seeking to represent, enter the legal name of each such union, trust, or employer.
B. Union, Trust, or Employer. Indicate whether the entity listed in Item A is a union ("U"), trust ("T"), or employer ("E").

C. File Number or Address. If the union, trust, or employer has filed reports with OLMS, enter its file number, if known. If you do not have a file number for the union, trust, or employer, enter its complete address in the Additional Information Schedule.

D. Description of Dealings. Describe in detail the nature of the purchases, sales, leases, or other dealings between the Payer and the union, trust, or employer whose employees your union represents or actively seeks to represent. For example, if the Payer and Union A arranged a payroll service in the amount of $45,000 for union members, you might describe the dealing as follows: "One payment for payroll services for Union A members." Unclear and nonspecific descriptions will result in a deficient report. If you need additional space to describe the business dealings, use the continuation pages.

E. Value. Enter the exact value of the purchase, sale, lease, or other dealings between the business and the union, trust, or employer whose employees the union represents or is actively seeking to represent, if known or easily obtainable by the filer, spouse, or minor child; otherwise, enter a good faith estimate of the fair market value and explain the basis for the estimate in the space provided. The fair market value may be determined by:

- The purchase price
- Recent appraisal
- Assessed value for tax purposes, adjusted to reflect market value if the assessed value is computed at less than 100% of that market value
- The year end book value of non-publicly traded stock, the year-end exchange rate of corporate stock, or the face value of corporate bonds or comparable securities
- The net worth of a business partnership or business venture
- The equity value of an individually-owned business or any other recognized indication of value (such as the sale price on the stock exchange at the time of the report or, for transactions, the sale price on the stock exchange at the time of the sale.

If the value is not known and cannot be estimated, enter N/A and explain the situation on the Additional Information Schedule. Enter the total from any continuation pages in the space provided and then total Column E.

Additional Information Schedule

A. Schedule/Item. Enter the schedule or item to which the additional information applies.

B. Additional Information. Enter the additional information for each schedule and item listed in Column A.

SELECTED SECTIONS AND DEFINITIONS FROM THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA) AND THE LABOR MANAGEMENT RELATIONS ACT, 1947, AS AMENDED (LMRA)

LMRDA § 3 [29 U.S.C. §402]. Definitions

For the purposes of titles I, II, III, IV, V (except section 505), and VI of this Act-

(a) "Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(b) "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

(c) "Industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(d) "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, or receivers.

(e) "Employer" means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

(f) "Employee" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

(g) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(h) "Trusteeship" means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it -

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

(k) "Secret ballot" means the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.

(1) "Trust in which a labor organization is interested" means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or

more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

(m) "Labor relations consultant" means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.

(n) "Officer" means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.[...]

LMRDA § 202 [29 U.S.C. §432]. Report of Officers and Employees of Labor Organizations

(a) Filing; contents of report

Every officer of a labor organization and every employee of a labor organization (other than an employee performing exclusively clerical or custodial services) shall file with the Secretary a signed report listing and describing for his preceding fiscal year--

(1) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child derived directly or indirectly from, an employer whose employees such labor organization represents or is actively seeking to represent, except payments and other benefits received as a bona fide employee of such employer;
(2) any transaction in which he or his spouse or minor child engaged, directly or indirectly, involving any stock, bond, security, or loan to or from, or other legal or equitable interest in the business of an employer whose employees such labor organization represents or is actively seeking to represent;
(3) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent;
(4) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, a business any part of which consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with such labor organization;
(5) any direct or indirect business transaction or arrangement between him or his spouse or minor child and any employer whose employees his organization represents or is actively seeking to represent, except work performed and payments and benefits received as a bona fide employee of such employer and except purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer; and
(6) any payment of money or other thing of value (including reimbursed expenses) which he or his spouse or minor child received directly or indirectly from any employer or any person who acts as a labor relations consultant to an employer, except payments of the kinds referred to in Section 186(c) of this title.

(b) Report of certain bona fide investments

The provisions of paragraphs (1), (2), (3), (4), and (5) of subsection (a) of this section shall not be construed to require any such officer or employee to report his bona fide investments in securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934 [15 U.S.C. §78a et seq.], in shares in an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1et seq.], or in securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935 [15 U.S.C.A. §79 et seq.], or to report any income derived therefrom.

(c) Exemption from filing requirement

Nothing contained in this section shall be construed to require any officer or employee of a labor organization to file a report under subsection (a) of this section unless he or his spouse or minor child holds or has held an interest, has received income or any other benefit with monetary value or a loan, or has engaged in a transaction described therein.

LMRA §302(c) [29 USCS § 186(c)]. Exceptions.

The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital

care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, (B) child care centers for preschool and school age dependents of employees, or (C) financial assistance for employee housing: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal services shall be furnished: (A) to initiate any proceedings directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, as amended [29 USCS §§ 151-158, 159-169], or this Act; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959; or (9) with respect to money or other things of value paid by an employer to a plant, area or industrywide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978.)

LMRA § 501 [29 U.S.C. 501]. Fiduciary responsibility of officers of labor organizations

(a) Duties of officers; exculpatory provisions and resolutions void

The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

(b) Violation of duties; action by member after refusal or failure by labor organization to commence proceedings; jurisdiction; leave of court; counsel fees and expenses

When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

(c) Embezzlement of assets; penalty

Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

If You Need Assistance

The Office of Labor-Management Standards has field offices located in the following cities to assist you if you have any questions concerning LMRDA reporting requirements.

Atlanta, GA
Birmingham, AL
Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Grand Rapids, MI
Guaynabo, PR
Honolulu, HI
Houston, TX
Kansas City, MO
Las Vegas, NV
Los Angeles, CA
Miami (Ft. Lauderdale), FL
Milwaukee, WI
Minneapolis, MN
Nashville, TN
New Haven, CT
New Orleans, LA
New York, NY
Newark (Iselin), NJ
Philadelphia, PA
Pittsburgh, PA
St. Louis, MO
San Francisco, CA
Seattle, WA
Tampa, FL
Washington, DC

Consult local telephone directory listings under United States Government, Labor Department, Office of Labor- Management Standards, for the address and telephone number of the nearest field office. Copies of labor organization annual financial reports, employer reports, labor relations consultant reports, and union officer and employee reports filed for the year 2000 and after can be viewed and printed at http://www.union-reports.dol.gov.

Copies of reports for the year 1999 and earlier can be ordered through the web site. Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations (CFR) documents, is also available on the Internet at: http://www.olms.dol.gov.

For questions on Form LM-30 and/or the instructions, call the Department of Labor's toll-free number at: 1-866-4-USA-DOL (1-866-487-2365) or e-mail olms-public@dol.gov.

If you would like to receive via email periodic updates from the Office of Labor-Management Standards, including information about the LM forms, enforcement results, and compliance assistance programs, you may subscribe to the OLMS Mailing List from the OLMS web site: http://www.olms.dol.gov.

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Part IV

Department of Labor

Office of Labor-Management Standards

Union Officials: Guidelines for Fiduciary Responsibilities Under Section 501 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 501; Notices

DEPARTMENT OF LABOR

Office of Labor-Management Standards

RIN 1215–AB52

Union Officials: Guidelines for Fiduciary Responsibilities Under Section 501 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 501

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, United States Department of Labor.

ACTION: Request for information from the public.

SUMMARY: This notice is a request for information from the public to assist the Department of Labor (''Department'') in determining whether to issue guidelines concerning the fiduciary obligations of union officers, agents, shop stewards and other representatives under section 501(a) of the Labor-Management Reporting and Disclosure Act (''LMRDA''), 29 U.S.C. 501. That section states, in general terms, that these persons occupy ''positions of trust'' within their labor organizations and must act in the best interests of their union. The LMRDA does not describe in detail the nature and scope of the fiduciary duties as applied to union officials. The Department also seeks comments on the nature and scope of such fiduciary obligations.

The comments from interested parties, including unions, union members, union officers, agents, shop stewards, and other representatives, public interest groups, and the public will help determine whether the Department should issue specific guidelines describing the minimum standards officers, agents, shop stewards, and other union representatives must meet to fulfill their fiduciary responsibilities under section 501 of the LMRDA. In addition, the comments should help delineate what issues concerning the fiduciary responsibilities of union officials should be addressed, if it is decided that the Department should issue such guidelines, and what specific standards should be included in the guidelines. These guidelines and standards could further the Department's interest in ensuring that breaches of fiduciary obligations not be permitted to occur or remain undisclosed.

DATES: Comments must be received on or before October 28, 2005.

ADDRESSES: You may submit comments, identified by RIN 1215–AB52, by any of the following methods: E-mail: *OLMS-REG-1215-AB52@dol.gov.*

FAX: (202) 693–1340. To assure access to the FAX equipment, only comments of five or fewer pages will be accepted via FAX transmittal, unless arrangements are made prior to faxing, by calling the number below and scheduling a time for FAX receipt by the Office of Labor-Management Standards (''OLMS'').

Mail: Mailed comments should be sent to Kay Oshel, Director of the Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210. Because the Department continues to experience delays in U.S. mail delivery due to the ongoing concerns involving toxic contamination, commenters should take this into consideration when preparing to meet the deadline for submitting comments.

Comments will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Director of the Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, *olms-public@dol.gov*, (202) 693–1233 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory, Regulatory and Administrative Framework

Section 501 of the Labor-Management Reporting and Disclosure Act (LMRDA) imposes a fiduciary obligation on officers, agents, shop stewards, and other representatives of a labor organization. That section provides:

> The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared in this section shall be void as against public policy.

29 U.S.C. 501(a). The section, then, requires the union ''officers, agents, shop stewards and other representatives'' to do the following for their labor organization:

> (1) To hold its money and property solely for the benefit of the organization and its members;
> (2) To manage, invest, and expend [the union's money and property] in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder;
> (3) To refrain from dealing with such organization as an adverse party;
> (4) To refrain from dealing with such organization in behalf of an adverse party in any matter connected with his duties;
> (5) To refrain from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization; and
> (6) To account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization.

In addition, the section specifically prohibits the labor organization from excusing its officers, agents, shop stewards and other representatives from these duties with any general exculpatory provisions or resolutions. While section 501 describes the fiduciary requirements in these general terms, it does not provide any specific guidance to union officers, agents, shop stewards, and other representatives or to union members concerning what specific actions or arrangements will be considered a violation of the fiduciary requirements established therein.

Section 501(b) further describes the mechanism for enforcing the fiduciary responsibilities set out in section 501(a). The section states:

> When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate

relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

29 U.S.C. 501(b). Several aspects of the enforcement procedures provided in this section should be noted. First, the section is enforced by a private right of action by the individual union member. Second, the member must first go to the union to ask the union to sue, recover damages or secure an accounting before bringing any action in court. Only after the union has refused or failed to take any remedial action may the member bring a lawsuit in court. Third, the member must show ''good cause'' to obtain ''by leave of the court'' the right to bring the legal action. Finally, the court may grant attorney's fees and expenses to the member.

The Secretary's Interpretative Regulations at 29 CFR 401 *et seq.* do not contain any provision relating to Section 501. In addition, the Department of Labor's Interpretative Manual stated until 2005 that ''because the Secretary of Labor does not have authority to enforce Section 501(a) of the LMRDA, it is the policy of [the Office of Labor-Management Standards] to refrain from giving advisory opinions on the scope of the fiduciary obligations set forth in section 501(a) and the procedure for enforcement set forth in section 501(b).''

While section 501 is enforced by a private right of action by the union member, the Secretary possesses the power to conduct investigations for any violation or potential violation of the LMRDA (with the exception of Title I), including breaches of fiduciary responsibilities in section 501. The Secretary may also make known her findings from any such investigation to ''interested persons or officials.'' Section 601 of the LMRDA provides that:

The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act (except title I or amendments made by this Act to other statutes) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this Act and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

29 U.S.C. 521(a). To date, the Department has not, as a matter of policy, addressed the question of what constitutes a breach of fiduciary duty under section 501. The Department has focused on investigations of embezzlement and theft made illegal under section 501(c) of the Act, and investigations of delinquencies of reports by union officers and employees required by section 202 of the Act, among other matters relating to the conduct of union officers and employees. 29 U.S.C. 432. However, as a result of further examination of the investigative powers given to the Secretary under section 601, the Office of Labor-Management Standards amended its Interpretative Manual to state in new entry 510.002 that the policy of the office was ''to investigate, at its discretion, allegations of violations by union officers and other representatives of their fiduciary responsibilities under section 501(a) of the LMRDA.'' In addition, the new policy indicated that ''[t]he results of such investigations will be made known to interested persons as appropriate.''

Section 501(c) establishes criminal penalties for the embezzlement of union assets. The section provides:

Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

29 U.S.C. 501(c). The Department of Labor will not address the provisions of section 501(c) through this particular request for information or any subsequent interpretative regulations or guidelines issued as a result of the information gathered here. Instead, any guidelines issued pursuant to this request for information will be the Department's interpretation of what actions would constitute a failure to meet the fiduciary responsibilities of section 501. *See, e.g., BLE International Reform Committee* v. *Sytsma, 802* F.2d 180, 190 (6th Cir. 1986) (Although Secretary's interpretative regulations are not binding, the courts have generally given the regulations considerable weight).

B. Legislative History

The Senate version of the LMRDA (S. 1555) did not consider the fiduciary responsibilities of union officials in the same manner as the House version of the bill, which included a section identical to the current section 501(a). The Senate bill, S. 1555, provided only that union members could sue for recovery of funds when a union officer or employee had already been convicted of embezzlement, theft, or a conversion of funds. The bill did not apply the common law notion of a fiduciary relationship to the relationship between union officers and employees and the union. This omission was criticized in the minority views to Senate Report No. 187. The minority, and in particular Senator Goldwater, stated:

The committee bill professes to recognize the fiduciary nature of the union official's relation to his union and its members, but makes no provision to establish such relationship, to impose the duties of a fiduciary on union officials, or to give union members any remedy for a breach of the fiduciary obligation.

In virtually every State in the Nation, the officers and directors of corporations are made fiduciaries by statute and held to the strictest accountability in their handling of corporate funds and property. Moreover, any profit or gain which accrues to them by virtue of their official position, even if no damage to the corporation or stockholder results, is held in constructive trust for the benefit of the corporation and its stockholders. Under these statutes, stockholders are given the right to enforce the fiduciary obligation through a suit in the courts. The same obligations and remedies attach to the officers and directors of nonprofit and eleemosynary corporations—churches, hospitals, charitable institutions, etc. Union officials alone seem to be free from what has become a normal, in fact a universal, obligation of officials similarly situated. * * * It is our intention to offer on the floor of the Senate amendments designed to fill this unjustifiable vacuum.

S. Rep. No. 187, 86th Cong., 1st Sess., *reprinted in* 1959 U.S. Code Cong. and Admin. News 2318, 2376–77.

As indicated above, the provisions that comprise the current 29 U.S.C. 501 were contained in the House version of the LMRDA (H.R. 8342). House Report No. 741 described the reasons for the fiduciary responsibilities in section 501. The House Report stated:

The committee bill also contains provisions dealing with breaches of trust and other questionable transactions, which, although not seriously criminal, nevertheless are incompatible with a strong and honestly run labor movement.

For centuries the law of fiduciaries has forbidden any person in a position of trust subject to such law to hold interests or enter into transactions in which self-interest may conflict with complete loyalty to those whom he serves. Such a person may not deal with

himself, or acquire adverse interests, or make any personal profit as a result of his position. The same principle has long been applied to trustees, to agents, and to bank directors. It should be equally applicable to union officers and employees. The ethical practices code of the American Federation of Labor and Congress of Industrial Organization states:

> It is too plain for extended discussion that a basic ethical principle in the conduct of union affairs is that no responsible trade union official should have a personal financial interest which conflicts with the full performance of his fiduciary duties as a worker's representative.

Section 501 of the committee bill provides that the officers, agents, shop stewards, and other representatives of labor organizations occupy positions of trust in relation to such organization and its members as a group.

H.R. Rep. No. 741, 86th Cong., 1st Sess., *reprinted in* 1959 U.S. Code Cong. and Admin. News 2424, 2433.

The intent of the fiduciary responsibilities in section 501 was further explained in the Supplementary views to House Report No. 741. There, five members of the House stated:

> Union officials occupy positions of trust. They hold property of the union and manage its affairs on behalf of the members. It is the duty of union officers just as it is the duty of all similar trustees to put their obligations to the union and its members ahead of any personal interest.
>
> The committee bill sets forth this principle unequivocally and declares that union officers and agents occupy positions of trust in relationship to labor organizations and their members. * * * We affirm that the committee bill is broader and stronger than the provisions of S. 1555 which relate to fiduciary responsibilities. S. 1555 applied the fiduciary principle to union officials only in their handling of ''money or other property'' (see S. 1555, sec. 610), apparently leaving other questions to the common law of the several states. Although the common law covers the matter, we considered it important to write the fiduciary principle explicitly into Federal labor legislation. Accordingly the committee bill extends the fiduciary principle to all the activities of union officials and other union agents or representatives.

H.R. Rep. No. 741, 86th Cong., 1st Sess., *reprinted in* 1959 U.S. Code Cong. and Admin. News 2424, 2479–80.

The Conference Committee adopted the House version of section 501, which applied the broad legal concept of a fiduciary relationship to the relationship between union officers, agents, shop stewards, and other representatives of the union and its members, verbatim.

Contemporary commentators suggested that the fiduciary responsibility sections had the potential to be among the most important provisions of the LMRDA. One wrote:

> The significance of these provisions transcends their literal commands. They represent the judgment of Congress, which almost certainly will never be reversed, as to the minimum ethical and legal standards by which the behavior of union leaders must be measured.

Benjamin Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harv. L. Rev. 851, 894 (1960).

Archibald Cox, who played a role in the development of this legislation as a Congressional staff member, expressed concern that the enforcement of the standards by individual members set out in section 501 might not be sufficient to assure that union officials would live up to their fiduciary responsibilities. Cox wrote:

> On the other hand, there is the danger, often expressed in the past, that individual employee's suits are neither an effective sanction nor a practical remedy. Workers are unfamiliar with the law and hesitate to become involved in legal proceedings. The cost is likely to be heavy, and they have little money with which to post bonds, pay lawyer's fees and print voluminous records. Time is always on the side of the defendant. Even if the suit is successful, there are relatively few situations in which the plaintiff or his attorney can reap financial advantage. Most men are reluctant to incur financial cost in order to vindicate intangible rights. Individual workers who sue union officers run enormous risks, for there are many ways, legal as well as illegal, by which entrenched officials can ''take care of'' recalcitrant members.

Archibald Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 853 (1960).

C. The Nature of the Fiduciary Obligation

Because the fiduciary responsibilities of union officials are enforced by a private right of action by individual union members, the courts have addressed the scope of the standards set out in section 501 on a case-by-case basis. Each case is decided on the particular facts of the alleged violation. As a result, the case law surrounding the fiduciary responsibilities of union officials under section 501 can be complex. Examination of the case law, however, reveals some general principles.

Section 501 imposes the broadest possible fiduciary duty on union officials. *See United States* v. *Bane*, 583 F.2d 832, 834–35 (6th Cir. 1978), *cert. denied*, 439 U.S. 1127 (1979); *see also*, *Johnson* v. *Nelson*, 325 F.2d 646 (8th Cir. 1963) (Section 501 should receive a broad interpretation). The purpose of the section is to deal with the misuse of union funds and union property in every manifestation by union officials. *See Hood* v. *Journeymen Barbers, Hairdressers, Cosmetologists and Proprietors International Union* 454 F.2d 1347, 1354 (7th Cir. 1972). Therefore, the section can be applied not only to the monetary interests of the union and its members, but to any area of the union official's authority. *See Stelling et al.* v. *International Brotherhood of Electrical Workers, Local 1547*, 587 F.2d 1379, 1386–87 (9th Cir. 1978), *cert. denied*, 442 U.S. 944 (1979); *see also, United Food and Commercial Workers, Local 911* v. *United Food and Commercial Workers International Union*, 119 F. Supp. 2d 724, 734 (N.D. Ohio 2000) (loss of members' democratic rights); *Nelson* v. *Johnson*, 212 F. Supp. 233, 284–88 (D. Minn. 1963), *aff'd*, 325 F.2d 646 (8th Cir. 1963) (examination of legislative history supports a broad interpretation of section 501).

In general, union officials will not violate their statutory fiduciary duties under section 501 if they act: (1) With proper authorization from the union; (2) without any personal gain; and, (3) in accordance with the constitution and bylaws of the labor organization. *See Tile, Marble, Terrazo Union Finishers, Shopworkers and Granite Cutters International Union* v. *Ceramic Tile Finishers Union, Local 25*, 972 F.2d 738, 744–45 (7th Cir. 1992). Congress did not intend authorization by the union to be a complete defense to claims under section 501. *See Morrissey* v. *Curran*, 650 F.2d 1267, 1273–74 (2d Cir. 1981). While the courts will often defer to the actions of union officers, they will give no deference to an expenditure of union funds when it is unauthorized or, even if authorized, when it bestows a direct, personal benefit on the union officer. In either of these instances, the courts will determine whether the expenditure is so unreasonable as to constitute a breach of the statutory fiduciary duties under section 501. *See, e.g., Talbot* v. *Robert Mathews Distributing Co.*, 961 F.2d 654, 666 (7th Cir. 1992); *Council 49, American Federation of State, County and Municipal Employees Union* v. *Reach*, 843 F.2d 1343, 1347 (11th Cir. 1988). Section 501 can be violated, for example, when union officials approve receipt of ''excessive benefits, significantly above a fair range of reasonableness.'' *Morrissey* v. *Curran*, 650 F.2d at 1275.

The courts have found a myriad of schemes and arrangements to have violated the statutory fiduciary duties

under section 501. For example, a court found that a union officer's alleged actions of taking money from employers and using the money to operate social organizations that helped the officer solidify his political control of the union would, if proven, violate the section's requirement that union officials deal with employers at arm's length. *Chathas* v. *Local 134, International Brotherhood of Electrical Workers*, 233 F.3d 508, 514 (7th Cir. 2000).

Procedurally, the actions brought by union members under section 501 are analogous to corporate shareholder suits. *See Phillips* v. *Osborne*, 403 F.2d 826, 831 (9th Cir. 1968). The requirement under section 501(b) that a request to sue be made to the union before the member brings suit is designed to prevent the filing of harassing and vexatious suits that are without merit. *See Sabolsky* v. *Budzanoski*, 457 F.2d 1245, 1253 (3d Cir. 1972), *cert. denied* 409 U.S. 853 (1972) (3d Cir. 1972).

The Department seeks comment on whether officers, agents, shop stewards, and other representatives of a labor organization, as well as union members and the public, would benefit from additional, specific guidance, beyond that contained in the relevant court cases, concerning what actions or arrangements constitute violations of section 501(a), 29 U.S.C. 501(a).

D. Interest of the Department of Labor

While Congress chose to enforce the fiduciary responsibilities of union officers through private actions brought by individual union members, the Department of Labor maintains an interest and a role in assuring that union officers adhere to their fiduciary responsibilities. Several sections of the LMRDA indicate a nexus between the interests of the Department and the goals of section 501.

Section 601 of the LMRDA provides that the Secretary shall have the power to undertake an investigation when she believes it necessary to determine whether any person has violated or is about to violate any provision of the LMRDA, including section 501(a). 29 U.S.C. 521(a). Further, the Secretary may report to interested persons or officials any matter that she deems to be appropriate as a result of such an investigation. *Id.* These ''interested persons and officials'' may include: (1) The members of the specific union whose officers or employees were the subject of the investigation; (2) the specific union whose officers or employees were the subject of the investigation; (3) a court that is hearing a private lawsuit under section 501; (4) the Congress or appropriate Congressional Committees; and (5) the general public. Thus, the Congress specifically gave the Department the authority to investigate potential violations of section 501 and to publish the results of those investigations. More specific standards concerning what constitutes a violation of the fiduciary responsibilities in section 501 would be useful to Department investigators during such an investigation to determine whether a violation has occurred and whether a report should be made.

Beyond this general authority to investigate, the failure of union officers to adhere to their statutory fiduciary duties could affect areas where the Department exercises enforcement authority. These areas include union elections, the imposition of trusteeships, deterrence and detection of embezzlement, and full financial disclosure by unions and union officers and employees.

For example, union officers could improperly use union assets or employers' monies to solidify their control of the union and to increase their chances at reelection. *See, e.g.*, *Chathas* v. *Local 134, International Brotherhood of Electrical Workers*, 233 F.3d 508 (7th Cir. 2000). The Department has an interest in this kind of breach of fiduciary duty because one of the purposes of the election provisions of the LMRDA is to offset the inherent advantage over potential rank and file challengers possessed by incumbent union leaders. *International Organization of Masters, Mates & Pilots* v. *Brown*, 498 U.S. 466, 478 (1991); *Reich* v. *Local 396, International Brotherhood of Teamsters*, 97 F.3d 1269, 1273 (9th Cir. 1996).

Two courts have held that a union official who takes actions or makes financial arrangements that improperly use pension or benefit funds violates section 501. *See Morrissey* v. *Curran*, 650 F.2d at 1274 (section 501 applies to expenditures of pension fund); *Hood* v. *Journeymen Barbers, Hairdressers, Cosmetologists and Proprietors International Union*, 454 F.2d at 1355 (failure of pension committee to observe requirements of pension agreement and maintain adequate reserves violated section 501); *but see National Labor Relations Board* v. *Amax Coal Co.*, 453 U.S. 322 (1981) (employer appointed trustee of a joint trust is not a representative of the employer, but instead owes an exclusive fiduciary duty to the trust fund participants and beneficiaries).

In addition, the Department recently has been engaged in an ongoing process to improve the administration of the LMRDA. During this time, the Department has acted to update and improve reports that had remained unchanged for many years. Through these initiatives the Department is attempting to increase information available to union members and unions regarding their various rights and obligations under the LMRDA. The Department's reforms advance the LMRDA's stated purpose that ''labor organizations, employers and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations.'' 29 U.S.C. 401(a).

For example, the new, more detailed reporting requirements with respect to the Form LM–2 reports work to increase transparency concerning union finances by providing more information to the union members in the union's annual financial reports. Labor Organization Annual Financial Reports, 68 FR 58374 (Oct. 9, 2003). Similarly, the Notice of Proposed Rulemaking to revise the Form LM–30, which discloses certain financial interests and transactions involving union officers and employees and their spouses and their minor children, is also aimed at improving disclosure to the rank-and-file union member (found in the proposed rules elsewhere in this issue). The goal of these initiatives is to make more detailed and transparent financial information available to union members and the public as the Congress intended with the passage of the LMRDA.

This request for information is part of that effort. The request and any subsequent guidelines should help union officers and employees voluntarily comply with the statute. Like the previous initiatives, it is intended to increase the information available to union members as well as union officers, agents, stewards and other representatives. In this instance, it increases the information available to union officers and members regarding what actions or financial arrangements constitute a violation of the fiduciary standards in section 501.

This increased information should help both union officers and union members. For example, well-intentioned union officers, agents, stewards and other representatives may find more specific guidelines concerning what actions or financial arrangements might constitute a violation of the fiduciary standards in section 501 to be helpful in shaping their own conduct on behalf of their members. This, in turn, may deter fraud and self-dealing by union officials.

In addition, members may come to possess a better sense of what actions or arrangements taken by their officers could be inappropriate. The members, then, could question or protest these questionable actions or arrangements at union meetings. As Archibald Cox noted at the outset of the LMRDA, union members may not be aware of such legal matters and may not pursue even valid claims under section 501. These members may need the assistance of more detailed guidelines in discerning what actions or arrangements constitute a violation of the fiduciary standards in section 501. However, even if the members do not pursue any claim under section 501, the more specific guidelines concerning what may constitute a violation of the fiduciary standards may enable the members to better monitor the financial affairs of their union and make more informed choices concerning the leaders of their union.

II. Information Sought

The Secretary seeks public comment concerning whether the Department should issue specific guidelines describing the minimum standards for union officers and employees to meet their fiduciary responsibilities under section 501 of the LMRDA. In addition, if the Department does decide to issue such guidelines, the Secretary seeks public comment regarding what issues concerning the fiduciary responsibilities of union officers and employees should be addressed in the guidelines and what specific standards should be included. In particular, the Secretary is seeking written submissions on the following topics:

1—Should the Department issue guidelines defining the types of positions that are indicated by the phrase ''officers, agents, shop stewards, and other representatives of a labor organization'' found in section 501(a) of the Act?

2—Should the guidelines include guidance about what specific actions an individual who is subject to section 501(a) standards should consider taking in order to help the individual remain in compliance with the law? These actions might include seeking professional advice from independent authorities such as certified professional appraisers and actuaries or submitting resolutions for membership ratification.

3—What actions or conduct, or types of action or conduct, should be included in the guidelines as violations of section 501(a)?

4—Should the guidelines indicate that it should be considered a breach of the responsibility of an individual fiduciary to fail to report the improper actions of another fiduciary?

5—Should the guidelines include a definition of what a ''reasonable amount of time'' is when applied to the demand to sue provision in section 501(b)?

6—What type of training and guidance do union officers and other union officials currently receive from their union or from other sources to help them carry out their duties in compliance with section 501(a)?

7—Do unions have a Code of Ethics that outlines the fiduciary responsibilities of officers, agents, shop stewards and other representatives?

8—If they do, are these Codes of Ethics distributed by the International or parent labor organization to all officers and employees at every level within the organization?

9—Do unions have internal controls and procedures designed to prevent fraud, embezzlement, self-dealing, and other conflicts of interest that are followed by individuals who serve in a fiduciary capacity? If so, what are they?

10—Do all unions issue an annual report? If so, do such annual reports contain an internal control report, that: (1) States the responsibility of union management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and (2) contains an assessment, as of the end of the issuer's fiscal year, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting?

11—The Secretary also seeks comments on what specific arrangements or transactions by union officers and employees related to the following subject areas should be said to constitute a breach of fiduciary obligations:

- Compensation plans of union officers or employees.
- Payment of travel, entertainment, or like expenses.
- Payment of political or election expenditures.
- Failure to pay union taxes or other expenses.
- Overpayment for contracts or expenses.
- Purchase, sale, or lease of goods or property.
- Creation or amendment of union administered pension funds systems.
- Conflicts-of-interest for union attorneys.
- Contacts with a rival union.
- Votes for benefits for the officers, shop stewards and other representatives.
- Failure to follow proper constitutional procedures in internal union affairs.

Signed at Washington, DC, this 19th day of August, 2005.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

[FR Doc. 05–16908 Filed 8–26–05; 8:45 am]

BILLING CODE 4510–CP–P

Federal Register

Monday,
August 29, 2005

Part V

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Research Projects; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Disability and Rehabilitation Research Projects

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the National Institute on Disability and Rehabilitation Research's (NIDRR) Disability and Rehabilitation Research Projects and Centers Program, Disability and Rehabilitation Research Projects (DRRP). This priority may be used for competitions in fiscal year (FY) 2006 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority is effective September 28, 2005.

FOR FURTHER INFORMATION CONTACT: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 6027, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@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 under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Act). An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

We published a notice of proposed priority (NPP) for this program in the **Federal Register** on April 6, 2005 (70 FR 17426). We discussed our rationale and the background for proposing this priority in the NPP.

Analysis of Comments and Changes

In response to our invitation in the NPP, we received two comments. An analysis of the comments and of any changes in the priority since publication of the NPP follows. Generally, we do not address technical and other minor changes and suggested changes we are not authorized to make under the applicable statutory authority.

Comment: One commenter asked NIDRR to emphasize intervention research that investigates the benefits of specific workplace strategies that improve the employment outcomes of people with disabilities.

Discussion: NIDRR agrees that intervention research is important and is currently sponsoring employment Rehabilitation Research and Training Centers that include intervention studies and the investigation of the benefits of specific workplace strategies to improve the employment outcomes of people with disabilities. NIDRR does not believe that the current language in the priority prohibits applicants from conducting intervention studies. However, the research must focus on the demand-side perspective.

Change: None.

Comment: One commenter asked NIDRR to encourage applicants to create a plan for how their research will reach critical stakeholders, including employers.

Discussion: NIDRR agrees with the importance of reaching critical stakeholders, and is revising the priority to include a requirement for the grantee to have a plan for knowledge translation and dissemination. In addition, NIDRR plans to support separate projects that focus specifically on effective knowledge translation and dissemination strategies. These projects will work with other NIDRR grantees, including this one, to help improve outreach activities.

Change: We have revised the text of the priority to require that the studies conducted include an effective plan for knowledge translation and dissemination.

Comment: One commenter stated that the type of research proposed in the notice of proposed priority, and particularly research that includes employers as research subjects, is resource intensive and asked NIDRR to consider allowing applicants to address only three of the four required activities.

Discussion: This priority seeks to improve our understanding of demand-side issues from a variety of perspectives. There are significantly fewer studies on labor market demand-side issues associated with the employment of individuals with disabilities in comparison to studies on the supply-side of the labor market. Therefore, each of the four issues identified in the priority is critical to comprehensively addressing the demand-side perspective in the employment of individuals with disabilities.

Change: None.

Comment: One commenter asked NIDRR to consider demographic pressures and workforce trends as important factors in employment of people with disabilities.

Discussion: NIDRR agrees that demographic pressures and workforce trends are important factors for consideration in employment research. The priority allows applicants the discretion to propose studies that include relevant factors as they relate to the priority.

Change: None.

Comment: One commenter's response was directed to the listing of eight critical issues and concerns identified in the background of the priority, particularly items one through three: Changing structure of the workforce and the impact of downsizing; increased use of on-call workers, temporary help agencies, and independent contractors; and rapid advances in technology requiring the need for highly educated, highly skilled workers. The commenter characterized these issues as macroeconomic concerns and suggested that the proposed priority requirements dilute the focus of the demand-side research. Further, the commenter recommended that NIDRR emphasize studies focused on local and regional factors influencing employment.

Discussion: The priority allows applicants the discretion to propose studies examining local and regional factors influencing employment, as they relate to the priority. However, NIDRR has no basis for requiring that all applicants focus on these factors in responding to the priority. Additionally, we believe that examination of relevant economic issues and associated employment concerns can improve our understanding about employment outcomes. For this reason, we believe it

is important that the priority include studies addressing critical disability employment issues, including a requirement that some aspect of the priority deal with economic issues, as they relate to the priority.

Change: None.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The final priority is in concert with NIDRR's proposed Long-Range Plan (Plan) published in the **Federal Register** on July 27, 2005 (70 FR 43521). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under the final priority, the specific reference is in Part C, Chapter I, Section A Employment. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister/other/2005–3/072705d.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priority

The Assistant Secretary establishes a priority for one DRRP, which must focus its research on demand-side employment placement models. Studies conducted under this priority must support rigorous, empirically based research designed to develop or identify and evaluate demand-side employment placement models, methods, and measures, and include a plan for knowledge translation and dissemination.

To meet this priority, research activities and studies must identify or develop, demonstrate, and evaluate methods, models, and measures leading to the following:

(1) Psychometrically sound measures for determining employer-focused employment needs;

(2) Types of employment interventions that effectively address employer issues, including methods for increasing employer and business entity participation in the development of strategies for improving employment outcomes for individuals with disabilities;

(3) Analysis comparing the effectiveness of the demand-side model and the supply-side model and identification of the predictors of workforce participation for specific populations of individuals with disabilities using both models; and

(4) Effective measures for evaluating the role of demand-side models in relation to employment outcomes, employment data, individual and systems level outcomes, and trends across workplace environments and employment systems, including measures that involve macroeconomic, legislative, or policy issues that potentially influence employment outcomes.

Executive Order 12866

This NFP has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the NFP are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP, we have determined that the benefits of the final priority justify the costs.

Summary of Potential Costs and Benefits

The potential costs associated with this final priority are minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of Grants.gov technology reduces mailing and copying costs significantly.

The benefits of the DRRP Program have been well established over the years in that similar projects have been completed successfully. This regulatory action will generate new knowledge through the research to be conducted under the final priority.

Another benefit of this final priority will be the establishment of a new DRRP that supports the President's NFI and will support improvements in the lives and potential employment outcomes of persons with disabilities.

Applicable Program Regulations: 34 CFR part 350.

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.*

(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: August 23, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–17047 Filed 8–26–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability Rehabilitation Research Projects (DRRP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–5.

Dates:

Applications Available: August 29, 2005.

Deadline for Transmittal of Applications: October 28, 2005.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: $500,000.

Estimated Range of Awards: $475,000–$500,000.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months.

Note: The maximum amount includes direct and indirect costs.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Act).

Priority: This priority is from the notice of final priority for this program published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

The priority is:

Demand-Side Employment Placement Models.

The specific requirements for this priority are in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $500,000.

Estimated Range of Awards: $475,000–$500,000.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months.

Note: The maximum amount includes direct and indirect costs.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–5.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 75 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single space may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (ED Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: August 29, 2005.

Deadline for Transmittal of Applications: October 28, 2005.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Pre-Application Meeting:* Interested parties are invited to participate in a pre-application meeting to discuss the funding priority and to receive information and technical assistance through individual consultation about the funding priority. The pre-application meeting will be held on September 14, 2005. Interested parties may participate either in person or by conference call at the U.S. Department of Education, Office of Special Education and Rehabilitative Services, Potomac Center Plaza, room 6075, 550 12th Street, SW., Washington, DC between 1 p.m. and 3 pm. After the meeting, NIDRR staff also will be available from 3:30 p.m. to 5 p.m. on that same day to provide information and technical assistance through individual consultation about the funding priority. For further information or to make arrangements to attend either in person or by conference call, or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza, room 6027, 550 12th Street, SW., Washington, DC 20202. Telephone (202) 245–7338 or by e-mail: *Lynn.medley@ed.gov.*

Assistance to Individuals With Disabilities at the Pre-Application Meeting

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you plan to participate in the pre-application meeting on site at the Department of Education and will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (*e.g.,* other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

7. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Disability Rehabilitation Research Projects-CFDA Number 84.133A–5 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Disability Rehabilitation Research Projects at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*) and provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with

the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–5), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133A–5), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–5), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert program review, a portion of its grantees to determine:

- The number of discoveries, analyses, and standards developed and/or tested with NIDRR funding that have been judged by expert panels to advance understanding of key concepts, issues, and emerging trends and strengthen the evidence-base for disability and rehabilitation policy, practice, and research;
- The number of new and improved interventions, programs, and devices developed and/or tested with NIDRR funding that have been judged by expert panels to be successful in improving individual outcomes and increasing access; and
- The number of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on

NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department of Education Web site: *http://www.ed.gov/offices/OUS/PES/planning.html.*

Updates on the GPRA indicators, revisions, and methods can be found in the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 6027, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@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 program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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Dated: August 23, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–17048 Filed 8–26–05; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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Sand Creek Massacre National Historic Site Trust Act of 2005 (Aug. 2, 2005; 119 Stat. 445)

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To direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries. (Aug. 2, 2005; 119 Stat. 448)

H.R. 794/P.L. 109–47

Colorado River Indian Reservation Boundary Correction Act (Aug. 2, 2005; 119 Stat. 451)

H.R. 1046/P.L. 109–48

To authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming. (Aug. 2, 2005; 119 Stat. 455)

H.J. Res. 59/P.L. 109–49

Expressing the sense of Congress with respect to the women suffragists who fought for and won the right of women to vote in the United States. (Aug. 2, 2005; 119 Stat. 457)

S. 571/P.L. 109–50

To designate the facility of the United States Postal Service located at 1915 Fulton Street in Brooklyn, New York, as the "Congresswoman Shirley A. Chisholm Post Office Building". (Aug. 2, 2005; 119 Stat. 459)

S. 775/P.L. 109–51

To designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, Oklahoma, as the "Boone Pickens Post Office". (Aug. 2, 2005; 119 Stat. 460)

S. 904/P.L. 109–52

To designate the facility of the United States Postal Service located at 1560 Union Valley Road in West Milford, New Jersey, as the "Brian P. Parrello Post Office Building". (Aug. 2, 2005; 119 Stat. 461)

H.R. 3045/P.L. 109–53

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Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 499)

H.R. 2985/P.L. 109–55

Legislative Branch Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 565)

S. 45/P.L. 109–56

To amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes. (Aug. 2, 2005; 119 Stat. 591)

S. 1395/P.L. 109–57

Controlled Substances Export Reform Act of 2005 (Aug. 2, 2005; 119 Stat. 592)

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CFR CHECKLIST

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1911–1925	(869–052–00109–1)	30.00	July 1, 2004
1926	(869–052–00110–4)	50.00	July 1, 2004
1927–End	(869–052–00111–2)	62.00	July 1, 2004
30 Parts:			
1–199	(869–052–00112–1)	57.00	July 1, 2004
200–699	(869–052–00113–9)	50.00	July 1, 2004
700–End	(869–052–00114–7)	58.00	July 1, 2004
31 Parts:			
0–199	(869–052–00115–5)	41.00	July 1, 2004
200–End	(869–052–00116–3)	65.00	July 1, 2004
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–052–00117–1)	61.00	July 1, 2004
191–399	(869–052–00118–0)	63.00	July 1, 2004
400–629	(869–056–00121–5)	50.00	July 1, 2005
630–699	(869–052–00120–1)	37.00	[7]July 1, 2004
700–799	(869–052–00121–0)	46.00	July 1, 2004
800–End	(869–052–00122–8)	47.00	July 1, 2004
33 Parts:			
1–124	(869–052–00123–6)	57.00	July 1, 2004
125–199	(869–052–00124–4)	61.00	July 1, 2004
200–End	(869–052–00125–2)	57.00	July 1, 2004
34 Parts:			
1–299	(869–052–00126–1)	50.00	July 1, 2004
300–399	(869–052–00127–9)	40.00	July 1, 2004
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts			
1–199	(869–052–00130–9)	37.00	July 1, 2004
*200–299	(869–056–00132–1)	37.00	July 1, 2005
300–End	(869–052–00132–5)	61.00	July 1, 2004
37	(869–052–00133–3)	58.00	July 1, 2004
38 Parts:			
0–17	(869–052–00134–1)	60.00	July 1, 2004
18–End	(869–052–00135–0)	62.00	July 1, 2004
39	(869–052–00136–8)	42.00	July 1, 2004
40 Parts:			
1–49	(869–052–00137–6)	60.00	July 1, 2004
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
52 (52.1019–End)	(869–052–00140–6)	61.00	July 1, 2004
53–59	(869–052–00141–4)	31.00	July 1, 2004
60 (60.1–End)	(869–052–00142–2)	58.00	July 1, 2004
60 (Apps)	(869–052–00143–1)	57.00	July 1, 2004
*61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–052–00145–7)	58.00	July 1, 2004
63 (63.600–63.1199)	(869–052–00146–5)	50.00	July 1, 2004
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
63 (63.8980–End)	(869–052–00149–0)	35.00	July 1, 2004
64–71	(869–052–00150–3)	29.00	July 1, 2004
72–80	(869–052–00151–1)	62.00	July 1, 2004
81–85	(869–052–00152–0)	60.00	July 1, 2004
86 (86.1–86.599–99)	(869–052–00153–8)	58.00	July 1, 2004
86 (86.600–1–End)	(869–052–00154–6)	50.00	July 1, 2004
87–99	(869–052–00155–4)	60.00	July 1, 2004
100–135	(869–052–00156–2)	45.00	July 1, 2004
136–149	(869–052–00157–1)	61.00	July 1, 2004
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–052–00159–7)	39.00	July 1, 2004
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–052–00161–9)	50.00	July 1, 2004
300–399	(869–052–00162–7)	42.00	July 1, 2004
400–424	(869–052–00163–5)	56.00	[8]July 1, 2004
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–052–00165–1)	61.00	July 1, 2004
790–End	(869–052–00166–0)	61.00	July 1, 2004
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–052–00167–8)	24.00	July 1, 2004
101	(869–052–00168–6)	21.00	July 1, 2004
102–200	(869–052–00169–4)	56.00	July 1, 2004
201–End	(869–052–00170–8)	24.00	July 1, 2004
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2005 CFR set		1,342.00	2005
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Subscription (mailed as issued)		325.00	2005
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Complete set (one-time mailing)		298.00	2003

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.