9–23–05 Friday
Vol. 70 No. 184 Sept. 23, 2005

Pages 55705–56104

Federal Register

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 70 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

Printed on recycled paper.

Contents

Federal Register

Vol. 70, No. 184

Friday, September 23, 2005

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 70, No. 184
Friday, September 23, 2005

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Animal and Plant Health Inspection Service

7 CFR Part 371

[Docket No. 05–012–1]

Noxious Weed Control and Eradication Act; Delegation of Authority

AGENCY: Office of the Secretary and Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document delegates the authority given to the Secretary of Agriculture under the Noxious Weed Control and Eradication Act of 2004 to establish a program to provide financial and technical assistance to control or eradicate noxious weeds. Authority is delegated from the Secretary of Agriculture to the Under Secretary for Marketing and Regulatory Programs; from that official to the Administrator of the Animal and Plant Health Inspection Service; and from the Administrator of the Animal and Plant Health Inspection Service to the Deputy Administrator for Plant Protection and Quarantine. In addition, this document also removes references to statutes that were repealed upon enactment of the Plant Protection Act and statutes that were repealed upon enactment of the Animal Health Protection Act.

DATES: *Effective Date:* September 23, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Alan V. Tasker, Noxious Weeds Program Coordinator, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1237; (301) 734–5225.

SUPPLEMENTARY INFORMATION:

Background

The Noxious Weed Control and Eradication Act of 2004 (Pub. L. 108–412) amended the Plant Protection Act (PPA, Pub. L. 106–224, 7 U.S.C. 7701–7772) by adding a new subtitle, ''Subtitle E—Noxious Weed Control and Eradication'' (7 U.S.C. 7781–7786), which authorizes the Secretary of Agriculture to establish a program to provide financial and technical assistance to control or eradicate noxious weeds. This rule delegates that authority from the Secretary of Agriculture to the Under Secretary for Marketing and Regulatory Programs; from that official to the Administrator of the Animal and Plant Health Inspection Service; and from the Administrator of the Animal and Plant Health Inspection Service to the Deputy Administrator for Plant Protection and Quarantine.

This rule also amends the delegations of authority to remove references to statutes that were repealed upon enactment of the PPA and the Animal Health Protection Act (AHPA, Pub. L. 107–171, 7 U.S.C. 8301–8317).

The PPA repealed the following statutes:

1. The Plant Quarantine Act (7 U.S.C. 151–164a, 167);
2. The Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*, 7 U.S.C. 147a note);
3. Parts of the Federal Noxious Weed Act of 1974 (7 U.S.C. 2802 through 2813). Section 1 and section 15 of the Federal Noxious Weed Act were not repealed (7 U.S.C. 2801 note; 7 U.S.C. 2814);
4. The Mexican Border Act (7 U.S.C. 149);
5. The Insect Control Act (7 U.S.C. 148 *et seq.*);
6. The Halogen Glomeratus Act (7 U.S.C. 1651 *et seq.*);
7. The Golden Nematode Act (7 U.S.C. 150 *et seq.*);
8. Section 1773 of the Food Security Act of 1985 (7 U.S.C. 148f); and
9. Subsections (a) through (e) of the Department of Agriculture Organic Act of 1944 (7 U.S.C. 147a).

The AHPA repealed the following statutes:

1. Pub. L. 97–46 (7 U.S.C. 147b);
2. Section 101(b) of the Act of September 21, 1944 (7 U.S.C. 429);
3. The Act of August 28, 1950 (7 U.S.C. 2260);
4. Section 919 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 2260a);
5. Section 306 of the Tariff Act of 1930 (19 U.S.C. 1306);
6. Sections 6 through 8 and 10 of the Act of August 30, 1890 (21 U.S.C. 102 through 105);
7. The Act of February 2, 1903 (21 U.S.C. 111, 120 through 122);
8. Sections 2 through 9, 11, and 13 of the Act of May 29, 1884 (21 U.S.C. 112, 113, 114, 114a, 114a–1, 115 through 120, 130);
9. The first section and sections 2, 3, and 5 of the Act of February 28, 1947 (21 U.S.C. 114b, 114c, 114d, 114d–1);
10. The Act of June 16, 1948 (21 U.S.C. 114e, 114f);
11. Public Law 87–209 (21 U.S.C. 114g, 114h);
12. The third and fourth provisos of the fourth paragraph under the heading ''Bureau of Animal Industry'' of the Act of May 31, 1920 (21 U.S.C. 116);
13. The first section and sections 2, 3, 4, and 6 of the Act of March 3, 1905 (21 U.S.C. 123 through 127);
14. The first proviso under the heading ''General expenses, Bureau of Animal Industry'' under the heading ''BUREAU OF ANIMAL INDUSTRY'' of the Act of June 30, 1914 (21 U.S.C. 128);
15. The fourth proviso under the heading ''Salaries and Expenses'' under the heading ''Animal and Plant Health Inspection Service'' of title I of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (21 U.S.C. 129);
16. The third paragraph under the heading ''MISCELLANEOUS'' of the Act of May 26, 1910 (21 U.S.C. 131);
17. The first section and sections 2 through 6 and 11 through 13 of Public Law 87–518 (21 U.S.C. 134 through 134h);
18. Public Law 91–239 (21 U.S.C. 135 through 135b);
19. Sections 12 through 14 of the Federal Meat Inspection Act (21 U.S.C. 612 through 614); and
20. Chapter 39 of title 46, United States Code.

We will further amend title 7 and title 9 of the Code of Federal Regulations in a future rulemaking action to update authority citations for the Plant Protection Act.

This rule relates to internal agency management. Therefore, this rule is

exempt from the provisions of Executive Order 12866 and 12988. Moreover, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects

7 CFR Part 2

Authority delegations (Government agencies).

7 CFR Part 371

Organization and functions (Government agencies).

■ Accordingly, 7 CFR parts 2 and 371 are amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

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

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

■ 2. In § 2.22, paragraph (a)(2) is amended as follows:

■ a. By removing paragraphs (a)(2)(ii) through (a)(2)(vi), paragraphs (a)(2)(ix) through (a)(2)(xvii), and paragraph (a)(2)(xix).

■ b. By redesignating paragraphs (a)(2)(vii) and (a)(2)(viii) as paragraphs (a)(2)(ii) and (a)(2)(iii), paragraph (a)(2)(xviii) as (a)(2)(iv), and paragraphs (a)(2)(xx) through (a)(2)(xlx) as paragraphs (a)(2)(v) through (a)(2)(xxxv), respectively.

■ c. By revising newly redesignated paragraphs (a)(2)(iv), (a)(2)(xi), (a)(2)(xv), and (a)(2)(xxxi) to read as set forth below.

§ 2.22 Under Secretary for Marketing and Regulatory Programs.

(a) * * *

(2) * * *

(iv) Section 18 of the Federal Meat Inspection Act, as amended, as it pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 618);

* * * * *

(xi) Virus-Serum-Toxin Act (21 U.S.C. 151–159).

* * * * *

(xv) The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 note; 2814).

* * * * *

(xxxii) Plant Protection Act, as amended (7 U.S.C. 7701–7786).

* * * * *

Subpart N—Delegations of Authority by the Under Secretary for Marketing and Regulatory Programs

■ 3. In § 2.80, paragraph (a) is amended as follows:

■ a. By removing paragraphs (a)(2) through (a)(6), paragraphs (a)(9) through (a)(17), and paragraph (a)(19).

■ b. By redesignating paragraphs (a)(7) and (a)(8) as paragraphs (a)(2) and (a)(3), paragraph (a)(18) as (a)(4), and paragraphs (a)(20) through (a)(56) as paragraphs (a)(5) through (a)(41), respectively.

■ c. By revising newly redesignated paragraphs (a)(4), (a)(11), (a)(16), and (a)(36) to read as set forth below.

§ 2.80 Administrator, Animal and Plant Health Inspection Service.

(a) * * *

(4) Section 18 of the Federal Meat Inspection Act, as amended, as it pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 618).

* * * * *

(11) Virus-Serum-Toxin Act (21 U.S.C. 151–159).

* * * * *

(16) The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 note; 2814).

* * * * *

(36) Plant Protection Act, as amended (7 U.S.C. 7701–7786).

* * * * *

PART 371—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

■ 4. The authority citation for part 371 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 5. In § 371.3, paragraph (b)(2)(x) is revised to read as follows:

§ 371.3 Plant protection and quarantine.

* * * * *

(b) * * *

(2) * * *

(x) Plant Protection Act, as amended (7 U.S.C. 7701–7786).

* * * * *

■ 6. In § 371.4, paragraph (b) is amended as follows:

■ a. By removing paragraphs (b)(3)(i) through (b)(3)(viii), and paragraph (b)(3)(x).

■ b. By redesignating paragraphs (b)(3)(ix) as paragraph (b)(3)(i) and paragraphs (b)(3)(xi) through (b)(3)(xxiv) as paragraphs (b)(3)(ii) through (b)(3)(xv), respectively.

■ c. By revising newly redesignated paragraph (b)(3)(i) to read as set forth below.

§ 371.4 Veterinary Services.

* * * * *

(b) * * *

(3) * * *

(i) Section 18 of the Federal Meat Inspection Act, as amended, as it pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 618).

* * * * *

For Part 2, Subpart C:

Dated: September 20, 2005.

Mike Johanns,

Secretary of Agriculture.

For Part 2, Subpart N:

Dated: September 20, 2005.

Charles D. Lambert,

Acting Under Secretary for Marketing and Regulatory Programs.

For Part 371:

Dated: September 20, 2005.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–19044 Filed 9–22–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 500

RIN 0518–AA02

National Arboretum

AGENCY: Agricultural Research Service; Research, Education, and Economics; USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is modifying the rules of conduct at the United States National Arboretum (USNA) and the schedule of fees to be charged for certain uses of the facilities, grounds, and services at the USNA.

DATES: This rule is effective October 24, 2005.

ADDRESSES: Address all correspondence to Thomas S. Elias, Director, U.S. National Arboretum, Beltsville Area, Agricultural Research Service, 3501 New York Avenue, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Dana Laster, Administrative and Marketing Manager, U.S. National Arboretum, Beltsville Area, ARS, 3501 New York Avenue, NE., Washington, DC 20002; (202) 245–4539.

SUPPLEMENTARY INFORMATION:

Background

Section 890(b) of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127 (1996 Act) expanded the authorities of the Secretary of Agriculture to charge reasonable fees for the use of USNA facilities and grounds. These authorities included the ability to charge fees for temporary use by individuals or groups of USNA facilities and grounds consistent with the mission of the USNA. In addition, authority was granted to charge fees for the use of the USNA for photography and cinematography. Pursuant to the Act, the Agricultural Research Service (ARS) promulgated a fee schedule for the USNA at 7 CFR part 500, subpart B. All rules and regulations noted in 7 CFR part 500, subpart A, Conduct on the U.S. National Arboretum Property, also apply to individuals or groups granted approval to use the facilities and grounds.

A proposed rule revising the USNA fee and conduct rules at 7 CFR part 500 was published for comment on December 20, 2004 (69 FR 75880). One hundred one comments were received from individuals and six organizations. The vast majority of public comments (approximately 96 percent) were received with regards to commercial photography. The majority of commentators asserted that Public Law 106–206, 16 U.S.C. 460l–6d(a), which governs the ''lands'' administered by the Secretary, supersedes the earlier authority granted the Secretary codified at 20 U.S.C. 196(a) with respect to commercial photography at the USNA. USDA asserts that the controlling authority for charging fees for photography and cinematography at the USNA is found at 20 U.S.C. 196(a)(5) which permits USDA to ''charge such fees as the Secretary of Agriculture considers reasonable for the use of the National Arboretum for commercial photography or cinematography.''

Nevertheless, § 500.23 was revised to only charge a fee for the use of the facility and grounds of the USNA for commercial photography or cinematography that use models, sets, or props that are not part of the site's natural or cultural resources or administrative facilities; take place where members of the public are generally not allowed; or take place at a location where additional administrative costs are likely. This action provides a balance both to allow photography and cinematography, yet also allow the USNA the ability to charge fees under prescribed conditions that are consistent with Public Law 106–206 to assure the integrity of the USNA as a public facility.

Further comments by stakeholders that are addressed by revisions in this final rule are as follows: (1) To assure the coverage of potential damage to property and collections, the addition of a refundable deposit for use of the facility or grounds, excluding the classroom, is included. (2) As recommended, the user fee for the Friendship Garden is increased to $1,500 to be comparable to other USNA locations. (3) The prohibition without the prior approval of the USNA Director to distribute materials was reworded. Prior approval by the USNA Director is only required to distribute materials to USNA general public visitors. (4) A clarification on the use of candles at events was made. The use of small candles has been included in the final rule. (5) As requested, the wording regarding receipts has been changed. (6) Concern that the 30-day advance notice for special events is too excessive. A 2-day advanced notice does not provide the USNA with adequate time to prepare sites and assign staff and supervision as needed which includes upfront time to change employee work schedules. However, the advance notice minimum was modified to 15 calendar days. (7) Concern over the exclusion of events on peak weekends and during normal visitation periods. Reference to the exclusion was deleted. (8) Concern that 10 working days for response by USNA is excessive. The response time was modified to a maximum of five working days. (9) Concern that the two weeks advance payment for tours is too lengthy. The advance payment requirement was modified to a one week minimum.

Revisions to the final rule were not made in response to some stakeholder comments because they were deemed not to be in the best interest of the government. These include the following: (1) Desire to automatically waive use fees for stakeholders. Automatically waiving use fees for all events greatly would diminish the financial support to the USNA. (2) Concern that the prior approval to serve beer and wine is unnecessary and unwarranted. Current ARS policy requires prior approval by the USNA Director and Beltsville Area Director for the consumption of beer and wine at the USNA. Departmental regulations as well as Federal Property Management Regulations restrict use of alcohol on Federal property. (3) A request was made to allow raffles at the USNA. Raffles require a permit from the District of Columbia and may reflect a less than positive image of USDA when raffles are held on USDA property. (4) A comment that fees collected will be dedicated, in part, for the maintenance of the particular USNA site that generated the fees. Since the funds generated will be used to maintain the USNA, the more popular facilities will naturally tend to receive more of the funds, but the USNA is not committing to a rigid funding formula. (5) Concern that the fee for use of the courtyard area within the National Bonsai and Penjing Museum is too low. The fee is in line with facilities use fees in other institutions and in consideration of the geographical location of the USNA. The fee will be evaluated and reconsidered after the first and second years of facilities use. Fees may be adjusted based upon the demand for this space and the level of maintenance needed to support the facilities use.

Lastly, some stakeholder comments reflect current practices of the USNA and therefore are not addressed in the final rule. These include: (1) Concern about closing the Bonsai and Penjing Museum during normal visitation hours for special events. The current policy is that special events will generally not result in the closing of the Museum to visitors during normal visitation hours; however, special exceptions may be made at the discretion of the USNA Director; (2) Concern over staffing for security during special events. The current practice of the USNA is to provide additional supervision, including additional security staff, as necessary to protect the grounds and assets of the USNA; (3) Concern about protecting and preserving the existing facilities and landscape at the Friendship Garden. Guidelines issued by the USNA for facilities use will help ensure that the quality and condition of the garden displays, collections, and facilities are not compromised.

Classification

This rule change has been reviewed under Executive Order 12866, and it has

been determined that it is not a ''significant regulatory action'' rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. This rule change will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Department of Agriculture certifies that this rule change will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–354, as amended (5 U.S.C. 601, et seq.).

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995, Pub. L. 104–13, as amended (44 U.S.C. chapter 35), the information collection and recordkeeping requirements that have been imposed in the management of these programs have been approved by OMB and assigned OMB control number 0518–0024 for the use of facilities or the performance of photography/cinematography at the USNA.

List of Subjects in 7 CFR Part 500

Agricultural research, Federal buildings and facilities, Government property, USNA, Photography, Cinematography, User fees.

■ For the reasons set out in the preamble, 7 CFR part 500 is revised as set forth below:

PART 500—NATIONAL ARBORETUM

Subpart A—Conduct on U.S. National Arboretum Property

Sec.

Subpart B—Fee Schedule for Certain Uses of National Arboretum Facilities and Grounds.

Authority: 20 U.S.C. 196(a); sub secs. 2, 4, 5; 40 U.S.C. 121(d); 40 U.S.C. 1315(c).

Subpart A—Conduct on U.S. National Arboreturm Property

§ 500.1 General.

The rules and regulations in this part apply to the buildings and grounds of the U.S. National Arboretum (USNA), Washington, DC, and to all persons entering in or on such property. The Administrator, General Services Administration, has delegated to the Secretary of Agriculture, with authority to further delegate, the authority to make all the needful rules and regulations for the protection of the buildings and grounds of the USNA (34 FR 6406). The Secretary of Agriculture has in turn delegated such authority to the Administrator, Agricultural Research Service (34 FR 7389). The rules and regulations in this part are issued pursuant to such delegations.

§ 500.2 Recording presence.

Admission to the USNA during periods when it is closed to the public will be limited to authorized individuals who may be required to sign the register or display identification documents when requested by the Security Staff, or other authorized individuals.

§ 500.3 Preservation of property.

(a) While at the USNA, it is unlawful to:

(1) Willfully destroy, damage, or remove USNA property or any part thereof;

(2) Set or maintain any open fire on the property of the USNA; however, the use of small candles may be approved at the discretion of the Director, USNA; or

(3) Apply any type of insecticide or herbicide on the grounds of the USNA, except for USNA employees in the course of their official duties or other persons authorized by the Director, USNA.

(b) Persons not employed by USNA are not permitted to bring biological agents of any kind, including but not limited to disease and pest agents of plants, onto the property without written permission of the Director, USNA.

§ 500.4 Conformity with signs and emergency directions.

Persons in and on property of the USNA shall comply with official signs of prohibitory or directive nature and with the directions of authorized individuals.

§ 500.5 Nuisances.

(a) The use of loud, abusive, or otherwise improper language; unwarranted loitering, sleeping, or assembly; the creation of any hazard to persons or things; improper disposal of rubbish; spitting; prurient prying; the commission of any obscene or indecent act, or any other unseemly or disorderly conduct; throwing articles of any kind from a building, and climbing upon any part of a building is prohibited.

(b) Playing of music or creation of other noises of a decibel level high enough to be heard outside of the USNA is prohibited.

§ 500.6 Gambling.

Participating in games for money or other personal property, or the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets, in or on USNA property, is prohibited.

§ 500.7 Intoxicating beverages and narcotics.

(a) Entering USNA property or the operation of a motor vehicle thereon, by a person under the influence of intoxicating beverages or a narcotic drug, is prohibited.

(b) Except as provided in subpart B of this part, possession of or consumption of intoxicating beverages on USNA property is prohibited.

(c) The sale of alcoholic beverages on the grounds of the USNA is prohibited.

(d) The possession of or use of narcotic drugs on the grounds of the USNA is prohibited.

§ 500.8 Soliciting, vending, debt collection, and distribution of handbills.

(a) The following activities are prohibited on USNA grounds:

(1) Soliciting of alms or contributions;

(2) Display or distribution of commercial advertising;

(3) Collecting private debts;

(4) Campaigning for election to any office;

(5) Soliciting and vending for commercial purposes (including, but not limited to, the vending of newspapers and other publications);

(6) Soliciting signatures on petitions, polls, or surveys (except as authorized by the USNA); and

(7) Impeding ingress to or egress from the USNA.

(b) Distribution to USNA general public visitors of material such as pamphlets, handbills, and flyers is prohibited without prior approval of the Director, USNA.

(c) The prohibitions in paragraphs (a) and (b) of this section do not apply to:

(1) Commercial or nonprofit activities performed under contract or concession with the USNA or pursuant to the provisions of the Randolph Sheppard Act;

(2) The solicitation of USNA personnel for contributions for the Combined Federal Campaign (CFC);

(3) National or local drives for funds for welfare, health, and other purposes sponsored or approved by the Agricultural Research Service; or

(4) Personal notices posted by employees on authorized bulletin boards.

§ 500.9 Photographs for news or advertising.

Photographs for news purposes may be taken at the USNA without prior permission. Photographs for advertising and other commercial purposes may be taken, but only with the prior approval of the Director, USNA and fees may be charged pursuant to § 500.23.

§ 500.10 Pets.

Pets brought upon USNA property must have proper vaccinations and, except assistance trained animals, must be kept on leash at all times. The release or abandonment of fish, plants, and animals of any kind on USNA grounds is prohibited.

§ 500.11 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles in or on USNA property shall drive only on established roads, shall drive in a careful and safe manner at all times, and shall comply with the signals and directions of the Security Staff and all posted traffic signs.

(b) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants, and parking in designated no parking areas in or on USNA property is prohibited.

(c) Except in emergencies, parking in or on USNA property in other than designated areas is not allowed without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or contrary to the direction of posted signs, is prohibited.

(d) USNA approval is required for all vehicles needed for access setup and breakdown activities relating to special events, ceremonies, or related activities. Off-road routes will be determined by the USNA.

(e) In addition to the penalties provided in § 500.15, vehicles parked in violation of this section are subject to being towed and the cost of such towing being assessed to the owner of such vehicle.

(f) This section may be supplemented from time to time, by the issuance and posting of specific traffic directives as may be required, and when so issued and posted such directives shall have the same force and effect as if incorporated in this subpart.

§ 500.12 Weapons and explosives.

(a) No person while in or on USNA property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for authorized official purposes.

(b) No person while in or on the USNA shall ignite fireworks or other pyrotechnical devices.

§ 500.13 Nondiscrimination.

The USNA is subject to the policy of nondiscrimination in programs or activities conducted by the United States Department of Agriculture as set forth in 7 CFR part 15d.

§ 500.14 Exceptions.

The Administrator, Agricultural Research Service, may in individual cases make prior, written exceptions to the rules and regulations in this part if it is determined to be not adverse to the public interest.

§ 500.15 Penalties and other law.

Whoever shall be found guilty of violating the rules and regulations in this subpart is subject to fine under title 18, United States Code, or imprisonment of not more than 30 days, or both (see 40 U.S.C. 1315(c)). Nothing contained in the rules and regulations in this part shall be construed as abrogating or authorizing the abrogation of any other regulations or any Federal law or any laws and regulations of the District of Columbia that may be applicable.

Subpart B—Fee Schedule for Certain Uses of National Arboretum Facilities and Grounds

§ 500.20 Scope.

This subpart sets forth schedules of fees for temporary use by individuals or groups of United States National Arboretum (USNA) facilities and grounds. This subpart also sets forth schedules of fees for the use of the USNA for commercial photography and cinematography. Fees generated will be used to offset costs of services or for the purposes of promoting the mission of the USNA. All rules and regulations noted in 7 CFR 500, subpart A—Conduct on the U.S. National Arboretum Property, will apply to individuals or groups granted approval to use the facilities and grounds for the purposes specified in this subpart.

§ 500.21 Fee schedule for tram and tours.

The USNA provides tours of the USNA grounds in a 48-passenger tram (accommodating 2 wheelchairs). The fee is as follows: $4.00 per adult, $3.00 per senior citizen or Friend of the National Arboretum, and $2.00 per child under the age 17. Children under 4 sharing a seat with an adult will not be charged. Pre-scheduled tram tours for groups may be arranged for a set fee of $125.00. Additionally, a tour guide may be pre-arranged to provide a non-tram tour for the fee of $50 per hour. Promotional programs offering discounted fees for these programs may be instituted at the discretion of the USNA. Payment for use of the tram is due at the time of ticket purchase. Payment for pre-scheduled tram tours must be made at least one week in advance. Payment for pre-scheduled, non-tram guided tours must be made at least one week in advance of the tour date.

§ 500.22 Fees and conditions for use of facilities and grounds.

(a) *Fee requirement.* (1) The USNA will charge a fee for temporary use by individuals or groups of USNA facilities and grounds. Fees for specific sites are listed in § 500.24.

(2) Non-profit scientific or educational organizations whose purposes and interests are complementary to the mission of the USNA and which substantially support the mission and purpose of the USNA (*e.g.*, Friends of the National Arboretum, National Bonsai Foundation, National Capital Area Federation of Garden Clubs, Herb Society of America) may be exempted from the fee for use of USNA facility or grounds requirement of this subpart by the Director, but still must reimburse the USNA for its costs, including setup, clean-up, security, and other costs as applicable.

(3) A Half Day usage is defined as 4 hours or less; a Whole Day usage is defined as more than 4 hours in a day. In all cases, usage includes all time during which a venue is committed,

including time used to set up before and clean up after an event. For after-hours usage of sites or facilities, an additional $40/hour will be added for supervision for each required staff member or security officer, with higher amounts required for sites or facilities that are more sensitive.

(b) *Reservations.* (1) Facilities and grounds are available by reservation at the discretion of the Director of the USNA and may be available to individuals or groups for uses that are consistent with the mission of the USNA. Agency initiatives may be granted first priority. Offices and hallways inside secured doors will not be available for use.

(2) Reservations to use USNA facilities and grounds may be made directly with the USNA. To ensure consideration, reservation requests should be made as far in advance as possible with a minimum of 15 calendar days prior to the date of use required for all reservations. This advanced notice will provide the USNA adequate time to prepare sites and assign staff and supervision as necessary.

(3) The USNA will make every effort to respond to requests in a quick and timely fashion. The USNA will respond to reservation requests within 5 working days with information as to whether the requested site is available for use. The USNA will also give notice to the prospective user of any planned activities (construction, maintenance, pesticide applications, and any similar activities) that might affect the planned use or event.

(4) A 50 percent non-refundable deposit will be due at the time of a booking in order to reserve a specific date and location. The remaining 50 percent is due five working days prior to the event.

(c) *Terms and conditions of use.* (1) The USNA provides space, water, and electrical hookup when available, and restrooms where available. Users must provide all tents, tables, chairs, trash receptacles, or other property required for the scheduled event. Users must remove all trash from the property at the conclusion of the event. Users must remove all tents, tables and chairs, and other property no later than 5:00 p.m. of the day following the event. The USNA will charge a facility use and break down fee of $500.00 per day for each day following the deadline to remove temporary facilities and equipment. The USNA will not store temporary facilities or equipment for users.

(2) Users must abide by USNA vehicle regulations in § 500.11 including the requirement to obtain USNA approval whenever off road access is required for setup.

(3) The USNA will not assume any responsibility for last minute changes due to failure of current mechanical systems, severe storms and other weather events, emergencies relating to security and safety.

(4) Some events that involve bringing animals and certain plants onto the USNA property may not be compatible with the plant research, display, and education mission of the USNA. Such events will be evaluated on a case-by-case basis and exceptions may be made by the Director of the USNA.

(5) Music and bands will be permitted but the decibel level of music should not be loud enough to be heard outside the boundaries of the USNA.

(6) (i) A refundable deposit as specified in paragraph (c)(6)(ii) of this section for use of the facility or grounds, excluding the classroom, will be collected in advance. In the event of building, property, or grounds damage or excessive cleaning requirements, the deposit will be used for repair and remediation and the balance will be refunded within 30 days of the event date. In the event that cleaning requirements or damage to the building, property or grounds exceeds the amount of the refundable deposit, the deposit will be used in full, with additional charges billed and due within 30 days of billing. Damages to plants, grounds, facilities, or equipment will be assessed on a value based on replacement costs, including labor.

(ii) *Refundable Deposit Schedule.*

Event fee	Refundable deposit required
$15,000–10,000	$2,000
$9,999–5,000	1,000
$4,999 and less	500

(7) Upon prior request, the Director may approve the consumption of beer and wine during uses of USNA pursuant to this section. Such permission generally will not be granted during times when USNA is open to the public. Director approval shall be conditioned upon compliance by users and by any of their agents or contractors, with all applicable provisions of the District of Columbia Code governing sale and consumption of alcoholic beverages, including the rules of the District of Columbia Department of Consumer Affairs, Alcoholic Beverage Regulation Administration.

(8) All users of the USNA pursuant to this subpart, as well as all those contracting with such users of the USNA, shall comply with all Federal and local laws.

(9) The USNA is a Federal property under the jurisdiction of the United States Department of Agriculture.

All activities are subject to Federal rules and regulations governing the use of public buildings and grounds.

(10) The USNA will not be responsible for any damage or loss suffered by an individual, group, or their contractor during a permitted event at the USNA.

(11) The Director may impose additional incidental terms and conditions concerning the use of the USNA facilities consistent with this part.

(12) Marriage ceremonies and accompanying receptions may only be held in the Dogwood Collection.

§ 500.23 Fees for commercial photography and cinematography on grounds.

The USNA may charge a fee for the use of the facility or grounds for purposes of commercial photography or cinematography as specified in § 500.24. Facilities and grounds are available for use for commercial photography or cinematography at the discretion of the USNA Director. Requests for use should be made a minimum of two weeks in advance of the required date. The USNA will charge for supervision costs at the rate of $40.00 per hour per security officer, in addition to the fees listed below. The USNA Director may waive fees for photography or cinematography conducted for the purpose of disseminating information to the public regarding the USNA and its mission or for the purpose of First Amendment activity. The USNA will charge a non-refundable application fee of $30 for commercial photography or cinematography activities that use models, sets or props that are not part of the natural, cultural resources, or administrative facilities features of the site; take place where members of the public are generally not allowed; or take place at a location where additional administrative costs are likely. If the application is approved and fees will be incurred, the application fee will be applied to the total fee due. No other credits will be given for the application fee. Fee payments for use of facilities or grounds or for commercial photography and cinematography must be made in advance of services being rendered. These payments are to be made in the form of a check or money order.

§ 500.24 Fee Schedule.

Event by category	Fee*	Unit	Notes
USNA Terrace	$12,000	Per Day	Up to 240 seated or 300 standing.
USNA Herb Garden	10,000	Per Day	Entrance Circle, Rose and Knot Garden: Up to 48 seated or 100 standing; cannot be tented. Specialty Garden: Up to 200 standing; may not be tented.
USNA Meadow	15,000	Per Day	Up to 600 seated or 1000 standing.
USNA Administration Building Lobby	2,000	Per Day	Up to 150 standing.
USNA Auditorium	2,500	Per Day	Up to 120 seated or 200 standing.
Friendship Garden	1,500	Per Day	Up to 60 seated or 100 standing.
National Capitol Columns	10,000	Per Day	Up to 190 seated or 400 standing; cannot be tented; includes night lighting of columns.
Bonsai Museum International, Pavilion and Upper Courtyard.	10,000	Per Day	Up to 120 seated or 200 standing.
Bonsai Museum Chinese Pavilion	10,000	Per Day	Up to 50 seated or 100 standing.
Dogwood Collection Allee & Circle	3,000	Per Day	Up to maximum of 150 people at event; reserved for marriage ceremonies and accompanying receptions only.
M Street Picnic Area	5,000	Per Day	Up to 200 seated or standing; paved or grassy areas can be tented.
Classroom	125 50	Per Day Per Half Day	Standard set-up with 40 chairs; includes microphone/lectern, screen, projection stand, two flip charts (no paper), and trashcan.
Still Photography:			
Individual	No Charge		For personal use only; includes hand-held cameras, recorders and tripods.
Other	$30 $250 plus Supervision	Application Fee Per Half Day	All photography that use models, sets or props that are not part of the site's natural or cultural resources or administrative facilities; or take place where members of the public are generally not allowed; or take place at a location where additional administrative costs are likely.
Cinematography:			
Set Preparation	$30 $250 plus Supervision	Application Fee Per Whole Day.	Set up; no filming.
Filming	$1,500 to $3,900	Per Whole Day	Sliding scale based on number of people in cast and crew and number of pieces of equipment from 45 people and 6 pieces of equipment = $1,500 to 200 people = $3,900; 5 people with carry on equipment = same as still photography.

*Fees include only access to sites; additional security charges may be necessary depending upon the site and the number of people participating.

§ 500.25 Payment of fees.

(a) Unless provided otherwise, all payments due under this subpart must be made by cash, check, or money order (in U.S. funds). Checks and money orders for payment of any fees imposed under this part are to be made payable, in U.S. funds, to the ''U.S. National Arboretum.'' Upon request, the USNA shall provide receipts to requesters for their records or billing purposes. If the USNA enters into an agreement to allow USNA visitors and users to make payment in the form of a credit card, USNA visitors and users who are assessed user fees may pay those fees with a credit card subject to the terms and conditions of such agreement.

(b) Any fees that become past due shall be collected in accordance with 7 CFR part 3.

Done at Washington, DC, this 19th day of September, 2005.

Edward B. Knipling,

Administrator, Agricultural Research Service.

[FR Doc. 05–18991 Filed 9–22–05; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV05–948–2 FIR]

Irish Potatoes Grown in Colorado; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Area No. 3 Colorado Potato Administrative Committee (Committee) for the 2005–2006 and subsequent fiscal periods from $0.03 to $0.02 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of potatoes grown in Colorado. Assessments upon Colorado potato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: October 24, 2005.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724; Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Colorado potatoes beginning July 1, 2005, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect the action that decreased the assessment rate established for the Committee for the 2005–2006 and subsequent fiscal periods from $0.03 to $0.02 per hundredweight of Colorado potatoes handled.

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

For the 2003–2004 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 12, 2005, and unanimously recommended 2005–2006 expenditures of $20,368 and an assessment rate of $0.02 per hundredweight of assessable potatoes handled. In comparison, last year's budgeted expenditures were $20,668. The assessment rate of $0.02 is $0.01 lower than the rate in effect since the 2003–2004 fiscal period. Due to increased potato yields and a reduction in expenses, the Committee's reserve has increased more than anticipated. The decreased assessment rate will allow the Committee to draw from the reserve to help cover 2005–2006 expenditures. This action should effectively lower the reserve to within the program limit of approximately two fiscal periods' operational expenses.

The major expenditures recommended by the Committee for the 2005–2006 fiscal period include $8,610 for salary, $3,000 for office rent, $1,750 for office expenses, and $1,000 for utilities. These budgeted expenses are the same as those approved for the 2004–2005 fiscal period.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado potatoes. Applying the $0.02 per hundredweight rate of assessment to the Committee's 585,475 hundredweight crop estimate should provide $11,709 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve ($42,701 as of July 1, 2005) will be kept within the maximum of approximately two fiscal periods' operational expenses as authorized by the order (§ 948.78).

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

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2005–2006 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

Based on Committee data, there are 8 producers and 8 handlers in the production area subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000.

Based on the total number of Colorado Area No. 3 potato producers (8), 2003 fresh potato production of 1,041,958 hundredweight (Committee records), and the average 2003 producer price of $5.05 per hundredweight as reported by National Agricultural Statistics Service (NASS), average annual revenue per producer from the sale of potatoes can be estimated at approximately $657,736. In addition, based on Committee records and an estimated average 2003 f.o.b. price of $7.15 per hundredweight ($5.05 per hundredweight NASS producer price plus Committee estimated packing and handling costs of $2.10 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under $6,000,000 worth of potatoes. In view of the foregoing, it can be concluded that the majority of the Colorado Area No. 3 potato producers and handlers may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2005–2006 and subsequent fiscal periods from $0.03 to $0.02 per hundredweight of potatoes. The assessment rate of $0.02 is $0.01 less than the 2004–2005 rate. The quantity of assessable potatoes for the 2005–2006 fiscal period is estimated at 585,475 hundredweight. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve ($42,701 as of July 1, 2005) will be kept within the maximum of approximately two fiscal periods' operational expenses as authorized by the order (§ 948.78).

The major expenditures recommended by the Committee for the 2005–2006 fiscal period include $8,610 for salary, $3,000 for office rent, $1,750 for office expenses, and $1,000 for utilities. These budgeted expenses are the same as those approved for the 2004–2005 fiscal period.

Due to increased potato yields and a reduction in expenses, the Committee's reserve has increased more than anticipated. Therefore, the Committee recommended a decreased assessment rate to enable an increased draw on the reserve, thus maintaining the level of the reserve within program limits of approximately two fiscal periods' operational expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program.

A review of historical information and preliminary information pertaining to the current crop year indicates that the producer price for the 2005–2006 season could range between $5.05 and $7.75 per hundredweight. Therefore, the estimated assessment revenue for the 2005–2006 fiscal period as a percentage of total producer revenue could range between 0.40 and 0.26 percent.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all Committee meetings, the May 12, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on these issues.

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

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

An interim final rule concerning this action was published in the **Federal Register** on June 27, 2005 (70 FR 36814). Copies of that rule were also mailed or sent via facsimile to all Area No. 3 Colorado potato handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended August 26, 2005, and no comments were received.

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

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

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 948—IRISH POTATOES GROWN IN COLORADO

■ Accordingly, the interim final rule amending 7 CFR part 948 which was published at 70 FR 36814 on June 27, 2005, is adopted as a final rule without change.

Dated: September 19, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–18990 Filed 9–22–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV05–985–2 IFR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 1 (Scotch) and Class 3 (Native) Spearmint Oil for the 2005–2006 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the quantity of Class 1 (Scotch) and Class 3 (Native) spearmint oil that handlers may purchase from, or handle for, producers during the 2005–2006 marketing year. This rule increases the Scotch spearmint oil salable quantity from 677,409 pounds to 1,062,898 pounds, and the allotment percentage from 35 percent to 55 percent. In addition, this rule

increases the Native spearmint oil salable quantity from 867,958 pounds to 1,019,600 pounds, and the allotment percentage from 40 percent to 47 percent. The order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

DATES: Effective June 1, 2005, through May 31, 2006; comments received by November 22, 2005 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov*; or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

The initial salable quantity and allotment percentages for Scotch and Native spearmint oil for the 2005–2006 marketing year were recommended by the Committee at its October 6, 2004, meeting. The Committee recommended salable quantities of 677,409 pounds and 867,958 pounds, and allotment percentages of 35 percent and 40 percent, respectively, for Scotch and Native spearmint oil. A proposed rule was published in the **Federal Register** on January 12, 2005 (70 FR 2027). Comments on the proposed rule were solicited from interested persons until February 11, 2005. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2005–2006 marketing year was published in the **Federal Register** on March 24, 2005 (70 FR 14969).

This rule revises the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle for, producers during the 2005–2006 marketing year, which ends on May 31, 2006. Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the Committee met on August 24, 2005, and in two separate motions, recommended that the 2005–2006 Scotch and Native spearmint oil allotment percentages be increased by 20 percent and 7 percent, respectively. With seven of the eight members present at the meeting, each of the recommendations passed with six members in favor and one member opposed. In both cases, the members opposing the recommendations favored larger increases.

Thus, taking into consideration the following discussion on adjustments to the Scotch and Native spearmint oil salable quantities, this rule increases the 2005–2006 marketing year salable quantities and allotment percentages for Scotch and Native spearmint oil to 1,062,898 pounds and 55 percent, and 1,019,600 pounds and 47 percent, respectively.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during the marketing year. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The original total industry allotment base for Scotch spearmint oil for the 2005–2006 marketing year was established at 1,935,455 pounds and was revised at the beginning of the 2005–2006 marketing year to 1,932,542 pounds to reflect a 2004–2005 marketing year loss of 2,913 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 1,932,455 pounds is applied to the originally established allotment percentage of 35 percent, the 2005–2006 marketing year salable quantity of 677,409 is effectively modified to 676,390 pounds.

The same situation applies to Native spearmint oil where the original total industry allotment base for the 2005–2006 marketing year was established at 2,169,894 pounds and was revised at the beginning of the 2005–2006 marketing year to 2,169,362 pounds to reflect a 2004–2005 marketing year loss of 532 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 2,169,362 pounds is applied to the originally established allotment percentage of 40 percent, the 2005–2006 marketing year salable quantity of 867,958 is effectively modified to 867,745 pounds.

By increasing the salable quantity and allotment percentage, this rule makes an additional amount of Scotch and Native spearmint oil available by releasing oil from the reserve pool. When applied to each individual producer, the allotment percentage increases allow each producer to take up to an amount equal to their allotment base from their reserve for each respective class of oil. Before November 1, 2005, a producer may also transfer excess oil to another producer to enable that producer to fill a deficiency in that producer's annual allotment for that class of oil.

The following tables summarize the Committee recommendations:

Scotch Spearmint Oil Recommendation

(A) Estimated 2005–2006 Allotment Base—1,935,455 pounds. This is the estimate on which the original 2005–2006 Scotch spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2005–2006 Allotment Base—1,932,542 pounds. This is 2,913 pounds less than the estimated allotment base of 1,935,455 pounds. This is less because some producers failed to produce all of their 2004–2005 allotment.

(C) Initial 2005–2006 Allotment Percentage—35 percent. This was recommended by the Committee on October 6, 2004.

(D) Initial 2005–2006 Salable Quantity—677,409. This figure is 35 percent of 1,935,455 pounds.

(E) Initial Adjustment to the 2005–2006 Salable Quantity—676,390 pounds. This figure reflects the salable quantity initially available after the beginning of the 2005–2006 marketing year due to the 2,913 pound reduction in the industry allotment base to 1,932,542 pounds.

(F) Increase in Allotment Percentage—20 percent. The Committee recommended a 20 percent increase at its August 24, 2005, meeting.

(G) 2005–2006 Allotment Percentage—55 percent. This figure is derived by adding the increase of 20 percent to the initial 2005–2006 allotment percentage of 35 percent.

(H) Calculated Revised 2005–2006 Salable Quantity—1,062,898 pounds. This figure is 55 percent of the revised 2005–2006 allotment base of 1,932,542 pounds.

(I) Computed Increase in the 2005–2006 Salable Quantity—386,508 pounds. This figure is 20 percent of the revised 2005–2006 allotment base of 1,932,542 pounds.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports given by the Committee manager from handlers who were not in attendance. The 2005–2006 marketing year began on June 1, 2005. Handlers have reported purchases and committed sales of 682,547 pounds of Scotch spearmint oil for the period of June 1, 2005, through August 24, 2005. This amount is 93 percent of the total sales for the five-year average of 736,991 pounds. Handlers estimated the total demand for the 2005–2006 marketing year could be between 917,745 pounds to 937,745 pounds. These amounts exceed the five-year average for an entire marketing year by 180,754 pounds to 200,754 pounds. Therefore, based on past history, the industry may not be able to meet market demand without this increase. When the Committee made its initial recommendation for the establishment of the Scotch spearmint oil salable quantity and allotment percentage for the 2005–2006 marketing year, it had anticipated that the year would end with an ample available supply.

Native Spearmint Oil Recommendation

(A) Estimated 2005–2006 Allotment Base—2,169,894 pounds. This is the estimate on which the original 2005–2006 Native spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2005–2006 Allotment Base—2,169,362 pounds. This is 532 pounds less than the estimated allotment base of 2,169,894 pounds. This is less because some producers failed to produce all of their 2004–2005 allotment.

(C) Initial 2005–2006 Allotment Percentage—40 percent. This was recommended by the Committee on October 6, 2004.

(D) Initial 2005–2006 Salable Quantity—867,958. This figure is 40 percent of 2,169,894 pounds.

(E) Initial Adjustment to the 2005–2006 Salable Quantity—867,745 pounds. This figure reflects the salable quantity initially available after the beginning of the 2005–2006 marketing year due to the 532 pound reduction in the industry allotment base to 2,169,362 pounds.

(F) Increase in Allotment Percentage—7 percent. The Committee recommended a 7 percent increase at its August 24, 2005, meeting.

(G) 2005–2006 Allotment Percentage—47 percent. This figure is derived by adding the increase of 7 percent to the initial 2005–2006 allotment percentage of 40 percent.

(H) Calculated Revised 2005–2006 Salable Quantity—1,019,600 pounds. This figure is 47 percent of the revised 2005–2006 allotment base of 2,169,362 pounds.

(I) Computed Increase in the 2005–2006 Salable Quantity—151,855 pounds. This figure is 7 percent of the revised 2005–2006 allotment base of 2,169,362 pounds.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports given by the Committee manager from handlers who were not in attendance. The 2005–2006 marketing year began on June 1, 2005. Handlers have reported purchases and committed sales of 742,221 pounds of Native spearmint oil for the period of June 1, 2005, through August 24, 2005. This amount is 77 percent of the total sales for the five-year average of 962,377 pounds. Handlers estimated the total demand for the 2005–2006 marketing year could be between 1,122,221 pounds to 1,222,221 pounds. These amounts exceed the five-year average for an entire marketing year by 159,844 pounds to 259,844 pounds. Therefore, based on past history, the industry may not be able to meet market demand without this increase. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2005–2006 marketing year, it had anticipated that the year would end with an ample available supply.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Scotch spearmint oil for the 2005–2006 marketing year should be increased to 1,062,898 pounds and 55 percent, respectively. In addition, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2005–2006 marketing year should be increased to 1,019,600 pounds and 47 percent, respectively.

This rule relaxes the regulation of Scotch and Native spearmint oil and will allow for market needs and improve producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2005–2006 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement

whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2005–2006 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The increases in the Scotch and Native spearmint oil salable quantities and allotment percentages allows for anticipated market needs for both classes of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

Initial Regulatory Flexibility Analysis

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

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

There are eight spearmint oil handlers subject to regulation under the order, and approximately 56 producers of Scotch spearmint oil and approximately 88 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 14 of the 56 Scotch spearmint oil producers and 18 of the 88 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This rule revises the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle for, producers during the 2005–2006 marketing year, which ends on May 31, 2006. This rule increases the Scotch spearmint oil salable quantity from 677,409 pounds to 1,062,898 pounds, and the allotment percentage from 35 percent to 55 percent. In addition, this rule increases the Native spearmint oil salable quantity from 867,958 pounds to 1,019,600 pounds, and the allotment percentage from 40 percent to 47 percent.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The recommended allotment percentages, upon which 2005–2006 producer allotments are based, are 55 percent for Scotch (a 20 percentage point increase from the original allotment percentage of 35 percent) and 47 percent for Native (a 7 percentage point increase from the original salable percentage of 40 percent). Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint oil. The econometric model estimated a $1.38 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed if volume controls were not used (*i.e.*, if the salable percentages were set at 100 percent).

Loosening the volume control restriction by increasing the allotment percentages resulted in this revised price decline estimate of $1.38 per pound if volume controls were not used. A previous price decline estimate of $1.60 per pound was based on the 2005–2006 allotment percentages (35 percent for Scotch and 40 percent for Native) published in the **Federal Register** on March 24, 2005 (70 FR 14969). The 2004 Far West producer price for both classes of spearmint oil was $9.48 per pound.

The surplus situation for the spearmint oil market that would exist without volume controls in 2005–2006 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

Based on projections available at the meeting, the Committee considered alternatives to the increases. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also looked at various increases ranging from 0 percent to 100 percent. The Committee reached its recommendations to increase the salable quantity and allotment percentage for Scotch and Native spearmint oil after careful consideration of all available information, and believes that the levels recommended will achieve the objectives sought. Without the increases, the Committee believes the industry would not be able to meet market needs.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

Further, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 24, 2005, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on a change to the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2005–2006 marketing year. Any comments received will be considered prior to finalization of this rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Scotch and Native spearmint oil that may be marketed during the marketing year which ends on May 31, 2005; (2) the current quantity of Scotch and Native spearmint oil may be inadequate to meet demand for the remainder of the marketing year, thus making the additional oil available as soon as is practicable is beneficial to both handlers and producers; (3) the Committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 985.224 paragraph (a) and (b) are revised to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 985.224 Salable quantities and allotment percentages—2005–2006 marketing year.

* * * * *

(a) Class 1 (Scotch) oil—a salable quantity of 1,062,898 pounds and an allotment percentage of 55 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,019,600 pounds and an allotment percentage of 47 percent.

Dated: September 20, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–19084 Filed 9–21–05; 9:55 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 45

[Docket No. RM05–6–000; Order No. 664]

Commission Authorization To Hold Interlocking Positions

September 16, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to clarify the time frame within which individuals must file applications for authorization to hold interlocking positions, and the information provided in certain informational reports required for automatic authorization of certain interlocking positions.

EFFECTIVE DATE: The amended regulations will become effective October 24, 2005.

FOR FURTHER INFORMATION CONTACT:

James Akers (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8101.

Melissa Mitchell (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6038.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

1. In this final rule, to meet its responsibility under section 305(b) of the Federal Power Act (FPA),[1] the Commission amends part 45 of its regulations [2] to clarify that individuals seeking Commission authorization to hold interlocking positions must obtain such authorization from the Commission prior to holding that interlocking position. The Commission also clarifies the regulations to define

[1] 16 U.S.C. 825d(b).

[2] 18 CFR part 45.

the term ''holding'' as acting as, serving as, voting as, or otherwise performing or assuming the duties and responsibilities of the interlocking positions requiring Commission authorization.

2. The Commission also amends its regulations to require that individuals filing an informational report for automatic authorization under section 45.9 of the Commission's regulations [3] must file such informational report prior to holding that interlocking position and that the informational report must include a statement or affirmation that the individual has not yet assumed the duties or responsibilities of the position for which the automatic authorization is sought.

Discussion

3. Section 305(b) of the FPA prohibits individuals from concurrently holding positions as an officer or director of more than one public utility; or to hold the positions of officer or director of a public utility and of an entity authorized by law to underwrite or participate in the marketing of public utility securities [4]; or to hold the positions of officer or director of a public utility and a company supplying electrical equipment to that particular public utility, unless the holding of such positions has been authorized by the Commission upon a showing that neither public nor private interests will be adversely affected thereby.

4. The Commission implemented Congress' mandate in part 45 of the Commission's regulations.[5] Section 45.3 of the regulations currently states that:

> the holding of positions within the purview of [section 305(b)] shall be unlawful unless the holding shall have been authorized by order of the Commission. Nothing in this part shall be construed as authorizing the holding of positions prior to the order of the Commission on application therefore. Applications shall be filed within 30 days after election or appointment to any positions within the purview of section 305(b) of the Act.'' [6]

The Commission has stated in previous orders that it does not look favorably on late-filed applications for authorization to hold interlocking positions.[7]

5. In examining Congress' intent in enacting section 305(b) of the FPA, the Commission has explained that ''among the evils sought to be eliminated by the enactment of section 305(b)'' was ''the lack of arm's length dealings between public utilities and organizations furnishing financial services or electrical equipment.'' [8] In this regard, the legislative history indicates that, with respect to section 305(b) of the FPA, ''Congress exhibited a relentless interest in, bordering on an obsession with, the evils of concentration of economic power in the hands of a few individuals. It recognized that the conflicts of interest stemming from the presence of the same few persons on boards of companies with intersecting interests generated subtle and difficult-to-prove failures in the arm's length bargaining process.'' [9]

6. While the statute requires prior authorization to hold otherwise proscribed interlocking positions, the regulations allow for applications to be filed up to 30 days after election or appointment to the interlocking position and also do not expressly address how applications filed more than 30 days late should be treated. The regulations do not allow for serving in the covered positions before receiving Commission authorization. Therefore, in a Notice of Proposed Rulemaking (NOPR) issued on March 25, 2005, the Commission proposed to clarify section 45.3 of the Commission's regulations, to provide that an application must be filed, and authorization granted, before a person may hold otherwise proscribed interlocking positions, and that late-filed applications will be denied.[10]

7. In addition to clarifying section 45.3, the Commission also proposed to clarify section 45.9, which governs automatic authorization for certain interlocking positions. Section 45.9 of the Commission's regulations provides that a person seeking to hold the positions of (1) an officer or director of a public utility and officer or director of another public utility (or utilities), where the same holding company owns, directly or indirectly, wholly or in part, the other public utility, (2) an officer or director of two public utilities, if one utility is owned, wholly or in part, by the other or (3) an officer or director of more than one public utility, if such person is already authorized under part 45 to hold different positions where the interlock involves affiliated public utilities, may apply for ''automatic authorization'' to hold the interlocking positions.[11] The regulations require that, as a condition of such authorization, persons seeking such authorization under section 45.9 must file with the Commission an informational report containing the full name and business address of the person requesting the authorization, the names of all public utilities that the person holds or seeks to hold positions with, the names of any other entity that the person serves as an officer or director of and a brief description of those positions, and an explanation of the corporate relationship between or among the public utilities involved. The informational report is required to be filed ''not later than 30 days after assuming the duties of the position.'' [12]

8. The NOPR proposed to clarify section 45.9 of the Commission's regulations, to require that the informational reports required for automatic authorization under section 45.9 must be filed with the Commission prior to an officer or director assuming the duties and responsibilities of the requested interlocking positions. The NOPR proposed that individuals who file informational reports late will not be entitled to automatic authorization under section 45.9, as the individual will not have satisfied the condition of timely submission of an informational report.

9. Finally, the Commission requested, in the NOPR, comments on the possibility of no longer granting entities (or individuals who serve as officers or directors of entities) that have market-based rate authority a waiver of the full requirements of part 45.

10. The NOPR was published in the **Federal Register** [13] on April 5, 2005. Comments were due on or before June 5, 2005.

A. Prior Filing and Approval for Section 45.3 Applications

(i) Comments

11. The California Electricity Oversight Board (CEOB) supports the proposed rule and states that the proposed rule comports completely with the Congressional intent behind

[3] 18 CFR 45.9.

[4] However, section 305(b)(2) of the FPA exempts from this prohibition certain interlocks between public utilities and securities underwriters and marketers.

[5] 18 CFR part 45.

[6] 18 CFR 45.3.

[7] *William T. Coleman*, 21 FERC ¶ 61,242 at 61,535 n.3 (1982).

[8] Paul H. Henson, 51 FERC ¶ 61,104 at 61,231 (1990), *citing John Edward Aldred*, 2 FPC 247, 261 (1940).

[9] *Hatch* v. *FERC*, 654 F.2d 825, 831 (D.C. Cir. 1981) (*Hatch*), *citing, e.g.* 79 Cong. Rec. 10379 (1935) (remarks of Representative Lea), 79 Cong. Rec. 8524 (1935) (remarks of Sen. Norris), and 15 U.S.C. 79a(b)(2) (2000); *see also Paul H. Henson*, 51 FERC ¶ 61,104 at 61,230 n.5 (1990) (discussing this quotation).

[10] *See Commission Authorization to Hold Interlocking Positions*, Notice of Proposed Rulemaking, 70 Fed. Reg. 17,219 (April 5, 2005) FERC Stats. & Regs. ¶ 32,580 (2005).

[11] Automatic authorization is only for interlocking positions between two or more public utilities; it does not authorize a person to hold an interlocking position with, for example, an electrical equipment supplier. For those interlocking positions, an application under section 45.3 is required.

[12] 18 CFR 45.9(b).

[13] 70 FR 17,219 (April 5, 2005).

section 305(b) of the FPA and the public policy of preventing abuses due to conflicts of interest. The CEOB argues that, under the language of section 305(b), individuals who seek to hold interlocking positions are prohibited from holding interlocking positions until the Commission determines that ''neither public nor private interests will be adversely effected.'' Based on this language, the CEOB supports the Commission's proposed rule to require applicants to file with the Commission prior to holding interlocking positions.

12. The Midwest Independent Transmission System Operator, Inc. (Midwest ISO) supports the proposed rule and states that requiring applicants for interlocking positions to file for Commission authorization prior to holding the interlocking positions will ensure greater transparency in the nation's utility industry and promote and preserve independence. The Midwest ISO also comments that the Commission should expand the scope of the proposed rule to include officers of non-jurisdictional utilities seeking to serve on the Board of Directors of a regional transmission organization (RTO) or independent system operator (ISO). The Midwest ISO states that allowing officers of non-jurisdictional utilities to serve on the Boards of Directors of RTOs and ISOs without prior Commission authorization ''opens the door to partial stakeholder Boards, and calls into question a public utility's true independence.'' [14] For these reasons, the Midwest ISO supports the proposed rule and requests that the Commission expand the scope of the existing rules.

13. The Edison Electric Institute (EEI) opposes the proposed rule and states that the existing rules adequately meet the requirements of section 305(b).[15] EEI argues that the existing rules strike a reasonable balance between the requirements of section 305(b) and the burden those requirements place on individuals and companies. While EEI agrees that officers and directors need to comply with the Commission's regulations, they ''are not aware of a widespread failure to comply'' with the regulations.[16] EEI also states that it is important that the Commission retain the 30-day window to file interlock applications since requiring individuals to file for authorization prior to holding interlocking positions would ''pose significant practical difficulties and would disrupt the ability of public utilities and their affiliates to maintain functioning boards of directors and officer corps in a timely and effective manner.'' [17] EEI argues that the danger of harm from interlocks is small, and that other entities provide oversight of corporate officers, including the Securities and Exchange Commission and the New York Stock Exchange.[18] In addition to arguing that the 30-day post-election timeframe is consistent with the statute, EEI requests that the Commission extend the window within which an individual may file from 30 days to 60 days after election or appointment to a covered position.[19]

14. AEP, NUSCO, Reliant Energy Inc. (Reliant) and Consumers Energy filed comments opposing the proposed rules. They state that requiring applications prior to holding a covered position will make it difficult for companies to fill officer or director vacancies in a timely fashion and lead to an inefficient selection process with the likely result of not selecting the most qualified individuals for the positions. This is exacerbated, they claim, by the fact that the companies and individuals often do not know in advance of election or appointment who will be selected to serve as an officer or director.

(ii) Commission Determination

15. The Commission will adopt the proposed regulations with one modification. We revise the proposed section 45.3 to reflect that the definition of the term ''holding'' applies throughout part 45 and not just to section 45.3.

16. The proposed regulations requiring that individuals apply for and receive authorization to hold interlocking positions before holding the positions will make the Commission's regulations consistent with the statute. Section 305(b) states that no person may hold interlocking positions ''unless the holding of such positions shall have been authorized by order of the Commission * * *'' [20]

17. The Commission disagrees that requiring such prior authorization will make it difficult for companies to fill vacancies or disrupt utilities' ability to maintain functioning boards. We find the possibility that a board or officer corps would be faced with so many vacancies at one time as to adversely effect a company's ability to function very unlikely. While, as stated by EEI, the Commission may not be the only entity that requires filing and approval of corporate officers and directors to maintain corporate oversight, the Commission was expressly charged by Congress with the responsibility to oversee officers and directors of public utilities and we will not and cannot delegate that responsibility to another entity.

18. In response to EEI's comment that it ''is not aware of a widespread failure to comply'' [21] with section 305(b), section 305(b) was intended to be prophylactic in nature and to prevent any abuse of corporate positions and control. Furthermore, the fact that EEI may not be ''aware of a widespread failure to comply'' [22] with the statute and regulations does not speak to the need to clarify the regulations and bring them into conformity with the statute. The statute speaks of *prior* authorization and that is what the regulations should require; *prior* authorization, not 30 days and not 60 days after the fact.

19. In response to Midwest ISO's comments that the Commission should expand the scope of the proposed regulations to include officers of non-jurisdictional utilities seeking to serve on RTO or ISO boards, the Commission finds that section 305(b) only limits interlocking directorates involving public utility boards and does not authorize the Commission to bar interlocking directorates involving non-public utility boards of directors. The Midwest ISO request goes to the issue of the independence of RTO and ISO boards. That issue is not within the purview of section 305(b) or part 45 of the Commission's regulations, and thus of this proceeding.

B. Prior Filing of Section 45.9 Informational Reports and Affirmation

(i) Comments

20. EEI opposes the proposed change to section 45.9, requiring individuals seeking automatic authorization to file their informational report prior to holding the interlocking position, for the same reasons explained above. Additionally, EEI requests that the Commission not require an informational report in deference to the information required on the annual Form 561.[23] Furthermore, EEI requests that the Commission clarify that section 45.9 applies to both registered and exempt holding companies.[24]

[14] Midwest ISO Comments at 6.

[15] American Electric Power Company (AEP), Northeast Utilities Service Company (NUSCO), Pepco Holdings, Inc. (PHI Companies), Consumers Energy Company (Consumers Energy) and Exelon Corporation (Exelon) all support the comments filed by EEI.

[16] EEI Comments at 3.

[17] *Id.* at 14.

[18] *Id.* at 10–11.

[19] *Id.* at 16, 25.

[20] 16 U.S.C. 825d(b)(1).

[21] EEI Comments at 14.

[22] *Id.*

[23] *Id.* at 5; *see* 18 CFR part 46.

[24] *Id.* at 21.

21. Keyspan Corporation (Keyspan), AEP, Sempra Energy (Sempra), NUSCO, Reliant, NiSource, Inc. (NiSource), PHI Companies and Exelon filed comments opposing the proposed rules requiring individuals seeking automatic authorization under section 45.9 of the regulations to file their informational reports prior to holding the interlocking positions and also requiring information on the dates the individual assumed the interlocking positions. They state that requiring informational reports prior to holding the positions would unduly restrict corporate and personnel options and jeopardize companies' effective participation in energy markets because changes on corporate boards often occur suddenly and without prior notice. Therefore, they argue that a requirement that individuals must file their informational reports prior to holding interlocking positions would be unduly burdensome. Sempra, Keyspan and NiSource state that the proposed rules are inconsistent, requiring informational reports for automatic authorization prior to holding interlocking positions and also requiring additional information on when the individual assumed the positions for which authorization is granted.[25] NUSCO and AEP state that additional information is not necessary as the currently required informational report, together with the information required on Form 561, is sufficient.[26] Exelon argues that the informational report is duplicative of the information provided in Form 561 and therefore, the informational report should be eliminated in lieu of Form 561.

(ii) Commission Determination

22. The Commission will adopt the proposed regulations, with two exceptions, discussed below.

23. Section 45.9 of the Commission's regulations requires that individuals seeking automatic authorization need only file with the Commission, in lieu of the application otherwise required, an informational report stating the individual's name and business address, the names of all public utilities with which the person currently holds or will hold the positions of officer or director and a description of those positions, the names of any other entity of which the person serves as officer or director and a description of those positions and a brief explanation of the corporate relationship between or among the interlocking public utilities.[27] Upon the filing of a completed informational report under section 45.9, the individual is automatically authorized to hold the interlocking positions listed in the informational report. Form 561, in contrast, is an annual report required by the Commission, and does not contain the same information. The annual Form 561 is not intended nor could it be an appropriate substitute for the need to make a contemporaneous filing to comply with the requirements of part 45 of the Commission's regulations. Therefore, the Commission finds that the informational reports filed under section 45.9 are not duplicative of Form 561 and it would not be appropriate to rely solely on Form 561.

24. Moreover, since the automatic authorization is granted upon receipt of filed, completed informational reports, we do not agree that requiring the informational report prior to holding interlocking positions would be unduly burdensome or restrict a companies' corporate and personnel options. Additionally, for those interlocking positions covered by section 45.9, *e.g.,* officers or directors of two or more affiliated public utilities,[28] it is a one-time filing requirement and, once authorization has been given, no further filings are required to hold further interlocking positions of the same type.[29] Again, therefore, the obligation to make such a filing is not unduly burdensome.

25. In response to several comments that the proposed regulations are inconsistent by requiring the identification of the date the individual assumed the positions at issue in an informational report filed prior to holding such positions, we agree. The intent behind the proposed language was to provide the Commission with information to assist in determining whether the informational report was timely filed or not. Therefore, we will not require identification of the date the individual assumed the positions at issue. Instead, we will require a statement or affirmation that the individual has not yet performed or assumed the duties or responsibilities of the position which necessitated the filing of the informational report as of the date of such report. We believe this requirement will provide the Commission with the information it needs with the least burden upon the applicants.

26. We also provide additional clarifying language in section 45.9, explaining that the informational report shall be filed prior to performing or assuming the duties and responsibilities of the interlocking position. Furthermore, we clarify that the informational reports must also comply with the filing requirements outlined in section 45.7.

C. Treatment of Existing Applications and of Late-Filed Applications

(i) Comments

27. Many commentors state that the proposal to automatically deny any late filed applications is unduly harsh.[30] Exelon states that automatic denial of late applications is ''draconian'' and urges the Commission to consider another penalty for untimely applications, such as a fine.[31] Many commentors urge the Commission to continue evaluating applications on a case-by-case basis, and to permit late applications where the applicant made a good faith effort to file on time.

28. EEI also argues that the Commission should not institute a rule that automatically denies late-filed applications; rather, the Commission should continue to evaluate late-filed applications on a case-by-case basis, and also provide an amnesty period to allow individuals to file applications under the current regulations and further assure all individuals currently holding Commission authorized interlocking positions that they will not need to refile under the new rules.[32]

(ii) Commission Determination

29. The Commission will adopt the proposed regulations.

30. While many commentors stated that automatic denial of late-filed applications is unduly harsh, the statute provides that individuals seeking to hold interlocking positions must receive Commission authorization prior to assuming the interlocking positions.[33] To permit individuals to hold interlocking positions before receiving Commission authorization would frustrate section 305(b) and the prophylactic nature of section 305(b). Therefore, the Commission will automatically deny all late-filed applications for authorization to hold interlocking positions. As for an amnesty period, we have long stressed the need to timely file,[34] we repeated

[25] Sempra Comments at 3; Keyspan Comments at 3; NiSource Comments at 5–6.

[26] AEP Comments at 5; NUSCO Comments at 3.

[27] *See* 18 CFR 45.9(c).

[28] *See* 18 CFR 45.9(a); *accord* NOPR at P 8.

[29] *See* 18 CFR 45.9(b).

[30] Sempra Comments at 4; Reliant Comments at 7.

[31] Exelon Comments at 3.

[32] EEI Comments at 23.

[33] Indeed, section 305(b) provides that ''it shall be unlawful for any person to hold'' interlocking positions ''unless the holding of such positions shall have been authorized by order of the Commission.''

[34] *See supra* note 7.

the need to timely file in June 2004, [35] and this NOPR has been pending since March 25, 2005, and the regulations adopted here will not become effective until 30 days from the date of publication in the **Federal Register**. That is amnesty enough.

31. Regarding any currently pending applications for Commission authorization to hold interlocking positions, the Commission intends to act on these applications on a case-by-case basis. Regarding individuals already authorized to hold interlocking positions, those individuals need not refile under the new regulations to continue to hold their previously authorized interlocking positions (unless and until, of course, they seek to assume additional interlocking positions).

D. Waiver of Full Requirements of Part 45 for Officers and Directors of Sellers With Market-Based Rate Authority

(i) Comments

32. EEI opposes any change that would cease waivers of the full requirements of part 45 for persons who are officers of directors of entities authorized to charge market-based rates, and to the contrary requests that the Commission include such waivers in the regulations rather than granting them on a case-by-case basis.[36] EEI argues that entities with market-based rates have already passed the Commissions screens for market power and affiliate transactions, and therefore, should not need to go through the duplicative process of having their officers and directors file a full application under part 45 of the Commission's regulations.[37]

33. Sempra, NUSCO, Reliant, Edison Mission Energy and Morgan Stanley Capital Group, Inc. (Morgan Stanley) all filed comments opposing the possibility that the Commission may cease granting waivers of the full requirements of Part 45 in orders granting market-based rate authority. They all state that companies that receive market-based rate authority undergo significant scrutiny and must pass the Commission's market power and affiliate abuse screens to ensure that entities with market-based rate authority will not abuse any power they may have. Morgan Stanley requests that the Commission clarify aspects of the waivers, such as specifying the information required when filing the abbreviated application and develop a standardized format to submit the information to the Commission.[38] Morgan Stanley also states that the Commission should clarify that the abbreviated filings may be made within 30 days of holding the interlocking positions.[39] Finally, Morgan Stanley states that, if the Commission eliminates the practice of granting waivers of the full requirements of part 45, the Commission should apply section 45.9 to power marketers.[40]

(ii) Commission Determination

34. The purpose of an application for authorization to hold interlocking positions under part 45 is to allow the Commission to review an individual officer or director's proposed interlock in order to find that such individual's service with more than one company will not adversely affect either public or private interests. The fact that a particular company may have ''passed'' the Commission's market-based rate screens says little about whether to grant authorization for an individual officer or director to hold interlocking positions under section 305(b). The Commission, moreover, does not consider part 45 to be a burdensome regulation. Individuals that are officers or directors of entities that do not have market-based rate authority must fulfill the full requirements of part 45. The Commission sees no reason to continue to treat these entities differently and, as a result, we intend to no longer grant waivers of the full requirements of part 45 in our orders granting market-based rate authority. Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of part 45. Since we intend to no longer grant such waivers, there is no need to address Morgan Stanley's request for clarification.

35. In response to Morgan Stanley's request that the Commission should permit power marketers to apply for automatic authorization under section 45.9, we do not grant the request. Allowing persons who are officers or directors of power marketers to seek automatic authorization under section 45.9, simply because such entities are power marketers, would frustrate the prophylactic nature of section 305(b). Therefore, we will deny the request to permit individuals who are officers or directors of power marketers to file for automatic authorization under section 45.9 simply because such entities are power marketers.

36. With respect to an individual who currently is authorized to hold interlocking positions, that individual will not need to refile under the full requirements of part 45 to continue to hold such interlocking positions (unless and until, of course, that individual assumes different or additional interlocking positions).

E. Miscellaneous

(i) Comments

37. EEI requests that the Commission ''indicate that an application will be deemed approved if not acted on or flagged for Commission action within 30 or 60 days after the application is filed.'' [41] EEI also requests that the Commission provide clarity and guidance as to the factors it considers in reviewing interlocking position applications, to further assist companies in their search for appropriate and qualified officers and directors.[42] To address all of the concerns raised by EEI, it requests the Commission hold a technical conference with industry members.[43]

(ii) Commission Determination

38. The Commission will amend the proposed regulatory text to provide that absent Commission action within 60 days of filing a completed application to hold interlocking positions, an application will be deemed granted. However, the Commission will reserve the right to revoke such authorization or require further proof that such interlocking position will not adversely affect public nor private interests.

39. In response to EEI's request for clarity and guidance as to the factors the Commission seeks to address in reviewing applications for authorization to hold interlocking positions, the Commission directs EEI, and all other interested parties, to the extensive case law on this subject developed over the past 70 years.

40. Finally, as we have answered all parties' comments and concerns, we see no need to hold a technical conference to address such matters.

Information Collection Statement

41. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency.[44] The information collection requirements in this final rule are identified under the Commission's data collection, FERC–

[35] Order Advising Public Utilities and their Officers and Directors of Federal Power Act Section 305(b) Obligations, 107 FERC ¶ 61,290 (2004).

[36] EEI Comments at 20.

[37] *Id.* at 8.

[38] Morgan Stanley Comments at 18.

[39] *Id.*

[40] *Id.* at 20.

[41] *Id.* at 18.

[42] *Id.* at 19.

[43] *Id.*

[44] 5 CFR 1320.11.

520, ''Application for Authority to Hold Interlocking Positions.'' Under section 3507(d) of the Paperwork Reduction Act of 1995,[45] the reporting requirements in the subject rulemaking will be submitted to OMB for review.

42. Respondents subject to the filing requirements of this final rule will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number. ''Display'' is defined as publishing the OMB control number in regulations, guidelines, forms or other issuances in the **Federal Register** (for example, in the preamble or regulatory text for the final rule containing the information collection.)[46]

Public Reporting Burden: In the NOPR, the Commission estimated that requiring the additional information would have a minimal effect on respondents but sought comments about the time and costs to comply with the requirements. The Commission received fourteen comments on its NOPR but none specifically addressing its estimates. Therefore, the Commission will retain its initial estimates. However, several commentors stated that requiring informational reports prior to persons holding positions would be a burdensome task. Other commentors believe that the information required in the informational reports duplicates the information reported on the Commission's FERC Form 561. The Commission has addressed these concerns elsewhere in the preamble of this final rule. The Commission is submitting a copy of this final rule to OMB for review and approval. In their notice of August 16, 2005, OMB took no action on the NOPR, instead deferring their approval until review of the final rule.

Title: FERC–520 ''Application for Authority to Hold Interlocking Positions''.

Action: Proposed Data Collection.

OMB Control Nos. 1902–0083.

Respondents: Business or other for profit.

Necessity of the Information: The information collected under the requirements of FERC–520 is used by the Commission to implement the statutory provisions of section 305(b) of the FPA and implemented by the Commission in the Code of Federal Regulations under 18 CFR part 45. Under part 45, each person that desires to hold interlocking position(s) must submit an application to the Commission or, if qualified, comply with the requirements for automatic authorization. Section 305(b) of the FPA makes the holding of certain defined interlocking positions unlawful unless the Commission has authorized the holding of such interlocks, and requires the applicant to show, in a form and manner as prescribed by the Commission, that neither public nor private interests will be adversely affected by the holding of the positions.

43. The final rule clarifies: (1) The time at which a person must apply for authorization to hold interlocking positions under section 305(b) of the FPA and part 45 of the Commission's regulations; (2) clarifies automatic authorizations for certain interlocking positions for which authorization is requested; and (3) requires a statement or affirmation that an individual has not yet assumed the duties or responsibilities of the position which necessitated the filing of an informational report under section 45.9. It is necessary to make these clarifications and have this statement or affirmation to ensure the Commission receives timely submissions and also has sufficient information to make a determination as to the appropriateness of holding the interlocking positions.

44. Interested persons may obtain information on this information collection by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Attention: Michael Miller, Officer of the Executive Director, phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*.

45. Comments concerning this information collection can be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4650, fax: (202) 395–7285.]

Environmental Analysis

46. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[47] As we stated in the NOPR, the Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are procedural, ministerial, or internal management programs or decisions,[48] as well as actions under section 305(b) of the FPA.[49] This Final Rule clarifies the time when, and information which, an individual seeking Commission authorization to hold interlocking positions must file. Therefore, this rule falls within the categorical exemptions provided in the Commission's regulations, and, as a result, neither an environmental impact statement nor an environmental assessment is required.

Regulatory Flexibility Act Analysis or Certification

47. The Regulatory Flexibility Act of 1980 (RFA)[50] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[51] The Commission is not required to make such analyses if a rule would not have such an effect.

48. The Commission does not believe that this final rule would have such an impact on small entities. Most persons affected by this final rule are officers or directors of companies that do not fall within the RFA's definition of a small entity. Further, this final rule does not substantially change the current requirements and regulations that persons who are officers and directors must comply with. Therefore, the Commission certifies that this rule will not have a significant impact on a substantial number of small entities.

Document Availability

49. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern Time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

50. From the Commission's Home Page on the Internet, this information is available in the Commission's document

[45] 44 U.S.C. 3507(d).

[46] *See* 1 CFR 21.35; 5 CFR 1320.3(f)(3).

[47] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[48] 18 CFR 380.4(a)(1).

[49] 18 CFR 380.4(a)(16).

[50] 5 U.S.C. 601–12.

[51] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 MWh. 13 CFR 121.201.

management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

51. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (email at *FERCOnlineSupport@ferc.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

Effective Date and Congressional Notification

52. This Final Rule will take effect October 24, 2005. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[52] The Commission will submit this final rule to both houses of Congress and the General Accountability Office.[53]

List of Subjects in 18 CFR Part 45

Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 45, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 45—APPLICATION FOR AUTHORITY TO HOLD INTERLOCKING POSITIONS

■ 1. The authority citation for part 45 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 3 CFR 142.

■ 2. Section 45.3 is revised to read as follows:

§ 45.3 Timing of filing application.

(a) The holding of positions within the purview of section 305(b) of the Act shall be unlawful unless the holding shall have been authorized by order of the Commission. Nothing in this part shall be construed as authorizing the holding of positions within the purview of section 305(b) of the Act prior to order of the Commission on application therefor. Applications must be filed and authorization must be granted prior to holding any interlocking positions within the purview of section 305(b) of the Act; late-filed applications will be denied. The term ''holding'', as used in this part, shall mean acting as, serving as, voting as, or otherwise performing or assuming the duties and responsibilities of officer or director within the purview of section 305(b) of the Act.

(b) Absent Commission action within 60 days of a completed application to hold interlocking positions, an application will be deemed granted. Such authorization is subject to revocation by the Commission after due notice to applicant and opportunity for hearing. In any such proceeding, the burden of proof shall be upon the applicant to show that neither public nor private interests will be adversely affected by the holding of such positions.

■ 3. In § 45.9, paragraph (b) is revised and paragraph (c)(5) is added to read as follows:

§ 45.9 Automatic authorization of certain interlocking positions.

* * * * *

(b) *Conditions of authorization.* As a condition of authorization, any person authorized to hold interlocking positions under this section must submit, prior to performing or assuming the duties and responsibilities of the position, an informational report in accordance with paragraph (c) of this section, unless that person is already authorized to hold interlocking positions of the type governed by this section. Failure to timely file the informational report will constitute a failure to satisfy this condition, and will constitute automatic denial.

(c) *Informational report.* * * *

(5) A statement or an affirmation that the applicant has not yet performed or assumed the duties or responsibilities of the position which necessitated the filing of this informational report.

[FR Doc. 05–19002 Filed 9–22–05; 8:45 am]

BILLING CODE 6717–01–P

[52] *See* 5 U.S.C. 804(2).

[53] *See* 5 U.S.C. 801(a)(1)(A).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM05–33–000; Order No. 663]

Revision of Rules of Practice and Procedure Regarding Issue Identification

Issued September 16, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations regarding filings. The regulations are revised to clarify that any issues that the movant wishes the Commission to address must be specifically identified in a section entitled ''Statement of Issues.'' This change will benefit the Commission by clarifying issues raised, and benefit movants by ensuring issues are addressed promptly and preserved for appeal.

EFFECTIVE DATE: The rule will become effective September 23, 2005.

FOR FURTHER INFORMATION CONTACT: Carol C. Johnson, Office of the General Counsel, GC–13, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8521.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

1. The Federal Energy Regulatory Commission (Commission) is revising its rules of practice and procedure to clarify that any issues a movant wishes the Commission to address must be clearly set forth in a section entitled ''Statement of Issues,'' that will reference representative Commission and court precedent on which the participant is relying. While the current rules require that pleadings include ''[t]he position taken by the participant filing any pleading * * * and the basis in fact and law for such position,'' the Commission has found that movants sometimes fail to specify the issues they want the Commission to address, or the case law supporting their position. 18 CFR 385.203(a)(7). This revision will benefit movants, and other parties to the proceeding, as well as the Commission.

2. The way to ensure that an issue is addressed is for a movant to place it squarely before the Commission in a filing. Under the Administrative

Procedures Act (APA), 5 U.S.C. 554(b)(3), ''[w]hen private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law * * *.'' These amendments are consistent with that provision of the APA in that they require that a movant identify with specificity those issues he is raising with the Commission, and provide the applicable legal authority supporting his position.

3. This rule will benefit all participants. Other parties will know with certainty which issues to address in any responsive pleadings. The Commission will know with certainty the issues being raised and the legal support cited as supporting that issue, enabling the Commission to respond promptly and thoroughly to such issues. Finally, movants will benefit by placing the issue squarely before the Commission for resolution.

4. There have been numerous instances where appeals have been denied because an appellant failed to clearly raise an issue before the Commission on rehearing. *See, e.g., California Dep't of Water Resources* v. *FERC,* 341 F.3d 906, 911(9th Cir. 2003) (issue not preserved for review where petitioner ''raised the issue in a single sentence at the end of an unrelated section of its request for rehearing, without citing the statutory language it now urges [the court of appeals] to consider.''); *Intermountain Municipal Gas Agency* v. *FERC,* 326 F.3d 1282, 1285 (D.C. Cir. 2003); *Coalition for the Fair and Equitable Regulation of Docks on the Lake of the Ozarks* v. *FERC,* 297 F.3d 771, 777 (8th Cir. 2002) (declining to find jurisdiction where petitioner's ''brief does not show that it raised the * * * arguments in any recognizable form''). Both the Natural Gas Act and the Federal Power Act require that issues be presented with specificity to the Commission on rehearing prior to any court appeal. 15 U.S.C. 717r(b) (''No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure to do so.''); 16 U.S.C. 825l(a) (''The application for rehearing shall set forth specifically the ground or grounds upon which such application is based * * *. No proceeding to review any orders of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.''). This is a threshold issue; courts have found no jurisdiction to address issues that were not sufficiently raised in a request for rehearing. *See, e.g., Intermountain* v. *FERC,* 326 F.2d at 1285 (concluding the court lacked jurisdiction to address an issue because ''so general and vague statement'' does not satisfy the requirement in the Natural Gas Act that objections be ''specifically urged.'') (citations omitted).

5. The general rules regarding content of pleadings are found in Rule 203, Content of pleadings and tariff or rate filings. 18 CFR 385.203. Rule 202 defines pleadings to include ''any application, complaint, petition, protest, notice of protest, answer, motion, and any amendment or withdrawal of a pleading.'' 18 CFR 385.202.[1] To date, § 385.203(a)(7) has required that each pleading include, as appropriate, ''[t]he position taken by the participant filing any pleading, to the extent known when the pleading is filed, and the basis in fact and law for such position.'' The Commission is revising this provision to specify that the issues be set forth in a separate titled section. Revised § 385.203(a)(7) requires that pleadings include: ''[t]he position taken by the participant filing any pleading, to the extent known when the pleading is filed, and the basis in fact and law for such position, including a separate section entitled ''Statement of Issues,'' listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying.''

6. This final rule also adds language to Rule 713 to clarify that a ''Statement of Issues'' section is also required in requests for rehearing as well as pleadings. Existing Rule 713 states that requests for rehearing ''must * * * [c]onform to the requirements in Rule 203(a) which are applicable to pleadings.'' 18 CFR 713(c)(2). Therefore, the amended language in revised Rule 203 already applies to rehearings; however, the requirement for a section entitled ''Statement of Issues'' is important enough that it warrants repeating in the rule on requests for rehearing. Revised 18 CFR 385.713(c)(2) is, therefore, revised to clarify that requests for rehearing must ''conform to the requirements in Rule 203(a), which are applicable to pleadings, including, but not limited to, the requirement for a separate section entitled ''Statement of Issues,'' listing each issue in a separately enumerated paragraph that includes representative Commission and court precedent on which the party is relying.''

7. If a movant fails to list issues in a separate section entitled ''Statement of Issues,'' such issues will be deemed to have been waived. This is consistent with existing Rule 2001, which states that filings that fail to meet applicable statutes, rules or orders may be rejected in full or all or part of the filing may be stricken. 18 CFR 385.2001(b). Sections 385.203 and 385.713 are both revised to specify that issues that are not presented in separate paragraphs in the ''Statement of Issues'' section will be deemed waived.

8. The changes that are made in this rule are essentially formatting changes. The existing regulations already require issue identification and the basis in fact and law for positions asserted; this order simply requires that the issues and legal support for the position taken be set forth in a section entitled ''Statement of Issues,'' thus making it easier for staff and others to know with certainty the issues and legal arguments being raised.

Information Collection Statement

9. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule. 5 CFR 1320.12 (2005). This final rule contains no additional information reporting requirements, and is not subject to OMB approval.

Environmental Analysis

10. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[2] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural that do not substantially change the effect of the regulations being amended. This proposed rule is procedural in nature and, therefore, falls under this exception; consequently, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

11. The Regulatory Flexibility Act of 1980 (RFA)[3] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not

[1] Rule 202 specifically excludes comments on rulemakings or comments on offers of settlement from the definition of pleading.

[2] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[3] 5 U.S.C. 601–612.

required to make such analysis if a rule would not have such an effect. The Commission certifies that this rule will not have such an impact on small entities as it merely clarifies existing requirements. An analysis under the RFA therefore, is not required.

Document Availability

12. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

13. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

14. User assistance is available for eLibrary and the FERC's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3676 (toll free) or TTY (202) 502–8659, or e-mail at *FERCOnlineSupport@ferc.gov.* You may also contact the Public Reference Room at (202) 502–8371 or e-mail at *public.referenceroom@ferc.gov.*

Effective Date

15. These regulations are effective immediately upon publication in the **Federal Register.** In accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this Final Rule effective immediately upon publication. It concerns only a matter of procedure affecting formatting of filings.

16. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules does not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

17. The Commission is issuing this as a final rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only a clarification of a matter of agency procedure and will not significantly affect regulated entities or the general public.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 385, chapter I, title 18, Code of Federal Regulations, as follows.

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z; 3301–3432; 16 U.S.C. 791a–825r; 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1085 (1988).

■ 2. Section 385.203 is amended by revising paragraph (a)(7) to read as follows:

§ 385.203 Content of pleadings and tariff or rate filings (Rule 203).

(a) * * *

(7) The position taken by the participant filing any pleading, to the extent known when the pleading is filed, and the basis in fact and law for such position, including a separate section entitled ''Statement of Issues,'' listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying; any issue not so listed will be deemed waived;

* * * * *

■ 3. Section 385.713 is amended by revising paragraph (c)(2) to read as follows:

§ 385.713 Request for rehearing (Rule 713).

* * * * *

(c) * * *

(2) Conform to the requirements in Rule 203(a), which are applicable to pleadings, including, but not limited to, the requirement for a separate section entitled ''Statement of Issues,'' listing each issue in a separately enumerated paragraph that includes representative Commission and court precedent on which the party is relying; any issue not so listed will be deemed waived; and

* * * * *

[FR Doc. 05–19004 Filed 9–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 272

RIN 0790–AH90

Administration and Support Basic Research

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document provides general policy guidance and principles for the conduct of DoD Components' Basic Research programs. It implements a general policy on the support of scientific research that is contained in the 1954 Executive Order 10521, ''Administration of Scientific Research by Agencies of the Federal Government,'' March 17, 1954. It also implements guiding principles for the government-university research partnership that are contained in Executive Order 13185, ''To Strengthen the Federal Government-University Research Partnership.''

DATE: This final rule is effective September 23, 2005.

FOR FURTHER INFORMATION CONTACT: Mark Herbst, (703) 696–0372.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This is a ''significant regulatory Action,'' as defined in Executive Order 12866, in so far as the Office of Management and Budget reviewed and approved it for publication. This rule will not: (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 Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. 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.

List of Subjects in 32 CFR Part 272

National defense; Research; Science and technology.

■ Accordingly, Title 32 of the Code of Federal Regulations, Chapter I, Subchapter M is amended by revising part 272 to read as follows:

PART 272—ADMINISTRATION AND SUPPORT OF BASIC RESEARCH BY THE DEPARTMENT OF DEFENSE

Sec.

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 272.1 Purpose

This part implements the:

(a) Policy on the support of scientific research in Executive Order 10521, ''Administration of Scientific Research by Agencies of the Federal Government'' (3 CFR, 1954–1958 Comp., p. 183), as amended; and

(b) Guiding principles for the government-university research partnership in Executive Order 13185, ''To Strengthen the Federal Government-University Research Partnership'' (3 CFR 2000 Comp., p. 341).

§ 272.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the ''DoD Components'').

§ 272.3 Definition of basic research.

Basic research is systematic study directed toward greater knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications towards processes or products in mind. It includes all scientific study and experimentation directed toward increasing fundamental knowledge and understanding in those fields of the physical, engineering, environmental, and life sciences related to long-term national security needs. It is farsighted high payoff research that provides the basis for technological progress.

§ 272.4 Policy.

It is DoD policy that:

(a) Basic research is essential to the Department of Defense's ability to carry out its missions because it is:

(1) A source of new knowledge and understanding that supports DoD acquisition and leads to superior technological capabilities for the military; and

(2) An integral part of the education and training of scientists and engineers critical to meeting future needs of the Nation's defense workforce.

(b) The Department of Defense shall:

(1) Conduct a vigorous program of high quality basic research in the DoD Component laboratories; and

(2) Support high quality basic research done by institutions of higher education, other nonprofit research institutions, laboratories of other Federal agencies, and industrial research laboratories.

(c) The DoD Components' conduct and support of basic research shall be consistent with the principles stated in Appendix A to this part.

§ 272.5 Responsibilities.

(a) The Director of Defense Research and Engineering, under the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)), shall:

(1) Provide technical leadership and oversight, issue guidance for plans and programs; develop policies; conduct analyses and studies; and make recommendations for DoD basic research.

(2) Recommend approval, modification, or disapproval of the DoD Components' basic research programs and projects to eliminate unpromising or unnecessarily duplicative programs, and to stimulate the initiation or support of promising ones.

(3) Recommend, through the USD(AT&L) to the Secretary of Defense, appropriate funding levels for DoD basic research.

(4) Develop and maintain a metrics program to measure and assess the quality and progress for DoD basic research, a required element of which is an independent technical review:

(i) At least biennially; and

(ii) With participation by all the Military Departments and all the other DoD Components that have basic research programs.

(5) Monitor the implementation of this part and issue any additional direction and guidance that may be necessary for that purpose.

(b) The Directors of the Defense Agencies supporting basic research and the Secretaries of the Military Departments, within their organizational purview, shall implement this part.

Appendix A to Part 272—Principles for the Conduct and Support of Basic Research

1. Basic research is an investment. The DoD Components are to view and manage basic research investments as a portfolio, with assessments of program success based on aggregate returns. There should be no expectation that every individual research effort will succeed because basic research essentially is an exploration of the unknown and specific outcomes are not predictable.

2. Basic research is along-term activity that requires continuity and stability of support. Individual basic research efforts sometimes return immediate dividends, with transitions directly from research laboratories to defense systems in the field. However, most often the full benefits of basic research are not apparent until much later. Therefore, the DoD Components must engage in long-term planning and funding of basic research to the maximum possible extent.

3. Balance is essential in the portfolio of basic research investments. A wide range of scientific and engineering fields is of potential interest to the Department of Defense and the DoD Components. It is important to develop a balanced portfolio that includes investments not only in established research areas with promise for evolutionary advances, but also in areas that entail higher risk and offer potential for revolutionary advances with correspondingly higher benefits.

4. Coordination with other Federal agencies is important. The DoD Components are to consider other Federal agencies' basic research investments when making investment decisions, both to avoid unintended overlapping of support and to leverage those agencies' investments as appropriate.

5. Merit review is used to select basic research projects for support. It is crucial that the Department of Defense invest in the highest quality research for defense needs. Merit review relies on the informed advice of qualified individuals who are independent of the individuals proposing to do the research. The principal merit review factors used in selecting among possible projects are technical merit and potential long-term relevance to defense missions.

Dated: September 19, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–18985 Filed 9–22–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–117]

RIN 1625–AA09

Drawbridge Operation Regulations; Trent River, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulations that govern the operation of the U.S. 70 Bridge across the Trent River, at mile 0.0, at New Bern, NC. This rule allows the bridge to remain in the closed-to-navigation position from 6 a.m. to 10:30 a.m., on October 1, 2005, to facilitate the Neuse River Bridge Run.

DATES: This rule is effective from 6 a.m. to 10:30 a.m. on October 1, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket, as part of docket CGD05–05–117 and are available for inspection or copying at Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6629. Fifth District maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Gary S. Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing a NPRM

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. Publishing an NPRM is impracticable and contrary to the public interest as the Neuse River run is scheduled for October 1st, and immediate action is necessary to minimize the potential danger to the public. The bridge closure is a necessary measure to facilitate public safety that allows for the orderly movement of participants and vehicular traffic before, during and after the run.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 533(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. A 30-day delayed effective date is impracticable and contrary to the public interest as the event is scheduled for October 1, 2005, and immediate action is necessary to ensure public safety and provide for the orderly movement of participants and vehicular traffic during the run.

Background and Purpose

North Carolina Department of Transportation, who owns and operates the drawbridge, has requested a temporary deviation from the operating regulations to facilitate the Neuse River Bridge Run. The run is an annual event, attracting participants from the surrounding cities and states.

The existing regulations are outlined at 33 CFR 117.843(a). The bridge has a vertical clearance of 13 feet at mean high water in the closed position, unlimited vertical clearance in the full open position. The Coast Guard has informed the known users of the waterway of the closure periods for the bridge so that these vessels can arrange their transits to minimize any impact during the Neuse River Bridge Run.

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. This conclusion is based fact that the Coast Guard has informed the known users of the waterway of this rule and that the mariners can plan their trips in accordance with scheduled closure period.

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 conclusion is based on the fact that the Coast Guard has informed the know users of the waterway, which consist mostly of recreational boaters and fisherman, of this rule and that the mariners can plan their trips in accordance with scheduled closure period.

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 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 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 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 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 M16475.1D, 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 (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 117.843, also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 6 a.m. to 10:30 a.m. on October 1, 2005, in § 117.843 suspend paragraphs (a)(3), (a)(4) and add paragraph (a)(5) to read as follows:

§ 117.843 Trent River.

* * * * *

(a)(5) From 6 a.m. to 10:30 a.m., on October 1, 2005, the U.S. 70 Bridge, mile 0.0, at New Bern, NC, shall remain closed to navigation.

* * * * *

Dated: September 13, 2005.

S.H. Ratti,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 05–19006 Filed 9–22–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 168

[CGD 91–202; USCG–2003–14734]

RIN 1625–AA05 (Formerly RIN 2115–AE10); RIN 1625–AA65

Escort Vessels for Certain Tankers—Crash Stop Criteria

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is permanently removing a ''crash stop'' requirement for tanker escort vessels in Prince William Sound and Puget Sound. The requirement appeared in a final rule published in 1994 under docket number CGD 91–202, but was suspended for safety reasons before it ever went into effect. Removal of the suspended provision is the final action for both the CGD 91–202 and the USCG–2003–14734 rulemakings.

DATES: This final rule is effective October 24, 2005.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–14734 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Commander Samson Stevens, GMSR–2, telephone 202–267–0751, e-mail: *SStevens@comdt.uscg.mil.* If you have questions on viewing the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 28, 2005, we published in the **Federal Register** a notice of proposed rulemaking (NPRM) entitled Escort Vessels for Certain Oil Tankers—Crash Stop Criteria (70 FR 15609). We received no comments on the proposed rule. No public meeting was requested and none was held.

Background and Purpose

This rule addresses ''unfinished business'' from 1994. On August 19, 1994, we published the final rule entitled Escort Vessels for Certain Tankers under docket number CGD 91–202, which adopted 33 CFR part 168 (57 FR 30058). The rule drew on a study to determine the capabilities of escort vessels to control disabled tankers. The study was published in two parts (59 FR 1411, Jan. 10, 1994; 60 FR 6345, Feb. 1, 1995). Preliminary data for the second study became available after publication of the final rule, but before the rule took effect on November 19, 1994. This preliminary data indicated that it might be dangerous to implement the final rule's crash stop provision, 33 CFR 168.50(b)(2). That provision required an escort vessel to be able to stop a disabled tanker within the same distance that it could ''crash-stop,'' that is, come to an emergency stop itself by putting its engine into full astern position, from a speed of 6 knots. Therefore, on November 1, 1994 (59 FR 54519), we suspended the crash stop provision before it could take effect with the other provisions of part 168. In 1995, the final results of the study of escort vessel capabilities showed that the crash stop criteria were not an effective performance characteristic for disabled tankers. No further action was taken with respect to the crash stop provision, and it remains suspended today.

As long as the crash stop provision's suspension remains in effect, we have continued reporting the CGD 91–202 rulemaking on the Uniform Regulatory Agenda of the United States, the Federal Government's official list of ongoing regulatory projects. CGD 91–202 appears in the most recent edition of the Agenda, under the Department of Homeland Security entries beginning at 70 FR 26892 (May 16, 2005). Twice each year, the Coast Guard spends valuable administrative time maintaining its Uniform Regulatory Agenda reports, whether or not a reported project is active.

For the reasons given under ''Removal of Crash Stop Provision,'' the Coast Guard maintains the position it first adopted in 1994, that the crash stop provision should not be implemented. Therefore, we now will permanently remove the crash stop provision. Removal of the crash stop provision also allows us to complete the CGD 91–202 rulemaking.

Since 1998, the Coast Guard has used the Department of Transportation's Docket Management System (DMS) to make its rulemaking documents widely available to the public. DMS assigns unique docket numbers to each rulemaking, and the format of those docket numbers (*e.g.*, USCG–2003–14734) is not compatible with the format of Coast Guard pre-1998 rulemaking docket numbers (*e.g.*, CGD 91–202). Therefore, in order to complete CGD 91–202 in a way that makes our actions visible to the public through DMS, we opened a DMS-compatible docket number, USCG–2003–14734. Thus, removal of the crash stop provision constitutes the final action for two rulemaking dockets with the same subject matter, CGD 91–202 and USCG–2003–14734.

Removal of Crash Stop Provision

We received two public comments in response to our 1994 notice suspending 33 CFR 168.50(b)(2). We placed both comments in the docket for USCG–2003–14734. One comment supported the suspension. The other forwarded a copy of a technical evaluation of 33 CFR 165.50(b), but did not address the crash stop criteria at all. As noted earlier, in 1995, the final results of the study of escort vessel capabilities showed that the crash stop criteria were not an effective performance characteristic for disabled tankers. Additionally, we noted a significant increase in tractor tug availability in the waters to which part 168 applies, which allows for more effective response and action when a tanker becomes disabled. Taken together, these factors persuaded us to remove the crash stop provision of 33 CFR 168.50(b)(2). Our March 2005 NPRM, proposing removal, elicited no public comments that would alter our decision. Therefore we are proceeding with removal of the crash stop provision. The remainder of part 168 is not affected by this action.

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. This rule allows us to finalize the status quo and close out CGD 91–202.

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 application and impact of this rule is limited. First, the escort vessel regulations only apply to laden single hull tankers of 5,000 gross tons or more operating on Prince William Sound or Puget Sound. We estimate the number of these tankers is 18. This figure will diminish over time as these single hull tankers are phased out of service, as required by OPA 90. Second, small entities typically do not own or operate vessels of this size. These vessels are normally owned and operated by larger corporations, including subsidiaries of major oil companies. As the rule finalizes the status quo, we do not believe that we are imposing any new burden on small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final 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 (Public Law 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.

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 the preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will 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 (34)(i) of the Instruction, from further environmental documentation. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 168

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 168 as follows.

PART 168—ESCORT REQUIREMENTS FOR CERTAIN TANKERS

■ 1. The authority citation for part 168 is revised to read as follows:

Authority: Section 4116(c), Pub. L. 101–380, 104 Stat. 520 (46 U.S.C. 3703 note); Department of Homeland Security Delegation No. 170.1, para. 2(82).

§ 168.50 [Amended]

■ 2. In § 168.50, remove and reserve paragraph (b)(2).

Dated: September 15, 2005.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 05–19005 Filed 9–22–05; 8:45 am]

BILLING CODE 4910–15–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; correction.

SUMMARY: NARA published the final rule, Records Center Facility Standards, in the August 29, 2005, **Federal Register** (70 FR 50980). In that final rule, we revised § 1228.240(c) entirely, removing subordinate paragraphs §§ 1228.240(c)(1) and (c)(2). Paragraph § 1228.240(d), which was not amended in the rulemaking, currently contains a sentence ''For requests submitted under paragraph (c)(2) of this section, NARA also will review the submitted plan to ensure that the plan is realistic.'' This correction removes that sentence.

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

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

SUPPLEMENTARY INFORMATION: In FR Doc. 05–17097 appearing on page 50980 in the **Federal Register** of Monday, August 29, 2005, the following correction is made:

PART 1228—[CORRECTED]

§ 1228.240 [Corrected]

■ On page 50988, in the second column, in Part 1228, Disposition of Federal Records, in amendment 9, the instruction ''9. Amend § 1228.240 by revising paragraph (c) to read as follows:'' and the amended text set forth are corrected to read:

■ ''9. Amend § 1228.240 by revising paragraphs (c) and (d) 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.

(d) *Approval of requests for agency records centers.* NARA will review the submitted documentation to ensure the facility demonstrates full compliance with the standards in this subpart. NARA reserves the right to visit the facility, if necessary, to make the determination of compliance. NARA will inform the agency of its decision within 45 calendar days after the request is received, and will provide the agency information on the areas of noncompliance if the request is denied. Requests will be denied only if NARA determines that the facility does not demonstrate full compliance with the standards in this subpart. Approvals will be valid for a period of 10 years, unless the facility is materially changed before then or an agency or NARA inspection finds that the facility does not meet the standards in this subpart. Material changes require submission of a new request for NARA approval.

* * * * *

Dated: September 19, 2005.

Allen Weinstein,

Archivist of the United States.

[FR Doc. 05–19021 Filed 9–22–05; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0238; FRL–7735–8]

Pesticides; Removal of Expired Time-Limited Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is removing time-limited tolerance exemptions for several pesticide chemicals. These time-limited tolerance exemptions are being removed because they have expired and are obsolete, and to ensure that the regulatory listings of tolerance exemptions are properly updated.

DATES: This final rule is effective on November 22, 2005.

ADDRESSES: EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0238. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; fax number: (703) 305–0599; e-mail address: *boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

II. Background

A. What is the Agency's Authority for Taking this Action?

This final rule is issued pursuant to section 408(e) of the Federal Food, Drug, and Comestic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) (21 U.S.C. 346a(e)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore, ''adulterated'' under section 402(a) of FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

B. Why is EPA Issuing this as a Final Rule?

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the actions taken in this final rule represent technical corrections to the regulations and do not involve substantive Agency action. The removal of an expired time-limited tolerance exemption from 40 CFR part 180 does not involve any substantive Agency action. The expiration date for

the time-limited tolerance exemption is set when the Agency issues the final rule that originally establishes, or a subsequent final rule that amends, the specific time-limited tolerance exemption. Once that time-limited tolerance expires, the associated listing in 40 CFR part 180 is obsolete and its removal is a ministerial act without substantive or procedural effects.

For this reason, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

C. What Action is EPA Taking?

The following time-limited tolerance exemptions are removed from 40 CFR part 180 because they have expired: Casein; fish meal; soy protein, isolated; soybean flour; wheat, including flour, bran, and starch; sodium caseinate; Rhodamine B; and wheat shorts.

III. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0238 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 22, 2005.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit XI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES.** Mail your copies, identified by docket ID number OPP–2005–0238, to: Public Information and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IV. Statutory and Executive Order Reviews

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

Because the Agency has made a good cause finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see Unit II.B.), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between

the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. 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 the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 19, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

§ 180.910 [Amended]

■ 2. Section 180.910 is amended by removing, in the table, the following entries: Casein; fish meal; soy protein, isolated; and wheat, including flour, bran, and starch.

§ 180.920 [Amended]

■ 3. Section 180.920 is amended by removing, in the table, the following entry: Sodium caseinate.

§ 180.930 [Amended]

■ 4. Section 180.930 is amended by removing, in the table, the following entries: Rhodamine B; soy protein, isolated; and wheat shorts.

[FR Doc. 05–19056 Filed 9–22–05; 8:45 am]

BILLING 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0246; FRL–7737–8]

Pyriproxyfen; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of pyriproxyfen in or on grass, forage, fodder, and hay, group 17, forage; grass, forage, fodder, and hay, group 17, hay; vegetable, legume, group 6; onion, dry bulb; grape; strawberry; sapote, white; and citrus hybrids. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 23, 2005. Objections and requests for hearings must be received on or before November 22, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP–2005–0246. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers;

greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

• Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

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

II. Background and Statutory Findings

In the **Federal Register** of August 17, 2005 (70 FR 48413) (FRL–7732–1, EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 3E6596, 3E6750, 4E6866, 4E6865, and 3E6582) by IR-4, 681 US Highway #1 South, North Brunswick, NJ 08902–3390. The petitions requested that 40 CFR 180.510 be amended by establishing tolerances for residues of the insecticide pyriproxyfen, [2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine, in or on legume vegetables, crop subgroups 6a, 6b, and 6c at 0.2 part per million (ppm) (PP 3E6596); onion, dry bulb at 0.05 ppm (PP 3E6750); grape at 2.5 ppm, and raisin at 4.0 ppm (PP 4E6866); strawberry at 0.3 ppm (PP 4E6865); white sapote, and ugli fruit at 0.3 ppm (PP 3E6582). The petition for onion, dry bulb (PP 3E6750) was subsequently amended from 0.05 ppm to 0.15 ppm. The Agency has also determined a separate tolerance for raisin is not necessary. In addition, ugli fruit has been translated to citrus hybrids. No comments were recived on the notice of filing.

Additionally, in the **Federal Register** of December 22, 2004 (69 FR 76724) (FRL–7689–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F6847) by Valent USA Corporation, 1600 Riviera Ave., Suite 200, Walnut Creek, California 94596–8025. The petition requested that 40 CFR 180.510 be amended by establishing tolerances for residues of the insecticide pyriproxyfen, [2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine], in or on grass forage and hay (crop group 17). The Agency has subsequently amended the petition to establish tolerances for grass, forage, fodder, and hay, group 17, forage at 0.70 ppm (previously requested at 0.5 ppm), and grass, forage, fodder, and hay, group 17, hay at 1.1 ppm (previously requested at 1.0 ppm). That notice included a summary of the petitions prepared by Valent USA Corporation], the registrant. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/health/human.htm*

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of these actions. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for residues of pyriproxyfen on vegetable, legume, group 6 at 0.20 ppm; onion, dry bulb at 0.15 ppm; grape at 2.5 ppm; strawberry at 0.30 ppm; white sapote at 0.30 ppm; citrus hybrids at 0.30 ppm; grass, forage, fodder, and hay, group 17, forage at 0.70 ppm; and grass, forage, fodder, and hay, group 17, hay at 1.1 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by pyriproxyfen as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found at *http://www.epa.gov/fedrgstr/EPA-PEST/2003/May/Day-14/p12022.htm*.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL of concern identified is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of

cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases.

A summary of the toxicological endpoints for pyriproxyfen used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR PYRIPROXYFEN FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (females 13–50 years of age) and general population	None	None	An appropriate endpoint attributable to a single oral dose was not available in the data base, including maternal toxicity in the developmental toxicity studies
Chronic dietary (all populations)	NOAEL = 35.1 mg/kg/day UF = 100 Chronic Reference Dose (cRfD) = 0.35 mg/kg/day	Special FQPA SF = 1X Chronic Population Adjusted Dose (cPAD) = cRfD Special FQPA SF = 0.35 mg/kg/day	Subchronic toxicity and chronic toxicity (feeding) - rat LOAEL = 141.28 mg/kg/day based on decreased body weight and clinical pathology results
Short-term incidental, oral (1 to 30 days) (Residential)	Oral Maternal NOAEL = 100 mg/kg/day	LOC for Margin of Exposure (MOE) = 100 (Residential)	Rat developmental toxicity study LOAEL = 300 mg/kg/day based on decreased body weight, body weight gain, and food consumption, and increased water consumption
Intermediate-term incidental, oral (1–6 months) (Residential)	Oral NOAEL = 35.1 mg/kg/day	LOC for MOE = 100 (Residential)	Subchronic toxicity and chronic toxicity (feeding) - rat (co-critical) LOAEL = 141.28 mg/kg/day based on decreased body weight and clinical pathology results
Short-term, and intermediate-term dermal (1–30 days and 1–6 months) (Occupational/Residential)	None	None	Based on the systemic toxicity NOAEL of 1,000 mg/kg/day (limit dose) in the 21-day dermal toxicity study in rats, quantification of dermal risks is not required. In addition, no developmental concern (toxicity) were seen in either rats or rabbits
Long-term dermal (6 months to lifetime) (Occupational/Residential)	Dermal (or oral) study NOAEL = 35.1 mg/kg/day	LOC for MOE = 100 (Residential)	Subchronic toxicity and chronic toxicity (feeding) - rat(co-critical) LOAEL = 141.28 mg/kg/day based on decreased body weight and clinical pathology results
Short-term, and intermediate-term dermal (1 to 30 days and 1–6 months)(Residential)	None	None	28-day inhalation toxicity - rats. Based on the absence of significant toxicity at the LOAEL of 1.0 mg/L (limit dose), the quantification of inhalation risks is not required. In addition, no developmental concern (toxicity) were seen in either rats or rabbits
Long-term dermal (6 months to lifetime) (Occupational/Residential)	Dermal oral study NOAEL = 35.1 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Subchronic and chronic toxicity (feeding) - rat (co-critial) LOAEL = 141.28 mg/kg/day based on decreased body weight and clinical pathology results
Cancer (oral, dermal, inhalation)	Cancer classification (“Group E”)	None	No evidence of carcinogenicity

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.510) for the residues of pyriproxyfen, in or on the following raw agricultural commodities: Acerola at 0.10 part per million (ppm); almond, hulls at 2.0 ppm; apple, wet pomace at 0.8 ppm; atemoya at 0.20 ppm; avocado at 1.0 ppm; biriba at 0.20 ppm; black sapote at 1.0 ppm; brassica, head and stem, subgroup at 5A at 0.70 ppm; brassica, leafy greens, subgroup 5B at 2.0 ppm; bushberry subgroup 13B at 1.0 ppm; canistel at 1.0 ppm; cherimoya at 0.20 ppm; citrus, oil at 20 ppm; citrus, dried pulp at 2.0 ppm; cotton, gin byproducts at 2.0 ppm; cotton, undelinted seed at 0.05 ppm; custard apple at 0.20 ppm; feijoa at 0.10 ppm; fig at 0.30 ppm; fig, dried at 1.0 ppm; fruit, citrus at 0.3 ppm; fruit, pome at 0.2 ppm; fruit, stone, group 12 at 1.0 ppm; guava at 0.10 ppm; ilama at 0.20 ppm; jaboticaba at 0.10 ppm; juneberry at 1.0 ppm; lingonberry at 1.0 ppm; logan at 0.30 ppm; lychee at 0.30 ppm;

mamey sapote at 1.0 ppm; mango at 1.0 ppm; okra at 0.02 ppm; olive at 1.0 ppm; olive, oil at 2.0 ppm; papaya at 1.0 ppm; passionfruit at 0.10 ppm; pistachio at 0.02 ppm; pulasan at 0.30 ppm; rambutan at 0.30 ppm; salal at 1.0 ppm; sapodilla at 1.0 ppm; soursop at 0.20 ppm; spanish lime at 0.30 ppm; star apple at 1.0 ppm; starfruit at 0.10 ppm; sugar apple at 0.20 ppm; tree nut at 0.02 ppm; vegetable, cucurbit, group 9 at 0.10 ppm; vegetable, fruiting, group 8 at 0.2 ppm; walnut at 0.02 ppm; and wax jambu at 0.10 ppm. Risk assessments were conducted by EPA to assess dietary exposures from pyriproxyfen in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. No such effects were identified in the toxicological studies for pyriproxyfen, therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM™/FCID), which incorporates food consumption data as reported by respondents in the U.S. Department of Agriculture (USDA) 1994–1996, and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The Tier 1 chronic analysis assumed 100% crop treated, DEEM™ 7.81 default processing factors and tolerance-level residues for all commodities. Percent crop treatedand/or anticipated residues were not used.

iii. *Cancer*. The Agency classified pyriproxyfen as a ''Group E'' chemical, no evidence for carcinogenicity to humans, based on the absence of evidence of carcinogenicity in male and female rats as well as in male and female mice. Therefore, a cancer risk assessment was not performed.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for pyriproxyfen in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of pyriproxyfen. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on EPA's Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and, Screening Concentration in Ground Water (SCI-GROW) models, the Estimated Environmental Concentrations (EECs) of pyriproxyfen for ground water exposures are estimated to be 0.006 parts per billion (ppb) (acute and chronic). Surface water exposures are estimated to be 2.15 ppb (peak concentration), and 0.40 ppb (long term average).

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model DEEM™/FCID using long-term average concentrations for surface water (0.40 ppb) to access the contribution to drinking water.

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

Pyriproxyfen is currently registered for use on the following residential non-dietary sites: Residential products for flea and tick control (home environment and pet treatments), and ant and roach control (indoor and outdoor applications). Formulations include carpet powders, foggers, aerosol sprays, liquids (shampoos, sprays and pipettes for pet treatments), granules, bait (indoor and outdoor), and impregnated materials (pet collars). Adults and toddlers could potentially be exposed to pyriproxyfen residues on treated carpets, floors, upholstery, and pets; however, since the Agency did not select any short-term dermal or inhalation endpoints, only a post-application residential assessment was conducted. Toddlers are anticipated to have higher exposures than adults from treated home environments and pets due to their behavior patterns. The risk assessment was conducted using the following residential exposure assumptions:

i. *Hand-to-mouth*: Short-term, intermediate term, and long-term hand-to-mouth exposures to toddlers from treated carpets, flooring (note the efficacy of carpet powders is approximately 365 days).

ii. *Hand-to-mouth*: Short-term and intermediate-term hand-to-mouth exposures to toddlers from petting treated animals (shampoos, sprays, spot-on treatments and collars). Long-term hand-to-mouth exposures to toddlers from petting treated animals (pet collars; note efficacy of pet collars up to 365 days).

iii. *Dermal*: Long-term dermal exposures from treated carpets, flooring, and pets (note that treated furniture is included in the carpet/flooring assessment).

iv. *Ingestion of granules or bait by toddlers (acute, episodic event*).

v. *Combined short-term and intermediate-term hand-to-mouth exposures (toddlers)*:

- Treated carpet (powder application) and treated pet (collar/pet shampoo/pet spray).
- Treated carpet (spray application) and treated pet (collar/pet shampoo/pet spray).
- Treated home environment (fogger application) and treated pet (collar/pet shampoo/pet spray).

vi. *Combined long-term hand-to-mouth and dermal exposures* (toddlers):

- Dermal exposure from pet hugging.
- Dermal contact with treated carpet.
- Hand-to-mouth exposures from treated carpets.
- Hand-to-mouth exposures from treated pets.

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to pyriproxyfen and any other substances and pyriproxyfen does not appear to produce a toxic metabolite produced by other substances. EPA has also evaluated comments submitted that suggested there might be a common mechanism among pyriproxyfen and other named pesticides that cause brain effects. EPA concluded that the evidence did not support a finding of common mechanism for pyriproxyfen and the named pesticides. For the purposes of this tolerance action, therefore, EPA has not assumed that pyriproxyfen has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements

released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty factors (UFs) (safety) in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. Based on the available data, there is no quantitative and qualitative evidence of increased susceptibility observed following *in utero* pyriproxyfen exposure to rats and rabbits or following prenatal/postnatal exposure in the 2-generation reproduction study.

3. *Conclusion*. There is a complete toxicity data base for pyriproxyfen and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined the 10X safety factor for infants and children should be reduced to 1X. The FQPA safety factor was reduced:

i. Due to the lack of evidence of prenatal or postnatal extra sensitivity, or increased susceptibility in developmental studies (rats and rabbits), and reproduction studies (rats).

ii. The lack of quantitative or qualitative evidence of increased susceptibility for rats and rabbits identified in the guideline prenatal developmental toxicity studies.

iii. The lack of evidence of quantitative or qualitative increased susceptibility in the two non-guideline studies that evaluated perinatal and prenatal development.

iv. Offspring toxicity (decreased body weight on pups during lactation days 14 to 21) in the reproduction toxicity study occurred only in the presence of decreases in body weight in parental animals at the same dose level (i.e., comparable toxicity in adults and offspring).

E. Aggregate Risks and Determination of Safety

The Agency currently has two ways to estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses. First, a screening assessment can be used, in which the Agency calculates drinking water levels of comparison (DWLOCs) which are used as a point of comparison against estimated environmental concentrations (EECs). The DWLOC values are not regulatory standards for drinking water, but are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPA's Office of Water are used to calculate DWLOCs: 2 liter L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWOCs, EPA concluded with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposures for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses changes. When new uses are added EPA reassesses the potential impacts of residues of the pesticide in drinking water as a part of the aggregate assessment process.

More recently the Agency has used another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface water and ground water EECs are directly incorporated into the dietary exposure analysis, along with food. This provides a more realistic estimate of exposure because actual body weights and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in developing drinking water modeling inputs.

1. *Acute risk*. An acute aggregate exposure analysis was not conducted since no acute doses or endpoints were selected for the general U.S. population (including infants and children) or the females 13–50 years old population subgroup.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to pyriproxyfen from food and water will utilize 3.2% of the cPAD for the U.S. population, 4.4% of the cPAD for all infants <1 year old, 9.9% of the cPAD for children 1–2 years old, and 2.4% of the cPAD for females 13–49 years old.

Chronic aggregate exposure takes into account chronic residential exposure plus chronic exposure to food and water. Pyriproxyfen is currently registered for use that could result in chronic residential exposure and the Agency has determined that it is appropriate to aggregate chronic food, water, and residential exposures for pyriproxyfen.

Using the exposure assumptions described in this unit for chronic exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 3,200 for the U.S. population; 820 for all infants <1 year old; 560 for children 1–2 years old; and 4,700 for females 13–49 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO PYRIPROXYFEN

Population/Subgroup	cPAD/mg/kg/day	%cPAD/(Food)	Target MOE	Aggregate MOE (food + water + residential)
U.S. population	0.35	3.2	100	3200
All infants (<1 year old)	0.35	4.4	100	820
Children (1–2 years old)	0.35	9.9	100	560
Females (13–49 years old)	0.35	2.4	100	4700

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyriproxyfen is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for pyriproxyfen.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 9,000 for the U.S. population; 1,600 for all infants <1 year old; 1,200 for children 1–2 years old; and 1,3000 for females 13–49 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyriproxyfen is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for pyriproxyfen.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 3,200 for the U.S. population; 560 for all infants <1 year old, 430 for children 1–2 years old, and 4,700 for females 13–49 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses.

5. *Aggregate cancer risk for U.S. population*. A cancer aggregate risk assessment was not performed since pyriproxyfen has not been classified as a potential carcinogen.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

In conjunction with the crop field trial studies, the petitioner submitted adequate concurrent recovery data for a gas chromatography/nitrogen-phosphorus detector (GC/NPD) method (RM-33P-1-3a or 9.66 V 1) used to determine residues of pyriproxyfen in/on the subject crops. The method has undergone an adequate radiovalidation, independent laboratory validation (ILV) trial, petition method validation (PMV) trial, and has been forwarded to the Food and Drug Administration (FDA) for inclusion in PAM Vol. II. The GC/NPD method RM-33P-1-3a is adequate for enforcement of the recommended tolerance levels for residues of pyriproxyfen per se in/on the subject crops.

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican maximum residue limits (MRLs) for pyriproxyfen.

C. Response to Comments

Several comments were received from a private citizen on objecting to pesticide body load, IR-4 profiteering, animal testing, establishing tolerances, pesticide residues, and pesticide exemptions.

The Agency has received these same comments from this commenter of numerous previous occasions. Refer to the **Federal Register** of June 30, 2005 (70 FR 37686) (FRL–7718–3), January 7, 2005 (70 FR 1349) (FRL–7691–4), and October 29, 2004 (69 FR 63083) (FRL–7681–9) for the Agency's response to these objections.

V. Conclusion

Therefore, tolerances are established for residues of pyriproxyfen, [2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine], in or on vegetable, legume, group 6 at 0.20 ppm; onion, dry bulb at 0.15 ppm; grape at 2.5 ppm; strawberry at 0.30 ppm; white sapote at 0.30 ppm; citrus hybrids at 0.30 ppm; grass, forage,fodder, and hay, group 17, forage at 0.70 ppm; and grass, forage, fodder, and hay, group 17, hay at 1.1 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0246 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 22, 2005.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0246, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.''''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 19, 2005

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.510 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.510 Pyriproxyfen; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Citrus hybrids	0.30
* * * * *	
Grape	2.5
Grass, forage, fodder, and hay, group 17, forage	0.70
Grass, forage, fodder, and hay, group 17, hay	1.1
* * * * *	
Onion, dry bulb	0.15
* * * * *	
Strawberry	0.30
* * * * *	
Vegetable, legume, group 6	0.20
* * * * *	
White sapote	0.30
* * * * *	

* * * * *

[FR Doc. 05–19059 Filed 9–22–05; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0133; FRL–7738–7]

Fenpropathrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fenpropathrin in or on bushberry subgroup 13B; lingonberry; juneberry; salal; pea, succulent; and vegetable, fruiting, group 8. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 23, 2005. Objections and requests for hearings must be received on or before November 22, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0133. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also

be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

II. Background and Statutory Findings

In the **Federal Register** of March 24, 2004 (69 FR 13833) (FRL–7347–2–), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions PP 1E6261, PP 1E6331, PP 1E6336, and PP 3E6588 by IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. The petitions requested that 40 CFR 180.466 be amended by establishing tolerances for residues of the insecticide fenpropathrin, α-cyano-3-phenoxy-benzyl 2,2,3,3-tetra-methylcyclopropanecarboxylate, in or on currant at 3.0 parts per million (ppm) requested by PP 1E6261; vegetable, fruiting, group 8, except tomato at 1.0 ppm requested by PP 1E6331; pea, succulent at 0.02 ppm requested by PP 1E6336, and bushberry subgroup 13B, lingonberry, juneberry, and salal at 3.0 ppm requested by PP 3E6588. Currant is a member of the bushberry subgroup, and will receive a tolerance at 3.0 ppm as requested for the bushberry subgroup. Therefore, a separate tolerance will not be established for currant under PP 1E6261. The proposed petition (1E6331) for vegetable, fruiting, group 8, except tomato at 1.0 ppm was subsequently amended to establish a tolerance for vegetable, fruiting, group 8 at 1.0 ppm. The Agency will delete the existing tolerance for tomato at 0.6 ppm since tomato is covered by the vegetable, fruiting group 8 tolerance promulgated under this ruling. That notice included a summary of the petition prepared by Valent U.S.A. Corporation, the registrant. One comment was received. EPA's response to this comment is discussed in Unit IV.C. below.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of these actions. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) ofFFDCA, for tolerances for residues of fenpropathrin on vegetable, fruiting, group 8 at 1.0 ppm; pea, succulent at 0.02 ppm; and bushberry subgroup 13B, lingonberry, juneberry, and salal at 3.0 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fenpropathrin is discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity--rodents (Rat)	NOAEL = 15 milligrams/kilogram/day (mg/kg/day) LOAEL = 30 mg/kg/day based on clinical signs of tremors, body weight reductions, decreased blood clotting time in females, and possibly increased alkaline phosphatase levels (both sexes)
870.3150	90-Day oral toxicity--nonrodents (Beagle dog)	NOAEL = < 6.2 mg/kg/day LOAEL = 6.2 mg/kg/day based on effects on the gastrointestinal system, tremors, and body weight changes
870.3200	21-Day dermal toxicity (NZW rabbit)	NOAEL = >3,000 mg/kg/day Only local irritation was seen. There were no systemic effects, thus the LOAEL was not determined

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3700	Prenatal developmental--rodents(Fischer Rats)	Maternal NOAEL = 3 mg/kg/day The maternal NOAEL for the developmental rat study was 3.0 mg/kg/day based on decreased food consumption and body weight gains. However, these effects are not characteristic of an acute exposure and are not a suitable option for this exposure scenario. One of the factors to consider in selecting an acute dietary endpoint is when the toxic effects occur. For an acute effect, a relevant endpoint would occur as the result of a single dose. Since the neurotoxic signs observed in the dams of the developmental rat study were most severe within two hours after dosing, the clinical effects are resultant from a single dose, and are therefore appropriate endpoints for acute exposure scenarios. Maternal LOAEL = 6 mg/kg/day based on decreased food consumption and body weight gains. At 10 mg/kg/day, 6 dams died between days 7 and 13, and one dam was sacrificed moribund on day 8. The remaining 23 dams survived through the end of gestation. Also in the high dose group, many clinical signs were observed in the dams including ataxia, sensitivity to external stimuli, spastic jumping, and tremors. These signs were most severe 2 hours post-dosing and during the first days of dosing. Developmental NOAEL = 6 mg/kg/day Developmental LOAEL = 10 mg/kg/day based on increased incidence of asymmetrical ossification of sternabrae and incomplete ossification of the 5th and 6th sternabrae.
870.3700	Prenatal developmental--nonrodents (NZW rabbit)	Maternal NOAEL = 4 mg/kg/day Maternal LOAEL = 12 mg/kg/day based on flicking of the forepaws Developmental NOAEL = >36 mg/kg/day No dose related effects were seen, thus the LOAEL was not determined
870.3800	Reproduction and fertility effects (Sprague-Dawley rats)	Parental/Systemic NOAEL = M:3.0; F: 3.0 mg/kg/day LOAEL = M: 8.9; F: 10.1 mg/kg/day based on death and clinical signs of neurotoxicity in females. Offspring NOAEL = M:3.0; F:3.4 mg/kg/day LOAEL = M: 8.9; F: 10.1 mg/kg/day based on increased mortality and body tremors.
870.4100	Chronic toxicity (Beagle Dog)	NOAEL = 2.5 mg/kg/day LOAEL = 6.25 mg/kg/day based on tremors and ataxia in both sexes
870.4200	Carcinogenicity- CD-1 mice	NOAEL = Not established LOAEL = M: >56.0; F: >65.2 mg/kg/day There was an overall lack of toxic response. However an aborted mouse carcinogenicity study demonstrated that at a slightly higher maximum tolerated dose (MTD) of 1,000 ppm, the test article was lethal to 15% of the mice after only 13 weeks. Thus the maximum dose used in this completed study (600 ppm) was very close to the MTD. A repeat study is not justified. no evidence of carcinogenicity
870.4300	Carcinogenicity-rat	NOAEL = M:17.06; F: 7.23 mg/kg/day LOAEL = 19.45 mg/kg/day based on increase mortality and body tremors in the females no evidence of carcinogenicity
870.5100	Gene mutation Bacterial Reverse Mutation Test	Negative in Salmonella typhimurium TA 1535, TA1537, TA1538, TA98, and TA100 and *Escerichia coli* Wp2 *uvrA* up to the limit concentration with evidence of compound insolubility
870.5300	Gene Mutation *In vitro* mammalian cell gene mutation test	There was no clear evidence (or a concentration related positive response) of induced mutant colonies over background
870.5375	Cytogenetics *In vitro* mammalian cell chromosomal aberration assay	Negative in Chinese hamster ovary (CHO) cells (cytotoxicity observed at ≥30 μg/mL -S9 and compound precipitation at 1,000 μg/mL +S9)
870.5500	Other effects Bacterial DNA damage or repair test	Negative in *Bacillus subtilis* H17 (DNA repair proficient) and M45 (DNA repair deficient)
870.5900	Other effects *In vitro* sister chromatid exchange assay	Negative in CHO cells up to the solubility limit.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.7485	Metabolism and pharmacokinetics (Sprague-Dawley rat)	Greater than 99% of the administered dose was excreted within 168 hours with 28% to 56% excreted in the urine and the remainder in the feces. Major biotransformations of the absorbed compound included the oxidation of the methyl group of the acid moiety, hydroxylation at the 4'-position of the alcohol moiety, cleavage of the ester linkage, and conjugation with sulfuric acid or glucuronic acid. Mean dermal absorption for the 10–hour interval was 33.3%, 20.1%, and 17.6% in the low, mid, and high dose groups, respectively
870.7600	Dermal penetration-rats	Dermal absorption increased with dose but not proportionally. The percentage of the dose absorbed decreased with the increasing administered dose. The total body burden could be expected to rapidly decrease due to excretion via urine and feces. Mean dermal absorption for the 10–hour interval was 33.3%, 20.1%, and 17.6% in the low, mid, and high dose groups, respectively

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

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

A summary of the toxicological endpoints for fenpropathrin used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FENPROPATHRIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (General population including infants and children)	NOAEL = 6 mg/kg/day UF = 1,000 Acute RfD = 0.006 mg/kg/day	Special FQPA SF = 1X aPAD = acute RfD ÷ Special FQPA SF = 0.006 mg/kg/day	Developmental Toxicity in Rats LOAEL = 10 mg/kg/day based on death and neurological signs At 10 mg/kg high dose death in 6 out of 30
Chronic Dietary (All populations)	NOAEL= 2.5 mg/kg/day UF = 1,000 Chronic RfD = 0.0025 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD ÷ Special FQPA SF = 0.0025 mg/kg/day	52-Week Chronic Oral Toxicity in Dogs LOAEL = 6.25 mg/kg/day based on tremors and ataxia in both sexes
Cancer (oral, dermal, inhalation)	Classification: Not likely to be carcinogen to humans		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.466) for the residues of fenpropathrin, in or on the following raw agricultural commodities: Cotton; grapes; strawberries; peanuts; tomatoes; Brassica, head and stem, Crop Subgroup 5A; fruit, citrus, group 10; fruit, pome, group 11; eggs; milk fat; and the meat; meat byproducts, and fat of cattle, goats, hogs, horses, sheep, and poultry. Risk assessments were conducted by EPA to assess dietary exposures from fenpropathrin in food as follows

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. In conducting the acute dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID, Version 2.03), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The acute dietary exposure analysis was a refined one. It was refined through the use of crop field trial data, Pesticide Data Program (PDP) monitoring data, anticipated residues (ARs) in animal commodities, processing factors, and percent crop treated and projected percent crop treated estimates.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the Dietary Exposure Evaluation

Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic dietary exposure analysis was also a refined one. It was refined through the use of crop field trial data, PDP monitoring data, ARs in animal commodities, processing factors, and average percent crop treated and projected market share estimates.

iii. *Cancer*. A cancer dietary exposure analysis was not performed because fenpropathrin was classified as ''not likely to be carcinogenic to humans.''

iv. *Anticipated residue and percent crop treated (PCT) information*. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such data call-ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such data call-ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used maximum PCT information as follows: Apples 15%; broccoli <2.5%; brussels sprouts <2.5%; cabbage <1%; cantaloupes 10%; cotton <2.5%; grapefruit 5%; grapes 10%; oranges 5%; peanuts <2.5%;pears 10%; pumpkins <2.5%; squash 10%; strawberries 20%; tangerines <2.5%; tomatoes <2.5%; and watermelons <2.5%; blueberries 18%.

The Agency used average PCT information as follows: Apples 10%; broccoli <1%; brussels sprouts <2.5%; cabbage <1%; cantaloupes 5%; cotton <1%; grapefruit 2%; grapes 5%; oranges 2%; peanuts <1%; pears 5%; pumpkins <1%; squash 5%; strawberries 15%; tangerines <1%; tomatoes <1%; and watermelons <1%; peas 27%; peppers 49%.

The Agency used projected acreage PCT information as follows: Blueberries 18%; peas 27%; peppers 49%.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available Federal, state, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of five except for those situations in which the average PCT is less than one. In those cases <1% is used as the average and <2.5% is used as the maximum. The percent of crop treated for grapefruit and oranges is 2%. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available Federal, state, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of five. In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent 6 years.

EPA projects PCT for a new insecticide use by assuming that the PCT for the insecticide's initial 5 years will not exceed the average PCT of the dominant insecticide (the one with the largest PCT) within all insecticides over the three latest available years. The PCTs included in the average may be for the same insecticide or for different insecticides since the same or different insecticides may dominate for each year selected. Typically, EPA uses USDA/NASS as the source for raw PCT data because it is non-proprietary and directly available without computation.

This method of projecting PCT for a new insecticide use, with or without regard to specific pest(s), produces an upper-end projection that is unlikely, in most cases, to be exceeded in actuality because the dominant insecticide is well-established and accepted by farmers. Factors that bear on whether a projection based on the dominant insecticide could be exceeded are whether the new insecticide is more efficacious or controls a broader spectrum of pests than the dominant insecticide, whether it is more cost-effective than the dominant insecticide, and whether it is likely to be readily accepted by growers and experts. EPA has considered these factors for the new uses of this insecticide, and indicates that it is unlikely that actual PCT for this new use will exceed the PCT for the dominant insecticide in the next 5 years.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fenpropathrin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fenpropathrin. Further information regarding EPA drinking water models used in pesticide exposure assessments can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservior Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWC's) of fenpropathrin for acute exposures are estimated to be 10.3 parts per billion (ppb) for surface water and 0.005 ppb for ground water. The EDWC's for chronic exposures are estimated to be 1.8 ppb for surface water and 0.005 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID). For acute dietary risk assessment, the peak water concentration value of 10.3 ppb was used to access the contribution to drinking water. For chronic dietary risk assessment, the annual average concentration of 1.8 ppb was used to access the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure

(e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fenpropathrin is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Fenpropathrin is a member of the pyrethroid class of pesticides. Although all pyrethroids alter nerve function by modifying the normal biochemistry and physiology of nerve membrane sodium channels, EPA is not currently following a cumulative risk approach based on a common mechanism of toxicity for the pyrethroids. Although all pyrethroids interact with sodium channels, there are multiple types of sodium channels, and it is currently unknown whether they have similar effects on all channels. In addition, EPA does not have a clear understanding of effects on key downstream neuronal function, e.g., nerve excitability, nor does EPA understand how these key events interact to produce their compound-specific patterns of neurotoxicity. There is ongoing research by both the EPA's Office of Research and Development and the pyrethroid registrants to evaluate the differential biochemical and physiological actions of pyrethroids in mammals. This research is expected to be completed by 2007. When the results of this research are available, the Agency will make a determination of common mechanism of toxicity as a basis for assessing cumulative risk. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's website at *http://www.epa.gov/pesticides/cumulative/.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* The Agency has determined that there is no concern for pre- and/or post-natal toxicity resulting from exposure to fenpropathrin based on the submitted guidelines studies. There is no evidence (qualitative or quantitative) of increased susceptibility following *in utero* and/or pre- or post-natal exposure in adequate developmental toxicity studies in rats or rabbits and in a two-generation reproduction study in rats. In the rat developmental toxicity study, developmental effects occurred at a dose that was higher than the dose that caused maternal toxicity. In the study in rabbits, no developmental effects were seen at the highest dose tested. In the two-generation reproduction study in rats, the deaths in two pups of the F2 generation were not considered to be evidence of qualitative increased susceptibility as (i) the deaths occurred at the same dose that caused severe maternal toxicity (i.e., maternal deaths and neurotoxic clinical signs) and, (ii) the deaths occurred during lactation (days 19 and 21) when these pups were exposed to the compound via the milk and the diet. The Agency has concluded that there are no concerns or residual uncertainties for pre- and post-natal toxicity, based on the submitted guideline study results. However, EPA is lacking acute and subchronic neurotoxicity studies, and a developmental neurotoxicity study. The developmental neurotoxicity study has been required based on neurotoxicity being seen in all four tested animal species, and the fact that no detailed neuropathology data were available.

3. *Conclusion.* Because analysis of the existing database does not provide a reliable basis for concluding that these missing studies will not affect the regulatory endpoints for fenpropathrin, EPA is retaining the additional 10X FQPA factor for fenpropathrin, in the form of a database uncertainty factor, for the protection of infants and children.

E. Aggregate Risks and Determination of Safety

The Agency currently has two ways to estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses. First, a screening assessment can be used, in which the Agency calculates drinking water levels of comparison (DWLOCs) which are used as a point of comparison against EDWCs. The DWLOC values are not regulatory standards for drinking water, but are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter(L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EDWCs for surface water and ground water are less than the calculated DWLOCs, EPA can conclude with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposures for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. When new uses are added EPA reassesses the potential impacts of residues of the pesticide in drinking water as a part of the aggregate assessment process.

More recently the Agency has used another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface and ground water EDWCs are directly incorporated into the dietary exposure analysis, along with food. This provides a more realistic estimate of exposure because actual body weights and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in developing drinking water modeling inputs.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure and drinking water, the acute dietary exposure from food and water to fenpropathrin will occupy 50% of the aPAD for the U.S. population, 43% of the aPAD for females 13 years

and older, 86% of the aPAD for all infants <1 year old, and 91% of the aPAD for children 3 to 5 years old, the subpopulation at greatest exposure. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure and drinking water, EPA has concluded that exposure to fenpropathrin from food and water will utilize 3.7% of the cPAD for the U.S. population, 6.7% of the cPAD for all infants < 1 year old, the subpopulation at greatest exposure, and 6.4% of the cPAD for children 1 to 2 years old. There are no residential uses for fenpropathrin. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term and intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fenpropathrin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risks are the sums of the risks from food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population.* Fenpropathrin has been classified as not likely to be carcinogenic to humans. Therefore, fenpropathrin is expected to pose at most a negligible cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

An enforcement method is available for the analysis of fenpropathrin in plants. This method, Residue Method Number RM-22-4 (11/1/89, revised 5/3/93) is entitled ''Determination of Fenpropathrin in Crops.'' Residues in crops are extracted with acetone/hexane, partitioned into hexane, cleaned up by silica gel and C_{18} Sep Pak chromatography, and measured by gas chromatography equipped with an electron capture detector. The limit of detection of this method is 0.01 ppm. An EPA trial of this method for the determination of fenpropathrin residues in apples has been successfully conducted. No additional animal commodity tolerances are being established with these petitions. As a result, enforcement methods for animal commodities are not being addressed. Recovery of fenpropathrin was tested through FDA multiresidue methods, and fenpropathrin was found to be completely recovered by the PAM I Section 302 Method (Luke Method).

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian, or Mexican MRLs for fenpropathrin in or on the proposed commodities. Therefore, harmonization of tolerances is not an issue.

C. Response to Comments

One comment was received from a private citizen who opposed the authorization to sell any pesticide that leaves a residue on food. The Agency has received this same comment from this commenter on numerous previous occasions and rejects it for the reasons previously stated (70 FR 1349, 1354, January 7, 2005).

V. Conclusion

Therefore, the tolerances are established for residues of fenpropathrin, α-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate, in or on bushberry subgroup 13B; lingonberry; juneberry, and salal at 3.0 ppm; pea, succulent at 0.02 ppm, and vegetable, fruiting, group 8 at 1.0 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0133 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 22, 2005.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0133, to: Public Information and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a

copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 19, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.466 is amended in the table to paragraph (a) by by removing the commodity ''tomato'' and by adding alphabetically commodities to the table to read as follows:

§ 180.466 Fenpropathrin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	*
Bushberry subgroup 13B	3.0
* * * *	*
Juneberry	3.0
* * * *	*
Lingonberry	3.0

Commodity	Parts per million
* * * * *	
Pea, succulent	0.02
* * * * *	
Salal	3.0
* * * * *	
Vegetable, fruiting, group 8	1.0

* * * * *

[FR Doc. 05–19062 Filed 9–22–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0017; FRL–7736–4]

Kasugamycin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance forresidues of kasugamycin in or on fruiting vegetables, crop group 8. Arysta Lifescience North American Corporation (previously know as Arvesta Corporation), agent for Hokko Chemical Industry Corporation, requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 23, 2005. Objections and requests for hearings must be received on or before November 22, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the**SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0017. All documents in the docket are listed in the EDOCKET index at*http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall#2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

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

II. Background and Statutory Findings

In the **Federal Register** of April 8, 2005 (70 FR 17997) (FRL–7704–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3E6579) by Arysta Lifescience North American Corporation, 100 First Street, Ste. 1700; San Fransisco, CA 94105; agent for Hokko Chemical Industry Corporation Ltd., 4-20, Nihonbashi Hongochkucho 4 Chome, Chuo-Ku, Tokyo 103–8341, Japan. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the fungicide kasugamycin, 1L-1,3,4/2,5,6-1-deoxy-2,3,4,5,6-pentahydroxy-cyclohexyl-2-amino-2,3,4,6-tetradeoxy-4-([α]-iminoglycino)-[α]-D-arabino-hexapyranoside, in or on fruiting vegetables (Crop Group 8) at 0.04 parts per million (ppm), tomato juice at 0.06 ppm, tomato puree at 0.06 ppm, and tomato paste at 0.25 ppm. That notice included a summary of the petition prepared by Arysta Life Science North American Corporation, agent for Hokko Chemical Industry Corporation, LLC, the registrant. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C. below.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see *http://*

www.epa.gov/pesticides/factsheets/riskassess.htm

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of kasugamycin on fruiting vegetables(Crop Group 8) at 0.04 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles of EPA uses in risk characterization at *http://www.epa.gov/oppfead1/trac/science/*.

A summary of the toxicological endpoints for kasugamycin used for human risk assessment is shown in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR KASUGAMYCIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (females 13–50 years of age and general population including infants and children)	None	None	Not Selected No appropriate dose and endpoint could beidentified for these population groups
Chronic dietary (all populations)	NOAEL = 11.3 mg/kg/day UF = 100 Chronic RfD = 0.113 mg/kg/day	Special FQPA SF = 1 cPAD = chronic RfD/Special FQPA SF = 0.113 mg/kg/day	Combined chronic toxicity/oncogenicity study in rats LOAEL = 116 mg/kg/day based on increased testicular softening and atrophy
Cancer (oral, dermal, inhalation)	Classification: No oncogenic potential was noted in the mouse oncogenicity or in the rat combined chronic/carcinogenicity studies; additionally, no mutagenic potential was noted in any of the five mutagenicity studies. Classification of kasugamycin is ''not likely to be carcinogenic to humans.''		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* This final rule reflects the establishment of the first tolerance for kasugamycin. Since there are no registered uses in the United States, the only exposure expected is from imported foods. Risk assessments were conducted by EPA to assess dietary exposures from kasugamycin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for kasugamycin; therefore, a quantitative acute dietary exposure assessment is unnecessary. No appropriate dose or endpoint could be identified for acute dietary exposure in the general population or any population subgroup.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The analysis is based on tolerance-level residues (modified by DEEM default processing factors for tomato processed commodities) and the assumption that 100% of the crop will be treated.

iii. *Cancer.* The Agency classified kasugamycin as ''not likely to be carcinogenic to humans,'' based on the lack of evidence of carcinogenicity in mice and rats. Therefore, a quantitative cancer exposure assessment was not conducted.

2. *Dietary exposure from drinking water.* There is no expectation that kasugamycin residues would occur in surface or ground water sources of drinking water. There are no registered uses of kasugamycin in the United States.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-

occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Kasugamycin is not registered for use on any sites that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. No increased quantitative or qualitative susceptibility was observed in the developmental rat or rabbit studies or in the 2–generation reproduction study. No offspring toxicity was observed at any of the doses tested in these three studies. Reproductive toxicity was noted in the F1 generation of the 2–generation reproduction study. However, because parental toxicity (decreased body weights and body weight gains) occured at a lower dose than that which resulted in effects on reproduction, there is no increased quantitative or qualitative susceptibility of the offspring. The toxicology database for kasugamycin is complete with respect to prenatal and postnatal toxicity and shows no evidence of increased qualitative or quantitative susceptibility in the offspring. Therefore, there are no residual uncertainties for prenatal and/or postnatal toxicity.

3. *Conclusion*. There is a complete toxicity data base for kasugamycin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Additionally, a developmental neurotoxicity study is not required because there was no evidence of neurotoxicity in any studies. Based on the above information, EPA concludes that it has reliable data that supports the conclusion that it is safe to remove the additional children's safety factor.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. No appropriate dose or endpoint was identified for acute dietary exposure in the general population or any population subgroup. Therefore, no acute risk is expected from exposure to Kasugamycin.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to kasugamycin from food will utilize < 1% of the cPAD for the U.S. population, < 1% of the cPAD for all infants < 1–year, and < 1% of the cPAD for children 1-2 years. There are no residential uses for kasugamycin that result in chronic residential exposure to kasugamycin, and no exposure is expected from drinking water. EPA does not expect the aggregate exposure (dietary only) to exceed 100% of the cPAD as shown in Table 2 of this unit.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO KASUGAMYCIN

Population/ Subgroup	cPAD (mg/ kg/day	%cPAD (Food)
U.S. population	0.113	<1
All Infants (< 1 yr)	0.113	<1
Children 1-2 yrs	0.113	<1

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level.)

Kasugamycin is not registered for use on any sites that would result in residential exposure, and the tolerance in this rule is for imported fruiting vegetables (crop group 8). No exposure is expected from drinking water. Therefore, the aggregate risk is from food only, and which does not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Kasugamycin is not registered for use on any sites that would result in residential exposure, and the tolerance in this rule is for imported fruiting vegetables (crop group 8). No exposure is expected from drinking water. Therefore, the aggregate risk is from food only, and which does not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. Kasugamycin has not been shown to be carcinogenic. Therefore, kasugamycin is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

The analytical enforcement method uses ion exchange resins for clean up and reverse-phase ion-pairing liquid chromatography with ultra-violet detection (HPLC/UV). This method was validated by an independent laboratory. The Agency's laboratory also conducted a laboratory trial of this method and has determined the method performance to

be useful as an enforcement method with the incorporated revisions recommended by the petitioner.

The method (HPLC/UV) may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican MRLs for kasugamycin.

C. Response to Comments

Comments were received from a private citizen on the notice of filing for kasugamycin on April 17, 2005 objecting to this proposed tolerance. The comments further stated that not enough tests have been completed (long term or tests on how it combines) and that there is little indication of safety.

The Agency response is as follows: The Agency has a complete toxicity database on kasugamycin, including several long-term or chronic studies. Further, EPA has not made a common mechanism of toxicity finding as to kasugamycin and any other substances and kasugamycin does not appear to produce a toxic metabolite produced by other substances. The commenter submitted no scientific information or contention in support of the commenter's claims.

V. Conclusion

Therefore, the tolerance is established for residues of kasugamycin, [3-O-[2-amino-4-[(carboxyiminomethyl)amino]-2,3,4,6-tetradeoxy-α-D-arabino-hexopyranosyl]-D-chiro-inositol]], in or on fruiting vegetables (Crop Group 8) at 0.04 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0017 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 22, 2005.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0017, to: Public Information and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045,

entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 15, 2005.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—AMENDED

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

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

■ 2. Section 180.614 is added to read as follows:

§ 180.614 Kasugamycin; tolerances for residues.

(a) *General.* Tolerances are established for residues of kasugamycin, 3-O-[2-amino-4-[(carboxyiminomethyl)amino]-2,3,4,6-tetradeoxy-α-D-arabino-hexopyranosyl]-D-chiro-inositol in or on the following raw agricultural commodity:

Commodity	Parts per million
Vegetable, fruiting group 8[1]	0.04

[1]There is no U.S. registration as of September 1, 2005.

(b) *Section 18 emergency exemptions.* [Reserved]

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

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

[FR Doc. 05–19061 Filed 9–22–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0185; FRL–7736–3]

Amicarbazone; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of amicarbazone and its metabolites in or on field corn and livestock commodities and indirect or inadvertent residues of amicarbazone and its metabolites in alfalfa, cotton, soybean and wheat. Arysta Lifescience North American Corporation (perviously known as Arvesta Corporation) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 23, 2005. Objections and requests for hearings must be received on or before November 22, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0185. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm.

119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

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

II. Background and Statutory Findings

In the **Federal Register** of January 22, 2004 (69 FR 3138) (FRL–7339–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F6131) by Arysta Lifescience North American Corporation, 100 First Street, Suite 1700; San Francisco, CA 94105. The petition requested that 40 CFR part 180 be amended by establishing tolerances for combined residues of the herbicide amicarbazone, 4-amino-4,5-dihydro-N-(1,1-dimethylethyl)-3-(1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide] and its metabolities DA amicarbazone (N-(1,1-dimethylethyl)-4,5-dihydro-3-(1-methylethyl)-5-oxo-1H,2,4-triazole-1-carboxamide) and iPr-2-OH DA amicarbazone (N-(1,1-dimethylethyl)-4,5-dihydro-3-(1-hydroxy-1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide), in or on the raw agricultural commodities alfalfa forage at 0.04 parts per million (ppm); alfalfa hay at 0.06 ppm; corn forage at 0.8ppm; corn grain, at 0.05 ppm; corn stover at 0.5 ppm; cotton gin by-product at 0.2 ppm; cottonseed hulls at 0.01 ppm; cottonseed meal at 0.01 ppm; cottonseed refined oil at 0.01 ppm; cotton undelinted seed at 0.04 ppm; soybean forage at 2.5 ppm; soybean hay at 7.0 ppm; soybean hulls at 0.2 ppm; soybean meal at 0.25 ppm; soybean oil at 0.01 ppm; soybean seed at 0.6 ppm; wheat bran at 0.08 ppm; wheat flour at 0.05 ppm; wheat forage at 0.6 ppm; wheat germs at 0.05 ppm; wheat grain at 0.09 ppm; wheat hay at 0.9 ppm; wheat middlings at 0.05 ppm; wheat shorts at 0.06 ppm; wheat straw at 0.4 ppm; sugarcane at 0.15 ppm; sugarcane molasses at 0.8 ppm; meat (cattle, goats, hogs, horses, and sheep) at 0.01 ppm; meat byproducts (cattle, goats, hogs, horses,and sheep) at 0.2 ppm; and milk at 0.01 ppm respectively.

Due to a lack of field trial data on sugarcane, tolerances on sugarcane and sugarcane molasses are not being established at this time.

One comment was received in response to the notice filing. B. Sachau objected to the proposed tolerances because of the amounts of pesticides already consumed and carried by the American population. She further indicated that testing conducted on animals have absolutely no validity and are cruel to the test animals. EPA's response to these comments is contained in Unit IV.C.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for combined residues of amicarbazone [4-amino-4, 5-dihydro- N-(1,1-dimethylethyl)-3-(1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide] and its metabolites DA amicarbazone [N-(1,1-dimethylethyl)-4,5-dihydro-3-(1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide] and iPr-2-OH DA amicarbazone [N-(1,1-dimethylethyl)-4,5-dihydro-3-(1-hydroxy-1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide], calculated as parent equivalents, in or on corn, field, forage at 0.80 ppm; corn, field, grain at 0.05 ppm; corn, field, stover at 1.0 ppm; cattle, fat at 0.01 ppm; cattle, liver at 1.0 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts, except liver at 0.10 ppm; goat, fat at 0.01 ppm; goat, liver at 1.0 ppm; goat, meat at 0.01 ppm; goat, meat byproducts, except liver at 0.1

ppm; hog, fat at 0.01 ppm; hog, liver at 0.1 ppm; hog, meat at 0.01 ppm; hog, meat byproducts, except liver at 0.01 ppm; horse, fat at 0.01 ppm; horse, liver at 1.0 ppm; horse, meat at 0.01 ppm; horse, meat byproducts, except liver at 0.10 ppm; milk at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, liver at 1.0 ppm; sheep, meat at 0.01 ppm; sheep, meat byproducts, except liver at 0.10 ppm; poultry, liver at 0.01 ppm. EPA can also make a determination on aggregate exposure for the establishment of tolerances for the indirect or inadvertent residues of amicarbazone and its metabolites DA amicarbazone and iPr-2-OH DA amicarbazone, calculated as amicarbazone, in or on the following raw agricultural commodities when present therein as a result of the application of amicarbazone to field corn: Alfalfa, forage at 0.05 ppm; alfalfa, hay at 0.10 ppm; cotton, undelinted seed at 0.07 ppm; cotton, gin byproducts at 0.30 ppm; soybean, forage at 1.50 ppm; soybean, hay at 5.0 ppm; soybean, seed at 0.80 ppm; wheat, forage at 0.50 ppm; wheat, hay at 1.0 ppm; wheat, grain at 0.10 ppm; wheat, straw at 0.50 ppm; wheat, grain, milled byproducts at 0.15 ppm.

EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by amicarbazone are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity - rodents (rats)	NOAEL = 33/38 milligram/kilogram/day (mg/kg/day) LOAEL = 67/78 mg/kg/day based on decreased bodyweight (BW) female and overall (weeks 1–13) bodyweight gain (BWG), decreased red cell indices, clinical chemistry (increased cholesterol, T4 and T3 males, O-demethylase females, N-demethylase males), increased relative liver weights females, and histopathology effects in males (minimal hepatocytomegaly and minimal pigmentation in the spleen)
870.3150	90–Day oral toxicity - nonrodents (dogs)	NOAEL = 6.28 mg/kg/day LOAEL = 24.99 mg/kg/day based on increased thyroid vacuolization and decreased food consumption and glucose in females; increased platelets, phosphate, bile acids, absolute and relative liver weights, and lymphoid hyperplasia of the gall bladder in males; and decreased albumin and increased triglycerides, N-demethylase, and O-demthylase in both sexes.
870.3200	21/28–Day dermal toxicity	NOAEL = 1,000 mg/kg/day LOAEL = Not Observed
870.3700	Prenatal developmental in rats	Maternal NOAEL = 15 mg/kg/day LOAEL = 100 mg/kg/day based on decreased BW/BWG and food consumption, and increased incidences of hard stools. Developmental NOAEL = 15 mg/kg/day LOAEL = 100 mg/kg/day based on multiple skeletal development retardations (incomplete ossification/unossification was observed in parietal bones, interparietal bones, supraoccipital bones, squamosal bones, zygoma, pubis, xiphoid, and fontanelle
870.3700	Prenatal developmental in rabbits	Maternal NOAEL = 5 mg/kg/day LOAEL = 20 mg/kg/day based on decreased BWG during treatment. Developmental NOAEL = 20 mg/kg/day LOAEL = 70 mg/kg/day based on decreased fetal BW, and increased incidences of incomplete ossification of the 5th medial phalanx (bilateral) and the 13th caudal vertebra, and slightly thick ribs.
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = 6.4/7.3 mg/kg/day LOAEL = 33.9/38.7 mg/kg/day based on decreased BW/BWG in both sexes. Reproductive NOAEL = 73.2/84.0 mg/kg/day LOAEL = Not Observed Offspring NOAEL = 6.4/7.3 mg/kg/day LOAEL = 33.9/38.7 mg/kg/day based on decreased pup BW and overall decreased BWG.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.4100	Chronic toxicity in rodents (rats)	NOAEL = 2.3/2.7 mg/kg/day LOAEL = 25.3/29.5 mg/kg/day based on decreased BW in females and BWG in both sexes. At the doses tested there was not a treatment related increase in tumor incidence when compared to control. Dosing was considered adequate based on decreased BW in females and BWG in both sexes.
870.4100	Chronic toxicity dogs (beagle)	NOAEL =2.5/2.3 mg/kg/day LOAEL = 8.9/8.7 mg/kg/day based on effects on the liver, including increased absolute and relative liver weights, and O-demethylase in males; increased globulin and cytochrome P-450 in females; and increased triglycerides and cholesterol in both sexes.
870.4300	Carcinogenicity-mice	NOAEL = 244.7/275.0 mg/kg/day LOAEL = 709.0/806.3 mg/kg/day based on decreased BW and BWG in both sexes, and subclinical anemia, and hemosiderin pigmentation of the spleen in males. no evidence of carcinogenicity At the doses tested there was not a treatment related increase in tumor incidence when compared to control. Dosing was considered adequate based on decreased BW and BWG in both sexes, and subclinical anemia, and hemosiderin pigmentation of the spleen in males.
870.5100	Bacterial reverse mutation test	There was no evidence of induced mutant colonies over background.
870.5100	Bacterial reverse mutation test	There was no evidence of induced mutant colonies over background.
870.5100	Bacterial reverse mutation test	There was no evidence of induced mutant colonies over background.
870.5300	*In vitro* mammalian cell gene mutation test	There was no evidence that MKH3586 induced mutant colonies over background in the presence or absence of S9-activation.
870.5375	*In vitro* mammalian chromosome aberration test	There was no evidence of chromosome aberration induced over background in the presence or absence of S9-activation.
870.5395	Mammalian erythrocyte micronucleus test	There was no significant increase in the frequency of micronucleated polychromatic erythrocytes in bone marrow at any treatment time.
870.6200	Acute neurotoxicity screening battery in rats (Fischer-344)	NOAEL = 10 mg/kg/day LOAEL = 20 mg/kg/day based on eyelid ptosis, decreased approach response (both sexes), and red nasal staining in males. A series of acute neurotoxicity studies were performed, the NOAEL for this study comes from 45121527.
870.6200	Subchronic neurotoxicity screening battery in rats (Fischer-344)	**Female:** NOAEL = 7.8 mg/kg/day LOAEL = 38.2 mg/kg/day based on decreased BW and overall BWG in females. **Male:** NOAEL = 66.5 mg/kd/day LOAEL = was not observed for males.
870.6300	Developmental neurotoxicity in rats	Maternal NOAEL = 8 mg/kg/day LOAEL = 39 mg/kg/day based primarily on decreased feed efficiency (combination of decreased BWG and increased food consumption) during lactation. Offspring NOAEL = 39 mg/kg/day LOAEL = 91 mg/kg/day based on decreased BWG.
870.7485	Metabolism and pharmacokinetics	95% of the radioactive dose was recovered within 72 hours following dosing. The majority of the dose was recovered from the urine within 24 hours (64%), indicating substantial absorption. Fecal excretion accounted for 27% of the dose within 24 hours. Major metabolites were DA MKH, N-methyl DA MKH, and decarboxamide.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.7485	Metabolism and pharmacokinetics	91% of the radioactive dose was recovered within 96 hours. Urinary excretion accounted for 70% of the radioactive dose within 12 hours, showing substantial absorption. Only 8% of the radioactive dose was excreted via the feces within 24 hours.
Non-guideline	Subchronic mechanistic feeding in rats	Thyroid hormones were increased in the >19.4 mg/kg/day females and 40.0 mg/kg/day males. However, thyroid to blood ratios of ^{125}I in treated groups were comparable to negative controls, indicating there was no impairment of thyroid hormone synthesis. Thus, the differences in thyroid hormones is probably due to metabolism at an extra-thyroidal site. The liver was implicated as this site because liver weights and UDP-glucuronosyltransferase activity were increased.
Non-guideline	*In vitro* studies on enzymes of thyroid hormone regulation	MKH 3586 does not affect the iodide organification step of thyroid hormone synthesis or the peripheral metabolism of thyroid hormones via Type I or Type II deiodinases *in vivo*. These findings support the subchronic mechanistic studies in rats which indicate that upregulation of UDP-glucuronosyl transferase in the liver may account for alterations in thyroid hormone profile.
Non-guideline	Behavioral study in rats	The following clinical signs were observed: Sedation, ptosis, salivation. Additionally at the HDT, piloerection, Straub phenomenon, and prone position were observed. The effects were observed at 30 minutes post dose, and no effect was observed at 150 minutes post dose, with the higher dose groups showing greater persistence of effects. A dose- and time-dependent effect was demonstrated on motor activity - decreased travel distance, increased resting time, and decreased rearing.
Non-guideline	Study of central nervous system safety pharmacology in mice	The data indicate that a single dose of MKH 3586 at 100 mg/kg causes minimal CNS functional impairment, characterized by increased reaction times to nociceptive stimuli, reduced traction force, impaired motor coordination, sedation, partial ptosis, and a mild anticonvulsive effect.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

Three other types of safety or uncertainty factors may be used: ''Traditional uncertainty factors;'' the ''special FQPA safety factor,'' and the ''default FQPA safety factor.'' By the term ''traditional uncertainty factor,'' EPA is referring to those additional uncertainty factors used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term ''special FQPA safety factor'' refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The ''default FQPA safety factor'' is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors deemed appropriate (RfD = NOAE/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{-6}), one in a ten million (1×10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value

derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE cancer = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for amicarbazone used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR AMICARBAZONE FOR USE IN HUMAN RISK ASSESSMENTS

Exposure Scenario	Dose Used in Risk Assessment UF	Special FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (females 13–49 years of age)	NOAEL = 10 mg/kg/day UF = 100X Acute RfD = 0.10 mg/kg/day	Special FQPA SF = 1X aPAD = 0.10 mg/kg/day	Acute neurotoxicity screening battery LOAEL = 20 mg/kg/day, based on eyelid ptosis, decreased approach response, red nasal staining in male rats.
Acute dietary (general population)	NOAEL = 10 mg/kg/day UF = 100X Acute RfD = 0.10 mg/kg/day	Special FQPA SF = 1X aPAD = 0.10 mg/kg/day	Acute neurotoxicity screening battery LOAEL = 20 mg/kg/day, based on eyelid ptosis, decreased approach response, red nasal staining in male rats.
Chronic dietary (all populations)	NOAEL = 2.3 mg/kg/day UF = 100X Chronic RfD = .023 mg/kg/day	Special FQPA SF = 1X cPAD = 0.023 mg/kg/day	Chronic rat and chronic dog LOAEL = 25.3 and 8.7, respectively, based on rat - decreased BW and BWG dog - liver effects, including increased absolute and relative liver weights, and O-demethylase in male dogs; increased globulin and cytochrome p450 in female dogs; and increased triglycerides and cholesterol in both sexes
Dermal (all durations)	Not required: No systemic toxicity by dermal route was seen at the limit dose. Evidence of low dermal absorption.		
Inhalation short-term (1 - 30 days)	NOAEL = 6.28 mg/kg/day	LOC for MOE = 100	90–Day oral toxicity in dogs LOAEL = 24.99 mg/kg/day, based on increased thyroid vacuolization and decreased food consumption and glucose in females; increased platelets, phosphate, bile acids, absolute and relative liver weights, and lymphoid hyperplasia of the gall bladder in males; and decreased albumin and increased triglycerides, N-demethylase, and O-demethylase in both sexes
Inhalation intermediate-term (1-6 months)	NOAEL = 6.28 mg/kg/day	LOC for MOE = 100	90–Day oral toxicity in dogs LOAEL = 24.99 mg/kg/day, based on increased thyroid vacuolization and decreased food consumption and glucose in females; increased platelets, phosphate, bile acids, absolute and relative liver weights, and lymphoid hyperplasia of the gall bladder in males; and decreased albumin and increased triglycerides, N-demethylase, and O-demethylase in both sexes
Cancer (oral, dermal, inhalation)	Classification: There was no treatment related increase in tumor incidence when compared to control. Dosing was considered adequate. This chemical is not likely to be a carcinogen.		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* No tolerances have been established in 40 CFR part 180 previously for the combined residues of amicarbazone, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from amicarbazone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: For the acute analyses, tolerance-level residues were assumed for all food commodities with proposed amicarbazone tolerances, and it was assumed that 100% of all of the crops included in the analysis were treated. The DEEM™ analyses included drinking water in addition to the food sources of residues.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM software with the

Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: For the chronic analyses tolerance-level residues were assumed for all food commodities with proposed amicarbazone tolerances, and it was assumed that 100% of all of the crops included in the analysis were treated. As with the acute analyses, drinking water was included in the assessment.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for amicarbazone in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of amicarbazone.

Based on the FIRST and SCI-GROW models, the estimated environmental concentrations (EECs) of amicarbazone for acute exposures are estimated to be 21.4 parts per billion (ppb) for surface water and 102.9 ppb for ground water. The EECs for chronic exposures are estimated to be 13.4 ppb for surface water and 102.9 ppb for ground water. The ground water EEC was used in both the acute and chronic DEEM analyses described earlier in this section.

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

Amicarbazone is not registered for use on any sites that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with amicarbazone. There is no evidence of increased susceptibility of rats in the reproduction study with amicarbazone. EPA concluded that there are no residual uncertainties for prenatal and/or postnatal exposure.

3. *Conclusion*. There is a complete toxicity data base for amicarbazone and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency concluded that there was reliable data to remove the 10X children's safety factor based upon the following: The toxicity database showed no increase in susceptibility in fetuses and pups with *in utero* and post-natal exposure; the dietary exposure assessment is based on HED-recommended tolerance-level residues, assumes 100% crop treated for all commodities, and utilizes high-end estimates of concentrations in water; and there are no residential uses proposed for this chemical at this time.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and drinking water to amicarbazone will occupy 7% of the aPAD for the U.S. population, 6% of the aPAD for females 13 years and older, 23% of the aPAD for the all infant subpopulation, which is the subpopulation with the greatest exposure, and 12% of the aPAD for children 1–2 years old. Therefore, EPA does not expect the acute aggregate risk exposure to exceed 100% of the aPAD.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to amicarbazone from food and drinking water will utilize 14% of the cPAD for the U.S. population, 39% of the cPAD for for the all infant subpopulation, which is the subpopulation with the greatest exposure, and 26% of the cPAD for children 1–2 years old. There are no residential uses for amicarbazone that result in chronic residential exposure to amicarbazone. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Amicarbazone is not registered for use on any sites that would result in residential exposure. Therefore, the chronic aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Amicarbazone is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which does not exceed the Agency's LOC.

5. *Aggregate cancer risk for U.S. population*. A cancer dietary exposure analysis was not performed because the

Agency determined that amicarbazone was not likely to cause cancer.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry) is available to enforce the tolerance expression. The methods for both plant and livestock commodities may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established Codex, Canadian or Mexican residue limits for amicarbazone.

C. Response to Comments

Ms. Sachau's comments regarding general exposure to pesticides contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to amicarbazone, including all anticipated dietary exposures and all other exposures for which there is reliable information. This comment as well as her comments regarding animal testing have been responded to by EPA on several occasions. 70 FR 1349 (January 7, 2005)(FRL–7691–4); 69 FR 63083, (October 29, 2004)(FRL–7681–9).

V. Conclusion

Therefore, tolerances are established for combined residues of amicarbazone [4-amino-N-(1,1-dimethyl)-4,5-dihydro-3-(1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide] and its metabolites DA amicarbazone [N-(1,1-dimethylethyl)-4,5-dihydro-3-(1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide] and iPr-2-OH DA amicarbazone [N-(1,1-dimethylethyl)-4,5-dihydro-3-(1-hydroxy-1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide], calculated as parent equivalents, in or on corn, field, grain at 0.05 ppm; corn, field, forage at 0.80 ppm; corn, field, stover at 1.0 ppm; cattle, fat at 0.01 ppm; cattle, liver at 1.0 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts, except liver at 0.10 ppm; goat, fat at 0.01 ppm; goat, liver at 1.0 ppm; goat, meat at 0.01 ppm; goat, meat byproducts, except liver at 0.1 ppm; hog, fat at 0.01 ppm; hog, liver at 0.1 ppm; hog, meat at 0.01 ppm; hog, meat byproducts, except liver at 0.01 ppm; horse, fat at 0.01 ppm; horse, liver at 1.0 ppm; horse, meat at 0.01 ppm; horse, meat byproducts, except liver at 0.10 ppm; milk at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, liver at 1.0 ppm; sheep, meat at 0.01 ppm; sheep, meat byproducts, except liver at 0.10 ppm; poultry, liver at 0.01 ppm.

Tolerances are also established for the indirect or inadvertent residues of amicarbazone and its metabolites DA amicarbazone and iPr-2-OH DA amicarbazone, calculated as amicarbazone, in or on the following raw agricultural commodities when present therein as a result of the application of amicarbazone to field corn: Alfalfa, forage at 0.05 ppm; Alfalfa, hay at 0.10 ppm; Cotton, undelinted seed at 0.07 ppm; Cotton, gin byproducts at 0.30 ppm; Soybean, forage at 1.50 ppm; Soybean, hay at 5.0 ppm; Soybean, seed at 0.80 ppm; Wheat, forage at 0.50 ppm; Wheat, hay at 1.0 ppm; Wheat, grain at 0.10 ppm; Wheat, straw at 0.50 ppm; Wheat, grain, milled byproducts at 0.15 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0185 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 22, 2005.

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

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

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIA, you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0185, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 12, 2005.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.615 is added to subpart C to read as follows:

§ 180.615 Amicarbazone; tolerances for residues

(a) *General.* Tolerances are established for combined residues of the herbicide, amicarbazone [4-amino-4, 5-dihydro- N-(1,1-dimethylethyl)-3-(1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide] and its metabolites DA amicarbazone [N-(1,1-dimethylethyl)-4,5-dihydro-3-(1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide] and iPr-2-OH DA amicarbazone [N-(1,1-dimethylethyl)-4,5-dihydro-3-(1-hydroxy-1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide], calculated as parent equivalents, in or on the following commodities:

Commodity	Parts per million
Cattle, fat	0.01
Cattle, liver	1.0
Cattle, meat	0.01
Cattle, meat byproducts, except liver	0.10
Corn, field, forage	0.80
Corn, field, grain	0.05
Corn, field, stover	1.0
Goat, fat	0.01

Commodity	Parts per million
Goat, liver	1.0
Goat, meat	0.01
Goat, meat byproducts, except liver	0.10
Hog, fat	0.01
Hog, liver	0.10
Hog, meat	0.01
Hog, meat byproducts, except liver	0.01
Horse, fat	0.01
Horse, liver	1.0
Horse, meat	0.01
Horse, meat byproducts, except liver	0.10
Milk	0.01
Sheep, fat	0.01
Sheep, liver	1.0
Sheep, meat	0.01
Sheep, meat byproducts, except liver	0.10
Poultry, liver	0.10

(b) *Section 18 emergency exemptions.* [Reserved]

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

(d) *Indirect or inadvertent residues.* Tolerances are established for the indirect or inadvertent residues of amicarbazone [4-amino-4, 5-dihydro-N-(1,1-dimethylethyl)-3-(1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide] and its metabolites DA amicarbazone [N-(1,1-dimethylethyl)-4,5-dihydro-3-(1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide] and iPr-2-OH DA amicarbazone [N-(1,1-dimethylethyl)-4,5-dihydro-3-(1-hydroxy-1-methylethyl)-5-oxo-1H-1,2,4-triazole-1-carboxamide], calculated as parent equivalents, in or on the following commodities when present therein as a result of application of amicarbazone to the growing crops in paragraph (a) of this section:

Commodity	Parts per million
Alfalfa, forage	0.05
Alfalfa, hay	0.10
Cotton, gin byproducts	0.30
Cotton, undelinted seed	0.07
Soybean, forage	1.50
Soybean, hay	5.0
Soybean, seed	0.80
Wheat, forage	0.50
Wheat, grain	0.10
Wheat, grain, milled by-products	0.15
Wheat, hay	1.0
Wheat, straw	0.50

[FR Doc. 05–18951 Filed 9–22–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0267; FRL–7738–6]

Pyridaben; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of pyridaben in or on hop, dried cones; papaya; star apple; sapote, black; mango; sapodilla; sapote, mamey; canistel, fruit, stone, group 12; strawberry; and tomato. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). EPA is also deleting certain pyridaben tolerances that are no longer needed as result of this action.

DATES: This regulation is effective September 23, 2005. Objections and requests for hearings must be received on or before November 22, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP–2005–0267. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

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

II. Background and Statutory Findings

In the **Federal Register** of July 3, 2003 (68 FR 39942) (FRL–7315–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (0E6068, 1E6226, 1E6303, 2E6457, and 2E6460) from IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. The

petitions requested that 40 CFR 180.494 be amended by establishing tolerances for residues of pyridaben, 2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2H)-one in or on the following raw agricultural commodities: Strawberry at 2.5 parts per million (ppm) (PP 0E6068); hop, dried cones at 10.0 ppm (PP 1E6226); tomato at 0.2 ppm (PP 1E6303); fruit, stone, group at 2.5 ppm (PP 2E6457); papaya, black sapote, canistel, mamey sapote, mango, sapodilla, and star apple at 0.1 ppm (PP 2E6460). The tomato petition was subsequently amended to propose a tolerance at 0.15 ppm. Registration for tomato will be limited to greenhouse grown tomato based on the available residue data. The petitioner also proposed that established tolerances for nectarine, peach, plum, and prune at 2.5 ppm be deleted since they will be superceded by the tolerance for fruit, stone, group 12 at 2.5 ppm. That notice included a summary of the petition prepared by BASF Corporation, the registrant. The Agency received one comment expressing support for this action.

EPA is also deleting the apricot, sweet cherry and tart cherry tolerances in § 180.494(a) since they expired on June 30, 2004, and will also be superceded by the tolerance for fruit, stone, group 12.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7) at *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of pyridaben, 2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2H)-one in or on hop, dried cones at 10.0 ppm; papaya at 0.10 ppm; star apple at 0.10 ppm; sapote, black at 0.10 ppm; mango at 0.10 ppm; sapodilla at 0.10 ppm; sapote, mamey at 0.10 ppm; canistel at 0.10 ppm; fruit, stone, group 12 at 2.5 ppm; strawberry at 2.5 ppm; and tomato at 0.15 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyridaben are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity--rats	NOAEL in males: = 4.94 mg/kg/day and NOAEL in females: 2.64 mg/kg/day LOAEL = 11.55 mg/kg/day based on decreased body weight (bwt) gain, food consumption, food efficiency and altered clinical pathology parameters in males and a LOAEL of 5.53 mg/kg/day based on decreased body weight gain and food efficiency in females
870.3100	90–Day oral toxicity mice	NOAEL = males: 4.07 and females: 4.92 mg/kg/day LOAEL = males: 13.02 and females: 14.65 mg/kg/day based on decreased body weight gain
870.3150	90–Day oral toxicity--non-rodents	NOAEL = 1.0 mg/kg/day LOAEL = 4.0 mg/kg/day based on increased incidence of clinical signs and decreased body weight gain in both sexes
870.3150	90–Day oral toxicity--non-rodents	NOAEL = < 2.4 mg/kg/day LOAEL ≤ 2.4 mg/kg/day based on increased incidence of clinical signs and depletion of fat in all treated animals
870.3200	21–Day dermal toxicity	NOAEL = 100 mg/kg/day LOAEL = 300 mg/kg/day based on decreased body weight gain observed in females
870.3465	30–Day inhalation toxicity	NOAEL = 0.001 mg/L LOAEL = 0.003 mg/L based on increased incidence of clinical signs and clinical chemistry changes in both sexes and decreased body weight gain in females

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3700	Prenatal developmental oral toxicity - rodents	Maternal NOAEL = 4.7 mg/kg/day Maternal LOAEL = 13 mg/kg/day based on decreased body weight, body weight gain and food consumption Developmental NOAEL = 13 mg/kg/day Developmental LOAEL = 30 mg/kg/day based on deceased fetal body weight and incomplete ossification of bones
870.3700	Prenatal developmental dermal toxicity - non-rodents	Maternal NOAEL = 70 mg/kg/day Maternal LOAEL = 170 mg/kg/day based on deceased body weight and food consumption Developmental NOAEL = 170 mg/kg/day Developmental LOAEL = 450 g/kg/day based on increased incidence of fetuses with retarded growth (incompletely ossified skull)
870.3700	Prenatal developmental oral toxicity - non-rodents	Maternal NOAEL = 5 mg/kg/day Maternal LOAEL = 15 mg/kg/day based on decreases in body weight, body weight gain, food consumption and abortions Developmental NOAEL = 15 mg/kg/day (HDT). No toxicity was observed at any dose, therefore, the NOAEL is equal to or greater than highest dose tested Developmental LOAEL = > 15 mg/kg/day
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = males: 2.20 and females: 2.41 mg/kg/day Parental/Systemic LOAEL = males: 6.31 and females: 7.82 mg/kg/day based on decreased body weight, body weight gains, and food efficiency Offspring NOAEL = 2.2 mg/kg/day Offspring LOAEL = 6.3 mg/kg/day based on decreased pup body weight and body weight gain Reproductive NOAEL = males: 6.31 and females: 7.82 mg/kg/day (HDT). No reproductive toxicity was observed at any dose Reproductive LOAEL = males: > 6.31 and > 7.82 mg/kg bwt/day (HDT)
870.4100	Chronic toxicity-dogs	NOAEL = Not established LOAEL = 0.5 mg/kg/day based on increased clinical signs of toxicity in both sexes and decreased body weight gain in females
870.4100	Chronic toxicity--dogs	NOAEL = Not established LOAEL = 1.0 mg/kg/day based on increased clinical signs of toxicity in both sexes and decreased body weight gain in females
870.4200	Carcinogenicity--rats	NOAEL = males: 1.13 and females: 1.46 mg/kg/day LOAEL = males: 5 and females: 6.52 mg/kg/day based on decreased body weight and body weight gain observed in males and females, and decreased alanine transferase in males There was no evidence of carcinogenicity
870.4300	Carcinogenicity--mice	NOAEL = 2.78 mg/kg/day (males and females) LOAEL = males: 8.88 and females: 9.74 mg/kg/day) based on decreased body weight gain, decreased food efficiency and changes in organ weights and histopathology (males) No evidence of carcinogenicity
870.5100	Gene mutation - *Salmonella*	Negative
870.5300	Gene mutation in Chinese hamster cultured V-79	Negative
870.5380	Mutagenic- structural chromosome aberration -*in vitro* cytogenetics - Chinese hamster	Negative
870.5385	Mutagenic - structural chromosome aberration - micronucleus - mouse	Negative
870.5500	Mutagenic- DNA damage/ repair- *E. Coli*	Negative

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.6200	Acute oral neurotoxicity - rat	NOAEL = 44 mg/kg (both sexes) LOAEL = 80 mg/kg/day based on increased incident of piloerection, hypoactivity, tremors, partially closed eyes, and decreases in body weight gain and food consumption No neuropathological effects were observed
870.6200	Subchronic neurotoxicity screening battery	NOAEL = males: 8.5 and females: 9.3 mg/kg/day LOAEL = males: 28.8 and females: 31.1 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency in both sexes No neuropathological effects were observed
870.7485	Metabolism and pharmacokinetics	Rapidly metabolized. Gastrointestinal tract was the major site for distribution, and elimination. Highest residues were found in liver, pancreas, spleen, kidney, lymph node and fat. Parent compound was metabolized to 20 - 30 metabolites and were resolved in urine and feces

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

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

A summary of the toxicological endpoints for pyridaben used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.— SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR PYRIDABEN FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (all populations)	NOAEL = 44 mg/kg/day UF = 100 Acute Reference Dose (RfD) = 0.44 mg/kg/day	Special FQPA SF = 1X Acute Population Adjusted Dose (aPAD) = acute RfD/Special FQPA SF = 0.44 mg/kg/day	Acute Neurotoxicity-Rat LOAEL = 80 mg/kg/day based on an increased incidence of piloerection, hypoactivity, tremors and partially closed eyes, decreased body weight gain and food consumption
Chronic dietary (all populations)	LOAEL = 0.5 mg/kg/day UF = 100 Chronic RfD = 0.005 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD/Special FQPA SF = .005 mg/kg/day	Chronic Feeding-Dog LOAEL = 0.5 mg/kg/day based on an increased incidence of ptyalism, emesis and soft stools, and decreased body weight gain in females. EPA determined that this LOAEL could be used in risk assessment without an additional safety factor because the effects seen were minimal
Cancer (oral, dermal, inhalation)	Pyridaben has been classified as a Group E chemical (i.e. evidence of non-carcinogenicity for humans) based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.494) for the residues of pyridaben, in or on a variety of raw agricultural commodities including nectarine, peach, plum, and prune at 2.5 ppm. Tolerances have also been established for milk and fat, meat, and meat byproducts for cattle, goat, hog, horse, and sheep. Risk assessments were conducted by EPA to assess dietary exposures from pyridaben in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each

commodity. The following assumptions were made for the acute exposure assessments: A Tier 3, acute dietary-exposure assessment (probabilistic) was conducted for pyridaben. The probabilistic assessment was based upon residue distribution files or anticipated-residue estimates derived from crop field trial data for most commodities; processing factors from processing studies were utilized for most processed commodities; and percent crop-treated estimates and projected market-share estimates were utilized for most crops.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A Tier 2, partially-refined, chronic dietary-exposure assessment was conducted for pyridaben. Anticipated-residue estimates were utilized to account for the residues of concern for risk assessment derived from proposed and established tolerance levels; and percent crop-treated estimates and projected market-share estimates were utilized for most crops.

iii. *Cancer*. Pyridaben has been classified as not likely to be carcinogenic to humans. Therefore, a quantitative exposure assessment was not conducted to assess cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information*. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such Data Call-Ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such Data Call-Ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

4% almonds, 20% apples, 34% apricots, 25% cherries, 10% cranberry, 35% grapefruit, 10% grapes, 4% lemons, 8% oranges, 8% peaches, 22% pears, 8% plums and prunes, 15% nectarines, 1% pistachios, 25% strawberry, 25% tangerines, 8% tomatoes, and 35% for meat and milk. The following PCT data were used in the chronic dietary exposure analysis: 2.5% almonds, 10% apples, 34% apricots, 2.5% cherries, 10% cranberry, 15% grapefruit, 5% grapes, 2.5% lemons, 5% oranges, 5% peaches, 15% pears, 5% plums and prunes, 19% strawberry, 15% tangerines, and 4% tomatoes.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available federal, state, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of five except for those situations in which the average PCT is less than one. In those cases <1% is used as the average and <2.5% is used the maximum. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available federal, state, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of five. In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent 6 years.

EPA projects PCT for a new insecticide use by assuming that the PCT for the insecticide's initial 5 years will not exceed the average PCT of the dominant insecticide (the one with the largest PCT) within all insecticides over three latest available years. The PCTs included in the average may be each for the same insecticide or for different insecticides since the same or different insecticides may dominate for each year selected. Typically, EPA uses USDA/NASS as the source for raw PCT data because it is non-proprietary and directly available without computation.

This method of projecting PCT for a new insecticide use, with or without regard to specific pest(s), produces an upper-end projection that is unlikely, in most cases, to be exceeded in actuality because the dominant insecticide is well-established and accepted by farmers. Factors that bear on whether a projection based on the dominant insecticide could be exceeded are whether the new insecticide is more efficacious or controls a broader spectrum of pests than the dominant insecticide, whether it is more cost-effective than the dominant insecticide, and whether it is likely to be readily accepted by growers and experts. These factors have been considered for this insecticide new use, and they indicate that it is unlikely that actual PCT for this new use will exceed the PCT for the dominant insecticide in the next 5 years.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for pyridaben in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of pyridaben. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the EPA's Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentrations in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of pyridaben for acute exposures are estimated to be 12 parts per billion (ppb) for surface water and 0.007 ppb for ground water. The EECs for chronic exposures are estimated to be 2.2 ppb

for surface water and 0.007 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Pyridaben is not registered for use on any sites that would result in residential exposure.

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to pyridaben and any other substances and pyridaben does not appear to produce a toxic metabolite produced by other substances. EPA has also evaluated comments submitted that suggested there might be a common mechanism among pyridaben and other named pesticides that cause brain effects. EPA concluded that the evidence did not support a finding of common mechanism for pyridaben and the named pesticides. For the purposes of this tolerance action, therefore, EPA has not assumed that pyridaben has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no quantitative and/or qualitative evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure to pyridaben. There is no evidence of increased quantitative and/or qualitative susceptibility to pyridaben following prenatal exposure in a 2–generation reproduction study in the rat. There are no concerns or residual uncertainties for prenatal/postnatal toxicity.

Pyridaben elicited weak clinical signs (piloerection, hypoactivity, tremors) in an acute neurotoxicity study and a transient effect on the righting reflex in a subchronic feeding study. These signs were initially judged to be evidence of neurotoxicity and a Developmental Neurotoxicity (DNT) study was required. However, further evaluation of the entire weight of evidence has led to the conclusion that these signs are non-specific in nature and not indicative of a direct effect on the nervous system.

Pyridaben has weak neurotoxicity signs as demonstrated in the acute neurotoxicity study in rats. Piloerection, hypoactivity, tremors, and partially closed eyes were observed in animals in the 100 mg/kg bwt group. In the subchronic neurotoxicity study, transient poorly coordinated righting reflex was observed in high dose males (28.8 mg/kg bwt/day) in the absence of other neurotoxicity or neuropathology in the subchronic neurotoxicity study. Inhibition of plasma cholinesterase activity occurred at the highest dose (27.68 mg/kg bwt/day) in females only in the 90–day rat feeding study.

The Agency has determined that the DNT study is no longer required based on the following:

- The lack of evidence for abnormalities in the development of the fetal nervous system including the prenatal developmental toxicity studies in either rats (oral gavage up to 1,000 mg/kg/day) or rabbits (oral greater than 15 mg/kg/day and dermal up to 450 mg/kg/day) and the 2–generation reproduction study in rats (up to 6.31 mg/kg/day).
- The levels at which effects occurred in the acute and subchronic neurotoxicity studies were the highest doses tested where significant toxicity, other than neurotoxic signs were noted. Transient piloerection and hypoactivity were noted in the mid dose males (100 mg/kg/day) and piloerection, hypoactivity, tremors and partially closed eyes were observed in animals in the 200 mg/kg bwt group (highest dose tested) in the acute neurotoxicity study in rats. There was also transient (only 1 week), poorly coordinated righting reflex in highest dose tested (28.8 mg/kg/day) in males only in the subchronic neurotoxicity study. No neuropathology was noted in either study.
- Inhibition of plasma (butyryl and acetyl) cholinesterase activity at the highest dose tested (27.68 mg/kg/day, females) in the standard 90–day rat feeding study, this was not seen in the reversibility phase of the study. Pyridaben may have some flexibility and charge characteristics which would allow it to interact with the cholinesterase receptor in some tissues, but this response is not indicative of a neurotoxic mode of action.
- Only transient (appearing at only week 8, but not at weeks 4 or 13), poorly coordinated righting reflex in high dose males (28.8 mg/kg bwt/day) was observed in the absence of neurotoxicity in the subchronic neurotoxicity study.
- No other study of any duration showed evidence of neurotoxic effects (clinical signs, organ weights, histopathology) and the studies were tested high enough to elicit frank toxicity (other than neurotoxicity).
- The 2–generation reproduction study in rats included developmental and neurotoxicity assessments. The observations included a comprehensive evaluation of clinical signs, onset and completion of pinna (ear) unfolding, hair growth, tooth eruption, eye opening, auditory and visual function assessed using the startle response and examination of pupil closure along with assessment of the visual placement response. No effects were noted up to and including the highest dose tested (6.31 mg/kg/day). No effects were noted on reproductive parameters. The observed effects in the 2–generation reproduction study were minimal in nature involving only body weight and food consumption.

3. *Conclusion*. There is a complete toxicity data base for pyridaben and exposure data are complete. There is no quantitative or qualitative evidence of increased susceptibility of rat and rabbit fetuses to *in utero* exposure to pyridaben in developmental studies. There is no quantitative or qualitative

evidence of increased susceptibility to pyridaben following prenatal/postnatal exposure in a 2–generation reproduction study incorporating neurotoxicity measurements. There is no concern for developmental neurotoxicity resulting from exposure to pyridaben. Since there was no observed evidence of potential developmental neurotoxicity in short- and long-term toxicity studies in rats, mice, and dogs, a DNT study is not required.

The dietary exposure scenarios includes metabolites and/or degradates of concern and the dietary food exposure assessment is refined for acute food exposure and partially refined for chronic food exposure. Although refined, the assessments are based on reliable data and will not underestimate exposure/risk. The dietary drinking water assessment (Tier 2 estimates) utilizes values generated by models and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations. There are no residential uses of pyridaben.

Based on these data, the Agency has reduced the FQPA Safety Factor to 1X and a developmental neurotoxicity study will not be required.

E. Aggregate Risks and Determination of Safety

The Agency currently has two ways to estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses. First, a screening assessment can be used, in which the Agency calculates drinking water levels of comparison (DWLOCs) which are used as a point of comparison against EECs. The DWLOC values are not regulatory standards for drinking water, but are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. When new uses are added EPA reassesses the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

More recently the Agency has used another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface water and ground water EECs are directly incorporated into the dietary exposure analysis, along with food. This provides a more realistic estimate of exposure because actual body weights and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in developing drinking water modeling inputs.

There are no existing or proposed uses for pyridaben that would result in residential non-dietary exposure, therefore aggregate acute and chronic risks are based solely on exposure from food and water, which are as follows:

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to pyridaben will occupy 3% of the aPAD for the U.S. population, 2% of the aPAD for females 13 years and older, 4% of the aPAD for all infants < 1 year old, and 6% of the aPAD for children 1–2 years old, the children subpopulation at greatest exposure. In addition, there is potential for acute dietary exposure to pyridaben in drinking water. To estimate total aggregate exposure to a pesticide from food and drinking water the Agency calculated DWLOCs which are used as a point of comparison against EECs. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO PYRIDABEN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.44	3	12	0.007	15,000
Females (13-49 years old)	0.44	2	12	0.007	12,900
Children (1-2 years old)	0.44	6	12	0.007	4,100
All infants (< 1 year old)	0.44	4	12	0.007	4,200

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to pyridaben from food will utilize 13% of the cPAD for the U.S. population, 29% of the cPAD for all infants < 1 year old, and 47% of the cPAD for children 1–2 years old the subpopulation at greatest exposure. In addition, there is potential for chronic dietary exposure to pyridaben in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO PYRIDABEN

Population/Subgroup	cPAD/mg/kg/day	% cPAD/(Food)	Surface Water EEC/(ppb)	Ground/Water EEC/(ppb)	Chronic/DWLOC (ppb)
U.S. population	0.005	13	2.2	0.007	150
Children (1-2 years old)	0.005	47	2.2	0.007	27
All infants (< 1 year old)	0.005	29	2.2	0.007	40

3. *Short-term and Intermediate-term risks*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Pyridaben is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population*. Pyridaben has been classified as not likely to be carcinogenic to humans. Therefore, pyridaben is expected to pose at most a negligible cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (GC/ECD method, BASF D9312) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex MRLs for pyridaben on hops, tropical fruit, stone fruit, strawberry, and tomatoes. Therefore, no compatibility questions exist with respect to Codex.

C. Response to Comments

The Agency received one comment expressing support for this action.

V. Conclusion

Therefore, tolerances are established for residues of pyridaben, 2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2H)-one in or on hop, dried cones at 10.0 ppm; papaya at 0.10 ppm; star apple at 0.10 ppm; sapote, black at 0.10 ppm; mango at 0.10 ppm; sapodilla at 0.10 ppm; sapote, mamey at 0.10 ppm; canistel at 0.10 ppm; fruit, stone, group 12 at 2.5 ppm; strawberry at 2.5 ppm; and tomato at 0.15 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0267 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 22, 2005.

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

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

2. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0267, to: Public Information and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of

electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 19, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.494 is amended by removing the entries for ''apricot''; ''cherry, sweet''; ''cherry, tart''; ''nectarine''; ''peach''; ''plum''; and ''prune'' from the table in paragraph (a) and by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.494 Pyridaben; tolerance for residues.

(a) * * *

Commodity	Parts per million	Revocation/expiration date
* *	* *	*
Canistel	0.10	None
* *	* *	*
Fruit, stone, group 12.	2.5	None
* *	* *	*
Hop, dried cones.	10.0	None

Commodity	Parts per million	Revocation/expiration date
* *	* *	*
Mango	0.10	None
* *	* *	*
Papaya	0.10	None
* *	* *	*
Sapodilla	0.10	None
Sapote, black	0.10	None
Sapote, mamey.	0.10	None
* *	* *	*
Star apple	0.10	None
Strawberry	2.5	None
Tomato	0.15	None

* * * * *

[FR Doc. 05–19058 Filed 9–22–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7973–8]

Ocean Dumping; Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates a new Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore Port Royal, South Carolina, as an EPA-approved ocean dumping site for the disposal of suitable dredged material. This action is necessary to provide an acceptable ocean disposal site for consideration as an option for dredged material disposal projects in the greater Port Royal, South Carolina, vicinity. This site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATES: This rule is effective on October 24, 2005.

ADDRESSES: The file supporting this designation is available for public inspection at the following location: EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, (404) 562–9395.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this part 228. This site designation is being published as final rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

B. Regulated Entities

Entities potentially affected by this action are persons, organizations, or government bodies seeking to dispose of dredged material into ocean waters offshore Port Royal, South Carolina, under the MPRSA and its implementing regulations. This final rule is expected to be primarily of relevance to parties seeking permits from the U.S. Army Corps of Engineers (COE) to transport dredged material for the purpose of disposal into ocean waters and to the COE itself for its own dredged material disposal projects. Potentially regulated categories and entities that may seek to use the proposed dredged material disposal site may include:

Category	Examples of potentially regulated entities
Federal Government	U.S. Army Corps of Engineers Civil Works Projects, U.S. Marine Corps, and Other Federal Agencies.
Industry and General Public	Port Authorities, Marinas and Harbors, Shipyards, and Marine Repair Facilities, Berth Owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your organization is affected by this action, you should carefully consider whether your organization is subject to the requirement to obtain an MPRSA permit in accordance with Section 103 of the MPRSA and the applicable regulations at 40 CFR Parts 220 and 225, and whether you wish to use the site subject to today's action. EPA notes that nothing in this final rule alters the jurisdiction or authority of EPA or the types of entities regulated under the MPRSA. Questions regarding the applicability of this final rule to a particular entity should be directed to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

C. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the agency decision making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare NEPA documents in connection with ocean disposal site designations. (See 63 FR 58045 [October 29, 1998], ''Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents.'')

EPA, in cooperation with the Charleston District COE, has prepared a Final EIS (FEIS) entitled ''Final Environmental Impact Statement for the Port Royal Ocean Dredged Material Disposal Site Designation.'' On June 25, 2004, the Notice of Availability of the FEIS for public review and comment was published in the **Federal Register** (69 FR 35597 [June 25, 2004]). Anyone desiring a copy of the EIS may obtain one from the address given above. The public comment period on the FEIS closed on July 26, 2004.

EPA received one comment letter on the FEIS from the South Carolina

Department of Health and Environmental Control. This letter states the Department's findings that the proposed ODMDS would be consistent with the State's Coastal Zone Management Program.

Pursuant to an Office of Water policy memorandum dated October 23, 1989, EPA has evaluated the proposed site designation for consistency with the State of South Carolina's (the State) approved coastal management program. EPA has determined that the designation of the proposed site is consistent to the maximum extent practicable with the State coastal management program, and submitted this determination to the State for review in accordance with EPA policy. As stated above, the State agrees with this determination.

The action discussed in the FEIS is the permanent designation for continuing use of an ODMDS near Port Royal, South Carolina. The purpose of this action is to provide an environmentally acceptable option for the continued ocean disposal of dredged material. The need for the permanent designation of a Port Royal ODMDS is based on a demonstrated COE need for ocean disposal of maintenance dredged material from the Federal navigation projects in the greater Port Royal Sound area. However, every disposal activity by the COE is evaluated on a case-by-case basis to determine the need for ocean disposal for that particular case. The need for ocean disposal for other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal for private/federal actions and a public review process for its own actions.

For the Port Royal ODMDS, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria given in the Ocean Dumping Regulations (40 CFR 220–229) and the COE regulations (33 CFR 209.120 and 335–338). The COE issues MPRSA permits to private applicants for the transport of dredged material intended for ocean disposal after compliance with regulations has been determined. EPA has the right to disapprove any ocean disposal project if, in its judgment, the MPRSA environmental criteria [Section 102(a)] or conditions of designation [Section 102(c)] are not met.

The FEIS discusses the need for this site designation and examines ocean and non-ocean disposal site alternatives to the proposed action. Specific alternatives considered were the two interim ocean sites, sites off the continental shelf, land disposal sites, and sites that might be used for shore protection.

D. Site Designation

On February 24, 2005, EPA proposed designation of an ODMDS for continuing disposal of dredged material from the Port Royal Sound area. The period on this proposal closed on April 11, 2005. One e-mail letter of comment was received opposing not only the designation of this site, but all ocean disposal in principle. In response to this letter, EPA reiterates its support of beneficial uses of dredged material, when appropriate, and that this action is in accordance with MPRSA and the EPA Ocean Dumping Regulations promulgated under MPRSA. In addition, any project which proposes to dispose of dredged material within this site must evaluate the material to determine its suitability for ocean disposal. Only dredged material which has been shown to meet the ocean dumping criteria would be permitted to be placed in this site.

The site is located approximately 7 nautical miles offshore Bay Point Island, South Carolina. The proposed ODMDS occupies an area of about 1.0 square nautical miles (nmi^2). Water depths within the area average 36 feet (ft.). The coordinates of the New Port Royal site proposed for final designation are as follows:

Latitude	*Longitude*
32°05.00′ N	80°36.47′ W
32°05.00′ N	80°35.30′ W
32°04.00′ N	80°35.30′ W
32°04.00′ N	80°36.47′ W

E. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR 228.5, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. In this case, locations off the Continental Shelf are not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of this site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. If, at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site can be restricted or terminated by EPA. The site conforms to the five general criteria.

In addition to these general criteria in § 228.5, §228.6 lists the 11 specific criteria used in evaluating a disposal site to assure that the general criteria are met. Application of these 11 criteria constitutes an environmental assessment of the impact of disposal at the site. The characteristics of the site are reviewed below in terms of these 11 criteria (the EIS may be consulted for additional information).

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast (40 CFR 228.6(a)(1))

The boundary of the site is given above. The northern boundary of the site is located about 7 nmi offshore of Bay Point Island, South Carolina. The site is approximatelty 1.0 nmi^2 in area. The bottom topography is relatively flat and featureless, with water depths averaging 36 ft.

2. Location In Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

Many of the area's species spend their adult lives in the offshore region, but are estuary-dependent because their juvenile stages use a low salinity estuarine nursery region. Specific migration routes are not known to occur within the site. The site is not known to include any major breeding or spawning area. Due to the motility of finfish, it is unlikely that disposal activities will have any significant impact on any of the species found in the area. In a letter dated October 23, 2003, the Habitat Conservation Division of National Marine Fisheries Service concurred with our assessment that this designation would not have a substantial individual or cumulative adverse impact on essential fish habitat, or fishery resources.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

The site is located approximately 7 nmi from the coast. Considering the previous disposal activities of the existing ODMDS (designated by the COE under Section 103 authority), dredged material disposal at the site is not expected to have an effect on the recreational uses of these beaches.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, If Any (40 CFR 228(a)(4))

The types of materials to be disposed of within this site are dredged materials as described in type and quantity by Section 2 of the FEIS. Between the years 1992 and 2003, approximately 200,000 cubic yards (annual average) have been ocean disposed within this area, typically once every two years. To date, the material from the Federal navigation project has been excluded from testing. Future disposal, which would be by hopper dredge or dump scow, should not change significantly by either volume or frequency. All disposals shall be in accordance with the approved Site Management and Monitoring Plan (SMMP) developed for this site (FEIS, Appendix B).

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

Due to the relative proximity of the site to shore and its depth, surveillance will not be difficult. The SMMP for the Port Royal ODMDS has been developed and was included as an appendix in the FEIS. This SMMP establishes a sequence of monitoring surveys to be undertaken to determine any impacts resulting from disposal activities. The SMMP may be reviewed and revised by EPA. A copy of the SMMP may be obtained at the address given above.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area Including Prevailing Current Direction and Velocity, If Any (40 CFR 228.6(a)(6))

A detailed current study, along with fate modelling of dredged material, was not deemed necessary because almost all of the material historically placed in the ocean has been sand. Therefore, a site-specific current study was not conducted within the site. Transport of disposed material should not present any adverse impacts. In summary, littoral drift is reported to be predominantly southwestward, while nearshore surface currents are derived primarily from wind stress, and are subject to extreme variability.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

This site, as well as past interim sites nearby, has been used to dispose of the material from the Port Royal Sound area since 1956. Subsequent monitoring of these disposals and the long-term effects show that no adverse impacts have, or are likely to occur to the area.

8. Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

The location of the ODMDS was selected to avoid interference with commercial shipping. It is not anticipated that the site would interfere with any recreational activity. In addition, mineral extraction, fish and shellfish culture, and desalination activities do not occur in the area.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Appropriate water quality and ecological assessments have been performed at the site. The most abundant benthic invertebrates found within the site were the annelid Polygrodius sp., the bivalve Ervilia concentrica, the polychaete Prionospio cristata, annelids in the class Oligochaeta, and the bivalve Crassinella lunulata. These five taxa accounted for more than 40 percent of total number of individuals collected. More detailed information concerning the water quality and ecology at the ODMDS is presented in the FEIS. A copy of the FEIS may be obtained at any of the addresses given above.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

The disposal of dredged materials should not attract or promote the development of nuisance species. No nuisance species have been reported to occur at previously utilized disposal sites in the vicinity.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))

There are no known such natural or cultural features of historical importance. As stated in the FEIS, this action has fully complied with both the Archaeological and Historic Preservation Act and the National Historic Preservation Act, as amended.

F. Site Management

Site management of the Port Royal ODMDS is the responsibility of EPA, in cooperation with the COE. The COE issues permits to private applicants for ocean disposal; however, EPA/Region 4 assumes overall responsibility for site management.

The SMMP for the Port Royal ODMDS was developed as a part of the process of completing the EIS. This plan provides procedures for both site management and for the monitoring of effects of disposal activities. This SMMP is intended to be flexible and may be reviewed and revised by the EPA.

G. Proposed Action

The EIS concludes that the site may be appropriately designated for use. The site is compatible with the 11 specific and five general criteria used for site evaluation.

The designation of the Port Royal site as an EPA-approved ODMDS is being published as final rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region 4.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean disposal of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the actual disposal, if it determines that environmental concerns under MPRSA have not been met.

The Port Royal ODMDS is not restricted to disposal use by federal projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to suitable dredged material from the greater Port Royal, South Carolina, vicinity.

H. Regulatory Assessments

1. Executive Order 12866

Under Executive Order 12866, EPA must determine whether the regulatory action is ''significant'' and therefore subject to 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:

(a) 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;

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

(c) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or

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

EPA has determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

2. Paperwork Reduction Act

This rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.) because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

3. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the designation will only have the effect of providing an environmentally acceptable disposal option for dredged material on a continued basis. Consequently, by publication of this Rule, the Regional Administrator certifies that this action will not have a significant impact on a substantial number of small entities and therefore does not necessitate preparation of a Regulatory Flexibility Analysis.

4. Unfunded Mandates Reform Act

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

EPA has determined that this action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Thus, the requirements of section 202 and section 205 of the UMRA do not apply to this proposed rule. Similarly, EPA has also determined that this action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this final rule.

5. Executive Order 13132

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. As described elsewhere in this preamble, today's action would only have the effect of providing a continual use of an ocean disposal site pursuant to section 102(c) of MPRSA. Thus, Executive Order 13132 does not apply to this final rule. Although section 6 of Executive Order 13132 does not apply, EPA did consult with State officials in developing this action and no concerns were raised.

6. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. As described elsewhere in this preamble, today's action would only have the effect of providing continual use of an ocean disposal site pursuant to section 102(c) of MPRSA. Thus, Executive Order 13175 does not apply to this final rule.

7. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (a) Is determined to be ''economically significant'' as defined under Executive Order 12866 and (b) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA 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 EPA.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have any reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As described elsewhere in this preamble, today's action would only have the effect of providing continual use of an ocean disposal site pursuant to section 102(c) of MPRSA.

8. Executive Order 13211

This final rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

9. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

10. Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

No action from this final rule would have a disproportionately high and adverse human health and environmental effect on any particular segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities.

11. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Accordingly, the requirements of Executive Order 12898 do not apply.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: September 14, 2005.

J.I. Palmer, Jr.,

Regional Administrator for Region 4.

■ In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as follows:

PART 228—[AMENDED]

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by adding (h)(23) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(23) Port Royal, SC; Ocean Dredged Material Disposal Site.

(i) Location (NAD83): 32°05.00′ N., 80°36.47′ W.; 32°05.00′ N., 80°35.30′ W.; 32°04.00′ N., 80°35.30′ W.; 32°04.00′ N., 80°36.47′ W.

(ii) Size: Approximately 1.0 square nautical miles.

(iii) Depth: Averages 36 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material from the greater Port Royal, South Carolina, vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

* * * * *

[FR Doc. 05–19063 9–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7973–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Nutmeg Valley Road Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (''EPA'' or the ''Agency'') New England (Region 1) announces the deletion of the Nutmeg Valley Road Site (''Site'') from the National Priorities List (''NPL''). The NPL constitutes appendix B of 40 part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') of 1980, as amended. EPA and the Connecticut Department of Environmental Protection (''CT DEP'') have determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

EFFECTIVE DATE: September 23, 2005.

FOR FURTHER INFORMATION CONTACT: Karen Lumino, Remedial Project Manager, at 617–918–1348, or, *lumino.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is:

Nutmeg Valley Road Site, Wolcott, New Haven County, Connecticut.

A Notice of Intent to Delete for this Site was published in the **Federal Register** on August 5, 2005 (70 FR 45334). The closing date for comments on the Notice of Intent to Delete was September 6, 2005. No comments were received therefore, EPA has not prepared a Responsiveness Summary.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 15, 2005.

Ira W. Leighton,

Acting Regional Administrator, U.S. EPA—New England.

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by removing the entry for the ''Nutmeg Valley Road Site in Wolcott, Connecticut.''

[FR Doc. 05–19054 Filed 9–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7974–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Deletion of the Jones Sanitation Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 2 office, announces the deletion of the Jones Sanitation Superfund Site (Site), located in Hyde Park, New York, from the National Priorities List (NPL).

The NPL is appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of New York, through the New York State Department of Environmental Conservation (NYSDEC), have determined that potentially responsible parties have implemented all appropriate response actions required. Moreover, EPA and NYSDEC have determined that with proper monitoring, operation and maintenance, this Site poses no significant threat to public health or the environment.

EFFECTIVE DATE: September 23, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Isabel Rodrigues, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866, phone (212) 637–4248; fax: (212) 637–4284; *e-mail:Rodrigues.Isabel@EPA.GOV.*

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Jones Sanitation Superfund Site, Town of Hyde Park, Dutchess County, New York. A direct final deletion and a notice of intent to delete of the Site were published in the **Federal Register** on July 7, 2005 (70 FR 30217 and 39180 to 39182). In these notices, EPA requested public comment on the proposed NPL deletion of the Site until August 8, 2005. During the 30-day comment period, EPA received correspondence offering critical comments. As a result of the critical comments, EPA published a Notice of Withdrawal of Direct Final Deletion of the Site on September 1, 2005. EPA evaluated the comments received and prepared a Responsiveness Summary and has concluded after a review of the comments that the Site does not pose a significant threat to public health or the environment. Copies of the Responsiveness Summary are available at the following repositories: U.S. Environmental Protection Agency, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308; and, Hyde Park Free Public Library, 2 Main Street, Hyde Park, NY 12538.

EPA identifies sites that appear to present a significant risk to public health or the environment, and it maintains the NPL as the active list of these sites. As described in 40 CFR 300.425(e)(3), any site deleted from the NPL remains eligible for remedial action in the unlikely event that conditions at a site warrant such action. Deletion of a site from the NPL does not affect the liability of potentially responsible parties nor does it impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 9, 2005.

Alan J. Steinberg,

Regional Administrator, Region II.

Authority

■ For the reasons set out in the preamble Part 300 Title 40 of Chapter I of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O.12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under New York (NY) by removing the site name ''Jones Sanitation'' and the corresponding city/county designation ''Hyde Park/Dutchess County.''

[FR Doc. 05–19055 Filed 9–22–05; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 70, No. 184
Friday, September 23, 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 AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 273, 275, and 277

RIN 0584–AD37

Food Stamp Program: Discretionary Quality Control Provisions of Title IV of Public Law 107–171

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: On May 13, 2002, the President signed the Farm Security and Rural Investment Act of 2002. Title IV of that law, the Food Stamp Reauthorization Act of 2002, contains provisions substantively revising the Quality Control system. This rule proposes to amend the Food Stamp Program regulations to implement certain discretionary provisions concerning the Quality Control system in Sections 4118 and 4119 of the Food Stamp Reauthorization Act of 2002. This rule would establish new timeframes for completing individual Quality Control reviews and establish procedures for resolving liabilities following appeal decisions. This rule proposes to revise the negative case review procedures and provides procedures for households that break up while subject to the penalty for refusal to cooperate with a Quality Control review. This rule also proposes several additional policy changes and technical corrections, including deletion of material pertaining to enhanced administrative funding for low error rates, which was ended beginning in Fiscal Year 2003 by the statute. An interim rule published October 16, 2003, addressed certain non-discretionary provisions concerning the Quality Control system in Sections 4118 and 4119 of the Food Stamp Reauthorization Act. The high performance bonuses that replace the administrative enhanced funding are addressed in a separate rule published February 7, 2005. This rule would affect State agencies' quality control review operations, and it would alter the impact on State agencies of assessment and resolution of potential liabilities for excessive payment error rates and awarding of bonuses for superior performance. Households sampled for quality control review of their cases would be minimally affected by this rule.

DATES: Comments on this rulemaking must be received on or before December 22, 2005.

ADDRESSES: The Food and Nutrition Service, Department of Agriculture invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- E-mail: Send comments to *daniel.wilusz@fns.usda.gov.*
- Fax: Submit comments by facsimile transmission to: (703) 305–0928.
- Mail: Send comments to Daniel Wilusz, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302.
- Hand Delivery or Courier: You may also hand-deliver comments to us on the 8th floor at the above address.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Margaret Werts Batko at the above address, by telephone at (703) 305–2516, or via the Internet at *margaret.batko@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information on Comment Filing/Electronic Access

Electronic Access and Filing Address

You may view and download an electronic version of this proposed rule at *http://www.fns.usda.gov/fsp/.* You may also comment via the Internet at the same address. Please include ''Attention: RIN 0584–AD37'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your message, contact us directly at 703–305–2516.

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change you recommend. Where possible, you should reference the specific section or paragraph of the proposed rule you are addressing. We may not consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period or comments delivered to an address other than those listed above.

We will make all comments, including names, street addresses, and other contact information of respondents, available for public inspection on the 8th floor, 3101 Park Center Drive, Alexandria, Virginia 22302 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

II. Procedural Matters

Executive Order 12866

This rule has been determined to be significant under E.O. 12866 and has, therefore, been reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Public Law 104–4

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) 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, FNS 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, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The Food and Nutrition Service has considered this rule's impact on State and local agencies and has determined that it does not have Federalism implications under E.O. 13132.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule has no impact on any of the protected classes. These changes primarily affect the quality control (QC) review system and not individual recipients' eligibility for or participation in the Food Stamp Program. The only provision that has any direct impact on recipients is the conforming change made in § 273.2(d)(2). This section provides that a recipient who refuses to cooperate with a QC review of his or her case will be terminated from further participation in the Program; that if the household reapplies during the annual review period, it cannot be determined eligible until it cooperates with the QC review; and if it reapplies following the end of the quality control review period, the household is required to provide full verification of its eligibility factors before it can be certified. The purpose of the requirement is to encourage household cooperation with the QC review of its case. In this rule we are proposing a conforming amendment to extend the timeframe of the penalty consistent with the revised timeframe for completing the QC review process established in Section 4119 of the Food Stamp Reauthorization Act of 2002 and addressed in this proposed regulation at § 275.23. Significant protection exists within the regulations to ensure that a household is terminated solely for refusal, and not inability, to cooperate. A household so terminated also has the right to request a fair hearing. Further, the household has the ability to reverse its termination by cooperating with the QC review during the QC review period. There were 56,954 active case households subject to a QC review, and 2,101 households who refused to cooperate with a QC review during Fiscal Year 2002, the last year information on non-cooperating households was collected. Information on protected class is not available for these households.

All data available to FNS indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs (Food Stamp Program nondiscrimination policy can be found at § 272.6). Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act, the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.''

Paperwork Reduction Act

This proposed rule contains reporting or recordkeeping requirements that have been approved by the Office of Management and Budget (OMB) under several separate information collections under the Paperwork Reduction Act of 1995. The collections are:

0584–0034, Negative Quality Control Review Schedule; Status of Sample Selection and Completion, Form FNS–245, and FNS–248: This rule does not affect the negative review schedule, Form FNS–245. In the most recent approval of OMB Number 0584–0034, the form FNS–247 (Statistical Summary of Sample Distribution) was eliminated. FNS has stopped requesting that this form be completed and the information be submitted. This rule removes the requirement to submit the report from the regulations. The elimination does not affect the burden, as the burden has already been adjusted for removal of this form. In this rule we are proposing to eliminate the Form FNS–248. However, the information required to be submitted on that form is still required. The regulations currently permit that this information be submitted in another format. Accordingly, elimination of this form will not affect the approved burden for OMB Number 0584–0034.

0584–0074 (Form FNS–380, Worksheet for Food Stamp Program Quality Control Reviews); 0584–0299 (Form FNS–380–1, Quality Control Review Schedule); and 0584–0303 (Sampling Plan, Arbitration, and Good Cause): This rule does not affect these information collections. This rule does not change the requirements for development and submittal of the States' sampling plans. This rule does not change the requirements for submitting cases for arbitration nor will it impact the number of cases anticipated to be submitted. This rule does include the provisions for good cause; however, those provisions are unchanged except for redesignation. Therefore, this rule will not impact the burden currently approved for good cause either.

OMB Number 0584–0010, Performance Reporting System, Management Evaluation, Data Analysis and Corrective Action: Corrective action planning is included under this information collection package. Regulations prior to passage of the Food Stamp Reauthorization Act of 2002 required corrective action planning whenever a State agency failed to reach the yearly target, whenever a State agency was not entitled to enhanced funding, and when its negative case error rate exceeded one percent. In an

interim rule entitled ''Non-Discretionary Quality Control Provisions of Title IV of Public Law 107–171'' published on October 16, 2003 at 68 FR 59519, the regulations were changed to reflect the provision in Section 4118 of the Food Stamp Reauthorization Act of 2002 that requires corrective action planning whenever a State agency's payment error rate equals or exceeds six percent. This requirement replaced the requirement for corrective action planning whenever a State agency failed to reach the yearly target. In the regulations as modified by the interim rule, State agencies continued to be required to do corrective action whenever they were not entitled to enhanced funding or when the negative case error rate exceeded one percent. A State agency was entitled to enhanced funding when its payment error rate was less than or equal to 5.90 percent and its negative case error rate was less than the national weighted mean negative case error rate for the prior fiscal year. This rule proposes to eliminate the requirement that State agencies conduct corrective action planning whenever a State agency is not entitled to enhanced funding because enhanced funding has been eliminated by Section 4118 of the Food Stamp Reauthorization Act of 2002. Elimination of this requirement will not have a significant impact on States' requirements to do corrective action planning because of the requirement in the regulation to do corrective action planning whenever the State's error rate exceeds six percent. The change from 5.9 percent to six is minimal. In Fiscal Year 2002, no State below six percent did not get enhanced funding. Further, in this rule we are proposing to continue to require that State agencies do corrective action planning whenever a State's negative case error rate exceeds one percent. Therefore, there is essentially no impact resulting from removing the requirement to do corrective action planning whenever a State agency is not entitled to enhanced funding.

Government Paperwork Elimination Act

In compliance with the Government Paperwork Elimination Act, the Food and Nutrition Service is committed to providing electronic submission as an alternative for information collections associated with this rule. The Food and Nutrition Service has made every effort to streamline and automate these processes. However, we are not able to make the entire process electronic at this time.

Part of the process allows electronic submission. The Quality Control review schedule (approved under OMB #0584–0299) serves as both the data summary entry form that the reviewer completes during each review, and subsequently, as the data input document for direct data entry into the automated national Food Stamp Quality Control System (FSQCS) at the Kansas City Computer Center. While the data are manually collected on a paper form from information extracted from a case file, it is electronically submitted to the FSQCS for tabulation and analysis. Some States have developed and begun to use computerized versions of the worksheet (OMB number 0584–0074), which provides information collected on the review schedule. In addition, FNS has developed a computerized version of the worksheet. States are being given the option to continue to use their own systems, the new computerized version provided by FNS or the paper version. When FNS computerized versions of the worksheet are used, the information is linked to and creates the review schedule.

Under OMB number 0584–0034, the burden for collecting and reporting information related to the review of negative cases and the status of sample selection and completion is approved. The FNS–245 serves as both the data summary entry form that the reviewer completes during each negative case review, and subsequently as the data input document for direct data entry into the FSQCS. Therefore, while data is manually collected, it is electronically submitted to the FSQCS for tabulation and analysis. The FNS–248 (Status of Sample Selection and Completion) collects information on the status of State reviews. The FNS–248 contains necessary information not produced by the automated system. However, much of the form contains information that can be obtained in other ways. The regulations already provide that the information can be submitted in another format than the Form FNS–248. In this rule, we are proposing to eliminate the form and to require the States to submit the necessary information as requested by the appropriate regional offices. States may submit this data electronically.

The burden under OMB number 0584–0303 encompasses the sampling plan, arbitration, and good cause. At this time, these areas are not substantively electronic submittals. To the extent possible, States may submit documents or portions of documents electronically.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and § 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at § 276.7 (for rules related to non-quality control (QC) liabilities) or Part 283 (for rules related to QC liabilities); (3) for retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR Part 279.

Regulatory Impact Analysis

Need for Action

This action is needed to implement certain provisions of Sections 4118 and 4119 of Title IV, the Food Stamp Reauthorization Act of 2002, Public Law 107–171, which was enacted on May 13, 2002. This rule proposes to amend the Food Stamp Program regulations concerning the Quality Control (QC) system to eliminate enhanced funding, to address the impact of appeals decisions on the resolution of QC liabilities for high payment error rates, to revise the timeframes for completing individual case reviews and the timeframes for penalties for households that refuse to cooperate with a QC review, and to make a number of technical policy changes and corrections. This analysis addresses the elimination of enhanced funding, the impact of appeals decisions on the resolution of QC liabilities for high payment error rates, the revised timeframes for completing individual case reviews, the timeframes for penalties for households that refuse to cooperate with a QC review, validation of the negative case error rate, and corrective action planning. An interim rule, published October 16, 2003, at 68 FR 59519, addressed the new liability system established by Section 4118 of the Food Stamp Reauthorization Act of 2002. The impact of the new liability system was addressed in the impact analysis for that rule. For greater understanding of the impact of the

changes to the liability system, the reader is referred to the interim rule.

Cost Impact

This action does not directly impact benefit levels or eligibility, so we do not anticipate any impact on food stamp benefit costs. The provision extending the timeframes for verification of households reapplying for benefits is not expected to have a measurable impact on benefit costs. Elimination of enhanced funding will result in a savings of administrative matching funds. In 2002, the Agency paid $77.3 million in enhanced funding incentives to 13 States. Over the five years between 1998 and 2002, the Agency paid $250 million in enhanced funding, for an annual average of $50 million during this period.

If State payment error rates remained at their 1998–2002 levels, the annual savings to the Food Stamp Program would be $50 million and the five-year savings would be $250 million. However, this savings will be largely offset by the establishment of the high performance bonuses (addressed in the final rule ''High Performance Bonuses'' published February 7, 2005, at 70 FR 6313). See Table below.

Benefit Impact

Elimination of enhanced funding based on payment accuracy would not have a benefit impact on State administrating agencies or on program operations if considered in isolation. However, when this provision is combined with the new performance bonus system in another rulemaking that proposes to change performance criteria from a narrow focus on payment accuracy to a broader measure that incorporates client service criteria in addition to payment accuracy, the new performance bonus system is expected to encourage States to assess and improve overall performance. Since the new bonus system is capped at $48 million annually the impact of the two rules will offset each other.

COST IMPACT OF CERTAIN QUALITY CONTROL PROVISIONS OF THE FOOD STAMP REAUTHORIZATION ACT OF 2002 (FEDERAL OUTLAYS)

[In millions of dollars]

	2005	2006	2007	2008	2009	5-year
Elimination of Enhanced Funding	−50	−50	−50	−50	−50	−250

The provisions affecting the timeframes for completing individual case reviews, procedures for appeals for the resolution of QC liabilities, and the procedures for treating households that refuse to cooperate with QC reviews are not expected to have any measurable impact on program costs.

III. Background

On May 13, 2002, the President signed Public Law 107–171, the Farm Security and Rural Investment Act of 2002. Title IV of Public Law 107–171, the Food Stamp Reauthorization Act of 2002 (FSRA), significantly revised the sanction, liability, and enhanced funding provisions of the Quality Control (QC) system. An interim rule entitled ''Non-Discretionary Quality Control Provisions of Title IV of Public Law 107–171'' was published October 16, 2003, at 68 FR 59519 that addressed certain provisions of Sections 4118 and 4119. A final rule entitled ''High Performance Bonuses'' was published February 7, 2005, at 70 FR 6313 that implemented Section 4120 of the Food Stamp Reauthorization Act. This rulemaking addresses the remaining provisions of Sections 4118 and 4119 of the Food Stamp Reauthorization Act. In addition, it includes several discretionary policy changes and numerous technical corrections.

A. Enhanced Funding

The current regulations at § 275.1(b) provide that the Department shall pay a State agency enhanced administrative funding if its payment error rate is less than or equal to 5.90 percent and the negative case error rate is less than the national weighted mean negative case error rate for the prior fiscal year. Section 4118 of FSRA removed the provision in the Food Stamp Act of 1977 for giving enhanced funding to State agencies with low payment and negative case error rates, effective fiscal year (FY) 2003, effectively ending enhanced payments. As a technical detail, we are proposing to eliminate § 275.1(b)(1) and (b)(2) and to revise § 275.1(a) into a general introductory paragraph, removing the ''(a)'' paragraph designation. Section 4120 of the FSRA replaces these enhanced funding provisions with high performance bonuses. Regulations addressing high performance bonuses have been published separately (proposed rule published December 17, 2003, at 68 FR 70193; final rule published February 7, 2005, at 70 FR 6313).

Section 275.23(d) establishes procedures for providing enhanced funding. In accordance with the elimination of enhanced funding, this section is no longer necessary. Therefore, we are proposing to remove § 275.23(d).

Section 275.3(c) requires that FNS validate the negative case error rate when a State agency's payment error rate for an annual review period appears to entitle it to an increased share of Federal administrative funding and its reported negative case error rate for that period is less than two percentage points above the national weighted mean negative case error rate for the prior fiscal year. That section also provides that FNS may review any negative case for other reasons. Validation of the negative case error rate is no longer necessary for purposes of establishing eligibility for enhanced funding. However, we are proposing in § 275.3(c) to require that all States' negative case error rates be validated by FNS. We are proposing to require universal validation of negatives for two reasons. First, we believe that fair and equitable treatment in terms of denying households needs to be ensured. Second, the negative error rate is one of the measurements of high performance. We believe that it is necessary to ensure the accuracy of those error rates if awards will be driven by these rates.

In addition, we are proposing to make technical changes throughout Part 275 to remove references to enhanced funding. These deletions are not discussed in this preamble.

Part 277, Payments of Certain Administrative Costs of State Agencies, establishes the rules for paying State agency administrative costs for operating the Food Stamp Program. In § 277.4, paragraphs (b)(1), (b)(4), (b)(5), and (b)(6) describe the procedures for increasing State administrative funding when State agency quality control error rates meet certain standards. Each paragraph provides the authority for different fiscal year periods beginning with Fiscal Year 1980. Sections 277.4(b)(1)(i), (b)(4), (b)(5), and (b)(6) cover fiscal year periods beginning October 1, 1980, through September 30, 1988. Section 277.4(b)(1)(ii) provides

the authority for the period beginning October 1988 and forward. The authority in the Food Stamp Act for § 277.4(b)(1)(i) was removed by the Hunger Prevention Act of 1988 (Public Law 100–435). The authority for § 277.4(b)(4), (b)(5), and (b)(6) was removed by the Omnibus Budget Reconciliation Act of 1982 (Public Law 97–253). Section 4118 of the FSRA eliminated enhanced funding based on quality control error rates for fiscal years beginning October 2002 and beyond, thus making § 277.4(b)(1)(ii) obsolete for FY2003 and beyond. All enhanced funding for Fiscal Years 1980 through 2002 paid under any of these authorities has already been made. Therefore, these paragraphs are no longer necessary. Accordingly, we are proposing to remove § 277.4(b)(1), (b)(4), (b)(5), and (b)(6). Sections 277.4(b)(2), (b)(3), (b)(7), and (b)(8) are proposed to be redesignated as § 277.4(b)(1), (b)(2), (b)(3), and (b)(4), respectively. In addition, we are proposing to correct the references in redesignated § 277.4(b)(3) to reflect these changes.

B. Disposition of Cases Where the Household Refuses To Cooperate

Section 275.12(g) establishes procedures for disposition of active quality control cases. Section 275.12(g)(1)(ii) provides procedures for handling cases when the household refuses to cooperate in the review. Under these procedures, the State agency is required to notify the household of the penalties for refusing to cooperate with the review. In § 275.12(g)(1)(ii), regulations currently provide that a reviewer may attempt to complete the case if this notice has been sent. This policy was revised by memorandum on September 1, 1998, in ''Change 1 to the September 1997 version of FNS Handbook 310,'' to require the State agency reviewer to attempt to complete the review. The change was effective October 1, 1998. The revised policy has been retained in subsequent revisions of FNS Handbook 310. The Department requires such completion because incomplete reviews introduce bias into the system. Consistent with this change in policy, we are proposing to revise § 275.12(g)(1)(ii) to say that the reviewer must attempt to complete the case. As provided for in the FNS Handbook 310, the reviewer will attempt to determine all of the necessary information to the point where either ineligibility or the appropriate benefit allotment is determined, verified, and documented.

C. Negative Case Reviews

In order to understand the parameters of the changes being proposed in this rulemaking for the review of negative cases, the readers need to understand the basic framework of the negative case review process. A negative case is a case where a household's application for food stamp benefits was denied or where a household's food stamp benefits were suspended or terminated. The negative universe includes all negative actions that occur during the review period. Under current rules, State agencies may randomly select negative cases for review by either ''action'' or by ''effective date.'' ''Action'' is a specific decision to deny, suspend, or terminate a case. Each action results in a notice to the household advising the household of the action. ''Effective date'' measures the result of a negative action, that is, that following the negative action, the household does not receive benefits. It measures the non-receipt of benefits against the prior receipt of benefits. In order for a case to be subject to review as a negative case under the current rules, there has to be a break in participation, that is, a household cannot receive uninterrupted benefits for two full consecutive months. Between the negative action and the next date of participation, there must be at least one day for which no benefits are received. A negative case review consists of a case file review. An expanded review of items addressed in the case is permitted if the case file does not support the negative action under review. Contact with the household and/or collateral contacts should occur only to clarify information in the case record if the case record does not support the negative action under review. Contact with the household and/or collateral contacts should occur only to clarify information in the case record if the case record does not support the negative action under review. This proposal would significantly modify the process described above in order to make the process uniform among the States and to eliminate inappropriate, excessive, and unnecessary household contacts.

Although not currently required, the Department has validated all State agencies' negative case error rates for the past several years. As discussed elsewhere in this rule, we are proposing that the Department will validate all State agencies' negative case error rates annually. In the process of performing these validations, it has become apparent that various State agencies have interpreted the regulatory provisions and Handbook review provisions differently. Further, it has become apparent that allowing the use of two different measuring points, by ''action'' or by ''effective'' date, has contributed to the differences among State agencies. Secondarily, use of ''effective date'' has resulted in confusion when multiple negative actions have occurred within the sample month. This is particularly important in determining the awarding of the high performance bonus awards for low negative case error rates. Finally, the Department has become concerned that some State QC workers, when they find that the basis of a negative case action is invalid, in an effort to find any reason that the negative action might have been valid, continue to review a household's case until any reason can be found to support the negative action result. This can result in multiple household and/or collateral contacts. The Department considers such contacts potentially intimidating and believes it is necessary to curtail their use. The Department believes that it is important that all States conduct negative reviews interpreting the regulatory and Handbook provisions the same way to ensure that review results are comparable.

First, the Department is proposing that the negative universe be based on ''action,'' eliminating the option to use ''effective date.'' Use of the two different selection criteria, ''action'' and ''effective date,'' has resulted in differences in the sampling universes among the States and inconsistent reviews. These sampling differences are of statistical concern in calculating a national negative case error rate. Further, because multiple actions can occur within a sampling period, but only resulting in one denial, suspension, or termination, States using ''effective date'' have to decide which of the several actions to review. This selection process can introduce bias into the system. Focusing on ''action'' means that each negative action would have an equal opportunity to be sampled and reviewed. Finally, negative reviews are not measuring program losses, but service to clients. Using ''action'' means the review is based on the reason given the household for the negative action. We are proposing to revise § 275.11(e)(2)(i) and (e)(2)(ii) accordingly.

Further, we are proposing to delete the requirement that there be a break in participation in order for a case to be subject to review. Section 275.11(f)(2)(vi) provides that a negative action would not be subject to review if there were no break in participation.

Changing the focus to the action eliminates a need for measuring whether there was a break in participation. The break in participation measures the effectiveness of the negative action, the denial or end of a households receipt of benefits. Elimination of ''break in participation'' is consistent with the change in focus to ''action'' only reviews. A conforming change is also being made to the definition ''Negative case'' in § 271.2.

Finally, the Department is proposing to eliminate the expanded review in § 275.13(b). As described above, the expanded review allows the QC reviewer to look beyond the reason given for action taken by the EW to deny, terminate, or suspend a household. The QC reviewer may examine the case file for additional reasons to support the denial, suspension, or termination. It also permits contacting the household or a collateral contact to clarify a reason for the denial, suspension, or termination. During the validation process, it has become apparent that the expanded review has become an opportunity to search for information to eliminate an invalid negative decision, making the decision correct, rather than determining the validity of the action the EW took. The Department considers this an inappropriate use of the review process that needs to be curtailed. Elimination of the expanded review is also consistent with a review of ''action.'' The QC review would be focused solely on the action taken, not on other possible negative actions that could have been taken. Under this proposal, an action could only be determined ''valid'' if the case record supported the negative action, as it was presented to the household. If documentation is missing in the case file to support and verify the reason for the specific denial action, the Department is proposing to continue to allow the QC reviewer to contact the household or a collateral contact to verify the validity of the specific negative action. The Department believes that this is necessary to curtail reviews that are focused on eliminating the error, rather than on determining the validity of the action, and result in excessive collateral contacts, negatively impacting customer service. A conforming change is also being made to § 275.13(c)(1).

We recognize that by evolving State interpretations of the regulatory and Handbook provisions to be the same, these proposed revisions may change the proportion of valid determinations. However, the Department believes that the consistent interpretations among the States will yield information that more accurately reflects actual negative actions, and represents a better balance between accuracy and customer service.

D. Corrective Action Planning

Section 4118 of the FSRA requires a State agency to do corrective action planning whenever its payment error rate is six percent or greater. In the interim rule published October 16, 2003 at 68 FR 59519, § 275.16(b)(1) was revised to require corrective action planning whenever a State agencys error rate equals or exceeds six percent. Current regulations provide that corrective action planning shall also be done by a State agency when the State agency is not entitled to enhanced funding (§ 275.16(b)(2)) or when the State agencys negative case error rate exceeds one percent (§ 275.16(b)(3)). We are proposing to remove § 275.16(b)(2) as no longer necessary because enhanced funding has been eliminated. In practical terms, this change will have little impact on the number of State agencies required to do corrective action planning. In FY 2002, the last year of enhanced funding, no State that had a payment error rate of less than six percent failed to qualify for enhanced funding. We are proposing to continue to require State agencies to conduct corrective action planning whenever the negative case error rate exceeds one percent (§ 275.16(b)(3)), but are proposing to redesignate § 275.16(b)(3) as § 275.16(b)(2) to reflect the deletion of § 275.16(b)(2). We believe that retaining the requirement to do corrective action planning when the negative error rate exceeds one percent is necessary to ensure that households are not being inappropriately denied or terminated in an effort to reduce payment error rates. Also, this is consistent with the High Performance Bonuses final rule that provides criteria for rewarding States with very low negative case error rates. Finally, we are proposing to redesignate § 275.16(b)(4), (b)(5), and (b)(6) as § 275.16(b)(3), (b)(4), and (b)(5), respectively, to reflect the deletion of § 275.16(b)(2) and redesignation of § 275.16(b)(3) as § 275.16(b)(2).

Section 275.13 requires State agencies to review suspended cases as part of the negative case sample. Suspended cases were added to the negative universe in a rule published July 16, 1999, at 64 FR 38287. That rule did not add suspended cases to those deficiencies requiring corrective action at § 275.16(b)(6) (redesignated in this rule as § 275.16(b)(5)). To correct this oversight, we are proposing to revise redesignated § 275.16(b)(5) to include deficiencies which result in improper suspensions.

E. Timeframes for Announcing the National Performance Measure and for Completing Quality Control Reviews and Resolving State/Federal Differences

The interim rule published October 16, 2003, at 68 FR 59519 revised the regulations at § 275.23(e)(7) to establish the following timeframes for completing quality control reviews and resolving State/Federal differences and for announcing the national performance measure. The deadline for completing quality control reviews and resolving State/Federal differences is May 31 of the following year. The deadline for announcing the national performance measure is June 30 following the end of the fiscal year review period. These new timeframes provide approximately two additional months to complete the case review and arbitration process and to develop and announce the national performance measure. In this rule, we are proposing to use this additional time in the following way.

Currently, as provided for in § 275.21(b)(2), State agencies are required to complete and transmit to FNS 90 percent of all cases selected for a sample month within 75 days of the end of that sample month. State agencies are required to complete and transmit to FNS 100 percent of all cases selected for a sample month within 95 days of the end of the month. Section 273.21(d) requires that all cases sampled for the annual review period be completed or otherwise accounted for and reported to FNS no later than 105 days from the end of the review period.

In order to fully understand this proposal, it is helpful to understand the background of the current timeframes. Section 13951 of the Mickey Leland Childhood Hunger Relief Act of 1993, Public Law 103–66, required that all case reviews and arbitration be completed within 180 days of the end of the review period. On June 23, 1995, the Department proposed changes to the regulations to implement the 180-day requirement to complete all case reviews and arbitration (60 FR 32615). In that rule, we proposed to reduce the amount of time to complete each monthly sample by requiring that 100 percent of the cases selected for review be completed within 90 days of the end of the sample month. However, in the final rule published June 2, 1997 (62 FR 29652), we left the timeframes as they were originally, *i.e.*, that 90 percent of all cases be completed within 75 days and all cases be disposed of within 95 days of the end of the sample month. In that final rule, we reduced the amount

of time FNS regional offices had to complete validation from 95 days to 43 days and modified the arbitration system in order to reduce the amount of time necessary to complete the case review and arbitration process within the allotted 180 days. Thus FNS absorbed all the reduction in time for completing the annual QC review process.

We believe that the best uses of the additional two months of time between the end of March and May 30 are to provide States with more time to complete the individual case review process, to provide the FNS regional offices with more time to complete their reviews of the subsample cases, and to provide some additional time at the end of the review process for the Department to ensure the accuracy of the error rates, liabilities, and any adjustments to the liabilities.

Accordingly, in § 275.21(b)(2), we are proposing to provide State agencies at least 100 days from the end of the sample month to complete and transmit to FNS 90 percent of all cases and that State agencies shall have at least 113 days from the end of the sample month to complete and transmit to FNS 100 percent of all cases selected for the sample month. We are proposing that State agencies have at least 123 days from the end of the annual review period to complete or otherwise account for all cases selected for review during the annual review period and to report to FNS the results of all the reviews. This gives the State agency an additional 25 days to act on 90 percent of the cases selected each sample month and an additional 18 days to complete all the cases selected each sample month. We are proposing that State agencies have at least until January 21 after the end of the review year to complete and dispose of all cases. We are also proposing that FNS may grant additional time as warranted upon request by a State agency for cause shown beyond these dates to complete and dispose of all cases. We are also proposing to revise § 275.21(b)(4) by replacing ''95'' with ''113''; to revise § 275.21(c) by replacing ''105'' with ''123''; and to add a sentence to each of these paragraphs stating that if FNS extends the timeframes in § 275.21(b)(2), that the timeframes in these paragraphs will be extended accordingly.

On January 22, 2003, we waived the deadlines for State agencies to complete processing cases in § 273.21(b) for FY 2003 and provided States with 113 days to complete each sample month's cases. This waiver was extended on March 4, 2004. In providing comments on this proposal, we would be interested in hearing whether this amount of additional time was useful and/or sufficient. In addition to the extended timeframes for completion of individual cases, that waiver provides State agencies an additional 10 days at the end of the review period, *i.e.*, January 22 through January 31, to perform checks on the individual data transmitted by State agencies (c-trails). That additional 10 days is an expansion of current policy allowing additional time to check the c-trails during the review period. In this rulemaking, we are not proposing to allow this additional 10 days at the end of the review year for checking the c-trails. We are not proposing to allow the additional 10 days in this rulemaking because we feel that States have already received a significant additional amount of time to perform and complete all work related to the individual case reviews. Delaying completion of the State work until January 31 delays the completion of the Federal rereview process which in turn impacts FNS?s ability to timely and accurately prepare the payment error rates. However, we are interested in receiving comments on this issue.

Under the timeframes as provided in the January 23, 2003, memorandum, FNS regional offices were given until March 31 to complete their subsample review process in order for all arbitration to be completed timely and to provide some additional time to ensure the accuracy of the error rates, liabilities, and adjustments to the liabilities. If FNS opts to extend the State agencies? timeframes, FNS will adjust the amount of time provided to the regions for validation and/or adjust the time provided to the Department to ensure the accuracy of the error rates, liabilities, and adjustments to the liabilities.

Section 275.21(c) provides that State agencies report the monthly progress of sample selection and completion on the Form FNS–248, Status of Sample Selection and Completion or other format specified by FNS. In response to a notice published at 68 FR 10437 on March 5, 2003, the Department received two comments suggesting elimination of the form. Federal statisticians use the information on the FNS–248 to track the status of case completions and identify when timely generation of an error rate is jeopardized. Most of the information on the FNS–248 is available elsewhere. Further, the form itself is not necessary for State agencies to provide the necessary information, and the regulation currently provides that States may submit this information other than on the form. Therefore, we are proposing to revise § 275.21(c) to eliminate the form. State agencies will still be required to submit the information on a monthly basis as directed by the appropriate regional office.

Section 275.21(d) requires State agencies to submit an FNS–247, Statistical Summary of Sample Distribution, annually. Although the requirement is still in the regulations, FNS no longer requires State agencies to submit this form. Accordingly, we are proposing to remove § 275.21(d).

Currently, there is one level of arbitration. Quality control arbitration is the resolution of disagreements between the FNS regional office and the State agency concerning individual QC case findings and the appropriateness of actions taken to dispose of an individual case. The timeframes for conducting arbitration are in § 275.3(c)(4). Under these rules, a State agency is required to submit its request for arbitration within 20 calendar days of the date of receipt by the State agency of the regional office case findings. The FNS arbitrator has 20 calendar days from receipt of the State agency request to review and make a decision on the case. The arbitration timeframes as currently established appear to be adequate from our perspective. We believe that 20 days is an adequate amount of time for a State agency to prepare its case for arbitration. This time period is intended primarily for the State agency to prepare its letter addressing what issue or issues it is appealing, assemble the case file, and transmit the request. This time period is not intended for State agencies to conduct additional review activities. Our recent experience with the arbitration process indicates that, except for a small number of cases where the State submitted an incomplete case, 20 days has been sufficient to review and reach a decision. Accordingly, we are not proposing to make any changes in the timeframes for requesting and conducting arbitration. We are seeking comments, however, about whether affected parties and the public agree that the timeframes are adequate. If additional time is required for arbitration, the amount of time given to State agencies for completing individual case reviews may need to be reduced from that proposed in this rule.

F. Consequences To Households Who Refuse To Cooperate With Quality Control Reviews

Section 273.2(d)(2) provides procedures for handling the cases of food stamp participants who refuse to cooperate with a quality control review of their case. Currently, a household is determined ineligible if it refuses to

cooperate with a QC review. Questions have arisen about what happens when one or more household members leave a household subject to this penalty. Because the regulations do not provide an answer to the question, it has been left to State agencies to determine which household members continue to be subject to the penalty. We are proposing to amend this provision to provide that the ineligibility penalty will follow the household member(s) who refused to cooperate.

In this rule, we are also proposing to make a conforming change to § 273.2(d)(2). Current procedures in § 273.2(d)(2) require that a household be terminated for refusal to cooperate with a State or Federal quality control reviewer. If a household terminated for refusal to cooperate with a State QC reviewer reapplies within 95 days of the end of the annual review period, the household cannot be determined eligible until it cooperates with the State QC reviewer. If the household terminated for refusal to cooperate with a State QC reviewer reapplies more than 95 days after the end of the review period, the household is required to provide verification of all eligibility factors before it can be certified. If a household terminated for refusal to cooperate with a Federal QC reviewer reapplies within 7 months of the end of the annual review period, the household cannot be determined eligible until it cooperates with the Federal QC reviewer. If the household terminated for refusal to cooperate with a Federal reviewer reapplies more than seven months after the end of the review period, the household is required to provide verification of all eligibility factors before it can be certified. We are proposing to change the dates in § 273.2(d)(2) to 123 days and nine months to conform the dates in § 273.2(d)(2) to the proposed changes in the dates for completion of the State review process in § 275.21(b) and the end of the Federal QC review process in § 275.23(e)(7) (renumbered in this proposed rule as § 275.23(c)).

We are also proposing additional conforming changes to other sections of the regulations that identify these timeframes. These conforming amendments are not discussed in this preamble.

G. Section 275.23—Determination of State Agency Program Performance

Section 275.23 establishes the procedures to be used to evaluate a State agency's performance through the quality control review system. This section includes the error rates to be established, the methodology used to establish those error rates (including regression), the thresholds for establishing potential liabilities for excessive error rates, the relationship of the sanction system to the warning process and negligence, the timeframes for announcing error rates, the procedures for resolving liabilities, the procedures for reducing liabilities based on good cause on appeal, the policy on charging interest on liabilities, and the procedures for new investment activities to reduce liabilities.

Over time, as the authority for determining the error rates and the sanction system has been changed by legislation, changes have been made throughout § 275.23. Those changes were made within the existing structure of the section. The changes to the sanction system made by the FSRA impact much of § 275.23. Because several sections require substantive revision and many paragraphs require minor changes or reference changes, we have decided to take the opportunity to reorganize the section at the same time as making the necessary changes resulting from the legislation. Accordingly, we are proposing to revise and reorganize § 275.23 in its entirety.

Under this proposed reorganization, § 275.23(a) will address the basic components of FNS determination of a State agency's efficiency and effectiveness (currently § 275.23(a) and (b)). A new § 275.23(b) will address error rates. The existing methodology for regression in § 275.23(e)(6) is proposed to be incorporated into the new § 275.23(b). Section 273.23(c) will address the timeframes for completing case reviews, conducting arbitration, and issuing error rates. Section 273.23(d) will address State agency liability. Included in this paragraph will be the procedure for establishing the national performance measure, the liability methodology, appeal rights, and the relationship to the warning process and negligence. Section 275.23(e) will address liability resolution plans; § 275.23(f) will address good cause; § 275.23(g) will address results of appeals on liability resolution; § 275.23(h) will address new investment (the rules currently refer to such investment as ''reinvestment''; in this rule, we are proposing to change the term to ''new investment,'' consistent with the language used in the FSRA); § 275.23(i) will address payment of the at-risk money; and § 275.23(j) will address interest charges.

Current § 275.23(e)(4) (Relationship to warning process and negligence), § 275.23(e)(5) (Good cause), and § 275.23(e)(6) (Determination of payment error rates) are unchanged except for minor editing, renumbering, or reference changes. Sections 275.23(e)(4), (e)(5), and (e)(6) are proposed to be redesignated as § 275.23(d)(4), (f), and (b)(2), respectively. These changes are part of the restructuring for purposes of clarity. Necessary reference changes and language changes resulting from the elimination of enhanced funding have also been made. Such changes are technical in nature and do not impact the procedures themselves. These sections include the regression methodology and the criteria for good cause. Although these sections have been included in their entirety, their substantive content has not been changed, and comments are not being sought on these procedures. Because comments are not being sought on the substantive content of these sections, any comments received on the substantive content will not be taken into consideration in developing the final rule.

H. Elimination of Pre-Fiscal Year 2003 Liability Establishment Procedures

The interim rule, published October 16, 2003, at 68 FR 59515, revised § 275.23(e) to eliminate procedures for establishing liabilities for Fiscal Years 1983 through 1991. Section 275.23(e)(2) now provides procedures for establishing liability for excessive payment error rates for FY 2002. Section 275.23(e)(3) provides procedures for establishing liability amounts for FY 2003 and beyond, putting in place the provisions of Section 4118 of the FSRA. The provisions of Section 4118 give the Department the authority to waive any portion of the established liability amount, to require a State agency to invest up to 50 percent of any established liability amount in program administration activities, to establish up to 50 percent of the established liability amount as being ''at-risk'' for repayment if a liability amount is established for the subsequent fiscal year, or any combination of the three. Readers should refer to the interim rule for more information concerning the new liability system. Comments received in response to the interim rule and to this proposed rule will be considered in developing the final rule on liability resolution. The final rule will merge the interim rule and this proposed rule.

We are proposing to remove § 275.23(e)(2) (as part of the overall revision of § 275.23) as it no longer necessary. All liabilities for FY 2002 have already been determined.

I. Appeals of Liability Determinations

Section 16(c)(7) of the Food Stamp Act, as amended, provides that a State agency is entitled to appeal the amount of a liability only for a fiscal year in which a liability amount is established. That means that excessive payment error rates in the first year of the new 2-year liability system are not subject to appeal. Nor is the national performance measure subject to appeal, in accordance with Section 16(c)(6)(D) of the Food Stamp Act, as amended. Thus, only a State agency's second year error rate and related liability determination are appealable. The Department recognizes that good cause may exist for an excessive error rate in year 2 that could be the result of events in year 1. The Department has proposed at § 275.23(d)(3) to limit appeals to the determination of a State's payment error rate, or a determination of whether the payment error rate exceeds 105 percent of the national performance measure and the liability amount for any year for which a liability is established. To address the limitations on the appealability of year 1 and the possibility of causes extending back into that year, we are also proposing to allow a State agency to address areas of good cause in the prior fiscal year that may have impacted the fiscal year 2 for which a liability amount has been established.

The recent significant drop in the national performance measure and individual State error rates has raised questions about the effect on this new liability system if the error rates continue to fall lower. Specifically questions have arisen about what happens if a State agency's error rate is below six percent but there is a 95 percent statistical probability that the State's payment error rate exceeds 105 percent of the national performance measure. There are two significant points to be addressed. First, since six percent is the potential liability threshold provided in the FSRA no liability amount would be established. However, the year would be a year of poor performance under the new liability system and would be considered a year 1 in determining whether a State agency had two consecutive years of error rates exceeding 105 percent of the national performance measure. The law mandates that a year be considered a year of poor performance whenever there is a 95 percent statistical probability that a State agency's payment error rate exceeds 105 percent of the national performance measure. The six percent threshold for a liability amount determination is not relevant to the determination of poor performance. Second, questions have also arisen about whether the determination of whether a year for which no liability was established because the State's error rate was above the national performance measure but was below six percent was a year 1 is appealable. Under FSRA, this determination is not appealable. However, in the event a State agency incurs a potential liability in a subsequent year, a State agency would be able to address areas of good cause in prior fiscal year 1 that may have impacted the fiscal year 2 for which a liability amount has been established.

Section 4118 of the FSRA provides that when a State agency appeals its liability amount determination, if the State agency began required new investment activities prior to an appeal determination, and if the liability amount is reduced to $0 through the appeal, the Secretary shall pay to the State agency an amount equal to 50 percent of the new investment amount that was included in the liability amount subject to appeal. If the Secretary wholly prevails on a State agency's appeal, Section 4118 provides that the Secretary will require the State agency to invest all or a portion of the amount designated for new investment to be invested or paid to the Federal government. Section 4118 further specifies that the Department will issue regulations addressing how the remaining new investment amount will be treated if neither party wholly prevails. The interim rule published October 16, 2003 at 68 FR 59519 established in § 275.23(e)(10) the provisions concerning either the Secretary or the State agency wholly prevailing. In accordance with Section 4118 of the FSRA, we are proposing procedures in this rule for use when neither party wholly prevails on appeal.

Under the FSRA, liability is established based on two consecutive fiscal years of poor performance. Whenever there is a 95 percent statistical probability that a State's payment error rate exceeds 105 percent of the national performance measure in each of two consecutive review years, the Department will issue, for the second consecutive fiscal year, a statement of potential liability amount to the State agency at the same time that the Department issues the State agency's official regressed payment error rate. The Department will also advise the State agency of the Department's determination of the portions of the liability amount (expressed as percentages) designated as waived, for new investment, and at-risk. If the State agency wishes to appeal the liability amount through the process in Part 283 of the regulations, the State agency may do so.

As specified in the interim rule, if the State agency appeals the liability amount and wholly prevails and consequently its liability amount is reduced to $0 through the appeal, and the State agency began new investment activities prior to the appeal determination, FNS shall pay to the State agency an amount equal to 50 percent of the new investment amount expended that was included in the liability amount subject to the appeal. This provision has been moved to § 275.23(g)(1). The interim rule also provided that if FNS wholly prevails on a State agency's appeal, FNS will require the State agency to invest all or a portion of the amount designated for new investment to be invested or paid to the Federal government.

The interim rule, however, did not address either the money designated as waived or as at-risk in the original determination with respect to either party wholly prevailing on appeal. As indicated above, the Department intends to identify the portions of the liability amount to be waived, newly invested, or at-risk as percentages of the liability amount. If the State agency wholly prevails on appeal, the amounts originally designated was waived or at-risk would be reduced to $0 (percentage designated multiplied by $0 liability amount). If FNS wholly prevails on appeal, the original liability amount determinations (expressed as percentages) and designated as waived, newly invested, or at-risk, would remain unchanged.

If the State agency appeals the liability amount and the appeal decision results in neither FNS nor the State agency wholly prevailing, a decision needs to be made as to how the newly established liability amount will be treated. The Department believes that the only way to accomplish this and implement the statutory intent is to apply the initial determination percentages to the newly established liability amount. For example, if the original liability was $750,000 and the Department determined to waive 25% ($187,500) of it, require that 25% ($187,500) be newly invested, and require 50% ($375,000) remain at-risk and if the appeal resulted in reducing the liability amount to $600,000, the determination under this option would be 25% ($150,000) waived, 25% ($150,000) required to be newly invested, and 50% ($300,000) placed at-risk. Using the original percentages, immediate action can be taken by both

parties to process the results of the appeal decision.

J. New Investment

The State agency may choose to begin new investment of any amount of the liability so designated while the appeal is proceeding, based on an approvable new investment plan. The interim rule established procedures for adjusting reimbursement and collection procedures if a State began new investment during the appeal process and subsequently wholly prevailed in its appeal or if the Department wholly prevailed on appeal.

In this rule we are proposing procedures for addressing the Department's responsibility if a State agency began investment prior to completion of an appeal and neither agency wholly prevailed.

If a State begins new investment prior to an appeal decision, and the amount already invested is less than the originally designated percentage multiplied by the new liability amount, the Department will require that the State agency continue to invest up to the newly calculated investment requirement. In the instances where a State agency has expended more than the originally designated percentage multiplied by the new liability amount, we are proposing that the Department will match the amount of funds expended in excess of that amount. This is consistent with the requirement in Section 4118 for when the State agency wholly prevails on appeal.

The regulations currently detail the requirements for reinvestment. We are proposing that these procedures remain essentially the same but for the above mentioned change of wording to new investment. Under the proposed reorganization, the procedures on new investment would be in new paragraph (h) in § 275.23. In the event that a State agency fails to comply with its new investment plan, we are proposing in redesignated § 275.23(h) that the State agency shall be required to remit to the Department the amount of funds that the State agency failed to invest. Those funds shall be remitted to the Department within 30 days of the date the State agency is notified of its failure to comply with its new investment plan. Further, we are proposing that interest shall be charged beginning with the date the State agency received the notice of failure to newly invest as required.

K. Payment of At-Risk Money

We are proposing at § 275.23(i) the procedures concerning a State agency's payment of the at-risk money. At-risk money becomes due if, in the year subsequent to the establishment of the money being at-risk, the State agency is again potentially liable for a sanction. Payment shall be made before the end of the fiscal year following the reporting period in which the at-risk money became due (that is September 30 of the year that the subsequent liability notification is issued), unless an administrative appeal relating to liability is pending. For example, if, in FY 2003, a State agency's error rate exceeds the performance goal, and again its error rate is excessive in FY 2004 based on its announced error rate, FNS would send the notification of the FY 2004 liability amount by June 30, 2005. If the State agency's error rate in FY 2005 is excessive, any money designated as at-risk for the FY 2004 liability would be due by September 30, 2006, unless an appeal for the FY 2004 liability is still pending. If the State agency has appealed the liability determination, the State agency will not be required to remit to FNS any at-risk money until any administrative and judicial appeals concerning the liability determination that the at-risk money was based upon have been completed. Appeal of a subsequent liability amount does not eliminate the State's requirement to pay the at-risk money when it becomes due. The appeal of the subsequent year's liability amount will determine whether the liability that year will be reduced and would affect the establishment of a possible additional designation of at-risk money.

We are proposing that interest begin accruing beginning October 1 following the September 30 due date for payment of any at-risk money, unless an appeal is pending. Section 4118 of the FSRA provides that interest shall not accrue on the at-risk amount during a reasonable period following the resolution of any administrative or judicial appeals. Therefore, if an appeal is pending on September 30, we are proposing that interest will begin to accrue beginning 30 calendar days after the completion of the appeals process and notification to the State agency of the final amount of the at-risk money determined to be required to be repaid. This is consistent with the requirement currently in the regulations at § 275.23(e)(8) (redesignated as § 275.23(j)) for payment of interest on quality control liability claims. We are also proposing that FNS will continue to have the authority to recover a State's liability for at-risk money through offsets to the letter of credit, billing a State directly, or using other authorized claims collection mechanisms, in accordance with redesignated § 275.23(j). The reference to the Federal Claims Collection Act (Pub. L. 89–508, 80 Stat. 308) has been updated to refer to the Debt Collection Improvement Act of 1996, Pub. L. 104–134, and the Federal Claims Collection Standards, 31 CFR Parts 900–904.

L. Demonstration Projects/SSA Processing

Demonstration project and SSA joint-processed cases (cases processed in accordance with § 273.2(k) of the regulations) are subject to special consideration in terms of the QC review process. Demonstration project cases and SSA joint-processed cases are included in the sampling universe, sampled, reviewed, and in the calculation of completion rates. Demonstration project cases that significantly modify food stamp eligibility and benefit calculations and SSA joint-processed are excluded from the error rate calculations. The determination of whether the modification is significant enough to exclude the demonstration project cases is made on a project-by-project basis. SSA joint-processed cases are excluded under the current regulations in all instances. Because of recent demonstration project cases processed by SSA separately from the procedures in § 273.2(k), questions have arisen about how to handle these cases for QC purposes. These cases would under normal procedures have been excluded from the error rate calculations. However, as demonstration projects, they have been determined to be more appropriately included in the error rate calculations. State agencies have initiated demonstration projects for many reasons, including program simplification and error reduction. In some instances State agencies want such cases included in the error rates because they perceive that the inclusion would result in improved error rates. Section 275.11(g), § 275.12(h), § 275.13(f), and § 275.23(c)(5) (redesignated in this rule as § 275.23(b)(1)) provide the procedures for sampling, reviewing, and reporting the results of demonstration project cases that significantly modify the rules for determining households' eligibility or allotment level and Social Security Administration (SSA) processed cases. The language in these sections has been interpreted variously by different parties and has been determined to be unclear. In order to clarify the procedures and make it clear that SSA processed demonstration projects may be included in the error rates, we are proposing to revise § 275.11(g) and redesignated § 275.23(b)(1) to provide that

demonstration project cases and SSA processed demonstration project cases may be included in error rate calculations, as determined on a project-by-project basis by the Department.

M. 120-Day Variance Exclusion (§ 275.12(d)(2)(vii))

A variance is the incorrect application of policy and/or deviation between the information that was used to authorize the sample month issuance and the verified information that should have been used to calculate the sample month issuance. Section 275.12(d)(2)(vii) provides for exclusion of variances resulting from application of new regulations or implementing memoranda of Federal law changes. Originally the provision applied only to mandatory implementation of legislative and regulatory provisions and only during the 120 days of the exclusion. Over time, the extent of the variance exclusion has been expanded to reflect a change in viewpoint of the intent of this hold harmless period. The variance exclusion was expanded to provide that the variance exclusion covered errors made during the 120-day period until the case was next acted upon. Further, in response to passage of the FSRA, the Department applied this variance exclusion to optional provisions of the law. Throughout this expansion, numerous questions have been raised about what the variance exclusion actually means. We are proposing in this rule to clarify the language in § 275.12(d)(2)(vii) to provide that all variances that occur during the variance exclusion period that stem directly from the provision being implemented are excluded until the household's case is next recertified or otherwise acted upon. Further, we are proposing to modify the provision to indicate that the variance exclusion may be authorized on a case-by-case basis in the instance of optional legislative or regulatory changes, not just mandatory changes. However, we are not proposing to provide the exclusion for waivers. The legislative provision authorizing the variance exclusion is specific in applying it to regulatory implementation. The Department's extension of that to implementation of legislative provisions is driven by the fact that many legislative provisions are effective immediately, prior to any regulation being published.

N. FIX Errors (§ 275.12(f)(3))

As discussed above, a variance is the incorrect application of policy and/or deviation between the information that was used to authorize the sample month issuance and the verified information that should have been used to calculate the sample month issuance. Section 275.12(f)(3) requires that all variances resulting from use by the State agency of information received from automated Federal information exchange systems (FIX errors) be coded and reported as variances, although they are excluded in determining a State agency's error rates. Data subject to the FIX exclusion are limited to Federal sources that verify income provided by the Federal source providing the data, Federal sources that provide the deduction for which the Federal source directly bills the household, and the Federal source that defines the disability. Information provided by Federal sources that are comprised of data provided to the Federal source by other entities is not information subject to the FIX variance exclusion. This requirement was established in an interim rule published November 2, 1988, at 53 FR 44171 and again addressed in the final rule published November 23, 1990, at 55 FR 48831. The requirement was established for program management purposes. After fifteen years of having the requirement in place to report such variance, the Department has not found the information to serve any program management purpose. While State agencies would still be required to correct any identified variances in individual cases, as they are for any other identified variance, we feel there is no reason to continue to require States to report this information to FNS. There have been few reported variances. Further, there has been no identified corrective action necessary at a national level during the period this requirement has been in place. Therefore, we are proposing to remove § 275.12(f)(3) in this rule.

O. Technical Changes

In addition, we are proposing in Part 271 Definitions to remove definitions no longer used in the quality control system and to add the definition ''National performance measure'' to reflect current quality control policy, and we are proposing to make technical changes throughout Part 275 to remove references to other Federally mandated quality control samples, the Worksheet for Integrated AFDC, Food Stamps, and Medicaid Quality Control Reviews, and the Integrated Review Schedule. With the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, the Aid to Families with Dependent Children was eliminated and consequently, the integrated quality control review system was eliminated. Therefore, we are proposing to change throughout Part 275 the titles of the Work Sheet and Review Schedule to reflect that quality control reviews are now food stamp only reviews. We are also proposing to remove throughout Part 275 references to integrated quality control samples, reviews, and other Federally mandated quality control systems.

Throughout the rule, we are proposing to remove references to the ''underissuance error rate'' wherever payment error rate and underissuance error rate are used. The definition of payment error rate includes both the overissuance error rate and the underissuance error rate, making the separate reference to the underissuance error rate redundant. This does not mean that FNS will not calculate the underissuance error rate.

With full implementation of electronic benefit transfer systems of issuance, food stamp benefits are no longer being issued as coupons. Accordingly we are proposing to remove references to coupons in § 275.12(c)(2) and § 275.13(d).

In addition, we are proposing technical changes throughout Part 275 to correct references based on changes proposed to be made in this rule. Due to the restructuring of § 275.23, many sections required renumbering and reference changes throughout § 275. These reference changes are not discussed in this preamble. Any substantive changes are discussed in the preamble.

DISTRIBUTION TABLE

Old section	New section
275.23(a)	275.23(a)
275.23(b)	275.23(a)
275.23(c)	275.23(c)
275.23(c)(1)	Removed
275.23(c)(2)	Removed

DISTRIBUTION TABLE—Continued

Old section	New section
275.23(c)(3)	Removed
275.23(c)(4)	Removed
275.23(c)(5)	275.23(b)(1)
275.23(d)	Removed
275.23(e)(1)	275.23(d) introductory text
275.23(e)(2)	Removed
275.23(e)(3) [1st and 3rd sentences]	275.23(d)(1)
275.23(e)(3) [2nd sentence]	271.2 Definition of ''National Performance Measure''
275.23(e)(3) [4th sentence]	275.23(d)(3)
275.23(e)(3) [last sentence and (i), (ii), and (iii)]	275.23(d)(2)
275.23(e)(4)	275.23(d)(4)
275.23(e)(5)	275.23(f)
275.23(e)(6)	275.23(b)(2)
275.23(e)(7)	275.23(c)
275.23(e)(8)	275.23(j)
275.23(e)(9)(i)	275.23(h)(1)
275.23(e)(9)(ii)	275.23(h)(2)
275.23(e)(9)(iii)	275.23(h)(3)
275.23(e)(10)	275.23(e)

DERIVATION TABLE

New section	Old section
271.2 Definition of National Performance Measure	275.23(e)(3) second sentence
275.23(a)	275.23(a), 275.23(b)
275.23(b)	275.23(c) [1st sentence]
	275.23(c)(1) [end of sentence beginning with word ''based'']
	275.23(c)(4) [end of sentence beginning with word ''based'']
273.23(b)(1)	275.23(c)(5) revised
273.23(b)(2)	275.23(e)(6)
275.23(c)	275.23(e)(7)
275.23(d)(1)	275.23(e)(3) [1st three sentences]
275.23(d)(2)	275.23(e)(3) [sentences 5 & 6] and paragraphs (i), (ii), and (iii)
275.23(d)(3)	275.23(e)(3) [fourth sentence]
275.23(d)(4)	275.23(e)(4)
275.23(e)(1)	275.23(e)(10) [first sentence]
275.23(e)(2)	275.23(e)(10) [second and third sentences]
	275.23(e)(9)(iii) [1st sentence]
275.23(f)	275.23(e)(5) [introductory text revised]
275.23(g)(1)	275.23(e)(10) [fourth sentence]
275.23(g)(2)	275.23(e)(10) [last sentence]
275.23(h)(1)	275.23(e)(9)(i)
275.23(h)(2)	275.23(e)(9)(ii)
275.23(h)(3)	275.23(e)(9)(iv) [first sentence]
275.23(h)(4)	275.23(e)(9)(v)
275.23(h)(5)	275.23(e)(9)(vi)
275.23(j)	275.23(e)(8)

IV. Implementation

The Department is proposing that the changes in this rule be effective and be implemented 60 days following publication of the final rule in the **Federal Register**. Section 4118 of the FSRA eliminated enhanced funding, effective October 1, 2002, for FY 2003. This rule would codify that elimination.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting, and recordkeeping requirements.

7 CFR Part 277

Food stamps, Government procedure, Grant programs—Social programs, Investigations, Records, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Parts 271, 273, 275, and 277 are proposed to be amended as follows:

1. The authority citation for Parts 271, 273, 275, and 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2:

a. Remove the definition ''Base period''.

b. Remove the definition ''National standard payment error rate''.

c. Add the definition ''National performance measure'' in alphabetical order.

d. Revise the definition ''Negative case''.

The addition and revision read as follows:

§ 271.2 Definitions.

* * * * *

National performance measure means the sum of the products of each State agency's payment error rate times that State agency's proportion of the total value of the national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its performance error rate.

Negative case means any action taken to deny, suspend, or terminate a case in the sample month.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.2, paragraph (d)(2) is amended by:

a. Removing the reference ''§ 275.3(c)(5) or § 275.12(g)(1)(ii),'' and adding in its place the reference ''§§ 275.3(c)(5) and 275.12(g)(1)(ii) of this chapter,'';

b. Removing the number ''95'' in the third sentence and adding in its place the number ''123'';

c. Removing the reference ''§ 273.2(f)(1)(ix)'' at the end of the third sentence and adding in its place the reference ''paragraph (f)(1)(ix) of this section'';

d. Removing the word ''seven'' in the last sentence and adding in its place the word ''nine'';

e. Removing the reference ''§ 273.2(f)(1)(ix)'' at the end of the last sentence and adding in its place the reference ''paragraph (f)(1)(ix) of this section.'';

f. Adding a new sentence at the end of the paragraph to read as follows:

§ 273.2 Office operations and application processing.

* * * * *

(d) * * *

(2) * * * In the event that one or more household members leave a household terminated for refusal to cooperate, the penalty for refusal to cooperate will attach to the person(s) who refused to cooperate.

* * * * *

PART 275—PERFORMANCE REPORTING SYSTEM

§ 275.1 [Amended]

4. In § 275.1:

a. Paragraph (a) is amended by removing the paragraph designation; and

b. Paragraph (b) is removed.

5. In § 275.3:

a. The introductory text of § 275.3 is amended by removing the word ''conduct'' in the second sentence and adding in its place the word ''conduction''.

b. The introductory text of paragraph (c) is amended by removing the words ''and underissuance error rate'' in the first sentence, by removing the third and fourth sentences and adding a new sentence in their place, and by removing the reference to ''§ 275.23(e)(6)'' in the last sentence and adding in its place a reference to ''§ 275.23(d)(4)''.

The addition reads as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) * * * FNS shall validate each State agency's reported negative case error rate. * * *

* * * * *

§ 275.4 [Amended]

6. In § 275.4, paragraph (c) is amended by removing the words ''Integrated TANF, Food Stamps and Medicaid'' and by adding in their place the words ''Food Stamp Program'', by removing the words ''Integrated Review Schedule'' and by adding in their place the words ''Quality Control Review Schedule'', and by removing the words '', and Form FNS–248, Status of Sample Selection and Completion''.

§ 275.10 [Amended]

7. In § 275.10:

a. Paragraph (a) is amended by removing the words ''and eligibility for enhanced funding'' and the words ''that is not entitled to enhanced funding'' in the last sentence.

b. Paragraph (b)(4) is amended by removing the word ''standard'' and adding in its place the words ''performance measure'' and by removing the words ''and State agency eligibility for enhanced funding''.

8. In § 275.11:

a. Paragraph (a)(1) is amended by removing the last sentence.

b. Paragraph (a)(2) introductory text is amended by removing the words ''integrated sampling,''.

c. Paragraph (b)(1)(i) is amended by removing the words ''and underissuance error rates'' and adding in their place the word ''rate''.

d. Paragraph (e)(2)(i) is revised.

e. Paragraph (e)(2)(ii) is revised.

f. Paragraph (f)(2) introductory text is revised.

g. Paragraph (f)(2)(v) and (f)(2)(vi) are removed and paragraphs (f)(2)(vii), (f)(2)(viii), and (f)(2)(ix) are redesignated as (f)(2)(v), (f)(2)(vi), and (f)(2)(vii), respectively.

h. Paragraph (g) is amended by removing the reference ''§ 275.23(e)(6)'' in the third sentence and by adding in its place the reference ''§ 275.23(b)(2)''; by removing the fourth sentence; and by adding three new sentences at the end of the paragraph.

The revisions and addition read as follows:

§ 275.11 Sampling.

* * * * *

(e) * * *

(2) * * *

(i) All actions to deny an application in the sample month except those excluded from the universe in paragraph (f)(2) of this section. If a household is subject to more than one denial action in a single sample month, each action shall be listed separately in the sample frame; and

(ii) All actions to suspend or terminate a household in the sample month except those excluded from the universe in paragraph (f)(2) of this section. Each action to suspend or terminate a household in the sample month shall be listed separately in the sample frame.

* * * * *

(f) * * *

(2) *Negative cases.* The universe for negative cases shall include all actions taken to deny, suspend or terminate a household in the sample month except the following:

* * * * *

(g) * * * FNS shall establish on an individual demonstration project basis whether the results of the reviews of active and negative demonstration project cases shall be included or excluded from the determination of State agencies' error rates as described in § 275.23(b). Cases processed by SSA in accordance with § 273.2(k) of this chapter, except for demonstration project cases, shall be excluded from the determination of State agencies' error rates. FNS shall establish on an individual project basis whether demonstration project cases processed by SSA shall be included or excluded from the determination of State agencies' error rates.

9. In § 275.12:

a. Paragraph (a) is amended by adding the words ''of this chapter'' after the reference ''273.9'' at the end of the fourth sentence and by adding the words ''of this chapter'' after the reference ''273.21'' in the sixth sentence.

b. Paragraph (b) is amended by removing the words ''Integrated Worksheet,'' in the last sentence.

c. The introductory text of paragraph (c) is amended by adding the words ''of this chapter'' after the reference ''§ 272.8'' at the end of the second sentence and by removing the words ''Integrated Worksheet,'' in the last sentence.

d. Paragraph (c)(2) is amended by removing the word ''coupon'' in the second sentence.

e. The introductory text of paragraph (d) is amended by removing the words ''column (5) of the Integrated Worksheet,'' in the last sentence, and by adding in their place the words ''column (4) of the''.

f. Paragraph (d)(1) is amended by adding the words ''of this chapter'' after the references ''§ 273.6(c)'' and ''§ 273.7(f)'' in the last sentence.

g. Paragraph (d)(2)(i) is amended by adding the words ''of this chapter'' after the reference ''§ 273.2(f)(1)(i)'' in the last sentence.

h. Paragraph (d)(2)(ii) is amended by adding the words ''of this chapter'' after the reference ''§ 273.2(i)(4)(i)'' in the first sentence.

i. Paragraph (d)(2)(iii) is amended by adding the words ''of this chapter'' after the reference ''§§ 273.12(a) and 273.21(h) and (i)'' in the second sentence and after the reference ''§§ 273.12(c) and 273.21(j)'' in the last sentence.

j. Paragraph (d)(2)(iv) is amended by adding the words ''of this chapter'' after the reference ''§ 273.2(f)(3)(i)(B)'' in the first sentence and after the reference ''§ 273.12(c)'' in the last sentence.

k. The introductory text of paragraph (d)(2)(vii) is revised.

l. Paragraph (d)(3) is amended by adding the words ''of this chapter'' after the words ''part 273'' in the second sentence.

m. Paragraph (e) is amended by removing the words ''Integrated Worksheet,'' in the last sentence.

n. The introductory text of paragraph (f) is amended by removing the words ''Integrated Review Schedule,'' in the last sentence.

o. Paragraph (f)(3) is removed.

p. The introductory text of paragraph (g) is amended by removing the words ''Integrated Review Schedule,'' in the last sentence.

q. Paragraph (g)(1)(ii) introductory text is amended by removing the word ''may'' in the second sentence and adding in its place the word ''must''.

r. Paragraph (g)(2)(iv) is amended by adding the words ''of this chapter'' after the reference ''§ 273.17''.

s. Paragraph (h) is amended by adding the words ''of this chapter'' after the reference ''§ 273.2(k)(2)(ii)'' in the last sentence.

The revision reads as follows:

§ 275.12 Review of active cases.

* * * * *

(d) * * *

(2) * * *

(vii) Subject to the limitations provided in paragraphs (d)(2)(vii)(A) through (d)(2)(vii)(F) of this section, any variance resulting from application of a new Program regulation or implementing memorandum of a mandatory change in Federal law that occurs during the first 120 days from the required implementation date. The variance exclusion shall apply to any action taken on a case directly related to implementation of a covered provision during the 120-day exclusionary period until the case is required to be recertified or acted upon for some other reason. FNS may choose to apply this variance exclusion to optional regulatory or legislative provisions.

* * * * *

10. In § 275.13:

a. Paragraphs (a), (b), and (c)(1) are revised.

b. Paragraph (d) is amended by removing the word ''coupon'' in the first sentence.

The revisions read as follows:

§ 275.13 Review of negative cases.

(a) *General.* A sample of actions to deny applications, or suspend or terminate a household in the sample month shall be selected for quality control review. These negative actions shall be reviewed to determine whether the State agency's decision to deny, suspend, or terminate the household, as of the review date, was correct. Depending on the characteristics of individual State systems, the review date for negative cases could be the date of the agency's decision to deny, suspend, or terminate program benefits, the date on which the decision is entered into the computer system, or the date of the notice to the client. State agencies must consistently apply the same definition for review date to all sample cases of the same classification. The review of negative cases shall include a household case record review; an error analysis; and the reporting of review findings, including procedural problems with the action regardless of the validity of the decision to deny, suspend or terminate. In certain instances, contact with the household or a collateral contact may be permitted.

(b) *Household case record review.* The reviewer shall examine the household case record and verify through documentation in it whether the reason given for the denial, suspension, or termination is correct. Through the review of the household case record, the reviewer shall complete the household case record sections and document the reasons for denial, suspension or termination on the Negative Quality Control Review Schedule, Form FNS–245.

(c) * * *

(1) A negative case shall be considered correct if the reviewer is able to verify through documentation in the household case record that a household was correctly denied, suspended, or terminated from the program in accordance with the reason for the action given by the State agency in the notice. Whenever the reviewer is unable to verify the correctness of the State agency's decision to deny, suspend, or terminate a household's participation through such documentation, the QC reviewer may contact the household or a collateral contact to verify the correctness of the specific negative action under review. If the reviewer is unable to verify the correctness of the State agency's decision to deny, suspend, or terminate the case for the specific reason given for the action, the negative case shall be considered incorrect.

* * * * *

§ 275.14 [Amended]

11. In § 275.14:

a. Paragraph (c) is amended by removing the words ''Integrated Review Worksheet, Form FNS–380,'' in the first sentence and by adding in their place the words ''Form FNS–380''.

b. Paragraph (d) is amended by removing the words ''Integrated Review Schedule,'' in the first sentence and by removing the words ''Integrated Review Worksheet,'' in the second sentence.

12. In § 275.16:

a. Paragraph (b)(2) is removed and paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) are redesignated as (b)(2), (b)(3), (b)(4), and (b)(5), respectively.

b. Newly-redesignated paragraph (b)(5) is revised.

The revision reads as follows:

§ 275.16 Corrective action planning.

* * * * *

(b) * * *

(5) Result in underissuances, improper denials, improper suspensions, improper termination, or improper systemic suspension of benefits to eligible households where such errors are caused by State agency rules, practices, or procedures.

* * * * *

13. In § 275.21:

a. The introductory text of paragraph (b) is amended by removing the words ''Integrated Review Schedule,'' in the second sentence.

b. Paragraph (b)(2) is revised.

c. Paragraph (b)(4) is amended by removing the number ''95'' in the first sentence and adding in its place the number ''113'' and adding a new sentence after the first sentence.

d. Paragraph (c) is revised.

e. Paragraph (d) is removed and paragraph (e) is redesignated as paragraph (d).

f. Newly-redesignated paragraph (d) is revised.

The revisions and addition read as follows:

§ 275.21 Quality control review reports.

* * * * *

(b) * * *

(2) The State agency shall have at least 100 days from the end of the sample month to dispose of and report the findings of 90 percent of all selected cases in a given sample month. The State agency shall have at least 113 days from the end of the sample month to dispose of and report the findings of all cases selected in a sample month. FNS may grant additional time as warranted upon request by a State agency for cause shown to complete and dispose of individual cases.

* * * * *

(4) * * * If FNS extends the timeframes in paragraph (b)(2) of this section, this date will be extended accordingly. * * *

(c) *Monthly status.* The State agency shall report in a manner directed by the regional office the monthly progress of sample selection and completion within 123 days after the end of the sample month. Each report shall reflect sampling and review activity for a given sample month. If FNS extends the timeframes in paragraph (b)(2) of this section, this date will be extended accordingly.

(d) *Demonstration projects/SSA processing.* The State agency shall identify the monthly status of active and negative demonstration project/SSA processed cases (*i.e.*, those cases described in § 275.11(g)) in accordance with paragraph (c) of this section.

14. Section 275.23 is revised to read as follows:

§ 275.23 Determination of State agency program performance.

(a) *Determination of efficiency and effectiveness.* FNS shall determine the efficiency and effectiveness of a State's administration of the Food Stamp Program by measuring State compliance with the standards contained in the Food Stamp Act, regulations, and the State Plan of Operation and State efforts to improve program operations through corrective action. This determination shall be made based on:

(1) Reports submitted to FNS by the State;

(2) FNS reviews of State agency operations;

(3) State performance reporting systems and corrective action efforts; and

(4) Other available information such as Federal audits and investigations, civil rights reviews, administrative cost data, complaints, and any pending litigation.

(b) *State agency error rates.* FNS shall estimate each State agency's active case, payment, and negative case error rate based on the results of quality control review reports submitted in accordance with the requirements outlined in § 275.21. The determination of the correctness of the case shall be based on certification policy as set forth in part 273 of this chapter.

(1) *Demonstration projects/SSA processing.* FNS shall make a project by project determination whether the reported results of reviews of active and negative demonstration project cases shall be included or excluded from the estimate of the active case error rate, payment error rate, and negative case error rate. The reported results of reviews of cases processed by SSA in accordance with § 273.2(k) of this chapter shall be excluded from the estimate of the active case error rate, payment error rate, and negative case error rate. FNS shall make a project by project determination whether the reported results of reviews of active and negative demonstration project cases processed by SSA shall be included or excluded from the estimate of the active case error rate, payment error rate, and negative case error rate.

(2) *Determination of payment error rates.* As specified in § 275.3(c), FNS will validate each State agency's estimated payment error rate by rereviewing the State agency's active case sample and ensuring that its sampling, estimation, and data management procedures are correct.

(i) Once the Federal case reviews have been completed and all differences with the State agency have been identified, FNS shall calculate regressed error rates using the following linear regression equations.

(A) $y_1' = y_1 + b_1(X_1 - x_1)$, where y_1' is the average value of allotments overissued to eligible and ineligible households; y_1 is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to the Federal finding, b_1 is the estimate of the regression coefficient regressing the Federal findings of allotments overissued to eligible and ineligible households on the corresponding State agency findings, x_1 is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to State agency findings, and X_1 is the average value of allotments overissued to eligible and ineligible households in the full quality control sample according to State agency's findings. In stratified sample designs Y_1, X_1, and x_1 are weighted averages and b_1 is a combined regression coefficient in which stratum weights sum to 1.0 and are proportional to the estimated stratum caseloads subject to review.

(B) $y_2' = y_2 + b_2(X_2 - x_2)$, where y_2' is the average value of allotments underissued to households included in the active error rate, y_2 is the average value of allotments underissued to participating households in the rereview sample according to the Federal finding, b_2 is the estimate of the regression coefficient regressing the Federal findings of allotments underissued to participating households on the corresponding State agency findings, x_2 is the average value of allotments underissued to participating households in the rereview sample according to State agency findings, and X_2 is the average value of allotments underissued to participating households in the full quality control sample according to the State agency's findings. In stratified sample designs y_2, X_2, and x_2 are weighted averages and b_2 is a combined regression coefficient in which stratum weights sum to 1.0 and are proportional to the estimated stratum caseloads subject to review.

(C) The regressed error rates are given by $r_1 = y_1/u$, yielding the regressed overpayment error rate, and $r_2' = y_2'/u$, yielding the regressed underpayment error rate, where u is the average value of allotments issued to participating households in the State agency sample.

(D) After application of the adjustment provisions of paragraph (b)(2)(iii) of this section, the adjusted regressed payment error rate shall be calculated to yield the State agency's payment error rate. The adjusted regressed payment error rate is given by $r_1'' + r_2''$.

(ii) If FNS determines that a State agency has sampled incorrectly, estimated improperly, or has deficiencies in its QC data management system, FNS will correct the State agency's payment and negative case error rates based upon a correction to that aspect of the State agency's QC

system which is deficient. If FNS cannot accurately correct the State agency's deficiency, FNS will assign the State agency a payment error rate or negative case error rate based upon the best information available. After consultation with the State agency, the assigned payment error rate will then be used in the liability determination. After consultation with the State agency, the assigned negative case error rate will be the official State negative case error rate for any purpose. State agencies shall have the right to appeal assessment of an error rate in this situation in accordance with the procedures of Part 283 of this chapter.

(iii) Should a State agency fail to complete 98 percent of its required sample size, FNS shall adjust the State agency's regressed error rates using the following equations:

(A) $r_1'' = r_1' + 2(1 - C)S_1$, where r_1'' is the adjusted regressed overpayment error rate, r_1', is the regressed overpayment error rate computed from the formula in paragraph (b)(2)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and S_1 is the standard error of the State agency sample overpayment error rate. If a State agency completes all of its required sample size, then $r_1'' = r_1'$.

(B) $r_2'' = r_2' + 2(1 - C)S_2$, where r_2'' is the adjusted regressed underpayment error rate, r_2' is the regressed underpayment error rate computed from the formula in paragraph (b)(2)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and S_2 is the standard error of the State agency sample underpayment error rate. If a State agency completes all of its required sample size, then $r_2'' = r_2'$.

(c) *FNS Timeframes for completing case review process, arbitration, and issuing error rates.* The case review process and the arbitration of all difference cases shall be completed by May 31 following the end of the fiscal year. FNS shall determine and announce the national average payment and negative case error rates for the fiscal year by June 30 following the end of the fiscal year. At the same time FNS shall notify all State agencies of their individual payment and negative case error rates and payment error rate liabilities, if any. FNS shall provide a copy of each State agency's notice of potential liability to its respective chief executive officer and legislature. FNS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the reporting period in which the claim arose unless an appeal relating to the claim is pending. Such appeals include administrative and judicial appeals pursuant to Section 14 of the Food Stamp Act. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c) of this chapter, FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Federal Claims Collection Standards (31 CFR Parts 900–904), depending upon the amount of the State's liability. FNS is not bound by the timeframes referenced in paragraph (c) of this section in cases where a State fails to submit QC data expeditiously to FNS and FNS determines that, as a result, it is unable to calculate the State's payment error rate and payment error rate liability within the prescribed timeframe.

(d) *State agencies' liabilities for payment error rates.* At the end of each fiscal year, each State agency's payment error rate over the entire fiscal year will be computed and evaluated to determine whether the payment error rate goal (national performance measure) established in paragraph (d)(1) of this section has been met. Each State agency that fails to achieve its payment error rate goal during a fiscal year shall be liable as specified in paragraph (d)(2) of this section.

(1) *National performance measure.* FNS shall announce a national performance measure not later than June 30 after the end of the fiscal year. The national performance measure is the sum of the products of each State agency's error rate times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. Once announced, the national performance measure for a given fiscal year will not be subject to administrative or judicial appeal.

(2) *Liability.* For fiscal year 2003 and subsequent years, liability for payment shall be established whenever there is a 95 percent statistical probability that, for the second or subsequent consecutive fiscal year, a State agency's payment error rate exceeds 105 percent of the national performance measure. The amount of the liability shall be equal to the product of the value of all allotments issued by the State agency in the second (or subsequent consecutive) fiscal year; multiplied by the difference between the State agency's payment error rate and 6 percent; multiplied by 10 percent.

(3) *Right to appeal payment error rate liability.* Determination of a State agency's payment error rate or whether that payment error rate exceeds 105 percent of the national performance measure shall be subject to administrative or judicial review only if a liability amount is established for that fiscal year. Procedures for good cause appeals of excessive payment error rates are addressed in paragraph (f) of this section. The established national performance measure is not subject to administrative or judicial appeal, nor is any prior fiscal year payment error rate subject to appeal as part of the appeal of a later fiscal year's liability amount. However, State agencies may address matters related to good cause in an immediately prior fiscal year that impacted the fiscal year for which a liability amount has been established. The State agency will need to address how year 2 was impacted by the event(s) in the prior year.

(4) *Relationship to warning process and negligence.*

(i) States' liability for payment error rates as determined above in paragraphs (d)(1) through (d)(3) of this section are not subject to the warning process of § 276.4(d) of this chapter.

(ii) FNS shall not determine negligence (as described in § 276.3 of this chapter) based on the overall payment error rate for issuances to ineligible households and overissuances to eligible households in a State or political subdivision thereof. FNS may only establish a claim under § 276.3 of this chapter for dollar losses from failure to comply, due to negligence on the part of the State agency (as defined in § 276.3 of this chapter), with specific certification requirements. Thus, FNS will not use the result of States' QC reviews to determine negligence.

(iii) Whenever a State is assessed a liability amount for an excessive payment error rate, the State shall have the right to request an appeal in accordance with procedures set forth in part 283 of this chapter. While FNS may determine a State to be liable for dollar loss under the provisions of this section and the negligence provisions of § 276.3 of this chapter for the same period of time, FNS shall not bill a State for the same dollar loss under both provisions. If FNS finds a State liable for dollar loss under both the QC liability system and the negligence provisions, FNS shall adjust the billings to ensure that two claims are not made against the State for the same dollar loss.

(e) *Liability Amount Determinations.* (1) FNS shall provide each State agency whose payment error rate subjects it to a liability amount the following

determinations each expressed as a percentage of the total liability amount. FNS shall:

(i) Waive all or a portion of the liability;

(ii) Require the State agency to invest up to 50 percent of the liability in activities to improve program administration (new investment money shall not be matched by Federal funds);

(iii) Designate up to 50 percent of the liability as ''at-risk'' for repayment if a liability is established based on the State agency's payment error rate for the subsequent fiscal year; or

(iv) Choose any combination of these options.

(2) Once FNS determines the percentages in accordance with paragraphs (e)(1)(i) through (e)(1)(iv) of this section, the amount assigned as at-risk is not subject to settlement negotiation between FNS and the State agency and may not be reduced unless an appeal decision revises the total dollar liability. FNS and the State agency shall settle any waiver percentage amount or new investment percentage amount before the end of the fiscal year in which the liability amount is determined. The determination of percentages for waiver, new investment and/or at-risk amounts by the Department is not appealable. Likewise, a settlement of the waiver and new investment amounts is unappealable.

(f) *Good cause.* When a State agency with otherwise effective administration exceeds the tolerance level for payment errors as described in this section, the State agency may seek relief from liability claims that would otherwise be levied under this section on the basis that the State agency had good cause for not achieving the payment error rate tolerance. State agencies desiring such relief must file an appeal with the Department's Administrative Law Judge (ALJ) in accordance with the procedures established under part 283 of this chapter. Paragraphs (f)(1) through (f)(5) of this section describe the unusual events that are considered to have a potential for disrupting program operations and increasing error rates to an extent that relief from a resulting liability amount or increased liability amount is appropriate. The occurrence of an event(s) does not automatically result in a determination of good cause for an error rate in excess of the national performance measure. The State agency must demonstrate that the event had an adverse and uncontrollable impact on program operations during the relevant period, and the event caused an uncontrollable increase in the error rate. Good cause relief will only be considered for that portion of the error rate/liability amount attributable to the unusual event. The following are unusual events which State agencies may use as a basis for requesting good cause relief and specific information that must be submitted to justify such requests for relief:

(1) *Natural disasters and civil disorders.* Natural disasters such as those under the authority of The Disaster Relief and Emergency Assistance Amendments of 1988 (Pub. L. 100–707), which amended The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288), or civil disorders that adversely affect program operations.

(i) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(A) The nature of the disaster(s) (*e.g.* a tornado, hurricane, earthquake, flood, etc.) or civil disorder(s) and evidence that the President has declared a disaster;

(B) The date(s) of the occurrence;

(C) The date(s) after the occurrence when program operations were affected;

(D) The geographic extent of the occurrence (*i.e.* the county or counties where the disaster occurred);

(E) The proportion of the food stamp caseload whose management was affected;

(F) The reason(s) why the State agency was unable to control the effects of the disaster on program administration and errors.

(G) The identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.).

(H) The percentage of the payment error rate that resulted from the occurrence and how this figure was derived; and

(I) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria and methodology will be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of a disaster or civil disorder:

(*1*) Geographical impact of the disaster;

(*2*) State efforts to control impact on program operations;

(*3*) The proportion of food stamp caseload affected; and/or

(*4*) The duration of the disaster and its impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure. For example, a reduction in the waiver amount may be made when a State agency's recent error rate history indicates that even absent the events described, the State agency would have exceeded the national performance measure in the review period.

(iii) If a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a natural disaster or civil disorder using factual analysis, the waiver amount shall be evaluated using the following formula and methodology which measures both the duration and intensity of the event. Duration will be measured by the number of months the event had an adverse impact on program operations. Intensity will be a proportional measurement of the issuances for the counties affected to the State's total issuance. This ratio will be determined using issuance figures for the first full month immediately preceding the disaster. This figure will not include issuances made to households participating under disaster certification authorized by FNS and already excluded from the error rate calculations under § 275.12(g)(2)(vi). The counties considered affected will include counties where the disaster/civil disorder occurred, and any other county that the State agency can demonstrate had program operations adversely impacted due to the event (such as a county that diverted significant numbers of food stamp certification or administrative staff). The amount of the waiver of liability will be determined using the linear equation $W = Ia/Ib \times [M/12 \text{ or } Mp/18] \times L$, where Ia is the issuance for the first full month immediately preceding the unusual event for the county affected; Ib is the State's total issuance for the first full month immediately preceding the unusual event; M/12 is the number of months in the subject fiscal year that the unusual event had an adverse impact on program operations; Mp/18 is the number of months in the last half (April through September) of the prior fiscal year that the unusual event had an adverse impact on program operations; L is the total amount of the liability for the fiscal year. Mathematically this formula could result in a waiver of more than 100% of the liability amount;

however, no more than 100% of a State's liability amount will be waived for any one fiscal year. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of disasters or civil disorders that ended prior to the second half of the prior fiscal year will not be considered.

(2) *Strikes.* Strikes by State agency staff necessary to determine Food Stamp Program eligibility and process case changes.

(i) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(A) Which workers (*i.e.* eligibility workers, clerks, data input staff, etc.) and how many (number and percentage of total staff) were on strike or refused to cross picket lines;

(B) The date(s) and nature of the strike (*i.e.*, the issues surrounding the strike);

(C) The date(s) after the occurrence when program operations were affected;

(D) The geographic extent of the strike (*i.e.* the county or counties where the strike occurred);

(E) The proportion of the food stamp caseload whose management was affected;

(F) The reason(s) why the State agency was unable to control the effects of the strike on program administration and errors;

(G) Identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(H) The percentage of the payment error rate that resulted from the strike and how this figure was derived; and

(I) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria shall be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of a liability amount in conjunction with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of the strike:

(*1*) Geographical impact of the strike;

(*2*) State efforts to control impact on program operations;

(*3*) The proportion of food stamp caseload affected; and/or

(*4*) The duration of the strike and its impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. For example, the amount of the waiver might be reduced for a strike that was limited to a small area of the State. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(iii) If a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a strike using factual analysis, a waiver amount shall be evaluated by using the formula described in paragraph (f)(1) of this section. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of strikes that ended prior to the second half of the prior fiscal year will not be considered.

(3) *Caseload growth.* A significant growth in food stamp caseload in a State prior to or during a fiscal year, such as a 15 percent growth in caseload. Caseload growth which historically increases during certain periods of the year will not be considered unusual or beyond the State agency's control.

(i) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(A) The amount of growth (both actual and percentage);

(B) The time the growth occurred (what month(s)/year);

(C) The date(s) after the occurrence when program operations were affected;

(D) The geographic extent of the caseload growth (*i.e.* Statewide or in which particular counties);

(E) The impact of caseload growth;

(F) The reason(s) why the State agency was unable to control the effects of caseload growth on program administration and errors;

(G) The percentage of the payment error rate that resulted from the caseload growth and how this figure was derived; and

(H) The degree to which the error rate exceeded the national performance measure in the subject fiscal year.

(ii)(A) The following criteria and methodology shall be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of unusual caseload growth:

(*1*) Geographical impact of the caseload growth;

(*2*) State efforts to control impact on program operations;

(*3*) The proportion of food stamp caseload affected; and/or

(*4*) The duration of the caseload growth and its impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure. For example, a reduction in the waiver amount may be made when a State agency's recent error rate history indicates that even absent the events described, the State agency would have exceeded the national performance measure in the review period. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of caseload growth that ended prior to the second half of the prior fiscal year will not be considered.

(iii) If the State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of caseload growth using factual analysis, the waiver amount shall be evaluated using the following five-step calculation:

(A) Step 1, determine the average number of households certified to participate Statewide in the Food Stamp program for the base period consisting of twelve consecutive months ending with March of the prior fiscal year;

(B) Step 2, determine the percentage of increase in caseload growth from the base period (Step 1) using the average number of households certified to participate Statewide in the Food Stamp Program for any twelve consecutive months in the period beginning with April of the prior fiscal year and ending with June of the current year;

(C) Step 3, determine the percentage the error rate for the subject fiscal year, as calculated under paragraph (b)(2) of this section, exceeds the national performance measure determined in accordance with paragraph (d)(1) of this section;

(D) Step 4, divide the percentage of caseload growth increase arrived at in step 2 by the percentage the error rate for the subject fiscal year exceeds the national performance measure as determined in step 3; and

(E) Step 5, multiply the quotient arrived at in step 4 by the liability amount for the current fiscal year to determine the amount of waiver of liability.

(iv) Under this methodology, caseload growth of less than 15% and/or occurring in the last three months of the subject fiscal year will not be

considered. Mathematically this formula could result in a waiver of more than 100% of the liability amount; however, no more than 100% of a State's liability amount will be waived for any one fiscal year.

(4) *Program changes.* A change in the Food Stamp Program or other Federal or State program that has a substantial adverse impact on the management of the Food Stamp Program of a State. Requests for relief from errors caused by the uncontrollable effects of unusual program changes other than those variances already excluded by § 275.12(d)(2)(vii) will be considered to the extent the program change is not common to all States.

(i) When submitting a request for good cause relief based on unusual changes in the Food Stamp or other Federal or State programs, the State agency shall provide the following information:

(A) The type of changes(s) that occurred;

(B) When the change(s) occurred;

(C) The nature of the adverse effect of the changes on program operations and the State agency's efforts to mitigate these effects;

(D) Reason(s) the State agency was unable to adequately handle the change(s);

(E) Identification and explanation of the uncontrollable errors caused by the changes (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(F) The percentage of the payment error rate that resulted from the adverse impact of the change(s) and how this figure was derived; and

(G) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii)(A) The following criteria will be used to assess and evaluate good cause in conjunction with the appeals process and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of unusual changes in the Food Stamp Program or other Federal and State programs:

(*1*) State efforts to control impact on program operations;

(*2*) The proportion of food stamp caseload affected; and/or

(*3*) The duration of the unusual changes in the Food Stamp Program or other Federal and State programs and the impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(5) *Significant circumstances beyond the control of a State agency.* Requests for relief from errors caused by the uncontrollable effect of a significant circumstance other than those specifically set forth in paragraphs (f)(1) through (f)(4) of this section will be considered to the extent that the circumstance is not common to all States, such as a fire in a certification office.

(i) When submitting a request for good cause relief based on significant circumstances, the State agency shall provide the following information:

(A) The significant circumstances that the State agency believes uncontrollably and adversely affected the payment error rate for the fiscal year in question;

(B) Why the State agency had no control over the significant circumstances;

(C) How the significant circumstances had an uncontrollable and adverse impact on the State agency's error rate;

(D) Where the significant circumstances existed (*i.e.* Statewide or in particular counties);

(E) When the significant circumstances existed (provide specific dates whenever possible);

(F) The proportion of the food stamp caseload whose management was affected;

(G) Identification and explanation of the uncontrollable errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(H) The percentage of the payment error rate that was caused by the significant circumstances and how this figure was derived; and

(I) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii)(A) The following criteria shall be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of a significant circumstance beyond the control of the State agency, other than those set forth in paragraph (f)(5) of this section:

(*1*) Geographical impact of the significant circumstances;

(*2*) State efforts to control impact on program operations;

(*3*) The proportion of food stamp caseload affected; and/or

(*4*) The duration of the significant circumstances and the impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(6) *Adjustments.* When good cause is found under the criteria in paragraphs (f)(1) through (f)(5) of this section, the waiver amount may be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure.

(7) *Evidence.* When submitting a request to the ALJ for good cause relief, the State agency shall include such data and documentation as is necessary to support and verify the information submitted in accordance with the requirements of paragraph (f) of this section so as to fully explain how a particular significant circumstance(s) uncontrollably affected its payment error rate.

(8) *Finality.* The initial decision of the ALJ concerning good cause shall constitute the final determination for purposes of judicial review as established under the provisions of § 283.17 and § 283.20 of this chapter.

(g) *Results of appeals on liability amount determinations.*

(1) If a State agency wholly prevails on appeal and, consequently, its liability amount is reduced to $0 through the appeal, and if the State agency began new investment activities prior to the appeal determination, FNS shall pay to the State agency an amount equal to 50 percent of the new investment amount that was expended by the State agency.

(2) If FNS wholly prevails on a State agency's appeal, FNS will require the State agency to invest all or a portion of the amount designated for new investment to be invested or to be paid to the Federal government.

(3) If neither the State agency nor FNS wholly prevails on a State agency's appeal, FNS shall apply the original waiver, new investment, and at-risk percentage determinations to the liability amount established through the appeal. If the State agency began new investment prior to the appeal decision and has already expended more than the amount produced for new investment as a result of the appeal decision, the Department will match the amount of funds expended in excess of the amount now required by the Department for new investment.

(h) *New investment requirements.* Once FNS has determined the percentage of a liability amount to be invested or following an appeal and recalculation by FNS of an amount to be invested, a State agency shall submit a plan of offsetting investments in program administration activities intended to reduce error rates.

(1) The State agency's investment plan activity or activities must meet the following conditions to be accepted by the Department:

(i) The activity or activities must be directly related to error reduction in the ongoing program, with specific objectives regarding the amount of error reduction, and type of errors that will be reduced. The costs of demonstration, research, or evaluation projects under sections 17(a) through (c) of the Act will not be accepted. The State agency may direct the investment plan to a specific project area or implement the plan on a Statewide basis. In addition, the Department will allow an investment plan to be tested in a limited area, as a pilot project, if the Department determines it to be appropriate. A request by the State agency for a waiver of existing rules will not be acceptable as a component of the investment plan. The State agency must submit any waiver request through the normal channels for approval and receive approval of the request prior to including the waiver in the investment plan. Waivers that have been approved for the State agency's use in the ongoing operation of the program may continue to be used.

(ii) The program administration activity must represent a new or increased expenditure. The proposed activity must also represent an addition to the minimum program administration required by law for State agency administration including corrective action. Therefore, basic training of eligibility workers or a continuing correction action from a Corrective Action Plan shall not be acceptable. The State agency may include a previous initiative in its plan; however, the State agency would have to demonstrate that the initiative is entirely funded by State money, represents an increase in spending and there are no remaining Federal funds earmarked for the activity.

(iii) Investment activities must be funded in full by the State agency, without any matching Federal funds until the entire amount agreed to is spent. Amounts spent in excess of the settlement amount included in the plan may be subject to Federal matching funds.

(2) The request shall include:

(i) A statement of the amount of money that is a quality control liability claim that is to be offset by investment in program improvements;

(ii) A detailed description of the planned program administration activity;

(iii) Planned expenditures, including time schedule and anticipated cost breakdown;

(iv) Anticipated impact of the activity, identifying the types of error expected to be affected;

(v) Documentation that the funds would not replace expenditures already earmarked for an ongoing effort; and

(vi) A statement that the expenditures are not simply a reallocation of resources.

(3) A State agency may choose to begin expending State funds for any amount of the liability designated as ''new investment'' in the liability amount determination prior to any appeal. FNS reserves the right to approve whether the expenditure meets the requirements for new investment. Expenditures made prior to approval by the Department will be subject to approval before they are accepted. Once a new investment plan is approved, the State agency shall submit plan modifications to the Department for approval, prior to implementation.

(4) Each State agency which has part of a liability designated for new investment shall submit periodic documented reports according to a schedule in its approved investment plan. At a minimum, these reports shall contain:

(i) A detailed description of the expenditure of funds, including the source of funds and the actual goods and services purchased or rented with the funds;

(ii) A detailed description of the actual activity; and

(iii) An explanation of the activity's effect on errors, including an explanation of any discrepancy between the planned effect and the actual effect.

(5) Any funds that the State agency's reports do not document as spent as specified in the new investment plan may be recovered by the Department. Before the funds are withdrawn, the State agency will be provided an opportunity to provide the missing documentation.

(6) If the funds are recovered, the Department shall charge interest on the funds not spent according to the plan in accordance with paragraph (j) of this section.

(i) *At-risk money.* If appropriate, FNS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the reporting period in which the claim arose unless an administrative appeal relating to the claim is pending. Such appeals include administrative and judicial appeals pursuant to Section 14 of the Food Stamp Act. If a State agency, in the subsequent year, is again subject to a liability amount based on the national performance measure and the error rate issued to the State agency, the State agency will be required to remit to FNS any money designated as at-risk for the prior fiscal year in accordance with either the original liability amount or a revised liability amount arising from an appeal, as appropriate, within 30 days of the date of the final billing. Appeals of the subsequent liability amount will not affect the requirement that the State agency pay the at-risk amount for the prior year. The amount of a State's at-risk money may be recovered through offsets to the State agency's letter of credit as identified in § 277.16(c) of this chapter. FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Federal Claims Collection Standards (31 CFR Parts 900–904), depending upon the amount of the State's liability.

(j) *Interest charges.*

(1) To the extent that a State agency does not pay an at-risk amount within 30 days from the date on which the bill for collection is received by the State agency, the State agency shall be liable for interest on any unpaid portion of such claim accruing from the date on which the bill for collection was received by the State agency. If the State agency is notified that it failed to invest funds in accordance with an approved new investment plan, the State agency has 30 days from the date of receipt of notification of non-expenditure of new investment funds to pay the Department the amount of funds not so invested. If the State agency does not pay the Department the amount of funds not invested within 30 days from the date of receipt of the notification of non-expenditure, the State agency shall be liable for interest on the non-expended funds from the date on which the notification was received by the State agency. If the State agency agrees to pay the claim through reduction in Federal financial participation for administrative costs, this agreement shall be considered to be paying the claim. If the State agency appeals such claim (in whole or in part), the interest on any unpaid portion of the claim shall accrue from the date of the decision on the administrative appeal, or from a date that is one year after the date the bill is

received, whichever is earlier, until the date the unpaid portion of the payment is received.

(2) A State agency may choose to pay the amount designated as at-risk prior to resolution of any appeals. If the State agency pays such claim (in whole or in part) and the claim is subsequently overturned or adjusted through administrative or judicial appeal, any amounts paid by the State agency above what is actually due shall be promptly returned with interest, accruing from the date the payment was received until the date the payment is returned.

(3) Any interest assessed under paragraph (j)(1) of this section shall be computed at a rate determined by the Secretary based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates during the period such interest accrues. The bond equivalent is the discount rate (*i.e.*, the price the bond is actually sold for as opposed to its face value) determined by the weekly auction (*i.e.*, the difference between the discount rate and face value) converted to an annualized figure. The Secretary shall use the investment rate (*i.e.*, the rate for 365 days) compounded in simple interest for the period for which the claim is not paid. Interest billings shall be made quarterly with the initial billing accruing from the date the interest is first due. Because the discount rate for Treasury bills is issued weekly, the interest rate for State agency claims shall be averaged for the appropriate weeks.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

§ 277.4 [Amended]

15. In § 277.4:

a. Paragraph (b) is amended by removing paragraphs (b)(1), (b)(4), (b)(5), and (b)(6) and by redesignating paragraphs (b)(2), (b)(3), (b)(7), and (b)(8) as paragraphs (b)(1), (b)(2), (b)(3), and (b)(4), respectively.

b. Newly redesignated paragraph (b)(3) is amended by removing the words ''Beginning October 1982,'' and by removing the reference ''paragraphs (b)(2) and (b)(3)'' and adding in its place the reference ''paragraphs (b)(1) and (b)(2)''.

Dated: September 12, 2005.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 05–19020 Filed 9–22–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM05–25–000]

Preventing Undue Discrimination and Preference in Transmission Services

September 16, 2005.

AGENCY: Federal Energy Regulatory Commission, (DOE).

ACTION: Notice of inquiry (NOI).

SUMMARY: The Federal Energy Regulatory Commission (Commission) is inviting comments on whether reforms are needed to the Order No. 888 pro forma open access transmission tariff (OATT) and the OATTs of public utilities to ensure that services thereunder are just, reasonable and not unduly discriminatory or preferential. The Commission is also inviting comments on the implementation of the newly established section 211A of the Federal Power Act (concerning the provision of open access transmission service by unregulated transmitting utilities). Finally, the Commission is inviting comments on section 1233 of the Energy Policy Act of 2005, which defines native load service obligation.

DATES: Comments on this NOI are due on November 22, 2005.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Procedure for Comments section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT: Daniel Hedberg (Technical Information), Office of Markets, Tariffs & Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6243.

David Withnell (Legal Information), Office of General Counsel—Markets, Tariffs & Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8421.

SUPPLEMENTARY INFORMATION:

Introduction

1. The Federal Energy Regulatory Commission (Commission) has a mandate under sections 205 and 206 of the Federal Power Act (FPA) [1] to ensure that, with respect to any transmission in interstate commerce or any sale of electric energy for resale in interstate commerce by a public utility, no person is subject to any undue prejudice or disadvantage. Under these sections, the Commission must determine whether any rule, regulation, practice, or contract affecting rates for such transmission or sale for resale is unduly discriminatory or preferential, and we must disapprove any of the foregoing that do not meet this standard. Pursuant to that mandate, in 1996, the Commission issued Order No. 888 [2] to remedy undue discrimination or preference in access to the monopoly owned transmission wires that control whether and to whom electricity can be transported in interstate commerce.[3]

2. The Commission is issuing this Notice of Inquiry to seek comments on whether reforms are needed to the Order No. 888 pro forma open access transmission tariff (OATT) and to the OATTs of public utilities to prevent undue discrimination and preference in the provision of transmission services. The Commission's preliminary view is that the pro forma OATT and public utilities' OATTs should be reformed to reflect lessons learned during nearly a decade of the electric utility industry's and the Commission's experience with open access transmission. In addition, the Commission is concerned that public utility transmission providers have come to different interpretations of

[1] 16 U.S.C. 824d–824e (2000). Section 205(b) states that ''[n]o public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue preference or disadvantage. * * *'' In addition, section 206(a) states that ''[w]henever the Commission * * * shall find that any rate, charge, or classification demanded, observed, charged or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice or contract to be thereafter observed and in force, and shall fix the same by order.''

[2] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, 62 FR 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[3] Order No. 888 at 31,669.

provisions of their OATTs and have implemented them in ways that need clarification by the Commission to avoid unduly discriminatory or preferential terms and conditions. The Commission's preliminary view is that reforms to the pro forma OATT and public utilities' OATTs appear necessary and the Commission seeks comments on how best to accomplish that. Further, the Commission is seeking comments on how best to implement section 1231 of the Energy Policy Act of 2005 (establishing section 211A of the FPA, which concerns the provision of open access transmission service by unregulated transmitting utilities). Finally, the Commission is seeking comments on section 1233 of EPAct 2005 (which defines native load service obligation).[4]

Background

3. In Order No. 888, the Commission required, as a remedy for undue discrimination, that all public utilities provide open access transmission service consistent with the terms and conditions of a pro forma OATT. The Commission determined that non-discriminatory open access transmission service, including access to transmission information, and stranded cost recovery were the most critical components of a successful transition to competitive wholesale markets. To achieve this, the Commission required all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to file OATTs containing certain non-price terms and conditions, and to functionally unbundle wholesale power services from transmission services.[5] With functional unbundling, public utilities must: (1) Take wholesale transmission services under the same tariff of general applicability as they offer their customers; (2) state separate rates for wholesale generation, transmission and ancillary services; and (3) rely on the same electronic information network that their transmission customers rely on to obtain information about the utilities' transmission systems.[6] While Order No. 888 set the foundation upon which to attain competitive electric markets, the Commission has recognized that Order No. 888 did not eliminate the potential to engage in undue discrimination and preference in the provision of transmission service.[7]

4. In Order No. 888, the Commission found that transmission utilities own the transportation system over which bulk power competition occurs and transmission service was a natural monopoly.[8] The electric industry has changed considerably since Order No. 888 was issued. It has evolved from one characterized by large, vertically integrated utilities to an industry with increasing wholesale trade and increasing numbers of independent buyers and sellers of wholesale power. Public utilities today purchase significantly more wholesale power to meet their load than in the past and seek non-discriminatory access to transmission facilities. Transactions have become less localized, with trade occurring on a more regionalized basis. Improved information about transmission systems has become available to all participants in the bulk power market. The Commission has approved the voluntary formation of a number of independent system operators (ISO) and regional transmission organizations (RTOs). New generation resources have been developed in areas that had experienced generation shortages. Regional trading patterns have expanded. Large numbers of merger applications and applications to charge market-based rates have been accepted by the Commission.

5. In the wake of these industry changes, questions have arisen concerning the efficacy of various terms and conditions of the transmission providers' OATTs. As the Commission noted in Order No. 888, it is in the economic self-interest of transmission monopolists, particularly those with high-cost generation assets, to deny transmission or to offer transmission on a basis that is inferior to that which they provide themselves.[9] This is still the view of the Commission. We have observed that public utilities continue to have the discretion and the incentive to interpret and apply the provisions of their OATTs in a manner that can result in unduly discriminatory behavior on each particular public utility's transmission system.[10] This is exacerbated by the fact that, in a number of respects, Order No. 888 and the pro forma OATT allow public utilities discretion in implementing the terms and conditions of providing transmission service. This not only makes it difficult for public utilities to comply, but makes it difficult for the Commission to identify violations.[11] Further, this can lead to inconsistent results across public utility systems to the detriment of customers. Transmission customers have also found ways to use the OATTs to their own advantage, particularly in the scheduling and queuing processes.[12] Moreover, OATT provisions have been modified in numerous ways on a company-by-company basis, leading to uncertainties within the industry as to the proper interpretation of those provisions and to unnecessarily inconsistent treatment of customers across public utilities. While some

[4] Energy Policy Act of 2005, Pub. L. 109–58, §§ 1231, 1233 119 Stat. 594 (2005) (EPAct 2005).

[5] The Commission did not require corporate unbundling, stating that efforts to remedy undue discrimination should begin by requiring the less intrusive functional unbundling approach.

[6] Concurrent with the issuance of Order No. 888, the Commission issued Order No. 889 that imposed standards of conduct governing communications between the utility's transmission and wholesale power functions, to prevent the utility from giving its power marketing arm preferential access to transmission information. It also required all public utilities that own, control or operate facilities used in the transmission of electric energy in interstate commerce to create or participate in an Open Access Same-Time Information Systems (OASIS) that provides existing and potential transmission customers the same access to transmission information. *Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct,* Order No. 889, 61 FR 21,737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 at 31,583 (1996), *order on reh'g,* Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g,* Order No. 889–B, 81 FERC ¶ 61,253 (1997).

[7] In Order No. 2000, the Commission found that ''opportunities for undue discrimination continue to exist that may not be remedied adequately by [the] functional unbundling [remedy of Order No. 888] * * *.'' *Regional Transmission Organizations,* Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,105 (1999), *order on reh'g,* Order No. 2000–A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington* v. *FERC,* 272 F.3d 607 (D.C. Cir. 2001).

[8] Order No. 888 at 31,652.

[9] *Id.* at 31,682.

[10] For example, remaining corporate ties between generation and transmission within public utilities have proven problematic for transmission access by new generators and new load-serving entities. Also, transmission providers have delayed the processing of a competitor's request for new service. Further, concerns regarding the calculation of available transfer capability (ATC) have arisen. (We note that the Commission used the term ''Available Transmission Capability'' in Order No. 888 to describe the amount of additional capability available in the transmission network to accommodate additional transmission services. To be consistent with the term generally accepted throughout the industry, ''Available Transfer Capability'' will be used).

[11] *See, e.g.*, Order No. 2003 at P 696 (noting that many decisions under the OATT are ''subjective'' and that a ''[t]ransmission [p]rovider that is not an independent entity has the ability and the incentive to exploit this subjectivity to its own advantage''). *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, 68 FR 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g,* Order No. 2003–A, 69 FR 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g,* Order No. 2003–B, 70 FR 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005), *order on reh'g,* Order No. 2003–C, 70 FR 37,661 (June 30, 2005) FERC Stats. & Regs. ¶ 31,190 (2005).

[12] *See, e.g.*, 2004 State of the Market Report: Midwest ISO at 30–31, 34, *http://www.midwestmarket.org/publish/Document/2b8a32_103ef711180_-7bf20a48324a/2004%20MISO%20SOM%20Report.pdf?action=download&_property=Attachment.*

market participants have raised concerns with the implementation of OATTs, others may be reluctant to bring issues to the Commission.

6. We are also concerned that undue discrimination and preferential treatment is much more difficult to detect when the transmission grid is constrained. For example, some transmission constraints have created fairly small local load pockets in primarily urban areas, *e.g.*, New York City, Long Island, Boston, parts of Connecticut, and the San Francisco Bay Area. Other load pocket concerns have arisen in parts of northern Virginia, New Orleans and various load centers in the Southwest Power Pool (SPP). Still other constraints are more regional in scope: (1) From the Midwest to the Mid-Atlantic; (2) from the Midwest to the Tennessee Valley Authority (TVA); (3) into and within California; (4) from TVA and the Southern Companies into Entergy; (5) from Mid-America Interconnected Network into Wisconsin Upper Michigan Systems and (6) into Florida. The existence of these and other constraints affects transmission systems resulting in a reduction in available transfer capability, a possible increase in the frequency of denials of requests for transmission service, and a possible increase in the frequency of transmission service interruptions and/or curtailments of transmission service. While such results may be legitimate because of such things as reliability or native load priority, these same results may provide an increased opportunity for transmission providers to engage in actions that are unduly discriminatory. Distinguishing between the two may be difficult to achieve. Consequently, the existence of transmission constraints and their effect on transmission system operations make it more difficult for us to carry out our statutory responsibility to ensure that transmission providers provide nondiscriminatory open access transmission service. In recognition of this problem, Congress, in section 1241 of the EPAct 2005, has directed the Commission to issue a rule to promote investment in the transmission grid by establishing incentive-based rate treatments ''for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.'' We will do so, but in a proceeding separate from this one and at a later date.

7. The Commission recognizes that the question of whether Order No. 888 adequately remedies undue discrimination can be contentious. Customers often argue that undue discrimination can be remedied only through structural reforms or by applying the OATT to bundled retail load. Transmission providers often argue that the Commission should not consider such broader remedies because it lacks the authority to do so or because Order No. 888 is working well as it is. State commissions often express concern that, although the Commission should seek to remedy undue discrimination at the wholesale level, it should not do so in ways that will intrude on state jurisdiction over bundled retail load. In issuing this NOI, the Commission emphasizes its desire to avoid the more polarizing elements of this debate and to pursue instead a pragmatic approach to reforming Order No. 888 that focuses on the specific problems that continue to exist and targeted remedies to address them. To that end, we encourage the parties to identify *with specificity* any alleged defects in Order No. 888 and to recommend reforms that are *appropriately targeted* to remedying those defects. Sweeping generalizations regarding undue discrimination (or the lack thereof) are not encouraged.

The Subject of the Notice of Inquiry

8. The Commission seeks to explore whether, and if so, which, reforms are necessary to the Order No. 888 pro forma OATT and to the individual public utility OATTs, given the current state of the electric industry and the apparent uncertainties and inconsistent application concerning various tariff provisions that have arisen since implementation of Order No. 888. The Commission's goal continues to be to prevent undue discrimination and preference in the provision of transmission service. Our preliminary view is that reforms to Order No. 888 are necessary to accomplish that goal and discharge our obligations under the FPA. The Commission is particularly interested in receiving comments describing specific enhancements that are needed to: (1) Remedy any unduly discriminatory or preferential application of the pro forma OATT or (2) improve the clarity of the Order No. 888 pro forma OATT and the individual public utility OATTs in order to more readily identify violations and facilitate compliance. In addition, the Commission is seeking comments on how best to implement the newly established section 211A (concerning the provision of open access transmission service by unregulated transmitting utilities).

9. Significantly, the Commission emphasizes that it is not proposing to change the native load preference established in Order No. 888. Section 1233 of EPAct 2005 defines native load service obligation. The Commission seeks comments on whether or not the approach the Commission took in Order No. 888 is the same as that set forth in section 1233. If it is not, the Commission requests commenters to identify the differences.

Questions for Response

10. The Commission encourages any and all comments regarding the topics broadly discussed above. Commenters are invited to share with the Commission their overall thoughts, including technical and legal matters, on how the pro forma OATT has worked thus far, *e.g.*, which portions of the pro forma OATT have worked well, which portions of the pro forma OATT could be improved, and what are the best practices of individual transmission providers and should these practices be made a part of the pro forma OATT and thus applicable to all public utility transmission providers. In addition, the Commission seeks responses to the following specific questions:

A. Undue Discrimination Generally

11. In Order No. 888, the Commission adopted a functional unbundling approach as a remedy for undue discrimination. Since that time, the Commission has found that the incentive and opportunity for undue discrimination nonetheless continues to exist. The Commission therefore encouraged the structural separation of generation from transmission through RTOs, ISOs and similar organizations. The Commission is interested in receiving comments on whether there are remedies other than structural separation that would adequately address undue discrimination.

1. Is undue discrimination difficult to detect? If it is, would greater transparency allow the Commission to better understand the scope of the problem as well as to provide a disincentive to discriminate? Would increased reporting requirements (*e.g.*, regarding denials of service, congestion management, and transmission expansion) be beneficial and cost effective?

2. What are the particular circumstances under which undue discrimination is most likely to occur? For example, is discrimination most likely to occur in areas where the transmission provider retains discretion as to how to implement a particular OATT provision (*e.g.*, ATC calculation)? If so, is standardization and specification of certain practices a potential remedy to undue discrimination?

3. How should the Commission address the tension between a transmission provider's obligation to serve bundled native load customers and its obligation to provide nondiscriminatory access under the OATT? Are there certain practices that transmission providers use to serve native load customers that are not available to non-affiliates under the OATT and, if so, should they be made available on an open access basis under the OATT?

B. Transmission Pricing

12. The Commission is interested in receiving comments on whether any reforms to the Commission's transmission pricing policies should be considered as part of OATT reform.

1. Are there changes to the Commission's current pricing policies that could be made to increase the efficient use of the grid on systems that do not use locational marginal pricing?

2. In Order No. 888, the Commission concluded that a public utility's tariff must explicitly permit the voluntary reassignment of all, or part of, a holder's firm transmission capacity rights to any eligible customer. (Order No. 888 at 31,696 and pro forma OATT section 23.) Does this approach to capacity reassignment remain reasonable today? If not, should greater capacity reassignment rights be encouraged by, for example, different pricing policies? Please provide specific suggestions.

3. In Order No. 888, the Commission capped the price for reassigned capacity at the highest of: (1) The original transmission rate charged to the purchaser (assignor), (2) the transmission provider's maximum stated firm transmission rate in effect at the time of the reassignment, or (3) the assignor's own opportunity costs capped at the cost of expansion (Price Cap). (Order No. 888 at 31,697). Does this pricing approach continue to be reasonable or should the price cap be modified or eliminated to further encourage capacity reassignment?

4. Does capacity reassignment provide a competitive alternative to the primary capacity provided by the transmission provider? If not, how should capacity reassignments be changed to achieve this result?

5. A secondary market for transportation capacity on natural gas pipelines helps to ensure that capacity is allocated to the highest valued use. Capacity resale of electric transmission is limited, however, because network service cannot be resold under Order No. 888. Should greater resale rights be permitted under the OATT and can this be accomplished consistent with the network properties of electric transmission?

6. Should the Commission allow deviations to its ''higher of'' policy to encourage greater incremental pricing of redispatch service or transmission upgrades? Should deviations be limited to cases where transmission providers hire an independent third party to administer such pricing reforms?

7. In Order No. 888, the Commission stated that its use of the contract path model of power flows and embedded cost ratemaking was intended to initiate open access, but was not intended to signal a preference for contract path/embedded cost pricing for the future. The Commission further stated that it would entertain non-discriminatory tariff innovations to accommodate new pricing proposals in the future. Order No. 888 at 31,734–35. Should the Commission continue to use the contract path model in the future?

8. How should any new services be priced in order to maximize their availability?

C. Network and Point-to-Point Transmission Service

13. In Order No. 888, the Commission required each public utility to offer transmission services that it is reasonably capable of providing, not just those services that it is currently providing to itself or others. It explained that because a public utility that is reasonably capable of providing transmission services may provide itself such services at any time it finds those services desirable, it is irrelevant that it may not be using or providing that service today. Thus, the Commission required all public utilities to offer both firm and non-firm point-to-point transmission service and firm network transmission service on a non-discriminatory open access basis.[13]

1. Should changes be made to the different services required by Order No. 888?

2. In Order No. 888, the Commission concluded that the load ratio allocation method of pricing network service continues to be reasonable for purposes of initiating open access transmission.[14] We note that on June 14, 2005, the United States Court of Appeals for the District of Columbia Circuit remanded the issue of physical impossibility as it relates to load ratio pricing in *Florida Municipal Power Agency* v. *FERC*, 411 F.3d 287 (D.C. Cir. 2005). Does the approach established in Order No. 888 continue to be reasonable today? Are the pricing differences established by public utility transmission providers in their individual OATTs between network and point-to-point transmission services reasonable in light of the differences in the network and point-to-point transmission services?

3. Should network service be converted to a contract demand service (*i.e.*, similar to *Florida Power Corp.*, 71 FERC ¶ 61,248 (1995); *Wisconsin Electric Power Co.*, 72 FERC ¶ 61,033 (1995); and *Florida Power Corp.*, 81 FERC ¶ 61,247 (1997)) or should point-to-point transmission service and network service be merged into a contract demand service?

4. Should new transmission services such as conditional firm, partial firm, and seasonal firm be required? Describe any such proposed service in detail, including necessary definitions.

5. Are the firm services being offered under the pro forma OATT (network and point-to-point) being offered in a manner comparable to the services provided to the transmission owner's unbundled retail customers?

6. Are there pricing policies that can create an incentive to maximize the use of the transmission system? If so, please explain in detail.

D. Untimely Processing of Requests for Transmission Service

14. The pro forma OATT provides deadlines for public utility transmission providers to complete system impact and other studies related to requests for transmission service. Sections 17.5 (Response to a Completed Application) and 18.4 (Determination of Available Transmission Capability) of the pro forma OATT provide that following receipt of a completed application for service the transmission provider must timely respond to transmission customer requests for determinations of firm and non-firm ATC. They then provide that the transmission provider must make the determination as soon as reasonably practicable after receipt but no later than certain specified time periods (or such time periods generally accepted in the region).

1. Are there provisions of the pro forma OATT that need to be reformed to better define the obligations of public utility transmission providers in responding to requests for transmission service?

2. Are the allowable time frames for public utility transmission providers to respond to transmission customers manageable?

3. Have transmission customers experienced delays by public utility transmission providers in responding to requests for transmission service? What delays have been experienced?

[13] Order No. 888 at 31,690.

[14] *Id.* at 31,736.

4. Have the delays by public utility transmission providers been unduly discriminatory or preferential?

5. What remedies can the Commission impose on public utility transmission providers for missing deadlines set forth in their OATTs?

E. Remedies, Penalties and Enforcement

15. Order No. 888 allows public utility transmission providers to impose penalty charges on transmission customers for certain identified tariff violations, such as penalties for imbalances, penalties in the event a customer fails to curtail as required under the pro forma OATT, and penalties for failure to maintain specified power factors. The purpose of these charges is to discourage certain behavior. Order No. 888 makes no mention of adverse consequences if a public utility transmission provider violates its OATT. Since the adoption of Order No. 888, the Commission has, in individual cases, approved a variety of remedies (*e.g.*, revoking market-based rate authority, providing refunds to customers, approving organizational changes in the transmission function). The EPAct 2005 gives the Commission civil penalty authority for violations of the FPA, including violations of the OATT. The Commission is interested in receiving comments on whether it should address the issue of remedies or penalties as part of OATT reform. The EPAct 2005 strengthened the Commission's civil penalty authority, and the Commission can now impose civil penalties for tariff violations, in addition to penalty charges.

1. Should there be identified penalty charges in the tariff to address a transmission provider violating the tariff provisions? Should there be additional penalty charges in the pro forma OATT for tariff violations by transmission customers?

2. Does the pro forma OATT need to be clarified so that transmission providers and customers are subject to the same penalty charges for the same violations?

3. Should overrun penalty charges (penalties for taking transmission service in excess of what the entity is contractually entitled to take) apply if a transmission provider takes service inconsistent with its OATT?

4. Should public utility transmission providers be subject to revocation of their market-based rate authority for certain OATT violations? Should certain violations (*e.g.*, setting aside more transmission capacity than is needed to serve native load and using the capacity for third-party sales) be considered market manipulation under the Market Behavior Rules [15] and section 1283 of the EPAct 2005 (which amends Part II of the FPA by adding a prohibition of energy market manipulation)?

5. Should the Commission provide greater specificity as to which penalty charges will apply to particular violations? Would greater specificity provide a greater deterrent effect on undue discrimination?

6. If the Commission provides greater specificity, which penalty charges should apply to which violations? For example, should penalty charges apply to failures to comply with OATT deadlines to encourage transmission providers to devote adequate resources to this area? Should a revocation of market-based rate authority be used to deter preferential treatment of an affiliate that is selling power at market-based rates?

7. Should the issue of remedies and penalties be considered in reforming Order No. 888 or as part of a broader effort to develop a comprehensive enforcement policy that would apply to all areas of Commission regulation?

F. Hourly Firm Transmission Service

16. Section 13.1 of the pro forma OATT (Term) provides that the minimum term of firm point-to-point transmission service shall be one day. In Order No. 888, the Commission adopted a one-day minimum term, explaining that this would moot a number of reliability concerns and allegations about possible ''cream-skimming.'' [16] Entities had argued that comparability would not be achieved by permitting others to have service for one hour with equal priority to native load and other long-term customers that have to pay the fixed cost of the transmission system every hour of the year. They also had expressed concern that a one-hour minimum term would promote selective use of the transmission system, impair the ability of a utility to plan its system, and adversely impact longer term transactions. Finally, some expressed concern that a one-hour firm service may encourage speculative advance requests for service during the system peak day (cream skimming). However, we note that several public utility transmission providers have individually filed for and received Commission authorization to modify their OATT to provide hourly firm point-to-point transmission service. *See, e.g., El Paso Electric Company*, (unpublished letter order dated April 9, 2004 in Docket No. ER04–567–000); *Entergy Services, Inc.*, 85 FERC ¶ 61,163 (1998), *order on reh'g*, 91 FERC ¶ 61,153 (2000).

1. Are the concerns expressed in Order No. 888 regarding minimum terms no longer relevant?

2. Should public utility transmission providers be required to offer hourly firm point-to-point transmission service?

3. For reservation and scheduling purposes, should the Commission permit transmission customers to batch hourly firm transmission requests so that the public utility transmission provider can evaluate them as if they were a single request?

4. Should the scheduling timelines for firm and non-firm hourly transmission service be the same or should they differ? Please explain.

G. Changes in Receipt and Delivery Points (Redirects)

17. Section 22.2 of the pro forma OATT (Modification on a Firm Basis) provides that any request by a transmission customer to modify receipt and delivery points on a firm basis shall be treated as a new request for service in accordance with section 17 of the pro forma OATT (Procedures for Arranging Firm Point-to-Point Transmission Service). While this new request is pending, the transmission customer retains its priority for service at the existing firm receipt and delivery points specified in the service agreement.

1. Have transmission customers been unduly discriminated against in attempting to modify their receipt and delivery points? If so, provide specific examples.

2. If there are problems associated with this section, what reforms are needed, or is this an enforcement matter?

H. Rollover Rights

18. Section 2.2 of the pro forma OATT (Reservation Priority for Existing Firm Service Customers) provides that existing firm service customers (wholesale requirements and transmission-only, with a contract term of one-year or more) have the right to continue to take transmission service from the public utility transmission provider when the contract expires, rolls over or is renewed. It specifically provides that this transmission reservation priority is independent of whether the existing customer continues to purchase capacity and energy from the public utility transmission provider or elects to purchase capacity and energy from another supplier.

[15] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

[16] Order No. 888 at 31,751–53.

1. Have public utility transmission providers hindered customers under pre-Order No. 888 agreements from rolling over their contracts that allow purchase of capacity and energy from another supplier?

2. Does the language in section 2.2 need to be reformed to ensure that rollover rights are provided when transmission customers are seeking access to alternative supply sources, or is this an enforcement matter?

3. Should rollover right policy determinations made subsequent to Order No. 888 be included in the pro forma OATT?

4. Are there other problems with section 2.2, either as written or as implemented by public utility transmission providers, that need to be addressed?

5. Are any potential transmission customers denied transmission access by the exercise of rollover rights?

6. Should the concept of rollover rights be reconsidered? Is one-year service with rollover rights consistent with the need to create incentives for transmission investment or should a longer minimum term of service be adopted to qualify for rollover rights? If so, how can the terms and conditions of rollover rights be reformed to ensure proper incentives for transmission investment?

I. Rules, Standards and Practices Governing the Provision of Transmission Service

19. Certain rules, standards and practices governing the provision of transmission service, such as public utilities' business practices, are not reflected in the Commission's pro forma OATT or in individual public utility tariffs. The Commission has previously adopted certain uniform business practices and amended the Commission's regulations to require compliance with such practices (*see, e.g., Open Access Same-Time Information System and Standards of Conduct*, Order No. 638, 65 FR 17,370 (February 25, 2000), FERC Stats. & Regs. ¶ 31,093 (2000)). The Commission has also recently issued a Notice of Proposed Rulemaking proposing to amend its regulations to incorporate by reference standards promulgated by the North American Energy Standards Board's (NAESB) Wholesale Electric Quadrant (WEQ) dealing with OASIS business practice standards and proposing to require each electric utility to revise its OATT to include the applicable WEQ standards. (*See Standards for Business Practices and Communication Protocols for Public Utilities*, 111 FERC ¶ 61,204 (2005), 70 FR 28,222 (May 17, 2005), FERC Stats. & Regs. ¶ 32,582 (2005)).

1. Should such rules, standards and practices be required to be included in public utilities' OATTs?

2. If not all, which of such rules, standards and practices should be included in OATTs (with the exception of the NAESB standards subject to the proceeding discussed above)?

3. Should rules, standards and practices not required to be included in OATTs be required to be posted on public utilities' OASIS to increase transparency?

J. Joint Transmission Planning

20. Currently, joint planning between a public utility transmission provider and transmission customer is not required by Order No. 888. However, section 30.9 of the pro forma OATT (Network Customer Owned Transmission Facilities) provides that for facilities constructed by a network customer, the network customer must receive credit where such facilities are jointly planned and installed in coordination with the transmission provider.

1. Does the requirement that a public utility transmission provider provide credits to new customer-owned transmission facilities have the effect of discouraging joint transmission planning?

2. Should joint transmission planning be made mandatory, for example, when transmission requests affect adjacent transmission systems? If so, under what authority could the Commission impose such a requirement?

3. Should public utility transmission providers be required to report to the Commission on an annual basis the joint planning that has occurred or been requested on their systems? Should the Commission conduct audits to determine the level of compliance with any joint planning requirement?

4. Should the pro forma OATT be reformed to include a provision for credits for transmission facilities built by a point-to-point transmission customer? Should credits be provided only for point-to-point service of a longer term, *e.g.*, five years?

K. Obligation To Expand Capacity

21. The pro forma OATT requires public utility transmission providers to expand capacity, if necessary, to satisfy the needs of network transmission customers (section 28.2) and point-to-point transmission service customers (sections 13.5 and 15.4). The transmission customer, however, must agree to compensate the transmission provider for any necessary transmission facility additions.

1. Has this provision met transmission customers' needs?

2. Have public utility transmission providers fulfilled these obligations?

3. How can the pro forma OATT be reformed to ensure that public utility transmission providers' obligations to expand are clarified or is this an enforcement matter only?

4. Have transmission customers been unduly discriminated against by transmission providers failing to plan and construct their transmission systems to accommodate the needs of network customers? If so, please provide specific examples. Should the pro forma OATT be reformed?

5. Are there other changes to the pro forma OATT that could achieve the goal of having transmission built?

6. Are there transmission pricing policies, such as demand charges, that would eliminate any financial disincentive for the transmission provider not to build transmission upgrades?

7. Does ''lumpiness'' act as a disincentive to expanding the transmission system, *i.e.*, where the transmission requests received are not of a sufficient transmission capacity to cost justify a substantial system upgrade (only 100 MW requested for a minimum 200 MW upgrade)? If so, what changes could be made to lessen this disincentive?

8. Are there interconnection procedures established in Order No. 2003 *et seq.*, that may be considered as best practices that should be adopted or possibly expanded in the pro forma OATT for point-to-point or network integration transmission services?

9. Should there be lower charges for longer-term transmission service that require transmission system upgrades, such as for five years rather than one year, because of the possibility of lower risk of revenue recovery for the transmission provider? If so, how would such a rate be designed?

L. Joint Ownership

22. In Order No. 888–A, the Commission required each public utility that owns interstate transmission facilities with a non-jurisdictional entity to offer open access transmission service over its share of the joint facilities.[17] Some current jointly-owned transmission facilities are the Georgia Integrated Transmission System, owned by Southern Company subsidiary Georgia Power, the Municipal Electric Authority of Georgia (MEAG Power), the

[17] Order No. 888–A at 30,218–19.

Georgia Transmission Corporation—a cooperative utility—and Dalton Utilities—a municipal system; the Pacific Intertie and Path 15. Order No. 888 did not address the possibility of existing transmission customers participating with the transmission provider in the joint ownership of new transmission facilities.

1. Should public utility transmission providers be required to offer their network service and point-to-point transmission customers the opportunity to participate in the joint ownership of new transmission facilities and network upgrades? If so, under what authority would the Commission impose such a requirement?

2. Would joint ownership reduce disputes over cost allocation for new capacity and provide a source of additional capital?

3. How would ownership rights affect the usage of the jointly owned facilities and how would this affect the rights of non-owners?

4. Should a provision(s) be included in the pro forma OATT concerning joint ownership? If so, please describe in detail.

M. Tariff Compliance Reviews

23. The Commission has relied primarily on transmission customer complaints and staff audits to identify OATT violations.

1. Should the Commission establish a regime of systematic tariff compliance reviews in order to monitor transmission providers' compliance with the terms and conditions of their OATTs?

2. Should these reviews be the equivalent of audits and investigations with due process and remedies for any violations?

3. Should the Commission require public utility transmission providers to hire independent reviewers to prepare reports for submission to the Commission and release to the public? If so, what role should the Commission play in such a process?

N. Hoarding of Transmission Capacity

24. In Order No. 888, the Commission acknowledged that hoarding of transmission capacity was a possibility. For example, the Commission found that firm transmission customers should not lose their rights to firm capacity simply because they do not use that capacity for certain periods of time. It explained that it would not limit the amount of transmission capacity that a customer may reserve, except in the face of evidence of hoarding or other anticompetitive practices.

1. Is there evidence of hoarding or anticompetitive practices by public utility transmission providers or customers that warrants reforms to the pro forma OATT? If so, please provide specific examples.

2. Are transmission providers adequately making non-firm transmission service available when it is not used by firm point-to-point and network service customers? Is the non-firm service made available in a non-discriminatory fashion?

3. Are there pricing policies that would further encourage transmission providers to make additional non-firm transmission service available?

O. Curtailments

25. Section 1.7 of the pro forma OATT defines curtailment as ''a reduction in firm or non-firm transmission service in response to a transmission capacity shortage as a result of system reliability conditions.'' Curtailment provisions for point-to-point transmission service are established in sections 13.7 and 14.7 for firm and non-firm transmission services respectively and the curtailment provisions for network integration transmission service are contained in section 33. Complaints regarding improper curtailment of service by transmission providers have been made in a variety of proceedings and the Commission has found cases of improper curtailment in the past.[18]

1. Is there evidence of improper curtailment practices by public utility transmission providers or customers that warrants reforms to the pro forma OATT? If so, please provide specific examples.

2. Should curtailments determined to be improper be subject to monetary penalties?

3. Should curtailments of firm transmission service designed to permit wholesale power sales by the merchant function of the transmission provider, or an affiliate, be considered market manipulation?

P. Reservation Priority

26. Section 13.2 of the pro forma OATT (Reservation Priority) provides that long-term firm point-to-point transmission service will be available on a first-come, first-served basis. With regard to short-term point-to-point transmission service requests, this section establishes that reservations will be conditional based upon the length of the requested transaction. This section further provides, in the context of short-term firm point-to-point transmission service, that if ATC is insufficient for all service requests, customers with a reservation for shorter-term service will have a right of first refusal to match longer-term reservations before losing their reservation priority.

1. Has the first-come, first-served approach to reservation priorities resulted in a fair and equitable means to allocate transmission capacity when the transmission system is oversubscribed? If not, what alternative approach should be implemented?

2. Is the right of first refusal with respect to short-term point-to-point transmission service working fairly and effectively to provide ATC to those customers who request the longest duration of short-term firm point-to-point transmission service or does it provide an unfair competitive advantage or an opportunity for abuse?

3. Should the right of first refusal in this context be eliminated?

Q. Designation of Network Resources

27. Section 30.1 of the pro forma OATT (Designation of Network Resources) provides that network resources shall include all generation owned, purchased or leased by the network customer designated to serve network load under the Tariff. Section 30.2 of the pro forma OATT (Designation of New Network Resources) provides that the network customer may designate a new network resource by providing the transmission provider with as much advance notice as practicable. Section 30.4 of the pro forma OATT (Operation of Network Resources) provides that network customers may not make firm off-system sales from designated network resources. Section 30.7 of the pro forma OATT (Limitation on Designation of Network Resources) provides that the network customer must demonstrate that it owns or has committed to purchase generation pursuant to an executed contract in order to designate a generating resource as a network resource.

1. Is there a problem with over-designation of network resources?

2. If so, how can the pro forma OATT be reformed to eliminate the problem?

3. Should network resource designations be limited to a specific ratio of the monthly peak load for the customer?

4. Are network resources consisting of firm contracts that do not specify generation sources until the energy is scheduled (sometimes referred to as ''seller's choice'') a problem? If so, should these generation sources only be allowed to be designated as network

[18] *See, e.g., Consolidated Edison Company of New York,* 108 FERC ¶ 61,120 (2004).

resources after the seller has identified the specific generating sources?

5. Have network customers been unduly discriminated against in attempting to modify their receipt and delivery points?

6. What specific difficulties have been experienced with designation of network resources?

7. If there are problems associated with this provision, what reforms to the provision are needed or is this an enforcement matter?

8. Should customers be allowed to ''undesignate'' portions of their designated network resources on a short-term basis in order to make firm sales from these resources?

R. Queuing for Long-Term Transmission Service

28. The pro forma OATT did not explicitly address queuing issues, but rather established provisions addressing the obligations and timeframes for a public utility transmission provider to address requests for transmission service that cannot be immediately granted due to a lack of ATC. The pro forma OATT also required public utility transmission providers to separately establish their ''Methodology for Completing a System Impact Study'' as Attachment D to the pro forma OATT. In Order No. 2003–A, the Commission found that although interconnection and delivery, and transmission service under the pro forma OATT, are separate services, it agreed that the queues for the two services must be closely coordinated.[19] Thus, in general, interconnection customers and transmission delivery service customers should have equal access to ATC, with priority being established on a first come, first served basis according to the date on which service is requested. Furthermore, studies for interconnection services should be coordinated with the facilities studies performed for transmission delivery services. This ensures that all required upgrades are planned and designed in a least cost manner.

1. What problems associated with the queuing process have been encountered?

2. Should the pro forma OATT be reformed to establish more specific rules about how other transmission requests in the queue should be accounted for when conducting studies?

3. Should clustering, *i.e.*, the studying of transmission requests as a group, be required? The Commission has allowed this practice on a case-by-case basis, *see, e.g., Southwest Power Pool, Inc.,* 110 FERC ¶ 61,028 (2005).

4. Are there blocking issues where a customer submits multiple requests intending to proceed with a single request specifically to keep others out of the queue? If so, how would the Commission decide which requests are legitimate versus blocking in nature? Would charging a processing fee that would increase with the duration of service for requests reduce the incentive to submit multiple self competing requests?

5. Should the public utility transmission provider's planning process be required to reflect plans for all new generation sources in the interconnection and transmission queues to ensure that customers can request transmission as easily for power and energy from independent power producers' generation as from the public utility transmission provider's own generation?

6. Should the duration of the long-term transmission request affect the transmission customer's queue position, for example a request for a five-year firm service receive a higher queue position for study purposes than a one-year firm service request?

S. Ancillary Services

29. In the pro forma OATT, the Commission established six ancillary services to be offered, including the following Schedules: (1) Scheduling, System Control and Dispatching services; (2) Reactive Supply and Voltage Control from Generation Sources Service; (3) Regulation and Frequency Response Service; (4) Energy Imbalance Service; (5) Operating Reserve—Spinning Reserve Service; and (6) Operating Reserve—Supplemental Reserve Service. The Commission explained that it generally adopted the North American Electric Reliability Council's recommendations for ancillary service definitions and descriptions.

1. Have the correct ancillary services needed to provide open access transmission service been identified?

2. Are there additional ancillary services that should be included in the pro forma OATT? If so, please identify such services and provide proposed definitions.

3. Are there ancillary services identified in the pro forma OATT that should be treated separately as distinct services, such as regulation and frequency response service?

4. Are the definitions for the ancillary services used in Order No. 888 still viable? If not, please provide proposed revised definitions.

5. Should the Commission address ancillary service pricing issues in this proceeding?

i. Energy Imbalances

30. In Order No. 888, the Commission explained that energy imbalance service ''is provided when the transmission provider makes up for any difference that occurs over a single hour between the scheduled and the actual delivery of energy to a load located within its control area.'' [20] The Commission also explained:

> [f]or minor hourly differences between the scheduled and delivered energy, the transmission customer is allowed to make up the difference within 30 days (or other reasonable period generally accepted in the region) by adjusting its energy deliveries to eliminate the imbalance. A minor difference is one for which the actual energy delivery differs from the scheduled energy by less than 1.5 percent, except that any hourly difference less than one megawatt-hour is also considered minor. Thus, the Final Rule established an hourly energy deviation band of ±1.5 percent (with a minimum of 1 MW) for energy imbalance. The transmission customer must compensate the transmission provider for an imbalance that falls outside the hourly deviation band and for accumulated minor imbalances that are not made up within 30 days.

The Commission further explained that this bandwidth promotes good scheduling practices and that it is important that the implementation of each scheduled transaction not overly burden others.[21] The pricing for energy within and outside of this bandwidth was left for public utility transmission providers to propose on a case-by-case basis. Since the issuance of Order No. 888, the Commission has approved energy imbalance service pricing provisions on a case-by-case basis. Generally, public utility transmission providers proposed energy imbalance charges, including penalty charges for scheduling deviations set at a percentage of the energy price, *e.g.*, 90 percent for excess energy and 110 percent for energy shortfalls.

1. Does the deviation band of ±1.5 percent continue to be appropriate?

2. Should penalty charges be eliminated entirely for transmission customers and/or should they be charged no more than the control area's cost of supplying energy to correct the imbalance? Should there be low or no penalty charges when reliability is not threatened and higher penalty charges only when reliability is threatened? Provide examples of threats to reliability in this context.

[19] Order No. 2003–A at P 541.

[20] Order No. 888 at 31,703; *see also* Schedule 4 of the pro forma OATT.

[21] Order No. 888–A at 30,232.

3. Would increased scheduling flexibility help?

4. Should transmission customers be allowed to aggregate energy imbalances over a greater time period than 30 days or be allowed to net energy imbalances?

5. Is it unduly discriminatory or preferential for a transmission customer to be charged energy imbalance penalties when the public utility transmission provider does not have to pay a penalty and incurs only a cost no higher than its incremental cost of energy for imbalances occurring in its control area or between control areas (return in kind)?

ii. Generator Imbalances

31. In Order No. 888, the Commission defined generator imbalance as the difference between the scheduled and actual delivery of energy from the generator. The Commission did not adopt a pro forma generator imbalance schedule, explaining that a generator should be able to deliver its scheduled hourly energy with precision. It also expressed concern that if a generator was allowed to deviate from its schedule by 1.5 percent without penalty (as permitted for energy imbalances), it would discourage good generator operating practices.[22] The Commission concluded that generator imbalances should be specified in each generator's interconnection agreement with its transmission provider or control area operator.

1. Should the Commission require that a generator imbalance schedule be included in the pro forma OATT? Is comparability in the treatment of generator imbalances needed?

2. How should generator imbalances be priced?

3. Should there be low or no penalty charges when reliability is not threatened and higher penalty charges only when reliability is threatened?

T. Pro Forma OATT Definitions

32. In order to promote consistency and clarity in the non-discriminatory provision of open access transmission service, the Commission included certain common service provisions in the pro forma OATT, including a definitions section to establish a common understanding of the terms used throughout the pro forma OATT.

1. Are the existing pro forma OATT terms and their definitions sufficient to ensure not unduly discriminatory transmission?

2. If not, what reforms or additional terms are needed? Please provide specific definitions.

3. The new FPA section 215(a)(4) established by EPAct 2005 defines reliable operation. Is there any reason that this definition of reliability should not be incorporated in the pro forma OATT?

U. ISO, RTO, and ITC Tariffs

33. In Order No. 888, the Commission encouraged the voluntary formation of properly-structured ISOs and provided the industry guidance on ISO formation, in the form of ISO principles to be used to assess ISO proposals submitted to the Commission. In addition, in 1999, the Commission issued a Final Rule in Order No. 2000 to advance the voluntary formation of RTOs with the objective of having all transmission-owning entities place their transmission facilities under the control of appropriate RTOs. The Commission concluded that such regional institutions could address the operational and reliability issues confronting the industry, and eliminate undue discrimination in transmission services that can occur when the operation of the transmission system remains in the control of a vertically integrated utility. Subsequently, the electric industry has made significant progress in the development of voluntary RTOs/ISOs (*e.g.*, Midwest Independent Transmission System Operator, Inc. and Southwest Power Pool, Inc.) and the Commission has accepted a wide range of ISO and RTO proposals. Further, the Commission has also authorized the formation of independent transmission companies (ITC).[23]

1. Which of the matters discussed throughout this NOI, if any, need not be applied to ISO and RTO tariffs? Please provide specifics.

2. Which of the matters discussed throughout this NOI, if any, need not be applied to ITCs? Please provide specifics.

V. Open Access by Unregulated Transmitting Utilities (Section 1231 of the Energy Policy Act of 2005)

34. In Order No. 888, the Commission concluded that it was appropriate to require a reciprocity provision in the pro forma OATT, which applied to all customers, including non-public utility entities that own, control or operate transmission facilities and that take service under the open access tariff.[24] The Commission did not require non-public utilities to provide transmission access; instead, the Commission conditioned the use of open access services on an agreement to offer open access services in return. The Commission found that while it did not have the authority to require non-public utilities to make their systems generally available, it did have the ability, and the obligation, to ensure that open access transmission is as widely available as possible and that Order No. 888 did not result in a competitive disadvantage to public utilities.

35. The Commission noted that while many non-public utilities were willing to offer reciprocal access, including through an open access tariff, these non-public utilities were fearful that a public utility may deny service based simply on a claim that the open access tariff offered by a non-public utility is not satisfactory. To assist these non-public utilities, the Commission developed a voluntary safe harbor procedure to alleviate those concerns. Under this procedure, non-public utilities could submit to the Commission a transmission tariff and a request for declaratory order that the tariff meets the Commission's comparability (non-discrimination) standards.[25] If the Commission found that a tariff contains terms and conditions that substantially conform or are superior to those in the pro forma tariff, the Commission deemed it an acceptable reciprocity tariff and required public utilities to provide open access service to that particular non-public utility.

36. The EPAct 2005 now authorizes the Commission to require non-public utilities (or ''unregulated transmitting utilities'') to provide open access transmission service. Section 1231 of the EPAct 2005 establishes a new section 211A in Part II of the FPA, which states in part that the Commission ''may, by rule or order, require an unregulated transmitting utility to provide transmission services'' at rates that are comparable to those it charges itself and under terms and conditions (unrelated to rates) that are comparable to those it applies to itself

[22] *Id.* at 30,230.

[23] *See, e.g., Trans-Elect, Inc.,* 98 FERC ¶ 61,142 (2002), *order on reh'g,* 98 FERC ¶ 61,368 (2002); *ITC Holdings Corp.,* 102 FERC ¶ 61,182, *order on reh'g,* 104 FERC ¶ 61,033 (2003); *American Transmission Co.,* 103 FERC ¶ 61,388 (2003), *order on reh'g,* 107 FERC ¶ 61,117 (2004); *See also Policy Statement Regarding Evaluation of Independent Ownership and Operation of Transmission,* 111 FERC ¶ 61,473 (2005) (stating that the Commission would entertain proposals for market participants to hold passive equity interests in ITCs).

[24] Order No. 888 at 31,760–63; Order No. 888–A at 30,281–90.

[25] The Commission explained that ''a nonpublic utility seeking to take service under a transmission provider's OATT must agree to offer to provide the transmission provider any service that the nonpublic utility provides or is capable of providing on its system in order to satisfy reciprocity.'' Order No. 888–A at 30,286.

and that are not unduly discriminatory or preferential.

1. Should the Commission require unregulated transmission utilities to provide transmission service under rates that are comparable to those they charge themselves and under terms and conditions that are comparable to those they apply to themselves and that are not unduly discriminatory or preferential?

2. If so, should the Commission impose this requirement on all unregulated transmission utilities through a rulemaking proceeding, or should the Commission apply this new law on a case-by-case basis, through complaints, motions seeking enforcement or sua sponte action by the Commission?

3. Section 1231 of the EPAct 2005 authorizes the Commission to require unregulated transmitting utilities to provide transmission service on terms and conditions that are comparable to those under which the utility provides transmission service to itself and that are not unduly discriminatory or preferential. Can terms and conditions be both comparable and unduly discriminatory or preferential or are comparable terms and conditions necessarily not unduly discriminatory or preferential?

Procedure for Comments

37. The Commission invites interested persons to submit comments, and other information on the matters, issues and specific questions identified in this notice. Comments are due on or before November 22, 2005. Comments must refer to Docket No. RM05–25–000, and must include the commenters' name, the organization they represent, if applicable, and their address.

38. To facilitate the Commission's review of the comments, commenters are requested to provide an executive summary of their position, not to exceed ten pages. Commenters are requested to identify each specific question posed by the NOI that their discussion addresses and to use appropriate headings. Additional issues the commenters wish to raise should be identified separately. The commenters should double space their comments.

39. Comments may be filed on paper or electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

40. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters are not required to serve copies of their comments on other commenters.

Document Availability

41. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

42. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

43. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@ferc.gov*) or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

By direction of the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 05–19003 Filed 9–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 365 and 366

[Docket No. RM05–32–000]

Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005

September 16, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Pursuant to Title XII, Subtitle F of the Energy Policy Act of 2005 (EPAct 2005), the Federal Energy Regulatory Commission (Commission) proposes to issue rules implementing the repeal of the Public Utility Holding Company Act of 1935, and the enactment of the Public Utility Holding Company Act of 2005, EPAct 2005. The Commission also proposes to remove its exempt wholesale generator rules, 18 CFR part 365 (2005), as they are no longer necessary. The Commission seeks public comment on the rules proposed herein.

DATES: Comments are due October 14, 2005. Reply comments are due October 21, 2005.

ADDRESSES: Comments and reply comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* Commenters unable to file comments electronically must send an original and 14 copies of their comments and reply comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC, 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments and reply comments.

FOR FURTHER INFORMATION CONTACT: Brandon Johnson (Legal Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6143.

James Guest (Technical Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6614.

James Akers (Technical Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8101.

SUPPLEMENTARY INFORMATION:

Introduction

1. On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005) [1] was signed into law. In relevant part, it repeals the Public Utility Holding Company Act of 1935 (PUHCA 1935) [2] and enacts the Public Utility Holding Company Act of 2005 (PUHCA 2005),[3] which, with one exception not relevant here, will become effective six months from the date of enactment.[4] Sections 1266, 1272, and 1275 of EPAct 2005 direct the Commission to issue certain rules and to provide detailed recommendations to Congress on technical and conforming amendments to federal law within four months after the date of enactment.[5] In addition, EPAct 2005 directs the Commission to issue a final rule exempting certain entities from the federal access to books and records provisions of EPAct 2005 within 90 days of the effective date of Subtitle F.

2. The Commission proposes to add a new Subchapter U and Part 366 to Title 18 of the Code of Federal Regulations to implement Title XII, Subtitle F of EPAct 2005 and to remove Subchapter T and Part 365 of Title 18 of the Code of Federal Regulations, and intends to issue final rules (as well as to submit the required report to Congress) within four months.[6] The Commission seeks comments on its proposals for the required rules discussed below.

3. Section 1264 of PUHCA 2005 concerns Commission access to the books and records of holding companies and other companies in holding company systems, and section 1275 of PUHCA 2005 concerns the Commission's authority to review and authorize the allocation of costs for non-power goods or administrative or management services. We note that the federal books and records access provision, section 1264, and the non-power goods and services provision, section 1275, of PUHCA 2005 supplement the Commission's existing ratemaking authority under the Federal Power Act (FPA) to protect customers against improper cross-subsidization or encumbrances of public utility assets [7] and similarly our ratemaking authority under the Natural Gas Act (NGA).[8] These provisions of PUHCA 2005 also supplement the Commission's broad authority under FPA section 301 and NGA section 8 to obtain the books and records of regulated companies and any person that controls or is controlled by such companies if relevant to jurisdictional activities.[9] Further, with respect to the electric industry, the Congress has enhanced our already significant authorities over public utility mergers, acquisitions and dispositions of jurisdictional facilities.[10] We believe that our existing FPA and NGA authorities, in combination with our enhanced authority over public utility mergers, acquisitions, and dispositions of jurisdictional facilities, and our new PUHCA 2005 authority, provide a sound framework to protect customers. To the extent that additional rulemakings or orders may be needed to protect customers adequately, the Commission will take appropriate actions in the future.

Definitions

4. The Commission proposes to largely incorporate in section 366.1 of its regulations the text of section 1262 of EPAct 2005, which contains the definitions of relevant terms used in PUHCA 2005 and in our proposed regulations.

Books and Records Requirements

5. Sections 1264(a) and (b) of EPAct 2005 generally provide that each holding company and each associate company of a holding company, as well as each affiliate of a holding company or any subsidiary company of a holding company, shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records (books and records) as the Commission determines are relevant to the costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of public utility or natural gas company customers with respect to jurisdictional rates. Moreover, section 1264(c) empowers the Commission to examine the books and records of any company in a holding company system, or any affiliate thereof, that the Commission determines are relevant to the costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of public utility or natural gas company customers with respect to jurisdictional rates. Finally, section 1264(d) forbids any member, officer, or employee of the Commission from divulging any fact or information that has come to his or her knowledge during the course of the examination of such books and records, except as may be directed by the Commission or a court of competent jurisdiction.[11]

6. The Commission proposes to incorporate largely without modification the text of section 1264 by adding section 366.2 to the Commission's regulations. Moreover, the Commission proposes to adopt certain accounting, cost-allocation, recordkeeping, and related rules promulgated by the SEC for holding companies and their service companies, as they existed on the date of enactment of EPAct 2005, specifically 17 CFR 250.1,[12] 250.26, 250.27, 250.80, 250.93, 250.94, 259.5S, and 259.313 and 17 CFR parts 256 and 257.[13] The Commission seeks comments, however, as to whether there are provisions of these SEC rules that the Commission should not adopt and also whether the Commission should adopt any additional accounting, cost-allocation, recordkeeping and related rules to carry out its statutory duties under PUHCA 2005. The Commission also seeks comments concerning which SEC reporting requirements the Commission should retain, and which ones it should not. Finally, in proposing to adopt the above-specified SEC regulations, the Commission does not intend to broaden their applicability beyond the types of companies to which they now apply. Commenters may address whether this scope of applicability is appropriate and

[1] Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005).

[2] 15 U.S.C. §§ 79a *et seq.* (2000).

[3] EPAct 2005 at §§ 1261 *et seq.*

[4] *Id.* at § 1274(a).

[5] *Id.* at §§ 1266, 1272, 1275.

[6] A related section of EPAct 2005, section 1289, involving, among other things, holding company acquisitions of securities, will be addressed in another rulemaking proceeding.

Moreover, we recognize that the repeal of PUHCA 1935 and section 318 of the FPA will give the Commission jurisdiction under section 204 of the FPA over certain issuances of securities and assumptions of liabilities by companies within holding company systems that are currently subject to the jurisdiction of the Securities and Exchange Commission (SEC). If the Commission determines that it is necessary or appropriate to revise or supplement its current regulations under section 204 of the FPA (16 U.S.C. 824c (2000)), 18 CFR Part 34 (2005), we will do so in a separate rulemaking proceeding.

[7] 16 U.S.C. 824d–e (2000).

[8] 15 U.S.C. 717c–d (2000).

[9] 16 U.S.C. 825 (2000); 15 U.S.C. § 717g (2000).

[10] EPAct 2005 at § 1289.

[11] There are comparable confidentiality provisions in the FPA and the NGA for public utility books and records and natural gas company books and records. 16 U.S.C. 825 (2000); 15 U.S.C. 717g (2000).

[12] The Commission does not intend to reimpose the registration requirement contained in 17 CFR 250.1. Instead, the Commission proposes to replace the registration requirement with a requirement that all entities falling within the definition of ''holding company'' in PUHCA 2005 notify the Commission of their status as a holding company and whether they qualify for exemption pursuant to section 1266 of EPAct 2005.

[13] These provisions, generally speaking, specify accounting, cost allocation, and recordkeeping requirements applicable to SEC-regulated holding companies and service companies.

may propose any regulatory text needed to implement it.

Exemption Authority

7. Section 1266(a) of EPAct 2005 directs the Commission to issue a final rule within 90 days after the effective date of Subtitle F exempting from the requirements of section 1264 of EPAct 2005 any person that is a holding company, solely with respect to one or more:

(1) Qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 *et seq.* (2000));
(2) Exempt wholesale generators; or
(3) Foreign utility companies.

8. Section 1266(b) further directs the Commission to exempt a person or transaction from the requirements of section 1264 if, upon application or *sua sponte:*

(1) The Commission finds that the books and records of a person are not relevant to the jurisdictional rates of a public utility or natural gas company; or
(2) The Commission finds that a class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

9. PUHCA 2005 requires the Commission to exempt any person that falls within the classes designated by section 1266(a) from the requirements of section 1264, and therefore, the Commission proposes to adopt such an exemption. At this time, the Commission does not propose to categorically exempt classes of entities or transactions described in section 1266(b) from the requirements of section 1264. Rather, we propose to rely on case-by-case applications for additional exemptions until we have gained further experience subsequent to the repeal of PUHCA 1935. However, we seek comment on whether the Commission should exempt classes of transactions involving mutual fund passive investors or other groups of passive investors from the new federal books and records access requirements.

10. Finally, we note that although a person that is a holding company solely with respect to exempt wholesale generators or qualifying facilities will be exempted from the Federal access to books and records provisions in section 1264, many exempt wholesale generators and qualifying facilities may nevertheless be public utilities under section 201 of the FPA [14] and remain subject to the Commission's authority with regard to their books and records under section 301 of the FPA, unless otherwise waived.[15] An exemption from the requirements of section 1264 is not an exemption from FPA section 301, NGA section 8, or any other requirements of the FPA and the NGA.

Allocation of Costs of Non-Power Goods or Services

11. Section 1275(b) of EPAct 2005 provides that, in the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of certain holding company systems [16] or a state commission having jurisdiction over the public utility, the Commission, after the effective date of PUHCA 2005, shall review and authorize an allocation of costs for such goods and services to the extent relevant to that associate company. Section 1275(b) thus grants to certain holding company systems and state commissions a right to obtain Commission review and authorization of such cost allocations, and we propose to reflect this statutory provision in new section 366.4(b) of our regulations.

12. We note that, irrespective of the new section 1275(b) of PUHCA 2005, with the repeal of PUHCA 1935 and the elimination of SEC review of the allocation of costs for non-power goods and services, we have authority under sections 205 and 206 of the FPA and sections 4 and 5 of the NGA to review the rate recovery in jurisdictional rates of such associate and affiliated company non-power goods and services costs, either upon application under section 205 of the FPA or section 4 of the NGA or upon complaint or our own motion under section 206 of the FPA and section 5 of the NGA, and we also have the authority to review and or require the filing of cost allocation agreements with the Commission since they are contracts affecting jurisdictional rates.[17]

13. The Commission seeks comments as to whether, in light of the repeal of PUHCA 1935, holding companies that prior to the repeal of PUHCA 1935 were registered holding companies should be required to file such cost allocation agreements with the Commission under section 205 of the FPA and section 4 of the NGA.

14. In addition, we note that section 1275(b) provides for Commission review and authorization of cost allocations for non-power goods or services provided by service companies to public utilities, but it does not do so where such non-power goods and services are provided to gas utility companies and natural gas companies. We invite comments as to whether the Commission should recommend an amendment clarifying that holding company systems and state commissions having jurisdiction over gas utility companies and natural gas companies in the holding company systems are included within the scope of section 1275(b).

15. Finally, we note that the SEC and state commissions previously have been primarily responsible for determining allocations of costs for non-power goods and services among the various associate companies in registered holding company systems, and these allocations have been made on an ''at cost'' basis. By contrast, the Commission's long-standing policy is that registered holding company special purpose subsidiaries must provide non-power goods and services to a public utility regulated by the Commission at the lower of cost or market, and, for at least a decade, we have imposed this lower of cost or market standard as a condition for approval of mergers that result in the creation of a new registered holding company.[18] We invite comments as to whether the Commission should apply the lower of cost or market standard for the allocation of costs for non-power goods and services, or if we should instead adopt the SEC at cost standard.

Single-State Holding Company Systems and Other Classes of Transactions

16. Section 1275(d) of EPAct 2005 directs the Commission to issue rules no later than four months after the date of enactment of EPAct 2005 to exempt

[14] 16 U.S.C. 824(e) (2000).

[15] *Id.* at § 825.

[16] Section 1275(b) provides that the Commission will exempt any company in a holding company system whose public utility operations are confined substantially to a single state. We interpret this to mean that holding company whose public utility operations are confined substantially to a single state may not, under this provision, elect to require the Commission to review and authorize an allocation of costs for non-power goods and services. This is discussed, *infra,* in paragraphs 15–17.

[17] 16 U.S.C. 824–e (2000); *accord* 15 U.S.C. 717c–d (2000); *see generally* EPAct 2005 at § 1275(c) (stating that nothing in section 1275 affects the authority of the Commission under other applicable law). While the scope of our jurisdiction over wholesale sales of natural gas is more limited than our jurisdiction over wholesale sales of electric energy, and our rate review may differ in certain respects, such reviews could be undertaken under sections 4 or 5 of the NGA.

Separately, we note that we are in discussions with the SEC regarding the transfer of books and records pursuant to section 1273 of EPAct 2005.

[18] *See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement,* Order No. 592, 61 FR 68595 (Dec. 18, 1996), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,044 at 30,124–25 (1996) (*Merger Policy Statement*), *reconsideration denied,* Order No. 592–A, 62 FR 33341 (June 19, 1997), 79 FERC ¶ 61,321 (1997).

from the requirements of section 1275 any company in a holding company system whose public utility operations are confined substantially to a single state (single-state holding company systems) and any other class of transactions that the Commission finds are not relevant to the jurisdictional rates of a public utility. We invite comments on how the Commission should define ''confined substantially to a single state.''

17. While section 1275(d) states that single-state holding company systems are exempt from the ''requirements'' of section 1275, we note that section 1275 does not impose any requirements on holding company systems, but rather grants holding company systems and relevant state commissions the right to obtain Commission review and authorization of cost allocations. Instead, the only requirements in section 1275 are directed toward the Commission, in particular that ''the Commission shall review and authorize'' cost allocations if asked to do so by the holding company system or the relevant state commission. Based on the structure of section 1275, we believe that the most reasonable interpretation of the exemption for single-state holding company systems in section 1275(d) is that Congress intended to deny single-state holding company systems and relevant state commissions the right to obtain Commission review of cost allocations pursuant to section 1275. Accordingly, we propose to reflect this limitation by excluding single-state holding company systems from the scope of Commission review under section 366.4(b) of the Commission's regulations.[19] The Commission invites comments on this interpretation of section 1275(d).

18. We believe that a similar interpretation applies with respect to the other classes of transactions that may be exempted pursuant to section 1275(d), namely, that an exemption under section 1275(d) forecloses Commission review under section 1275(b). In section 366.4(c) of the Commission's regulations, we propose to establish a procedure by which the Commission, either upon petition for declaratory order or upon its own motion, may exclude from the scope of Commission review and authorization under section 366.4(b) any class of transactions that we determine are not relevant to the jurisdictional rates of a public utility.

19. The Commission seeks comments as to other classes of transactions that, pursuant to section 1275(d), should be exempted from the requirements of section 1275.

Previously Authorized Activities

20. Section 1271 of EPAct 2005 states essentially that a person may continue to engage in activities or transactions authorized by rule or order as of the date of enactment of EPAct 2005 if that person continues to comply with the terms of the authorization, and the Commission proposes to reflect this statutory provision in section 366.5 of the Commission's regulations. In addition, the Commission proposes to require that, if any such activities are challenged in a formal Commission proceeding, the person claiming prior authorization shall be required to provide the full text of any such authorization (whether by rule, order, or letter) and the application(s) or pleading(s) underlying such authorization (whether by rule, order, or letter).

Exempt Wholesale Generators and Foreign Utility Companies

21. EPAct 2005 repeals PUHCA 1935 in its entirety, including section 32, which requires the Commission to make exempt wholesale generator determinations on a case-by-case basis, upon application. Although the definitional section of PUHCA 2005 references section 32 of PUHCA 1935, the Congress nevertheless repealed section 32 in its entirety and did not re-enact that provision in the new PUHCA 2005. The Commission believes that the most reasonable interpretation of EPAct 2005, given the omission of section 32 in the new PUHCA 2005, is that Congress did not intend the Commission to continue to make case-by-case determinations of exempt wholesale generator status in the future (*i.e.*, after the effective date of PUHCA 2005). Rather, we believe that the most reasonable interpretation of the statute is that only those entities that are holding companies with respect to persons granted exempt wholesale generator status before the repeal of PUHCA 1935 will qualify for an exemption from the new federal books and records access requirements under proposed section 366.3(a)(2) of the Commission's regulations. Accordingly, we propose to remove Part 365 of the Commission's regulations, which set forth the filing requirements and ministerial procedures for persons seeking exempt wholesale generator status under section 32 of PUHCA 1935, and we invite comments on whether we should do so.

22. We note that the benefit of exempt wholesale generator status under PUHCA 1935 was that entities that the Commission determined to have met the definition of exempt wholesale generator were exempted from the myriad requirements of PUHCA 1935. The principal benefit of being an exempt wholesale generator under PUHCA 2005 is exemption from the new federal books and records access requirements. To the extent that these new federal books and records access requirements add to the Commission's existing very broad books and records access authority under FPA section 301 and NGA section 8, our interpretation serves to err on the side of greater customer protection.

23. In any event, as previously noted, entities that qualified as exempt wholesale generators under PUHCA 1935 were not exempted from the Commission's authority under the FPA if they met the FPA definition of ''public utility,'' including the very broad access to books and records provisions of FPA section 301. Nor will they be exempt from these FPA provisions as a result of PUHCA 2005.

24. In addition, we note that Congress repealed section 33 of PUHCA 1935, which addresses foreign utility companies. As with exempt wholesale generators, we believe that Congress intended to limit the exemption for persons that are holding companies with respect to foreign utility companies to those attaining foreign utility company status before repeal of PUHCA 1935. The Commission seeks comments as to this interpretation of EPAct 2005.

Cross-Subsidization and Encumbrances of Utility Assets

25. PUHCA 2005 is primarily a ''books and records access'' statute and does not give the Commission any new substantive authorities, other than the requirement in section 1275 of EPAct 2005 that the Commission review and determine certain non-power goods and services cost allocations among holding company members upon request. Nor does it give the Commission authority to pre-approve holding company activities.[20] Accordingly, outside the context of reviewing a holding company transaction requiring approval under

[19] This interpretation pertains only to review and authorization of cost allocations for non-power goods and services under section 1275 of EPAct 2005. As discussed earlier, we view the ability of the Commission to review rate recovery in jurisdictional rates under sections 205 and 206 of the FPA and sections 4 and 5 of the NGA as a separate matter.

[20] We note, however, that section 1289 of EPAct 2005 amends section 203 of the FPA to grant the Commission expanded approval authority with respect to mergers and the acquisitions of securities by holding companies within certain holding company systems.

section 203 of the FPA or a proposed issuance of securities under section 204 of the FPA, the Commission will continue to rely primarily on its ratemaking authorities under sections 205 and 206 of the FPA and sections 4 and 5 of the NGA to protect jurisdictional customers against inappropriate cross-subsidization or encumbrances of utility assets on an ongoing basis.

26. The Commission already has in place, pursuant to the FPA and NGA, certain reporting requirements regarding money pools and cash management activities that affect jurisdictional companies.[21] Further, in the electric area, we have policies that protect against cross-subsidization occurring as a result of wholesale power sales between affiliates in a holding company system as well as sales of non-power goods and services between such affiliates.[22] We seek comment on whether, in light of the repeal of PUHCA 1935, the Commission needs to promulgate additional rules or to adopt additional policies to protect against inappropriate cross-subsidization or encumbrances of utility assets, pursuant to our authorities under the FPA and NGA. Comments should specify what additional rules may be needed and the statutory basis for such rules. For example, if it has the authority to do so, should the Commission issue rules regarding public utility holding company diversification into non-utility businesses? Would the Commission have authority to promulgate such rules under its FPA or NGA ratemaking authority? Should the Commission modify its existing cash management rules to apply not only to public utilities, natural gas companies, and oil pipelines, but also to include public utility holding companies? We seek comment on these and any other related issues in order to determine whether, in addition to the regulations being proposed herein under PUHCA 2005, the Commission may need to consider promulgating separate, additional rules under the FPA or the NGA.

Additional Conforming or Technical Amendments

27. Section 1272 of EPAct 2005 directs the Commission to submit to Congress detailed recommendations on technical and conforming amendments to federal law necessary to carry out PUHCA 2005 within four months after the date of enactment. The Commission invites comments as to what technical and conforming amendments the Commission should include in this submission to Congress.

Information Collection Statement

28. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[23] However, the Commission is carrying out an express statutory mandate spelled out in EPAct 2005. Moreover, insofar as the Commission is carrying over and applying requirements that the SEC previously has applied, we note that the proposed regulations do not impose any new or additional reporting burdens. On the contrary, to the extent that the Commission's proposed regulations eliminate certain SEC regulations concerning accounting, cost-allocation, recordkeeping, and related rules, they reduce the information collection burden on regulated entities.

29. In particular, we are adopting the following information collections currently implemented by the SEC: Form U13–60 ''Annual Report for the period by a reporting company''; Form U5S ''Annual Report for Public Utility Holding Company''; Rule 26 ''Financial Statement and Recordkeeping Requirements for registered holding companies and subsidiaries''; Part 257 ''Preservation and Destruction of Records of Registered Public Utility Holding Companies and of Mutual and Subsidiary Service Companies''.

30. The Commission also proposes to eliminate the requirements contained under its own regulations in 18 CFR part 365. The corresponding information collection is FERC–598 ''Determinations for Entities Seeking Wholesale Generator Status''.

Action: Revision of currently approved collections of information.

OMB Control Nos.: Currently the above information collections have the following control numbers—3235–0153, 32353235–0164, 3235–0182, 3235–0183, 3235–0306 and 1902–0166.

Frequency of Responses: Several of the information collections have annual submissions while other information collections require that records be maintained.

Necessity of the Information: The proposed rule implements new accounting, cost allocation, recordkeeping, and related rules under part 366 of the Commission's regulations and deletes requirements contained in part 365 of its regulations. These revisions are to implement the repeal of PUHCA 1935 and the implementation of certain provisions of the EPAct 2005.

31. For information on the requirements, submitting comments on these collections of information including ways to reduce the burden imposed by these requirements, please send your comments to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, (202–502–8415)) or send comments to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285, e-mail: *oira_submission@omb.eop.gov*.)

Environmental Analysis

32. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[24] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that carry out legislation, involve information gathering, analyses and dissemination, and involve accounting.[25] These proposed rules, if finalized, carry out EPAct 2005 and involve information gathering and analysis, and involve accounting and therefore fall under this exception; consequently, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

33. The Regulatory Flexibility Act of 1980 (RFA) requires rulemakings to contain either a description and analysis of the effect that the rule will have on small entities or to contain a certification that the rule will not have a significant economic impact on a substantial number of small entities.[26] Most public utilities to which the rules proposed herein, if finalized, would apply do not fall within the RFA's definition of small entity.[27]

[21] *Regulation of Cash Management Practices*, Order No. 634, 68 FR 40500 (Jul. 8, 2003), III FERC Stats. & Regs. ¶ 31,145 (June 26, 2003), Order No. 634–A, 68 FR 61993 (Oct. 31, 2003), III FERC Stats. & Regs. ¶ 31,152 (2003).

[22] *See Merger Policy Statement*, FERC Stats. & Regs. ¶ 31,044 at 30,124–25. *See also Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062–65 (1994); *LG&E Power Marketing Inc.*, 68 FERC ¶ 61,247 at 62,121–24 (1994).

[23] 5 CFR 1320.11 (2005).

[24] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[25] 18 CFR 380.4(a)(3), (5), (16) (2005).

[26] 5 U.S.C. § 603 (2000).

[27] 5 U.S.C. § 601(3) (2000), citing to section 3 of the Small Business Act, 15 U.S.C. § 632 (2000). Section 3 of the Small Business Act defines a ''small business concern'' as a business that is independently owned and operated and that is not

Continued

Consequently, the rules proposed herein, if finalized, will not have ''a significant economic impact on a substantial number of small entities.''

Comment Procedures

34. The Commission invites interested persons to submit comments and reply comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due October 14 2005. Reply comments are due October 21, 2005. Comments and reply comments must refer to Docket No. RM05–32–000, and must include the commenter's name, the organization he or she represents, if applicable, and his or her address.

35. Comments and reply comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters who are not able to file comments and reply comments electronically must send an original and 14 copies of their comments and reply comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

36. All comments and reply comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

Document Availability

37. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

38. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

39. User assistance is available for eLibrary and the Commission's Website during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

List of Subjects in 18 CFR Parts 3 and 365

Electric power, Natural gas, Public utility holding companies and service companies, Reporting and recordkeeping requirements, Uniform System of Accounts and Cost allocations.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, under the authority of EPAct 2005, the Commission proposes to amend Chapter I of Title 18 of the *Code of Federal Regulations*, as set forth below:

Subchapter T—[Removed and Reserved]

PART 365—[REMOVED]

1. Subchapter T, consisting of Part 365, is removed and reserved.

2. Subchapter U, consisting of Part 366, is added to read as follows:

Subchapter U—Regulations Under the Public Utility Holding Company Act of 2005

PART 366—PUBLIC UTILITY HOLDING COMPANY ACT OF 2005

Sec.

§ 366.1 Definitions.

For purposes of this part:

Affiliate. The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

Associate company. The term ''associate company'' of a company means any company in the same holding company system with such company.

Commission. The term ''Commission'' means the Federal Energy Regulatory Commission.

Company. The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

Electric utility company. The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

Exempt wholesale generator and foreign utility company. The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b (2000)), as those sections existed on August 7, 2005, the day before the effective date of the Energy Policy Act of 2005, August 8, 2005.

Gas utility company. The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

Holding company.

(1) *In general.* The term ''holding company'' means—

(i) Any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and

(ii) Any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities

dominant in its field of operation. 15 U.S.C. § 632 (2000). The Small Business Size Standards component of the North American Industry Classification System, for example, defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed four million MWh. 13 CFR 121.201 (2005).

imposed by this subtitle upon holding companies.

(2) *Exclusions.* The term ''holding company'' shall not include—

(i) A bank, savings association, or trust company, or their operating subsidiaries that own, control, or hold, with the power to vote, public utility or public utility holding company securities so long as the securities are—

(A) Held as collateral for a loan;

(B) Held in the ordinary course of business as a fiduciary; or

(C) Acquired solely for purposes of liquidation and in connection with a loan previously contracted for and owned beneficially for a period of not more than two years; or

(ii) A broker or dealer that owns, controls, or holds with the power to vote public utility or public utility holding company securities so long as the securities are—

(A) Not beneficially owned by the broker or dealer and are subject to any voting instructions which may be given by customers or their assigns; or

(B) Acquired within 12 months in the ordinary course of business as a broker, dealer, or underwriter with the bona fide intention of effecting distribution of the specific securities so acquired.

Holding company system. The term ''holding company system'' means a holding company, together with its subsidiary companies.

Jurisdictional rates. The term ''jurisdictional rates'' means rates accepted or established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

Natural gas company. The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

Person. The term ''person'' means an individual or company.

Public utility. The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

Public-utility company. The term ''public-utility company'' means an electric utility company or a gas utility company.

Single-state holding company system. The term ''single-state holding company system'' means a holding company system whose public utility operations are confined substantially to a single state.

State commission. The term ''state commission'' means any commission, board, agency, or officer, by whatever name designated, of a state, municipality, or other political subdivision of a state that, under the laws of such state, has jurisdiction to regulate public utility companies.

Subsidiary company. The term ''subsidiary company'' of a holding company means—

(1) Any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(2) Any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

Voting security. The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

§ 366.2 Commission access to books and records.

(a) *In general.* Unless otherwise exempted by Commission rule or order, each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) *Affiliate companies.* Unless otherwise exempted by Commission rule or order, each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) *Holding company systems.* The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission determines are relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) *Confidentiality.* No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

(e) *Accounting, cost allocation, recordkeeping, and related rules.* Each holding company and each associate company, affiliate, and subsidiary thereof is to maintain its books, accounts, memoranda, and other records in the manner specified in the accounting, cost-allocation, and related rules contained in 17 CFR 250.1, 250.26, 250.27, 250.80, 250.93, 250.94, 259.5S, and 2.59.313 and 17 CFR parts 256 and 257.

§ 366.3 Exemption from Commission access to books and records.

(a) *Exempt classes of entities.* Any person that is a holding company, solely with respect to one or more of the following, is exempt from the requirements of § 366.2 of this chapter:

(1) Qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 *et seq.* (2000));

(2) Exempt wholesale generators; or

(3) Foreign utility companies.

(b) *Commission Authority to Exempt Additional Entities and Classes of Transactions.* The Commission shall exempt a person or transaction from the requirements of § 366.2 of this chapter if, upon application or upon the motion of the Commission—

(1) The Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company; or

(2) The Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

(c) Any person seeking an exemption under this provision, shall file a petition for declaratory order pursuant to § 385.207(a) of this chapter justifying its request for exemption. Any person seeking such an exemption shall bear the burden of demonstrating that such an exemption is warranted.

§ 366.4 Allocation of costs for non-power goods and services.

(a) For purposes of this section, the term ''public utility'' has the meaning given the term in section 201(e) of the Federal Power Act (16 U.S.C. 824(e) (2000)).

(b) *Commission review.* In the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of the system or a state commission having jurisdiction over the public utility, the Commission shall review and authorize the allocation of the costs for such goods or services to the extent relevant to that associate company. Such election to have the Commission review and authorize cost allocations shall remain in effect until further Commission order.

(c) *Exemptions.* Any company in a single-state holding company system is exempt from paragraph (b) of this section. A holding company system or state commission may, pursuant to this subsection, seek a Commission determination regarding single-state holding company system status by filing a petition for declaratory order pursuant to Rule 207(a) of the Commission's Rules of Practice and Procedure (§ 385.207(a) of this chapter). Furthermore, any holding company system or state commission seeking such a determination shall bear the burden of demonstrating that such determination is warranted.

(d) *Other classes of transactions.* Either upon petition for declaratory order or upon its own motion, the Commission may exclude from the scope of Commission review and authorization under paragraph (b) of this section any class of transactions that the Commission finds is not relevant to the jurisdictional rates of a public utility. Any holding company system or state commission seeking to obtain such a determination under this subsection shall file a petition for declaratory order pursuant to Rule 207(a) of the Commission's Rules of Practice and Procedure justifying its request for exemption (§ 385.207(a) of this chapter). Furthermore, any holding company system or state commission seeking such an exemption shall bear the burden of demonstrating that such determination is warranted.

(e) Nothing in paragraphs (b)–(d) of this section shall affect the authority of the Commission under the Federal Power Act (16 U.S.C. 791 *et seq.* (2000)), the Natural Gas Act (15 U.S.C. 717 *et seq.* (2000)), or other applicable law, including the authority of the Commission with respect to rates, charges, classifications, rules, regulations, practices, contracts, facilities, and services.

§ 366.5 Previously authorized activities.

Unless otherwise provided by Commission rule or order, a person may continue to engage in activities or transactions authorized under the Public Utility Holding Company Act of 2005 prior to the date of enactment of Energy Policy Act of 2005, August 8, 2005, for the period of time provided in such authorization, so long as that person continues to comply with the terms of such authorization. If any such activities or transactions are challenged in a formal Commission proceeding, the person claiming prior authorization shall be required to provide the full text of any such authorization (whether by rule, order, or letter) and the application(s) or pleading(s) underlying such authorization (whether by rule, order, or letter).

[FR Doc. 05–19000 Filed 9–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 447 and 455

[CMS–2198–CN]

RIN 0938–AN09

Medicaid Program; Disproportionate Share Hospital Payments

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

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a technical error that appeared in the proposed rule published in the **Federal Register** on August 26, 2005 entitled ''Medicaid Program; Disproportionate Share Hospital Payments.''

FOR FURTHER INFORMATION CONTACT: Jim Frizzera, (410) 786–9535.

SUPPLEMENTARY INFORMATION:

I. Background

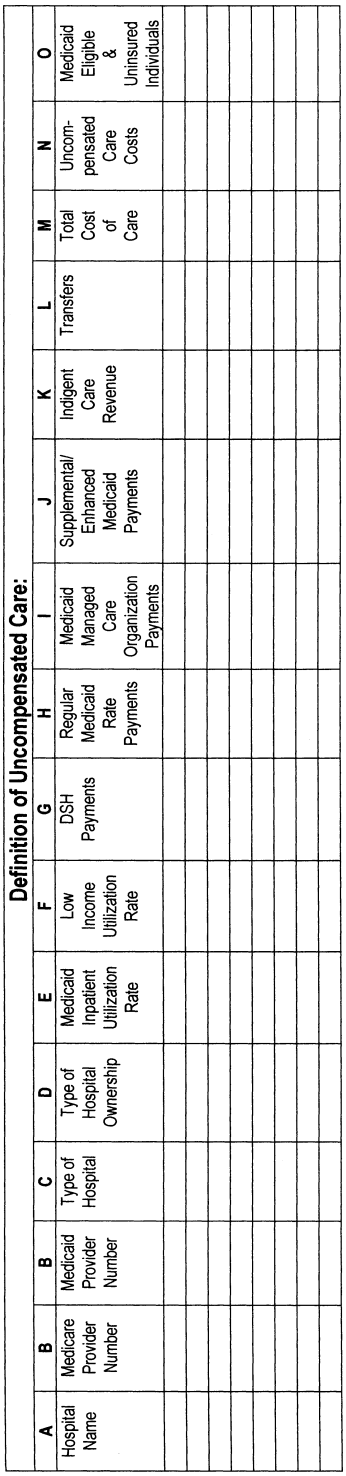
In FR Doc. 05–16974 of August 26, 2005 (70 FR 50262), we inadvertently omitted a sample Excel spreadsheet that displays the reporting requirements described in section III.A. of the proposed rule.

II. Correction of Errors

In FR Doc. 05–16974 of August 26, 2005 (70 FR 50262), we are making the following correction:

On page 50264, third column, after the first full paragraph, add the following Excel spreadsheet:

BILLING CODE 4120–01–P



Definition of Uncompensated Care:														
A	B	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Hospital Name	Medicare Provider Number	Medicaid Provider Number	Type of Hospital	Type of Hospital Ownership	Medicaid Inpatient Utilization Rate	Low Income Utilization Rate	DSH Payments	Regular Medicaid Rate Payments	Medicaid Managed Care Organization Payments	Supplemental/ Enhanced Medicaid Payments	Indigent Care Revenue	Transfers	Total Cost of Care	Uncom-pensated Care Costs	Medicaid Eligible & Uninsured Individuals

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

Dated: September 20, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–19051 Filed 9–22–05; 8:45 am]

BILLING CODE 4120–01–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 051603C]

RIN 0648–AQ65

Atlantic Highly Migratory Species; Amendments to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfish

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

ACTION: Cancellation of a public hearing.

SUMMARY: Due to the mandatory evacuation of the Florida Keys for Hurricane Rita, NMFS is cancelling a public hearing on the draft Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and proposed rule that was scheduled for September 21, 2005, in Key West, FL. NMFS intends to reschedule the Key West public hearing at a later date. The draft Consolidated HMS FMP and the proposed rule describe a range of management measures that could impact fishermen and dealers for all HMS fisheries.

DATES: The hearing scheduled for September 21, 2005, in Key West, FL, has been cancelled and will be rescheduled at a later date.

ADDRESSES: The location of the rescheduled hearing will be announced at a later date and published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Heather Stirratt or Karyl Brewster-Geisz at (301) 713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The FMP for Atlantic Tunas, Swordfish, and Sharks, finalized in 1999, and the FMP for Atlantic Billfish, finalized in 1988, are implemented by regulations at 50 CFR part 635.

On August 19, 2005 (70 FR 48804), NMFS published a proposed rule and draft Consolidated HMS FMP, and scheduled 24 public hearings throughout September and October 2005 to receive comments from fishery participants and other members of the public regarding the proposed rule and draft Consolidated HMS FMP. On September 7, 2005 (70 FR 53146), NMFS announced two cancellations due to Hurricane Katrina and one meeting location change. Due to the mandatory evacuation of the Florida Keys for Hurricane Rita, NMFS is cancelling a third public hearing that was scheduled for September 21, 2005, in Key West, FL. NMFS intends to reschedule the Key West public hearing at a later date, and may extend the comment period, if necessary, to ensure adequate opportunities for public comment by constituents. Notification of the new date and location would be published in the **Federal Register**. The schedule for the other public hearings remains unchanged.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heather Stirratt, (301) 713–2347, at least 7 days prior to the hearing in question.

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

Dated: September 19, 2005.

Alan Risenhoover,

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

[FR Doc. 05–19048 Filed 9–20–05; 1:12 pm]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 184
Friday, September 23, 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

Forest Service

Little Belt-Castle-Crazy Mountains Travel Management Plan EIS, Lewis and Clark National Forest; Cascade, Judith Basin, Meagher, Wheatland, Sweetgrass, and Park Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to develop a travel management plan to regulate motorized and non-motorized travel on roads and trails on lands administered by the Belt Creek, Judith Musselshell, and White Sulphur Ranger Districts of the Lewis and Clark National Forest. Approximately 924,800 acres of National Forest System lands are contained within the analysis area. The purpose of the project is to evaluate the impacts of motorized and non-motorized travel within the planning area, and to identify and select an alternative that allows recreational use and enjoyment of the National Forest System lands, minimizes resource damage, reduces adverse effects to terrestrial and aquatic species, and mitigates or reduces conflicts between types of uses. Needs for securing additional legal public access routes to reach National Forest System lands may be identified and discussed, but no decision will be made on acquiring specific routes.

DATES: Comments concerning the scope of the analysis should be received on or before October 24, 2005 (approx. 30 days after publication in the **Federal Register**).

ADDRESSES: Send written comments to Lesley W. Thompson, Forest Supervisor, Lewis and Clark National Forest, 1101 15th Street North, Box 869, Great Falls, MT 59401. People sending comments electronically can do so by putting ''Little Belt-Castle-Crazy Mountains Travel Plan'' on the subject line of their e-mail to *comments-northern-lewisclark@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Dick Schwecke, EIS Team Leader (406) 791–7700.

SUPPLEMENTARY INFORMATION: The project addresses travel management planning on three of the seven mountain ranges managed partly or entirely by the Lewis and Clark National Forest. The Little Belt-Castle-Crazy Mountain project includes approximately 924,800 acres, which is about 50% of the land area managed by the Lewis and Clark National Forest. The purpose of this project is to evaluate the impacts of motorized and non-motorized travel on existing roads and trails within the planning area. The Forest Service intends to identify action alternatives that provide for public access, use, and enjoyment of the Lewis and Clark National Forest, while also minimizing resource damage, reducing adverse effects to terrestrial and aquatic species, and mitigating or reducing conflicts between types of uses. The project is intended to focus on identifying the types of use and season of use that would be appropriate on roads, trails, and specific areas within the mountain ranges to be analyzed.

Public Involvement

The Forest Service will be seeking information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action. Comments received will be included in the documentation for the EIS. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. The scoping process will include identifying: potential issues, significant issues to be analyzed in depth, alternatives to the proposed action, and potential environmental effects of the proposal and alternatives.

Estimated Dates for Filing

The Draft EIS for the Little Belt—Castle—Crazy Mountains Travel Management Plan is expected to be available for public review by June 2006. The comment period on the draft EIS will be 60 days. It is very important that those interested in the management of this area participate at that time. The final EIS is scheduled to be completed by December 2006. In the final EIS, the Forest Service is required to respond to comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Reviewers Obligation to Comment

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. (*Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60-day comment period on the Draft EIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statements.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statements should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statements. Comments may also address the adequacy of the draft environmental impact statements or their merits of the

alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments on the draft EIS should be directed to the responsible official: Lesley W. Thompson, Forest Supervisor, Lewis and Clark National Forest, 1101 15th Street North, Great Falls, MT 59401.

Dated: September 13, 2005.

Lesley W. Thompson,

Forest Supervisor.

[FR Doc. 05–18532 Filed 9–22–05; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 23, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: On July 22, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 42301) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and impact of the additions on the current or most recent contractors, the Committee has determined that the product listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.

2. The action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product is added to the Procurement List:

Product

Emergency Administrative Kit,
NSN: 7520–00–NIB–1738—50 Person.
NPA: Tarrant County Association for the Blind, Fort Worth, Texas.
NPA: Associated Industries for the Blind, Milwaukee, Wisconsin.
Contracting Activity: Federal Emergency Management Agency, Fort Worth, Texas.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. E5–5162 Filed 9–22–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee For Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: October 23, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Services, Child Development Centers, Buildings 44401, 45400, and 45410, Fort Gordon, Georgia.
NPA: Good Vocations, Inc., Macon, Georgia.
Contracting Activity: U.S. Army Contracting Agency, Fort McPherson, Georgia.
Service Type/Location: Custodial Services, Postwide, Fort Benning, Georgia.
NPA: Power Works Industries, Inc., Columbus, Georgia.
Contracting Activity: U.S. Army Contracting Agency, Fort McPherson, Georgia.

G. John Heyer,

General Counsel.

[FR Doc. E5–5163 Filed 9–22–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 12–14 October 2005.

Time(s) of Meeting: 0800–1630, 12 October 2005; 0800–1700, 13 October 2005; 0630–1100, 14 October 2005.

Place: Ft. Leavenworth, KS.

1. *Agenda:* The FY06 study panels of the Army Science Board (ASB) are holding a Fall Meeting on 11–14 October 2005. The meetings will be held at the Eisenhower Hall, Ft. Leavenworth, KS. The plenary will begin at 0800 hrs on the 12th and will end at approximately 1100 hrs on the 14th. For further information on the FY06 ASB Fall Meeting, please contact COL Heather Ierardi at (703) 693–3079 or e-mail at *heather.ierardi@hqda.army.mil*.

Wayne Joyner,

Program Support Specialist Army Science Board.

[FR Doc. 05–19010 Filed 9–22–05; 8:45 am]

BILLING CODE 3710–08–M

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 October 24, 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 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 20, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Student Aid Report (SAR).

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses: 24,767,197. Burden Hours: 5,242,388.

Abstract: The SAR is used to notify all applicants of their eligibility to receive Federal student aid for postsecondary education.

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 2808. 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 Joseph Schubart at his e-mail address *Joe.Schubart@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. 05–19121 Filed 9–22–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Education Publications Center

AGENCY: Office of Management, U.S. Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) publishes this notice of an altered system of records entitled ''Education Publications Center'' (ED PUBS) (18–05–18), last published in 64 FR 72384, 72404–05 (December 27, 1999). The Department amends this notice by: (1) Deleting the old numbering of the system, 18–13–05, and renumbering the system as 18–05–18 to reflect that the system is managed by the Department's Office of Management; (2) changing the system location to reflect that the central database is maintained by the Department's contractor, Aspen Systems Corporation; (3) revising the routine use that allows disclosures to labor organizations; (4) updating the paragraphs on storage and retrievability; (5) updating the paragraph on safeguards to reflect current measures; and (6) updating the paragraph on system manager to reflect the location in the Department's Office of Management.

DATES: We must receive your comments on the proposed routine use for the system of records included in this notice on or before October 24, 2005. The changes made in this notice will become effective October 24, 2005 unless the system of records needs to be changed as a result of public comment.

ADDRESSES: Address all comments about the proposed routine use to Judy Craig, U.S. Department of Education, 400 Maryland Avenue, SW., room 2E103, Washington, DC 20202–4573. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov*. You must include

the term ''ED PUBS'' in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 2E103, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Judy Craig. Telephone: (202) 401–0480. 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:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of an altered system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to information about an individual that contains individually identifiable information that is retrieved by a unique identifier associated with the individual, such as a name or social security number. The information about the individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.''

The Privacy Act requires each agency to publish a notice of new or altered systems of records in the **Federal Register**. Each agency also must submit reports to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) and the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Chair of the House Committee on Government Reform, whenever the agency publishes a new system of records or makes a significant change to an established system of records. Minor changes to an established system of records, such as the amendments to the ED PUBS system of records, do not require an agency to prepare a report.

Electronic Access to This Document

You may view this document, as well as all other Department documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: September 20, 2005.

Michell Clark,

Acting Assistant Secretary for Management and Chief Information Officer.

For the reasons discussed in the preamble, the Acting Assistant Secretary for Management of the Department publishes a notice of an altered system of records. The following amendments are made to the Notice of New and Altered Systems of Records and Corrections published in the **Federal Register** on December 27, 1999 (64 FR 72384–72408):

1. On page 72404, first column, the numbering, ''18–13–05,'' is revised to read as follows: 18–05–18.

2. On page 72404, first column, under the heading ''*SYSTEM LOCATION*,'' the paragraph is revised to read as follows: Aspen Systems Corporation, 2277 Research Boulevard, Rockville, MD 20850.

3. On page 72405, first column, under the heading, ''(6) *Labor Organization Disclosure*.'' the paragraph is revised to read as follows:

The Department may disclose records from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

4. On page 72405, second column, ''*STORAGE:*,'' ''*RETRIEVABILITY:*,'' and ''*SAFEGUARDS:*'' are revised to read as follows:

Storage

The records are retained in a computer database.

Retrievability

The records are retrieved by customer type (this is a categorical description of the customer such as school administrator, parent, teacher K–12, etc.), order date, the title of the requested product, and the region of the country from which the order was placed.

Safeguards

Records in the system will be maintained in a secure password-protected electronic system that will utilize security hardware and software to include: firewalls to block external access to the system, the required use of a unique user ID with personal identifiers, and the recording of all interactions with the system. A maximum of one trusted individual with a Department of Justice Civil clearance has system logon access. This clearance is based on a National Agency Checks with Written Inquiries and Credit (NACIC) review, equivalent to the Department's moderate risk 5C clearance process. All physical access to the site of the Department's contractor, where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge. The ED PUBS system has been granted Certification and Full Accreditation in accordance with the Department's Certification and Accreditation Program, and applicable Federal laws and policies.

5. On page 72405, second column, under the heading, ''*SYSTEM MANAGER(S) AND ADDRESS:*,'' the paragraph is revised to read as follows:

ED PUBS Contract Officer's Representative & Program Manager/Analyst, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., room 2E103, Washington, DC 20202.

[FR Doc. 05–19071 Filed 9–22–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection package to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The package requests a three-year extension of its Security, OMB Control Number 1910–1800. This information collection package covers information necessary for DOE management to exercise management oversight and control over their contractors. The collections consist of information (1) for the nuclear materials control and accountability for DOE-owned and—leased facilities and DOE-owned nuclear materials at other facilities that are exempt from licensing by the NRC; (2) for the protection of classified information, special nuclear materials and other national security assets (DOE site self-assessments and site security plans); and (3) on DOE Federal and contractors traveling to foreign countries; for tracking and recording background information on foreign nationals having access to DOE facilities and information; and collection of Foreign Ownership, Control or Influence data from bidders on DOE contracts requiring personnel security clearances.

DATES: Comments regarding this collection must be received on or before October 24, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

Comments should also be addressed to: Sharon A. Evelin, Director, IM–11/Germantown Bldg., U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585–1290, and to: Kathy Murphy, SP–1.22 Germantown Building, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290.

FOR FURTHER INFORMATION CONTACT: Sharon A. Evelin and Kathy Murphy, at the addresses listed above in **ADDRESSES.**

SUPPLEMENTARY INFORMATION: This package contains: (1) OMB No.: 1910–1800; (2) Package Title: Security (3) Purpose: for DOE management to exercise management oversight and control over their contractors; (4) Estimated Number of Respondents: 39,136; (5) Estimated Total Burden Hours: 249,955; (6) Number of Collections: The package contains fourteen (14) information and/or recordkeeping requirements.

Statutory Authority: Department of Energy Organization Act, Public Law 95–91, of August 4, 1977.

Sharon A. Evelin,

Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. 05–19038 Filed 9–22–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL05–10–000]

Criteria for Reassertion of Jurisdiction Over the Gathering Services of Natural Gas Company Affiliates; Notice of Inquiry

September 15, 2005.

1. This order institutes a notice of inquiry to evaluate possible changes in the criteria set forth in *Arkla Gathering Service Co.*[1] employed by the Commission in evaluating whether and under what circumstances the Commission may invoke its ''in connection with'' jurisdiction to guard against abusive practices by natural gas companies and their gathering affiliates.

2. The *Arkla* test involves a determination that, as a result of the concerted action of a pipeline and its gathering affiliate, the Commission's effective regulation of the pipeline is circumvented. In a recent decision,[2] the United States Court of Appeals for the District of Columbia found that the Commission had misapplied the criteria set forth in *Arkla.* Under *Arkla,* the Commission's ability to reassert jurisdiction is limited to abuses directly related to the affiliate's unique relationship with an interstate pipeline, such as tying gathering service to the pipeline's jurisdictional transmission service or cross-subsidization between the affiliate's gathering rates and the pipeline's transmission rates. The court stated that *Arkla* permits a reassertion of jurisdiction in circumstances ''limited to'' abuses ''directly related to the affiliate's unique relationship with an interstate pipeline,'' such as ''tying gathering service to the pipeline's jurisdictional transmission service,'' or ''cross-subsidization between the affiliate's gathering rates and the pipeline's transmission rates.'' [3] The court found that, in the case before it, the gathering affiliate's affiliation with the pipeline was ''utterly irrelevant to its ability to charge high rates, or to impose onerous conditions for gathering service.'' [4] Instead, the affiliate ''could do these things for one reason only '' because it was a recently deregulated monopolist in the North Padre gathering market.'' [5] Accordingly, the court held that the Commission had not met its own test under *Arkla* for reassertion of jurisdiction and vacated and remanded the Commission's orders.

3. The Commission is interested in reevaluating both its legal authority to reassert jurisdiction and the policy considerations in deciding whether to do so. To assist this reevaluation of the *Arkla* test, the Commission is seeking comment on the following questions:

1. Is there an inherent anti-competitive issue when pipelines spin-down gathering facilities to affiliates or are concerns about the behavior of affiliated gatherers unique to certain specific pipeline/affiliate relationships, such as those articulated by Shell in its request for rehearing in the *Shell* v. *Transco* proceeding in Docket No. RP02–99–010?

2. Once a pipeline has spun-down its gathering services into an affiliated company, is it common for the affiliated gatherer to seek higher rates for its gathering services than the rates charged by the pipeline for those services prior to the spin-down?

a. How do the rates of non-affiliated gatherers compare to the rates of affiliated gatherers?

b. Have the rates charged by affiliated gatherers had an impact on well shut-ins?

3. What factors are relevant in determining whether a gathering affiliate is separate from its pipeline affiliate and independent from its pipeline affiliate in performing its gathering functions?

4. Must a gathering affiliate be physically separate and separately staffed in order to be independent of its pipeline affiliate?

5. Because the basis of initially disclaiming NGA section 4 and 5 ''in

[1] *Arkla Gathering Service Co.,* 67 FERC ¶61,257 at 61,871 (1994), *order on reh'g,* 69 FERC ¶61,280 (1994), *reh'g denied,* 70 FERC ¶ 61,079 (1995), reconsideration denied, 71 FERC ¶61,297 (1995) (collectively, *Arkla*), *aff'd Conoco Inc.* v. *FERC,* 90 F.3d 536 (D.C. Cir. 1996) (Conoco).

[2] *Williams Gas Processing Co., L.P.* v. *FERC,* 373 F.3d 1335 (2004) (*Williams Gas Processing*).

[3] *Williams Gas Processing,* at 1342.

[4] *Id.* at 1342.

[5] *Id.*

connection with'' rate and service jurisdiction is solely a change in ownership of the gathering facilities, is it necessary for the Commission to require a showing of collusion or abusive conduct in order to reassert jurisdiction, if it is found that the transfer of the facilities is a sham and/or there is no real, de facto separate corporate ownership?

6. What kind of conduct should trigger the Commission's reassertion of jurisdiction over the gathering services of a pipeline affiliate?

7. Should the Commission be especially concerned about the actions of gathering affiliates when they control access to an essential facility in order to gain access to the interstate pipeline grid?

8. Should a showing of ''concerted action'' by the gathering affiliate and the pipeline be required, or should it be sufficient for the gathering affiliate alone to have engaged in anticompetitive or otherwise objectionable behavior to trigger the Commission's reassertion of jurisdiction?

9. What kind of activities would constitute ''concerted action'' between the gathering affiliate and its affiliated pipeline for purposes of circumventing the Commission's effective regulation of the pipeline?

10. What incentives do states have to ensure that providers of gathering services do not engage in anticompetitive behavior?

11. Is there a gap between state regulation of gathering services and the Commission's regulation of natural gas companies, and, if so, what is the nature of that gap?

12. Should the Commission view the conduct of offshore affiliated gatherers differently from onshore affiliated gatherers due to the lack of state regulation offshore?

13. What criteria should the Commission employ in reasserting NGA section 4 and 5 ''in connection with'' jurisdiction over gathering rates and services following a spin-down of gathering facilities by a pipeline to an affiliate?

Procedure for Comments

4. The Commission invites interested persons to submit comments, and other information on the matters, issues and specific questions identified in this notice. Comments are due 60 days from the date of publication in the **Federal Register**. Comments must refer to Docket No. PL05–10–000, and must include the commentor's name, the organization they represent, if applicable, and their address.

5. To facilitate the Commission's review of the comments, the Commission requests that commentors provide an executive summary of their position. In addition, the Commission requests that commentors identify each specific question posed by the Notice of Inquiry that their comments address and to use appropriate headings. Comments should be double-spaced.

6. Comments may be filed on paper or electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commentors may attach additional files with supporting information in certain other file formats. Commentors filing electronically do not need to make a paper filing. Commentors that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

7. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commentors are not required to serve copies of their comments on other commentors.

Document Availability

8. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

9. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

10. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@ferc.gov*) or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov).*

By direction of the Commission. Commissioner Brownell concurring with a separate statement attached.

Magalie R. Salas,

Secretary.

Notice of Inquiry on Criteria for Reassertion Jurisdiction Over the Gathering Services of Natural Gas Company Affiliates.

BROWNELL, Commissioner, *concurring:*

Today we issue a Notice of Inquiry (NOI) to evaluate possible changes in the criteria for invoking the Commission's ''in connection with'' jurisdiction. I appreciate the need to guard against affiliate abuse. However, I think it is important to put the questions proffered in the NOI in context.

In *Panhandle,* the Supreme Court found that sections 4, 5 and 7 of the NGA do not concern gathering and only extend to the interstate transportation of gas by their express terms.[1] In *Conoco,* the court expressly stated that where an activity or entity falls within the section 1(b) gathering exemption of the NGA, the other provisions of the NGA, including the ''in connection with'' language in sections 4 and 5 neither expand our jurisdiction nor override the gathering exemption.[2] Therefore, the fundamental question for me is whether any new test has a direct nexus to our effective regulation of the interstate pipeline, not the gatherer. I am hard pressed to find that necessary linkage even if a spun-down entity seeks a higher rate for its services or is an essential access point to the interstate grid. In either situation, the Commission will continue to employ its section 4 and 5 NGA authority to ensure that the pipeline's rates remain just and reasonable.

Since Order 636, the Commission has approved a number of proposals to spin-down (as well as spin-off) gathering facilities because such transfers eliminated unnecessary costs from interstate rates and the stand-alone gatherer could more efficiently utilize the facilities involved. There have been very few complaints.

I urge commenters to consider whether there is a need for a new test and, if so, how any new test is consistent with the limits of our current statutory authority.

Dated:

Nora Mead Brownell,

Commissioner.

[FR Doc. 05–19001 Filed 9–22–05; 8:45 am]

BILLING CODE 6717–01–P

[1] *Panhandle III,* 337 U.S. at 508–09, 69 S.Ct. at 1257–58.

[2] *Conoco Inc.* v. *FERC,* 90 F.3rd 536 at 552 (D.C. Cir. 1996), *cert. denied,* 519 U.S. 1142 (1997).

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division Transmission and Ancillary Services-Rate Order No. WAPA–122

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Order Concerning Transmission and Ancillary Services Rates.

SUMMARY: The Deputy Secretary of Energy confirmed and approved Rate Order No. WAPA–122 and Rate Schedules UGP–FPT1, UGP–NFPT1, UGP–NT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, and UGP–AS6 placing the Integrated System (IS) Transmission and Ancillary Services rate into effect on an interim basis. The provisional rates will be in effect until the Federal Energy Regulatory Commission (Commission) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment, within the allowable periods.

DATES: Rate Schedules UGP–FPT1, UGP–NFPT1, UGP–NT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, and UGP–AS6 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 schedules in effect on a final basis through September 30, 2010, or until the rate schedules are superseded. These new rate schedules dated October 2005, supersede the similarly titled rate schedules dated 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Harris, Upper Great Plains Regional Manager, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone (406) 247–7405, or Mr. Jon R. Horst, Rates Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone (406) 247–7444, e-mail *horst@wapa.gov*.

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved existing Rate Schedules UGP–FPT1, UGP–NFPT1, UGP–NT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, and UGP–AS6 for IS Transmission and Ancillary Service rates on August 1, 1998, in Rate Order No. WAPA–79. The Commission confirmed and approved the rate schedules on November 25, 1998, in FERC Docket No. EF98–5031–000. These rate schedules were then extended through September 30, 2005, by Rate Order No. WAPA–100, which was confirmed and approved by the Commission on December 16, 2003, under FERC Docket No. EF03–5032–000. The rate schedules for Rate Order No. WAPA–79 and Rate Order No. WAPA–100 contained formulary rates that were recalculated yearly using the fixed charge rate methodology. The provisional formula rates will continue to use the fixed charge rate methodology and will continue to be recalculated yearly from updated financial and load data. However, the Generator Step Up Transformers are to be removed from the annual revenue requirement for IS. After the approval of the original Transmission and Ancillary Service rates for the IS, the Commission decided that Generator Step Up Transformers should not be included in transmission rates for jurisdictional utilities. Consistent with Western's goal to observe Commission precedent to the extent consistent with its mission and permitted by law and regulation, the IS Transmission and Ancillary Service rates are being modified.

The existing IS Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service Rate Schedule is superseded by Rate Schedule UGP–FPT1, dated October 2005. The 2004–2005 existing rate for IS Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service is $2.72 per kilowattmonth (kWmonth). The provisional rate for IS Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service is $2.69/KWmonth. Under Rate Schedule UGP–NFPT1, the existing rate calculation for IS Non-Firm Point-to-Point Transmission Service is 3.73 mills per kilowatthour (mills/kWh). The provisional rate for IS Non-Firm Point-to Point Transmission Service is 3.68 mills/kWh. Under Rate Schedule UGP–NT1 the existing annual revenue requirement for IS Network Integration Transmission Service is $128,017,923. The provisional annual revenue requirement for IS Network Integration Transmission Service is $126,741,576.

Under Rate Schedule UGP–AS1, the existing rate for Scheduling System Control and Dispatch (Scheduling and Dispatch) Service is $49.29/schedule/day. The provisional rate for Scheduling and Dispatch is $49.77/schedule/day. Under Rate Schedule UGP–AS2, the existing rate for Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service) is $0.06/kWmonth. The provisional rate for Reactive Service is $0.07/kWmonth. Under Rate Schedule UGP–AS3, the provisional rate calculated for Regulation and Frequency Response Service is unchanged from the existing rate of $0.04/kWmonth. Under Rate Schedule UGP–AS4, there is no change in the rate for Energy Imbalance Service between the existing and the proposed rates. Under Rate Schedules UGP–AS5 and UGP–AS6, the rate for Spinning and Supplemental Reserves is $0.11/kWmonth. The provisional rate calculated for Spinning and Supplemental Reserves is $0.12/kWmonth.

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.

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–122, the proposed IS Firm and Non-Firm Transmission and Ancillary Service rates into effect on an interim basis. The new Rate Schedules UGP–FPT1, UGP–NFPT1, UGP–NT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, and UGP–AS6 for IS Transmission and Ancillary Service rates will be promptly submitted to the Commission for confirmation and approval on a final basis.

Dated: September 13, 2005.

Clay Sell,

Deputy Secretary.

[Rate Order No. WAPA–122]

In the matter of: Western Area Power Administration Rate Adjustment for the Pick-Sloan Missouri Basin Program—Eastern Division Transmission and Ancillary Services; Order Confirming, Approving, and Placing the Pick-Sloan Missouri Basin Program—Eastern Division Transmission and Ancillary Services Formula Rates Into Effect on an Interim Basis

This rate was established in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the

Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), 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:

$/kWmonth: Monthly charge for capacity (i.e., $ per kilowatt (kW) per month).

12-cp: 12-month coincident peak average.

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 system in accordance with standard utility practice.

A&GE: Administrative and general expense.

Balancing Authority: An electric system or systems, bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Balancing Authorities and contributing to frequency regulation of the Interconnection. Formerly known as control area.

Basin Electric: Basin Electric Power Cooperative.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kilowatts.

Capacity Rate: The rate which sets forth the charges for capacity. It is expressed in $/kWmonth.

Commission: Federal Energy Regulatory Commission.

Corps of Engineers: U.S. Army Corps of Engineers.

Customer: An entity with a contract that is receiving service from Western's UGPR.

DOE: United States Department of Energy.

DOE Order RA 6120.2: An order outlining power marketing administration financial reporting and ratemaking procedures.

Energy: Measured in terms of the work capacity over a period of time. It is expressed in kilowatthours.

Emergency Energy: Electric energy purchased by an electric utility whenever an event on the system causes insufficient operating capability to cover its own demand requirement.

Energy Imbalance Service: A service which provides energy correction for any hourly mismatch between a Transmission Customer's energy supply and the demand served.

Energy Rate: The rate which sets forth the charges for energy. It is expressed in mills per kilowatthour and applied to each kilowatthour delivered to each customer.

FERC: The Commission (to be used when referencing Commission Orders).

FERC Order No. 888: FERC Order Nos. 888, 888–A, 888–B and 888–C unless otherwise noted.

Firm: A type of product and/or service available at the time requested by the customer.

Firm Point-to-Point: Service that is reserved and/or scheduled between Points of Receipt and Delivery.

FRN: **Federal Register** notice.

FY: Fiscal year; October 1 to September 30.

GSU: Generator Step Up Transformer.

GWh: Gigawatthour—the electrical unit of energy that equals 1 billion watthours or 1 million kWh.

Heartland: Heartland Consumers Power District.

IS: Integrated System.

ISO: Independent System Operator.

JTS: Joint Transmission System.

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.

kWmonth: Kilowattmonth—the electrical unit of the monthly amount of capacity.

kWyear: Kilowattyear—the electrical unit of the yearly amount of capacity.

Load: The amount of electric power or energy delivered or required at any specified point(s) on a system.

Load-ratio share: Ratio of the Network Transmission Customer's coincident hourly load (including its designated network load not physically interconnected with the Transmission Provider) to the Transmission Provider's monthly Transmission System peak, calculated on a rolling 12-month basis.

Long-Term Firm Point-to-Point: Firm Point-to-Point Transmission Service reservation with at least 12 consecutive equal monthly amounts.

MAPP: Mid-Continent Area Power Pool.

MBMPA: Missouri Basin Municipal Power Agency.

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.

MVAR: Megavar, equal to 1,000,000 VARs.

MW: Megawatt—the electrical unit of capacity that equals 1 million watts or 1,000 kilowatts.

NERC: North American Electric Reliability Council.

Net Revenue: Revenue remaining after paying all annual expenses.

Network Customer: An entity receiving Transmission Service under the terms of the Transmission Provider's Network Integration Transmission Service of the Tariff.

Non-Firm Point-to-Point: Point-to-Point Transmission Service under the Tariff that is reserved and scheduled on an as-available basis and is subject to interruption for economic reasons.

O&M: Operation and maintenance.

OASIS: Open Access Same-Time Information System—provides access to information on transmission pricing and availability for potential transmission customers.

OM&R: Operation, Maintenance & Replacement.

P–SMBP: Pick-Sloan Missouri Basin Program.

P–SMBP—ED: Pick-Sloan Missouri Basin Program—Eastern Division.

Point-to-Point: The reservation and transmission of capacity and energy on either a firm or non-firm basis from designated Point(s) of Receipt to designated Point(s) of Delivery.

Power: Capacity and energy.

Provisional Rate: A rate which has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary.

Rate Brochure: An April 2005 document 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 framework under which Western markets power.

Reactive Supply and Voltage Control from Generating Sources Service: A service which provides reactive supply through changes to generator reactive output to maintain transmission line voltage and facilitate electricity transfers.

Regulation and Frequency Response Service: A service which provides for following the moment-to-moment variations in the demand or supply in a Balancing Authority and maintaining scheduled interconnection frequency.

Reserve Services: Spinning Reserve Service and Supplemental Reserve Service.

Revenue Requirement: The revenue required to recover annual expenses (such as O&M, purchase power, transmission service expenses, interest, and deferred expenses) and repay Federal investments, and other assigned costs.

SCADA: Supervisory Control and Data Acquisition.

Schedule: An agreed-upon transaction size (megawatts), beginning and ending ramp times and rate, and type of service required for delivery and receipt of power between the contracting parties and the Balancing Authority(ies) involved in the transaction.

Scheduling, System Control and Dispatch Service: A service which provides for (a) scheduling, (b) confirming and implementing an interchange schedule with other balancing authorities, including intermediary balancing authorities providing transmission service, and (c) ensuring operational security during the interchange transaction.

Service Agreement: The initial agreement and any amendments or supplements entered into by the Transmission Customer and Western for service under the Tariff.

Short-Term Firm Point-to-Point: Firm Point-to-Point Transmission Service with service duration of less than one year.

Spinning Reserve Service: Generation capacity needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output. The Transmission Provider must offer this service when the transmission service is used to serve load within its Balancing Authority. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Spinning Reserve Service obligation.

Supplemental Reserve Service: Generation capacity needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generation units that are on-line but unloaded, by quick start generation or by interruptible load. The Transmission Provider must offer this service when the transmission service is used to serve load within its Balancing Authority. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Supplemental Reserve Service obligation.

Supporting Documentation: A compilation of data and documents that support the Rate Brochure and the rate proposal.

System: An interconnected combination of generation, transmission and/or distribution components comprising an electric utility, independent power producer(s) (IPP), or group of utilities and IPP(s).

Tariff: Western Area Power Administration Open Access Transmission Service Tariff, originally approved in Docket No. NJ98–1–000, 99 FERC ¶ 61,062 (2002) and amended in Docket No. NJ05–1–000, 112 FERC ¶ 61,044 (2005).

Transmission Customer: Any eligible customer (or its designated agent) that receives transmission service under the Tariff.

Transmission Provider: Any utility that owns, operates, or controls facilities used to transmit electric energy in interstate commerce. The UGPR, as operator of the IS, is the Transmission Provider for the purposes of this **Federal Register** notice.

Transmission System: The facilities owned, controlled, or operated by the Transmission Provider that are used to provide transmission service.

Transmission System Total Load: The 12-cp peak for Network Transmission Service plus reserved capacity for all Firm Point-to-Point Transmission Service.

UGPR: The Upper Great Plains Customer Service Region of the Western Area Power Administration. In some places in this order, UGPR maybe referenced generically as Western.

VAR: A unit of reactive power.

WAUGP: The NERC acronym for the Western Area Upper Great Plains Balancing Authority. This balancing authority is also known as the Watertown Balancing Authority.

Watertown Operation Office: Western Area Power Administration Upper Great Plains Customer Service Region, Operations Office, 1330 41st Street SE., Watertown, South Dakota.

Western: United States Department of Energy, Western Area Power Administration.

Western Regions: Customer service regions of the Western Area Power Administration.

Western's Tariff: Western's Open Access Transmission Service Tariff.

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, for a minor rate adjustment in developing these rates. The steps Western took to involve interested parties in the rate process were:

1. The proposed rate adjustment process began February 9, 2005, when Western mailed a notice announcing an informal customer meeting to all IS Transmission Customers and interested parties. The meeting was held on March 22, 2005, in Sioux Falls, South Dakota. At this informal meeting, Western explained the rationale for the rate adjustment, presented rate designs and methodologies, and answered questions.

2. A **Federal Register** notice published on April 18, 2005, (70 FR 20119), announced the proposed rates for P–SMBP—ED Transmission and Ancillary Service rates, and began a public consultation and comment period.

3. On April 28, 2005, Western mailed letters to all IS Transmission Customers and interested parties transmitting the **Federal Register** notice published on April 18, 2005, and directing them to the rate brochure on Western's Web site.

4. Western received no comment letters during the consultation and comment period, which ended May 18, 2005.

Project Description

The initial stages of the Missouri River Basin Project were authorized by section 9 of the Flood Control Act of 1944 (58 Stat. 887, 890, Pub. L. 78–534). It was later renamed the P–SMBP. The P–SMBP is a comprehensive program, with the following authorized functions: flood control, navigation improvement, irrigation, municipal and industrial water development, and hydroelectric

production for the entire Missouri River Basin. Multipurpose projects have been developed on the Missouri River and its tributaries in Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

The UGPR markets significant quantities of Federally-generated hydroelectric power from the P–SMBP—ED. Western owns and operates an extensive system of high-voltage transmission facilities which the UGPR uses to market approximately 2,400 MW of capacity from Federal projects within the Missouri River Basin. This capacity is generated by eight powerplants located in Montana, North Dakota, and South Dakota. The UGPR uses the transmission facilities of Western and others to market this power and energy to customers located within the P–SMBP—ED. This marketing area includes Montana, east of the Continental Divide, all of North and South Dakota, eastern Nebraska, western Iowa, and western Minnesota.

Integrated System Description

Using a single system, joint-planning concept, the UGPR, Basin Electric, and Heartland combined their transmission facilities to form the IS and developed Transmission and Ancillary Service rates for transmission over the IS. This action was necessary because the UGPR, Basin Electric, and Heartland, whose facilities are fully integrated, did not have rates suitable for long-term open access transmission service. The transmission facilities included in the IS are transmission lines, substations, communication equipment and facilities related to operation, maintenance, and support of the IS Transmission System. The UGPR is designated as the operator of the other participants' transmission facilities and as such contracts for service, determines and posts the available transmission capacity on the OASIS, bills for service, collects payments, and distributes revenues to each IS participant. The IS consists of the transmission facilities owned by Basin Electric and Heartland east of the east-west electrical separation in the United States, the transmission facilities owned by Western in the P–SMBP—ED, and the Miles City DC Tie owned by Western and Basin Electric. These facilities interconnect with utilities in the states of Montana, North Dakota, South Dakota, Iowa, Minnesota, Missouri, and in addition include facilities which interconnect with Canada.

The approach for formation of the IS was to include facilities which followed the spirit and intent of the FERC Order No. 888 and to make the system the most useful to all transmission requesters. The ''seven-factor test'' defined in FERC Order No. 888 was used to determine the distribution facilities that were excluded from the IS Transmission System. Several major facilities are included in the IS. The second 345-kV transmission line between the Antelope Valley and Leland Olds generation stations, which meets the standards for acceptable transmission facilities set in the Commission rulings on filings by other transmission entities, is included. The 230-kV transmission line between Tioga, North Dakota, and Boundary Dam, which provides access to generation and loads in Canada, is included in the IS. The IS also includes the Miles City DC tie, which opens the markets between the east-west electrical separation of the United States and increases access to other utilities.

P–SMBP—ED Transmission and Ancillary Service Rates Study

Western prepared a Transmission and Ancillary Service rates study to ensure that Transmission and Ancillary Service rates are based on the cost of service of the IS Transmission System. This study includes all IS Transmission and Ancillary Service expenses and associated offsetting revenues. Western charges IS Transmission Service rates separately to entities receiving transmission-only services over the IS Transmission System.

The UGPR is proposing to continue using an annual fixed charge formula that will determine how much revenue must be recovered from the IS Transmission and Ancillary Service rates. The annual revenue requirements include O&M expenses, administrative and general expenses, interest expense, and depreciation expense. This methodology is applied annually using the most recent historical test year. These revenue requirements are offset by appropriate IS revenues.

Integrated System Transmission Service

Western will offer Network, Firm Point-to-Point, and Non-Firm Point-to-Point Transmission Service on the IS. The service offered is the transmission of energy and capacity from Points of Receipt to Points of Delivery on the IS. The IS Transmission Service Rates include the cost of Scheduling, System Control and Dispatch Service. Therefore, an additional charge for this ancillary service is not required for transmission users.

Western, Basin Electric, and Heartland will take IS Transmission Service. Transmission Service to Western's Customers continues to be bundled in the firm electric power service rate under existing contracts that expire in 2020.

The UGPR prepared a transmission service study to ensure that the formula IS Transmission and Ancillary Service rates are based on the cost of service to the IS. The UGPR seeks approval of formula rates for calculating Point-to-Point IS Transmission Rates, the Network Annual Revenue Requirement for IS Transmission Service, and ancillary service rates. Western requests the Commission confirm that these rates are not arbitrary, capricious, or in violation of the law. The rates will be recalculated every year, effective May 1, based on the approved formula rates and updated financial and load data. The UGPR will provide customers notice of changes in the Transmission and Ancillary Service rates no later than April 1 of each year.

IS Transmission System Total Load

The IS Transmission System Total Load is the 12-cp system peak for IS Network Transmission Service plus the reserved capacity for all IS Long-Term Firm Point-to-Point Transmission Service.

The IS Transmission System Total Load is calculated as follows based upon the most recent historical data available at the time of the initial rate proposal. This included both 2003 and 2004 data:

IS Network Transmission Load	3,185,000 kW
Long-Term Firm Point-to-Point Reserved Capacity	743,000 kW
IS Transmission System Total Load	3,928,000 kW

Annual Costs

Western calculated the annual costs of providing the various IS Transmission and Ancillary Services using a Commission-recognized methodology for annual cost calculation with fixed charge rates for various cost components. The cost components applicable to Western include O&M,

A&GE, depreciation, and the cost of capital. These components are displayed as fixed charge rates or percentages of net investment. These fixed charge rates are then summed to arrive at a total fixed charge rate associated with the particular service for which a rate is being calculated. The fixed charge rate calculation for the various IS Transmission and Ancillary Services can be summarized with the following formula:

O&M ÷ Net investment
+ A&GE ÷ Net investment
+ Depreciation expense ÷ Net investment
+Annual interest expense ÷ Unpaid investment balance

Total fixed charge rate

To arrive at the annual cost of providing the IS Transmission Service or one of the Ancillary Services, the total fixed charge rate is applied to the net investment allocated to the service:

Total fixed charge rate × Net investment = Annual cost of providing service.

The source for the UGPR's annual O&M, A&GE, depreciation expense, interest expense, and investment is the Results of Operations for the Upper Great Plains Customer Service Region-Pick Sloan Missouri Basin. The source for Heartland's data is Heartland Consumers Power District Annual Report. The sources for Basin Electric's data are Basin Electric's Consolidated Financial Statement, Rural Utility Service Form 12, and other accounting records.

Annual Revenue Requirement for IS Transmission Service

The annual revenue requirement for IS Transmission Service is based upon the most recent historical data available at the time of the initial rate proposal. This data is used in a test year and uses an annual fixed charge methodology. The rates for IS Transmission Service (Network and Point-to-Point) are based on a revenue requirement that recovers the annual costs of Western, Basin Electric, and Heartland associated with providing the IS Transmission Service plus any facility credit paid to the IS Transmission Customers. The annual revenue requirement for IS Transmission Service includes the cost for Scheduling, System Control, and Dispatch Service needed to provide transmission service. Therefore, an additional charge for this ancillary service is not required for transmission users. The annual transmission costs are offset by appropriate Transmission Revenue Credits to avoid over-recovery of costs. The annual revenue requirement for IS Transmission Service can be summarized with the following formula:

Annual IS Transmission Costs of UGPR
+ Annual IS Transmission Costs Basin Electric and Heartland
+ Transmission Customer Facility Credits
− Transmission Revenue Credits

Annual Revenue Requirement for IS Transmission Service

Transmission Customer Facility Credits are credits paid to IS Transmission Customers for facilities that are integrated with the IS and increase both the capability and the reliability of the IS. The credits are addressed in individual agreements and appropriate adjustments are made in subsequent rate calculations. The IS participants will evaluate requests for facility credits consistent with the Commission's guidance in the FERC Order No. 888, other relevant Commission policy, and the terms of the Tariff.

Transmission Revenue Credits include revenue from sales of Non-Firm, discounted IS Firm and Short-Term Firm Point-to-Point Transmission Service; revenue from existing transmission agreements; and revenue from Scheduling, System Control and Dispatch Services.

IS Network Transmission Service

The proposed rate for IS Network Transmission Service is a formula calculation based upon the annual revenue requirement for IS Transmission Service then in effect, as determined by the annual fixed charge methodology. The monthly charge for IS Network Transmission Service is as follows:

Network Customer's Load-ratio share
× Annual Revenue Requirement for IS Transmission
÷ 12 months

Monthly IS Network Transmission Service Charge

The load ratio-share is the ratio of the Network Customer's coincident hourly load to the monthly IS Transmission System peak minus the coincident peak for all IS Firm Point-to-Point Transmission Service plus the IS Firm Point-to-Point reservations, calculated on a rolling 12-cp basis. The proposed rate formula would be effective October 1, 2005, through September 30, 2010.

IS Firm Point-to-Point Transmission Service

The rate for IS Firm Point-to-Point Transmission Service is the annual revenue requirement for IS Transmission Service divided by the IS Transmission System Total Load in kW, to derive a cost per kilowattyear (kWyear). The formula for the monthly rate is as follows:

Annual Revenue Requirement for IS Transmission
÷ IS Transmission System Total Load
÷ 12 months

Monthly IS Firm Point-to-Point Transmission Rate

The rate formula is applied annually by using the most current historical data available. The proposed rate formula would be effective October 1, 2005, through September 30, 2010.

IS Non-Firm Point-to-Point Transmission Service

The proposed rate for IS Non-Firm Point-to-Point Transmission Service is a mills/kWh rate, based upon the current firm point-to-point rate and may be discounted. The formula rate is as follows:

Monthly IS Firm Point-to-Point Transmission Rate
÷ 730 hours/month
× 1000 mills per dollar

IS Non-Firm Point-to-Point Transmission Rate

This rate will remain in effect for the same period as the IS Firm Point-to-Point Transmission Service rate and will also be reviewed annually. The IS Non-Firm Point-to-Point Transmission Service will be offered at hourly, daily, and monthly rates. The IS Transmission Service availability will be posted on the UGPR OASIS.

Ancillary Services

In accordance with the Tariff, Western will offer to all customers the six ancillary services defined by the Commission, two of which IS Transmission Customers are required to purchase: (1) Scheduling, System Control, and Dispatch Service, and (2) Reactive Supply and Voltage Control from Generation Sources Service. The remaining four ancillary services are: (3) Regulation and Frequency Response Service, (4) Energy Imbalance Service, (5) Spinning Reserve Service, and (6) Supplemental Reserve Service. The open access ancillary service formula rates are designed to recover only the costs incurred for providing the service(s). The charges for ancillary services are based on the cost of resources used to provide these services.

Sales of Regulation and Frequency Response Service, Energy Imbalance Service, Spinning Reserve Service, and Supplemental Reserve Service may be limited since Western has allocated its power resources to preference entities under long-term commitments. In accordance with the Tariff, if Western is unable to provide these services from its own resources, an offer will be made to purchase the services and pass through these costs, including an administrative charge to the customer.

Scheduling, System Control, and Dispatch Service

Western's annual revenue requirement for Scheduling, System Control, and Dispatch Service is determined by multiplying the portion of the Watertown Operations Office net plant and communications facilities net plant associated with Scheduling, System Control, and Dispatch Service by the transmission fixed charge rate. The formula rate for Scheduling, System Control, and Dispatch Service is:

Annual Revenue Requirement for
Scheduling, System Control and Dispatch Service
÷ Annual Number of Daily Schedules

Scheduling, System Control and Dispatch Rate

This rate and rate design only recovers Western's revenue requirement for Scheduling, System Control, and Dispatch Service.

Reactive Supply and Voltage Control from Generation Sources Service

Western's annual cost of providing Reactive Supply and Voltage Control from Generation Sources Service is determined by multiplying the total P–SMBP—ED generation net plant by the generation fixed charge rate. The annual cost is multiplied by the capability used for reactive support to determine Western's reactive service revenue requirement. Basin Electric's and Heartland's annual revenue requirement is based on the annual cost of equipment installed on its generators to provide this service. Western's, Basin Electric's, and Heartland's annual revenue requirements are summed for the total revenue requirement for this service. The Reactive Supply and Voltage Control Service from Generation Sources Service rate is then derived by dividing the total annual revenue requirement by the load requiring reactive service. The annual rate is then divided by 12 months to obtain a monthly rate. The Reactive Supply and Voltage Control rate calculation is summarized in the following formula:

Annual Reactive Revenue Requirement
+ Load Requiring Reactive Service
÷ 12 months

Monthly Reactive Rate

Regulation and Frequency Response Service

Regulation and Frequency Response Service in the east side of the balancing authority is provided primarily by Oahe generation and in the west side of the balancing authority by Fort Peck generation, both of which are Corps of Engineer facilities. To calculate the annual cost of providing Regulation and Frequency Response Service, the Corps of Engineers' generation fixed charge rate is applied to Oahe generation and Fort Peck generation net plant investment. This cost is divided by the capacity at the plants to derive a dollar per kilowatt amount for Oahe and Fort Peck powerplants' installed capacity. This dollar per kilowatt amount is then applied to the capacity of Oahe generation and Fort Peck generation reserved for Regulation and Frequency Response Service in the balancing authority. The capacity reserved for Regulation and Frequency Response Service has been determined to be 2 percent of the annual peak load. The 2 percent value was derived by averaging yearly peak condensing as percentage of load for five years. Western's annual revenue requirement for Regulation and Frequency Response Service is determined by applying the dollar per kilowatt amount to the capacity used for Regulation and Frequency Response Service. Basin Electric's and Heartland's annual revenue requirement is based on the annual cost of equipment installed on its generators to provide this service. Western's, Basin Electric's, and Heartland's annual revenue requirements are summed for the total revenue requirement for this service. Annual rate for Regulation and Frequency Response Service is then determined by dividing the total revenue requirement by the total load in the Balancing Authority. The annual rate is then divided by 12 months to obtain a monthly rate. The Regulation and Frequency Response Service rate calculation is summarized in the following formula:

Annual Revenue Requirement for Regulation
+ Load in the Balancing Authority Requiring Regulation
÷ 12 months

Monthly Regulation and Frequency Response Rate

Energy Imbalance Service

This service is not intended to provide backup for generation supply. Energy shall be returned in like time frames (on-peak, off-peak, etc.) and accounts zeroed out monthly. Western reserves the right to apply a penalty to energy imbalances outside a 3-percent bandwidth (±1.5 percent deviation). The penalty for under deliveries outside the 3-percent bandwidth is 100 mills/kWh. Over deliveries outside the bandwidth will be forfeited to the balancing authority.

Reserve Services

Western's annual cost of generation for Reserve Services is determined by multiplying the generation fixed charge rate by the P–SMBP—ED generation net plant investment. The cost/kW year is determined by dividing the annual cost of generation by the plant capacity. The capacity used for Reserve Services is determined by multiplying Western's peak IS load by the MAPP operating reserve requirement of 5 percent. The cost/kW year is multiplied by the capacity used for Reserve Services to determine the annual revenue requirement for Reserve Services. The annual revenue requirement for Reserve Services is divided by Western's peak transmission load to calculate the annual rate. The annual rate is then divided by 12 months to obtain a monthly rate. This rate and rate design recovers only Western's revenue requirement associated with Reserve Services. If energy is taken under these services, the energy charge will be the MAPP or its successors rate for emergency energy. The Regulation and Frequency Response Service rate calculation is summarized in the following formula:

Annual Revenue Requirement for Reserves
÷ Load Requiring Reserves
÷ 12 months

Monthly Reserve Service Rate

Existing and Provisional Rates

The revenue requirements for the individual services and comparison values are outlined in the following table. These rates are calculated comparing the Existing Revenue Requirement to the Revenue Requirement based upon the most recent historical data available at the time of the initial rate proposal.

TABLE 1

Service	Existing revenue requirement	Provisional revenue requirement	Percentage change
Transmission	$128,017,923	$126,741,576	−0.997
Scheduling, System Control and Dispatch	3,373,281	3,406,102	−0.973
Reactive Supply and Voltage Control from Generation Sources	2,736,253	3,065,568	12.035
Regulation and Frequency Control	1,065,771	1,075,623	0.924
Reserves	1,895,268	2,009,276	6.015

Certification of Rates

Western's Administrator certifies that the IS Transmission and Ancillary Service rates placed into effect on an interim basis are the lowest possible rates consistent with sound business principles. The provisional formula rates were developed following administrative policies and applicable laws.

IS Transmission Service Discussion

Western proposes continuing the annual fixed charge formula to determine the Annual Revenue Requirement for IS Transmission Service. The annual revenue requirement for IS Transmission Service includes O&M expense, A&GE, interest expense, and depreciation expense from the most recent historical test year. This annual revenue requirement for IS Transmission Service is offset by appropriate revenue credits.

The IS Transmission System includes the transmission facilities owned by Western, Basin Electric, Heartland and others in which the IS has contractual rights. The costs paid to others for contractual rights on their transmission lines are included in the costs recovered by the annual revenue requirement for IS Transmission Service.

Western will continue to offer Network, Firm Point-to-Point, and Non-Firm Point-to-Point Transmission Service on the IS Transmission System. The service offered is the transmission of energy and capacity from Points of Receipt to Points of Delivery on the IS. The IS Transmission Service rates include the cost of Scheduling, System Control, and Dispatch Service. Therefore an additional charge for this ancillary service is not required for transmission users.

The provisional IS Transmission Service rates will be applied to customers who purchase transmission services. Western, Basin Electric, and Heartland will take IS Transmission Service. The IS Transmission Service to the UGPR's Customers will continue to be bundled in the firm electric service rate under existing contracts that expire in 2020.

IS Transmission System Total Load

The IS Transmission System Total Load is the 12-cp system peak for Network IS Transmission Service plus the reserved capacity for all IS Long-Term Firm Point-to-Point Transmission Service. For the provisional rate, the IS Transmission System Total Load will be unchanged at 3,968,000 kW.

Annual Costs

Western will continue to use a Commission-recognized methodology for annual cost calculation with fixed charge rates for various cost components approved by the Commission in WAPA–79 and WAPA–100. The change in the provisional rate is that the costs associated with the GSUs are no longer included in the net plant investment for transmission or the various expenses. The investment and costs for GSUs are now in the generation fixed charge calculation in support of ancillary services. The proposed methodology will continue to be an annual fixed charge formula that will determine the annual revenue requirement to be recovered from transmission services.

Annual Revenue Requirement for IS Transmission

A change in the costs that comprise the annual revenue requirement for IS Transmission is being proposed. The proposed transmission rate methodology is different from the current transmission rate methodology in one area. The GSU investments are removed from the transmission investments and placed in the generation investments. This also moves the corresponding costs of GSUs from transmission costs to generation costs. The existing annual revenue requirement for IS Transmission Service is $128,017,923. The provisional Annual Revenue Requirement for IS Transmission Service is $126,741,576.

Network

The current IS Network Transmission Service schedule expires on September 30, 2005. The provisional annual revenue requirement for IS Transmission Service will be used in the provisional rate formula for IS Network Transmission Service. The provisional charge for the monthly demand for IS Network Transmission Service will be the product of the network customer's load ratio share times one-twelfth (1/12) of the annual revenue requirement for IS Transmission Service. The load ratio share will be based on the network customer's hourly load (including its designated network load not physically interconnected with Western), coincident with the IS monthly transmission system peak, which will be calculated on a rolling 12-cp basis. Western's transmission system peak includes the sum of capacity reserved for IS Point-to-Point Transmission Service, 12-cp monthly entitlements for firm power customers, and the average 12-cp monthly system peak for IS Network Transmission Service. The provisional rate formula is to be effective beginning October 1, 2005, through September 30, 2010.

Firm Point-to-Point

The current IS Firm Point-to-Point Transmission Service rate for 2004–2005 is $2.72 and expires September 30, 2005. The provisional formula rate will continue to be the Annual Revenue Requirement for IS Transmission Service divided by the IS Transmission System Total Load. The provisional rate for IS Firm Point-to-Point Transmission Service is $2.69 per kWmonth for 2004–2005.

Non-Firm Point-to-Point

The current IS Non-Firm Transmission Service rate expires September 30, 2005. The provisional rate for IS Non-Firm Transmission Service is expressed in mills/kWh and is based on the current IS Firm Point-to-Point Transmission Service rate and may be discounted. The provisional IS Non-Firm Point-to-Point Transmission Service rate will be the IS Firm Point-to-Point Transmission Service rate divided by 730 hours per month and multiplied by 1000 mills per dollar. The provisional IS Non-Firm Transmission Service rate for 2004–2005 is 3.68 mills/kWh.

The following table summarizes the difference in calculations between the current IS Transmission Service rates and the provisional IS Transmission Service rates. It compares the change in the average annual projections used in the 2004–2005 transmission and ancillary services study and the provisional IS Transmission Service rates for this rate adjustment based upon the most recent historical data available at the time of the initial rate proposal.

COMPARISON OF ANNUAL REVENUES

Item	Existing rate	Provisional rate	Percent change
Annual IS Costs	$137,088,496	$136,289,145	−0.577
Transmission Customer Facility Credits	2,482,447	2,482,647	0.000

COMPARISON OF ANNUAL REVENUES—Continued

Item	Existing rate	Provisional rate	Percent change
Transmission Revenue Credits	9,454,494	9,454,494	0.000
Annual Revenue Requirement for IS Transmission Service	128,017,923	126,741,576	−0.997

The change in annual revenue requirement for IS Transmission Service is primarily a result of a revision in the allocation of expenses and investments. The revenue change between the existing rate and the provisional rate is <1 percent and, therefore, this is a minor rate adjustment.

Basis for Rate Development

The existing rates for IS Network, Firm and Non-Firm Transmission Service in Rate Schedules UGP–NT1, UGP–FPT1, and UGP–NFPT1, expire September 30, 2005. This rate adjustment contains rates that replace existing rates. The adjusted rates reflect changes in costs. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay investment within the allowable period. The provisional IS Transmission Service rates, detailed in Rate Schedules UGP–NT1, UGP–FPT1, and UGP–NFPT1, will take effect on October 1, 2005 to correspond with the start of the Federal fiscal year and remain in effect through September 30, 2010, or until replaced.

The proposed rates for IS Transmission Service include a provision to pass through electric industry restructuring costs associated with providing transmission service. These costs will be passed through to each appropriate IS Transmission Customer.

Comments

Western did not receive any comments or responses regarding the IS Transmission Service rate adjustment.

Ancillary Services Discussion

The IS will continue to offer six ancillary services. These are (1) Scheduling, system control, and dispatch service, (2) reactive supply and voltage control service, (3) regulation and frequency response service, (4) energy imbalance service, (5) spinning reserve service, and (6) supplemental reserve service. The first two are required services: (1) Scheduling, system control, and dispatch service and (2) reactive supply and voltage control service. All these ancillary services are listed in Western's Tariff.

The provisional rates for ancillary services are designed to recover only the costs associated with providing the service(s). The formula for calculating the rates will remain the same but the GSUs will be included in the investment and costs for the generation fixed charge in support of ancillary services. The costs for providing Scheduling, System Control, and Dispatch Service are included in the provisional IS Transmission Service rates.

The following table summarizes the difference in calculations between the current IS Ancillary Service rates and the provisional IS Ancillary Service rates. It compares the change in the average annual projections used in the 2004–2005 transmission and ancillary services study and the provisional IS Transmission and Ancillary Service rates for this rate adjustment based upon the most recent historical data available at the time of the initial rate proposal.

COMPARISON OF ANCILLARY SERVICE RATES

Item	Unit	Existing rate	Provisional rate	Percent change
Scheduling, System Control and Dispatch Service	schedule/day	$49.29	$49.77	0.974
Reactive Supply and Voltage Control	kWmonth	0.06	0.07	16.667
Regulation and Frequency Response	kWmonth	0.04	0.04	0.000
Energy Imbalance	n/a	n/a	n/a	n/a
Reserves	kWmonth	0.11	0.12	9.091

Basis for Rate Development

The existing rates for IS Ancillary Services in Rate Schedules UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, and UGP–AS6, expire September 30, 2005. The rate adjustment contains rates that replace existing rates. The adjusted rates reflect a revised methodology and changes in costs. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required power investment within the allowable period. The provisional rates will take effect on October 1, 2005, to correspond with the start of the Federal fiscal year and remain in effect through September 30, 2010.

Comments

Western did not receive any comments or responses regarding the IS Ancillary Services rate adjustment.

Availability of Information

Information about this rate adjustment, including studies, brochures, comments, letters, memorandums, and other supporting material made or kept by Western, used to develop the provisional rates, is available for public review in the Upper Great Plains Regional Office, 2900 4th Avenue North, Billings, Montana.

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, formula rates for the IS Transmission and Ancillary Services under Rate Schedules UGP–FPT1, UGP–NFPT1, UGP–NT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, and UGP–AS6. The rate schedules 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: September 13, 2005.

Clay Sell,

Deputy Secretary.

Rate Schedule UGP–AS1; October 1, 2005; Supersedes 1998 Schedule

Upper Great Plains Region Integrated System: Scheduling, System Control, and Dispatch Service

Effective

The first day of the first full billing period beginning on or after October 1, 2005, through September 30, 2010, or until superseded by another rate schedule.

Applicable

This service is required to schedule the movement of power through, out of, within, or into the Western Area Upper Great Plains Balancing Authority (WAUGP). The charges for Scheduling, System Control, and Dispatch Service are to be based on the rate outlined below. The formula rate used to calculate the charges for service under this schedule was developed and may be modified under applicable Federal laws, regulations, and policies.

The rate will be applied to all schedules for WAUGP non-Transmission Customers. The WAUGP will accept any reasonable number of schedule changes over the course of the day without any additional charge.

The charges for Scheduling, System Control, and Dispatch Service may be modified upon written notice to the customer. Any change to the charges for the Scheduling, System Control, and Dispatch Service shall be as set forth in a revision to this rate schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement.

The Upper Great Plains Region (UGPR) shall charge the non-Transmission Customer under the rate then in effect.

Formula Rate

$$\text{Rate per Schedule per Day} = \frac{\text{Annual Revenue Requirement for Scheduling, System Control, and Dispatch Service}}{\text{Number of Daily Schedules per Year}}$$

Rate

A recalculated rate will go into effect every May 1 based on the above formula and data. The UGPR will notify the customer annually of the recalculated rate on or before April 1.

Rate Schedule UGP–AS2; October 1, 2005; Supersedes 1998 Schedule

Upper Great Plains Region Integrated System: Reactive Supply and Voltage Control From Generation Sources Service

Effective

The first day of the first full billing period beginning on or after October 1, 2005, through September 30, 2010, or until superseded by another rate schedule.

Applicable

To maintain transmission voltages on all transmission facilities within acceptable limits, generation facilities under the control of the Western Area Upper Great Plains balancing authority (WAUGP) are operated to produce or absorb reactive power. Thus, Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service) must be provided for each transaction on the transmission facilities. The amount of Reactive Service that must be supplied with respect to the Transmission Customer's transaction will be determined based on the Reactive Service necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by WAUGP.

The Transmission Customer must purchase this service from the Transmission Provider. The charges for such service will be based upon the rate outlined below. The formula rate used to calculate the charges for service under this schedule was developed and may be modified under applicable Federal laws, regulations, and policies.

The charges for Reactive Service may be modified upon written notice to the Transmission Customer. Any change to the charges for Reactive Service shall be as set forth in a revision to this rate schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement. The Upper Great Plains Region (UGPR) shall charge the Transmission Customer under the rate then in effect.

Those Transmission Customers with generators in the balancing authority providing WAUGP with adequate

Reactive Service will not be charged for this service. Any waiver of this charge or any crediting arrangements for Reactive Service must be documented in the Transmission Customer's Service Agreement.

Formula Rate

$$\text{WAUGP Reactive Service Rate} = \frac{\text{Annual Revenue Requirement for Reactive Service}}{\text{Load Requiring Reactive Service}}$$

Rate

A recalculated rate will go into effect every May 1 based on the above formula and updated financial and load data. The UGPR will notify the Transmission Customer annually of the recalculated rate on or before April 1.

Rate Schedule UGP–AS3; October 1, 2005; Supersedes 1998 Schedule

Upper Great Plains Region Integrated System: Regulation and Frequency Response Service

Effective

The first day of the first full billing period beginning on or after October 1, 2005, through September 30, 2010, or until superseded by another rate schedule.

Applicable

Regulation and Frequency Response Service (Regulation) is necessary to provide for the continuous balancing of resources, generation, and interchange with load and for maintaining scheduled interconnection frequency at 60 cycles per second (60 Hz). Regulation is accomplished by committing on-line generation whose output is raised or lowered, predominantly through the use of automatic generating control equipment, as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Western Area Upper Great Plains balancing authority (WAUGP) operator. The Transmission Customer must either purchase this service from WAUGP or make alternative comparable arrangements to satisfy its Regulation obligation. The charges for Regulation are outlined below. The amount of Regulation will be set forth in the applicable Transmission Customer's Service Agreement.

The formula rate used to calculate the charges for service under this schedule was developed and may be modified under applicable Federal laws, regulations, and policies.

Charges for Regulation may be modified upon written notice to the Transmission Customer. Any change to the Regulation charges shall be as set forth in a revision to this rate schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement. The Upper Great Plains Region (UGPR) shall charge the Transmission Customer under the rate then in effect.

Transmission Customers will not be charged for this service if they receive Regulation from another source, or self-supply it for their own load. Any waiver of this charge or any crediting arrangement for Regulation must be documented in the Transmission Customer's Service Agreement.

Formula Rate

$$\text{WAUGP Regulation Rate} = \frac{\text{Annual Revenue Requirement for Regulation}}{\text{Load in the Balancing Authority Requiring Regulation}}$$

Rate

A recalculated rate will go into effect every May 1 based on the above formula and updated financial and load data. The UGPR will notify the Transmission Customer annually of the recalculated rate on or before April 1.

If resources are not available from a WAUGP resource, the UGPR will offer to purchase the Regulation and pass through the costs, plus an amount for administration, to the Transmission Customer.

Rate Schedule UGP–AS4; October 1, 2005; Supersedes 1998 Schedule

Upper Great Plains Region Integrated System: Energy Imbalance Service

Effective

The first day of the first full billing period beginning on or after October 1, 2005, through September 30, 2010, or until superseded by another rate schedule.

Applicable

Energy Imbalance Service is provided when a difference occurs between scheduled and actual delivery of energy to a load located within the Western Area Upper Great Plains Balancing Authority (WAUGP) over a single hour. The Transmission Customer must either obtain this service from WAUGP or make alternative comparable arrangements to satisfy its Energy Imbalance Service obligation.

The WAUGP shall establish a deviation band of +/−1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s). Deviation accounting will be completed monthly on an hour-to-hour basis.

The formula rate used to calculate the charges for service under this schedule was developed and may be modified under applicable Federal laws, regulations, and policies.

The Energy Imbalance Service compensation may be modified upon written notice to the Transmission Customer. Any change to the Transmission Customer compensation for Energy Imbalance Service shall be as set forth in a revision to this schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement. The Upper Great Plains Region (UGPR) shall charge the Transmission Customer under the rate then in effect.

Formula Rate

The UGPR reserves the right to implement the following upon providing notice to the Transmission Customer.

For negative excursions (under deliveries) outside the bandwidth, the WAUGP will assess a penalty charge of 100 mills/kWh.

For positive excursions (over deliveries) outside the bandwidth, over deliveries of energy will be forfeited to the balancing authority.

Rate

The bandwidth in effect October 1, 2005, through September 30, 2006, is 3 percent (+/−1.5 percent hourly deviation).

Rate Schedule UGP–AS5; October 1, 2005; Supersedes 1998 Schedule

Upper Great Plains Region Integrated System: Operating Reserve—Spinning Reserve Service

Effective

The first day of the first full billing period beginning on or after October 1, 2005, through September 30, 2010, or until superseded by another rate schedule.

Applicable

Spinning Reserve Service (Reserves) is needed to serve load immediately in the event of a system contingency. Reserves may be provided by generating units that are on-line and loaded at less than maximum output. The Transmission Customer must either purchase this service from the Western Area Upper Great Plains balancing authority (WAUGP) or make alternative comparable arrangements to satisfy its Reserves obligation. The charges for Reserves are outlined below. The amount of Reserves will be set forth in the applicable Transmission Customer's Service Agreement.

The formula rate used to calculate the charges for service under this schedule was promulgated and may be modified under applicable Federal laws, regulations, and policies.

The charges for Reserves may be modified upon written notice to the Transmission Customer. Any change to the charges for Reserves shall be as set forth in a revision to this rate schedule developed pursuant to applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement. The Upper Great Plains Region (UGPR) shall charge the Transmission Customer under the rate then in effect.

Formula Rate

$$\text{WAUGP Regulation Rate} = \frac{\text{Annual Revenue Requirement for Regulation}}{\text{Load in the Balancing Authority Requiring Regulation}}$$

Rate

A recalculated rate will go into effect every May 1 based on the above formula and updated financial and load data. The UGPR will notify the Transmission Customer annually of the recalculated rate on or before April 1.

If resources are not available from a WAUGP resource, the UGPR will offer to purchase the Reserves and pass through the costs, plus an amount for administration, to the Transmission Customer.

In the event that Reserves are called upon for emergency use, the UGPR will assess a charge for energy used at the Mid-Continent Area Power Pool Rate for emergency energy, presently the greater of 30 mills/kWh or the prevailing market energy rate in the region. The Transmission Customer would be responsible for providing transmission service to get the Reserves to its destination.

Rate Schedule UGP–AS6; October 1, 2005; Supersedes 1998 Schedule

Upper Great Plains Region Integrated System: Operating Reserve—Supplemental Reserve Service

Effective

The first day of the first full billing period beginning on or after October 1, 2005, through September 30, 2010, or until superseded by another rate schedule.

Applicable

Supplemental Reserve Service (Reserves) is needed to serve load in the event of a system contingency, however, it is not available immediately to serve load but rather within a short period of time. Reserves may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load. The Transmission Customer must either purchase this service from the Western Area Upper Great Plains Balancing Authority (WAUGP) or make alternative comparable arrangements to satisfy its Reserves obligation. The charges for Reserves are outlined below. The amount of Reserves will be set forth in the applicable Transmission Customer's Service Agreement.

The formula rate used to calculate the charges for service under this schedule was developed and may be modified under applicable Federal laws, regulations, and policies.

The charges for Reserves may be modified upon written notice to the Transmission Customer. Any change to the charges for Reserves shall be as set forth in a revision to this rate schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Service Agreement. The Upper Great Plains Region (UGPR) shall charge the Transmission Customer under the rate then in effect.

Formula Rate

$$\text{WAUGP Reserves Rate} = \frac{\text{Annual Revenue Requirement for Reserves}}{\text{Load Requiring Reserves}}$$

Rate

A recalculated rate will go into effect every May 1 based on the above formula and updated financial and load data. The UGPR will notify the Transmission Customer annually of the recalculated rate on or before April 1.

If resources are not available from a WAUGP resource, the UGPR will offer to purchase the Reserves and pass through the costs, plus an amount for administration, to the Transmission Customer.

In the event Reserves are called upon for Emergency Energy, the UGPR will

assess a charge for energy used at the Mid-Continent Area Power Pool Rate for Emergency Energy, presently the greater of 30 mills/kWh or the prevailing market energy rate in the region. The Transmission Customer would be responsible for providing transmission service to get the Reserves to its destination.

Rate Schedule UGP–FPT1; October 1, 2005; Supersedes 1998 Schedule

Upper Great Plains Region Integrated System: Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service

Effective

The first day of the first full billing period beginning on or after October 1, 2005, through September 30, 2010, or until superseded by another rate schedule.

Applicable

The Transmission Customer shall compensate the Upper Great Plains Region (UGPR) each month for Reserved Capacity under the applicable Firm Point-to-Point Transmission Service Agreement and rates outlined below. The formula rates used to calculate the charges for service under this schedule were developed and may be modified under applicable Federal laws, regulations, and policies.

The UGPR may modify the rate for Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the rate for Firm Point-to-Point Transmission Service shall be as set forth in a revision to this rate schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement. The UGPR shall charge the Transmission Customer under the rate then in effect.

Discounts

Three principal requirements apply to discounts for transmission service as follows: (1) Any offer of a discount made by the UGPR must be announced to all eligible Transmission Customers solely by posting on the Open Access Same-Time Information System (OASIS), (2) any Transmission Customer-initiated requests for discounts, including requests for use by one's wholesale merchant or an affiliate's use, must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, the UGPR must offer the same discounted transmission service rate for the same time period to all eligible Transmission Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Formula Rate

$$\text{Firm Point-to-Point Transmission Rate} = \frac{\text{Annual IS Transmission Service Revenue Requirement}}{\text{IS Transmission System Total Load}}$$

Rate

A recalculated rate will go into effect every May 1 based on the above formula and updated financial and load data. The UGPR will notify the Transmission Customer annually of the recalculated rate on or before April 1.

Rate Schedule UGP–NFPT1; October 1, 2005; Supersedes 1998 Schedule

Upper Great Plains Region Integrated System: Non-Firm Point-to-Point Transmission Service

Effective

The first day of the first full billing period beginning on or after October 1, 2005, through September 30, 2010, or until superseded by another rate schedule.

Applicable

The Transmission Customer shall compensate the Upper Great Plains Region (UGPR) for Non-Firm Point-to-Point Transmission Service under the applicable Non-Firm Point-to-Point Transmission Service Agreement and rate outlined below. The formula rates used to calculate the charges for service under this schedule were developed and may be modified under applicable Federal laws, regulations, and policies.

The UGPR may modify the rate for Non-Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the rate for Non-Firm Point-to-Point Transmission Service shall be as set forth in a revision to this rate schedule developed under applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement. The UGPR shall charge the Transmission Customer under the rate then in effect.

Discounts

Three principal requirements apply to discounts for transmission service as follows: (1) Any offer of a discount made by the UGPR must be announced to all eligible Transmission Customers solely by posting on the Open Access Same-Time Information System (OASIS), (2) any Transmission Customer-initiated requests for discounts, including requests for use by one's wholesale merchant or an affiliate's use, must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, the UGPR must offer the same discounted transmission service rate for the same time period to all eligible Transmission Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Formula Rate

$$\text{Maximum Non-Firm Point-to-Point Transmission Rate} = \text{Firm Point-to-Point Transmission Rate} \div \frac{\text{730 hours}}{\text{per month}} \times \frac{\text{1000 mills}}{\text{per dollar}}$$

Rate

A recalculated rate will go into effect every May 1 based on the above formula and updated financial and load data. The UGPR will notify the Transmission Customer annually of the recalculated rate on or before April 1.

Rate Schedule UGP–NT1; October 1, 2005; Supersedes 1998 Schedule

Upper Great Plains Region Integrated System: Annual Transmission Revenue Requirement for Network Integration Transmission Service

Effective

The first day of the first full billing period beginning on or after October 1, 2005, through September 30, 2010, or until superseded by another rate schedule.

Applicable

The Transmission Customer shall compensate the Upper Great Plains Region (UGPR) each month for Network Transmission Service under the applicable Network Integration Transmission Service Agreement and annual revenue requirement outlined below. The formula for the annual revenue requirement used to calculate the charges for this service under this schedule was developed and may be modified under applicable Federal laws, regulations, and policies.

The UGPR may modify the charges for Network Integration Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Network Integration Transmission Service shall be as set forth in a revision to this rate schedule promulgated developed under applicable Federal laws, regulations, and policies and made part of the applicable Transmission Customer's Service Agreement. The UGPR shall charge the Transmission Customer under the revenue requirement then in effect.

Formula Rate

$$\text{Monthly Charge} = \frac{(\text{Transmission Customer's Load-Ratio Share} \times \text{Annual Revenue Requirment for IS Transmission Service})}{12 \text{ months}}$$

Annual Revenue Requirement

A recalculated annual revenue requirement will go into effect every May 1 based on updated financial data. The UGPR will notify the Transmission Customer annually of the recalculated annual revenue requirement on or before April 1.

[FR Doc. 05–19039 Filed 9–22–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6667–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050187, ERP No. D–SFW–F64005–00, Upper Mississippi National Wildlife and Fish Refuge Comprehensive Conservation Plan (CCP) Implementation, MN, WI, IL and IA.

Summary: EPA has no objections to the Preferred Alternative, and recommends that the Final EIS address how the plan will be integrated with the Upper Mississippi River Navigation Ecosystem Sustainability Program. Rating LO.

EIS No. 20050209, ERP No. D–NPS–J65442–WY, Grand Teton National Park Transportation Plan, Implementation, Grand Teton National Park, Teton County, WY.

Summart: EPA expressed concerns about wetland mitigation and storm water impacts. Rating EC2.

EIS No. 20050259, ERP No. D–FHW–C40166–NY, Southtowns Connector/Buffalo Outer Harbor Project, Improvements on the NYS Route 5 Corridor from Buffalo Skyway Bridge to NYS Route 179, in the City of Buffalo, City of Lackawanna and Town of Hamburg, Erie County, NY.

Summary: EPA expressed concerns about assessment of cumulative impacts. Rating EC2.

EIS No. 20050274, ERP No. D–AFS–J61107–ND, NE McKenzie Allotment Management Plan Revisions, Proposes to Continue Livestock Grazing on 28 Allotments, Dakota Prairie Grasslands Land and Resource Management Plan, Dakota Prairie Grasslands, McKenzie Ranger District, McKenzie County, ND.

Summary: EPA expressed concerns about potential water quality impacts from sediment, fecal coliform and temperature modification in streams and other surface waters, and recommended reducing water quality impacts near aquatic/riparian resources by working with permittees and other stakeholders, and develop adaptive management monitoring. Rating EC2.

EIS No. 20050281, ERP No. D–AFS–K65287–CA, North Fork Eel Grazing Allotment Management Project, Proposing to Authorize Cattle Grazing on Four Allotment, Six Rivers National Forest, Mad River Ranger District, North Fork Eel River and Upper Mad River, Trinity County, CA.

Summary: EPA has no objection to the proposed action. Rating LO.

EIS No. 20050306, ERP No. D–FHW–H40185–00, U.S. Highway 34, Plattsmouth Bridge Study, over the Missouri River between U.S. 75 and I–29, Funding, Coast Guard Permit, U.S. Army COE 10 and 404 Permits, Cass County, NE and Mills County, IA.

Summary: EPA expressed concerns about potential wetland, floodplain, stream, and cumulative impacts. Rating EC2.

EIS No. 20050311, ERP No. D–NPS–H65025–NE, Niobrara National Scenic River General Management Plan, Implementation, Brown, Cherry, Keya Paha and Rock Counties, NE.

Summary: EPA has no objection to the proposed action. Rating LO.

EIS No. 20050294, ERP No. DR–COE–K11114–CA, Mare Island Reuse of Dredged Material Disposal Ponds as a Confirmed Updated Dredged Material Disposal Facility, Issuing Section 404 Permit Clean Water Act and Section 10 Permit Rivers and Harbor Act, San Francisco Bay Area, City of Vallejo, Solando County, CA.

Summary: Many of EPA's objections to the original Draft EIS were addressed in this revised document. However, EPA continues to have concerns about the delegation of responsibility for site operations and associated environmental safeguards, as well as implementation of wetlands restoration measures. Rating EC2.FINAL EISs.

EIS No. 20050283, ERP No. F–AFS–K65269–NV, Martin Basin Rangeland Project, Authorize Continued Livestock Grazing in Eight Allotments: Martin Basin, Indian, West Side Flat Creek, Buffalo, Bradshaw, Buttermilk, Granite Peak and Rebel Creek Cattle and Horse Allotments, Humboldt-Toiyabe National Forest, Santa Rosa Ranger District, Humboldt County, NV.

Summary: EPA has continuing concerns due to further resource decline and recommended an aggressive implementation schedule to reduce utilization rates in critical areas, and the use of tiered environmental documentation for specific Allotment Management Plans.

EIS No. 20050286, ERP No. F–SFW–B64004–ME, Maine Coastal Islands National Wildlife Refuge (formerly Petit Manan National Wildlife Refuge Complex) Comprehensive Conservation Plan, Implementation, the Gulf of Maine.

Summary: EPA continues to have no objection to the proposed action.

EIS No. 20050316, ERP No. F–FAA–F51050–IL, O'Hare Modernization Program, Proposes Major Development, Chicago O'Hare International Airport, Airport Layout Plan (ALP), Federal Funding, U.S. Army COE Section 404 Permit, City of Chicago, IL.

Summary: While many EPA's previous concerns have been resolved, EPA still has concerns because it is not clear that proposed mitigation for noise, air quality and water will be adopted and included in the Record of Decision.

EIS No. 20050322, ERP No. F–FRC–L03012–WA, Capacity Replacement Project, Construction and Operation of 79.5 miles Pipeline: Modify 5 Existing Compressor Stations, U.S. Army COE 10 and 404 Permits, Whatcom, Skagit, Snohomish, King, Pierce and Thurston Counties, WA.

Summary: As requested, FERC provided additional information on the proposed compensatory mitigation plan and other critical elements in the final EIS. Accordingly, EPA had no objections to the proposed action.

EIS No. 20050327, ERP No. F–AFS–J65434–CO, County Line Vegetation Management Project, Salvaging Spruce Beetle Infected Trees and Thinning Spruce-Fir Stand, Rio Grande National Forest, Conejos Peak Ranger District, Conejos County, CO.

Summary: EPA continues to have concerns about soil erosion impacts, stream water quality impacts, and wildlife sensitive species impacts.

EIS No. 20050330, ERP No. F–AFS–H65023–00, Black-Tailed Prairie Dog Conservation and Management on the Nebraska National Forest and Associated Units, Implementation, Dawes, Sioux Blaine, Cherry, Thomas Counties, NE and Custer, Fall River, Jackson, Pennington, Jones, Lyman, Stanley Counties, SD.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050331, ERP No. F–COE–G39042–TX, PROGRAMMATIC—Lower Colorado River Basin Study, Provide Flood Damage Reduction and Ecosystem Restoration, Colorado River, TX.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050337, ERP No. F–AFS–K65283–CA, Empire Vegetation Management Project, Reducing Fire Hazards, Harvesting of Trees Using Group-Selection (GS) and Individual Trees Selection (ITS) Methods, Mt. Hough Ranger District, Plumas National Forest, Plumas County, CA.

Summary: While EPA has no objection to the proposed action, EPA did request that the ROD include a commitment to mitigate impacts to air quality and implement resource monitoring/adaptive management.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–19047 Filed 9–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6667–6]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*. Weekly receipt of Environmental Impact Statements, filed 09/12/2005, through 09/16/2005, pursuant to 40 CFR 1506.9.

EIS No. 20050379, Final EIS, FHW, CA, California High-Speed Train System, High-Speed Train (HST) System for Intercity Travel, Extend from Sacramento and the San Francisco Bay Area, in the North, through Central Valley, to Los Angeles and San Diego in the South , Orange County, CA, Wait Period Ends: 10/24/2005, Contact: David Valenstein 202–493–6368 This document is available on the Internet at: *http://www.cahighspeedrail.ca.gov.*

EIS No. 20050380, Final EIS, FHW, NC, Fayetteville Outer Loop Corridor Study, Transportation Improvement Program (TIP) Cape Fear River, Cumberland, Hoke and Robeson Counties, NC, Wait Period Ends: 10/24/2005, Contact: John F. Sullivan 919–856–4346.

EIS No. 20050381, Final EIS, AFS, CA, Los Padres National Forest Oil and Gas Leasing Management, Implementation, Kern, Los Angeles, Monterey, Santa Barbara and San Luis Obispo Counties, CA, Wait Period Ends: 10/24/2005, Contact: Al Hess 805–646–4348 Ext. 311.

EIS No. 20050382, Draft EIS, BIA, WI, Menominee Casino-Hotel 223-Acre Fee-to-Trust Transfer and Casino Project, Implementation, Federal Trust, Menominee Indian Tribe of Wisconsin (Tribe), in City of Kenosha and County of Kenosha, WI, Comment Period Ends: 11/21/2005, Contact: Herb Nelson 612–725–4510.

EIS No. 20050383, Draft EIS, AFS, IL, Shawnee National Forest Trails Designation Project, Phase 1, Designation, Construction and Maintenance for Trail System within Four Watershed: Eagle Creek, Big Grand Pierre Creek, Lusk Creek and Upper Bay Creek, Hidden Springs Ranger District, Gallatin, Hardin, Johnson, Pope and Saline Counties, IL, Comment Period Ends: 11/07/2005, Contact: Matthew Lechner 618–253–7114. This document is available on the Internet at: *http://www.fs.fed.us/r9/forests/shawnee/projects/projects/eis/2005/trails/*.

EIS No. 20050384, Final EIS, COE, DC, Washington Aqueduct's Project, Proposed Water Treatment Residuals Management Process, NPDES Permit, Dalecarlia and McMillan Water Treatment Plants, Potomac River, Washington, DC, Wait Period Ends: 10/24/2005 Contact: Thomas P. Jacobus 202–764–0031.

EIS No. 20050385, Draft EIS, COE, VA, Craney Island Eastward Expansion, Construction of a 580-acre Eastward Expansion of the Existing Dredged Material Management Area, Port of Hampton Roads, Norfolk Harbor and Channels, VA , Comment Period Ends: 11/07/2005, Contact: Craig Seltzer 757–201–7390.

EIS No. 20050386, Draft EIS, NOA, AK, Office of Ocean and Coastal Resource Management Approval of Amendments to the State of Alaska's Coastal Management Program, Implementation, Funding, AK, Comment Period Ends: 11/07/2005, Contact: Helen C.P. Bass 301–713–3155 Ext. 175.

EIS No. 20050387, Draft EIS, FHW, TN, Interstate 69 Segment of Independent Utility #8, Construction from TN–385 (Paul Barrett Parkway) in Millington, TN to I–155/US51 in Dyersburg, TN, Funding, Shelby, Tipton, Lauderdale and Dyer Counties, TN, Comment Period Ends: 11/07/2005, Contact: Walter Boyd 615–781–5774.

EIS No. 20050388, Draft EIS, FRC, WA, Lewis River Hydroelectric Projects, Relicensing the Swift No. 1 (FERC No. 2111–018), Swift No. 2 (FERC No. 2213–011), Yale (FERC No. 2071–013), Merwin (FERC No. 935–053) Project, Application for Relicense, North Fork Lewis River, Cowlitz, Clark and Shamania Counties, WA, Comment Period Ends: 11/23/2005, Contact: Jon Cofrancesco 202–502–8951.

EIS No. 20050389, Draft EIS, FHW, CO, US Highway 160, Transportation Improvements from Junction US 160/550 Durango—East to Bayfield, U.S. Army COE Section 404 Permit, La Plata County, CO, Comment Period Ends: 11/07/2005, Contact: Joseph Duran 720–963–3006.

Amended Notices

EIS No. 20050369, Final EIS, FHW, MD, MD–32 Planning Study, Transportation Improvements from MD–108 to Interstate 70, Funding, Howard County, MD, Wait Period Ends: 10/11/2005, Contact: Caryn Brookman 410–962–4440. Revision to FR Notice Published on 9/9/2005. Correction to Comment Due Date from 10/24/05 to 10/11/2005 and to the Title.

Dated: September 20, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–19052 Filed 9–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0249; FRL–7735–1]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review plant-incorporated protectants based on virus coat protein genes: science issues associated with a review of proposed rules.

DATES: The meeting will be held from December 6–7, 2005, from 8:30 a.m. to 5:00 p.m, eastern time.

1. *Comments*: For the deadlines for submission of requests to present oral comments and submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION**.

2. *Nominations*: Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before October 5, 2005.

3. *Special accommodations*: For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 12 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Holiday Inn-National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the Holiday Inn-National Airport is (703) 684–7200.

1. *Comments*: Written comments may be submitted electronically (preferred), or through hand delivery/courier, or by mail. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

2. *Nominations, requests to present oral comments, and special seating*: To submit nominations for ad hoc member of the FIFRA SAP for this meeting, requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. To ensure proper receipt by EPA, your request must identify docket identification (ID) number OPP–2005–0249 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail addresses: *lewis.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). 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 DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0249. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and ad-hoc members for this meeting) and the meeting agenda will be available as soon as possible, but no later than mid November 2005. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets.

Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically (preferred), through hand delivery/courier, or by mail. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0249. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0249. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2. or mail to the address provided in Unit I.C.3. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0249. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail*. Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0249.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2005–0249 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, November 30, 2005, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments presented before the FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP members at the meeting.

2. *Written comments*. Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I.C., no later than noon, eastern time, November 30, 2005, to provide the FIFRA SAP members the time necessary to consider and review the written comments. It is requested that persons submitting comments directly to the docket also notify the DFO listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the extent of written comments for consideration by the FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. For information on access or services for individuals with disabilities, please contact Paul Lewis at (202) 564–8450 or *lewis.paul@epa.gov*). To request accommodation of a disability, please contact Paul Lewis, preferably at least 12 days prior to the meeting, to give EPA as much time as possible to process your request.

4. *Request for nominations to serve as ad hoc members of the FIFRA SAP for this meeting*. As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicit the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: risk assessment of virus-resistant transgenic plants, plant virology, plant virus recombination, gene flow/weed issues, post-transcriptional gene silencing and human/non-target exposure to novel proteins. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before October 5, 2005. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Though financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 12 ad hoc scientists.

If a prospective candidate for service on the FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48 [5–02]) which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality and no prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP.

Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who

have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

The FIFRA SAP will meet to consider and review plant-incorporated protectants based on virus coat protein genes: science issues associated with a review of proposed rules. A plant-incorporated protectant (PIP) is a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. The term includes both active and inert ingredients. PIPs are regulated as pesticides by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) because they meet the FIFRA definition of a pesticide, being intended for preventing, destroying, repelling, or mitigating a pest. Residues of PVCP-PIPs in or on food are also subject to FFDCA section 408 because PIPs meet the FFDCA definition of a pesticide chemical.

PIPs may occur naturally or be introduced into plants by conventional breeding or genetic engineering. PVCP-PIPs are PIPs in which inserted genetic material is derived from a plant virus sequence that encodes a plant virus coat protein. Plant virus coat proteins encapsidate the viral nucleic acid and are known to have a role in nearly every stage of viral infection including replication, movement throughout an infected plant, and transport from plant to plant. Incorporation of plant virus coat protein gene sequences into plant genomes has been found to confer resistance to the virus from which it was derived and often to related viruses.

EPA is seeking the assistance of the FIFRA SAP in evaluating several issues associated with the review of proposed rules that would exempt certain PVCP-PIPs from regulation under FFDCA and/or FIFRA. These issues include the potential human health effects from exposure to residues of PVCP-PIPs, the potential for non-target impacts, and the potential environmental consequences associated with gene flow and recombination.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 19, 2005.

Clifford J. Gabriel,

Director, Office of Science Coordination and Policy.

[FR Doc. 05–19129 Filed 9–22–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0348; FRL–7733–5]

Malathion; Revised Risk Assessments, Notice of Availability, and Solicitation of Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's revised human health risk assessment and as well as the start of a 60-day comment period ecological risk assessment for the organophosphate pesticide malathion. A revised human health assessment on malathion was conducted to incorporate toxicity data which EPA received after 2000. Since no additional ecological data on malathion has been received after 2000, EPA's ecological risk characterization has remained unchanged. This notice also solicits information or data from stakeholders and interested parties to help refine the malathion risk assessment, and encourages parties to suggest risk management ideas or proposals to address the potential risks which have been identified. EPA is developing an Interim Reregistration Eligibility Decision (IRED) for malathion through the full, 6-Phase public participation process, which in this case includes reissuing the revised risk assessment for an additional Phase 5 public comment period. The Agency uses this process to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before November 22, 2005.

ADDRESSES: Comments, identified by identificaiton (ID) number OPP–2004–0348, may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Tom Moriarty, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5035; fax number: (703) 308–8005; *e-mail address: moriarty.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0348. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday,

excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0348. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0348. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0348.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0348. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register**citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is making available the Agency's revised human health risk assessment, and ecological risk assessment on malathion. Previously completed risk assessments were issued for public comment through a **Federal Register** notice published on December 12, 2000 (65 FR 77624) (FRL–6756–7), along with EPA's response to comments; and related documents for malathion. EPA has updated its human health risk assessment since 2000 by incorporating data received since that time. However, since no additional ecological data regarding malathion has been received since 2000, the ecological risk assessment currently being made available is the same assessment completed in 2000. EPA developed the risk assessments for malathion as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Malathion is characterized as a non-systemic, broad spectrum organophosphate pesticide with numerous commercial agricultural uses, residential uses and, as well as several wide area uses. Malathion's wide area applications include use as a public health mosquitocide, use to control fruit flies, and use in eradication programs such as the U.S. Department of Argriculture's Boll Weevil Eradication Program. Malathion is also formulated into a pharmaceutical product (Ovide® Lotion) which is approved by the Food and Drug Administration for the control of head lice and their ova.

EPA's revised human health risk assessment has identified potential risks of concern from various uses of malathion, some of which are derived mainly from potential exposure to malathion's oxygen metabolite, malaoxon. Concerns include potential exposure to malaoxon through drinking water, and from drift as a result of wide area applications. The Agency also has potential risk concerns for adults and children who may be exposed to malathion *per se* from the home fogger use of malathion. EPA has also included an analysis of the pharmaceutical use of malathion. The analysis of the pharmaceutical use presents the proposed safety findings on malathion as a pharmaceutical and a pesticide product from the joint perspective of both the Food and Drug Administration and EPA.

The Agency is interested in receiving information which would help refine the identified risks, and information on effective and practical measures to mitigate potential risk. Information or data that could refine uncertainties, or risk estimates that exceed the Agency's level of concern are of particular concern to the Agency. Because EPA notes that estimated dietary risks differ significantly between calculations made with maximum and typical application parameters, the Agency is interested in information on typical use patterns (rates, number of applications, or application intervals) for commercial agricultural crops. EPA notes that in conducting its occupational assessment, exposure data were unavailable for two specific application scenarios, (1) power dusters, and (2) plant dipping scenarios, and is requesting additional information on either of these application scenarios. In addition, information is requested on the feasibility of the levels of protection assessed for pesticide handlers, and the maximum restricted entry intervals being evaluated, as well as the type of post-application activities which need to be performed for the scenarios assessed. With respect to the estimated risk from wide area treatments, EPA notes that additional data on the transformation of malathion to malaoxon could potentially refine this portion of the malathion risk assessment. Additional toxicity data on malaoxon may also be a help to EPA. EPA is also interested in information on typical storage conditions, or information on malathion's product life cycle, such as how long a product is typically stored before it is used.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–6756–7), explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. As mentioned earlier, a revised risk assessment on malathion was previously published in 2000 during Phase 5 of the 6–Phase process. However, due to new data and revised risk characterization, EPA is reissuing its current revised risk assessment during a second Phase 5 public comment period.

All comments should be submitted using the methods in Unit I. and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for malathion. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

After considering comments received, EPA will develop and issue the Malathion IRED. The decisions presented in this IRED may be supplemented by further risk mitigation measures when EPA considers its cumulative assessment of the organophosphate pesticides.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data

concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 14, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–18705 Filed 9–22–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0013; FRL–7696–1]

Pesticide Reregistration Performance Measures and Goals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's progress in meeting its performance measures and goals for pesticide reregistration during fiscal year 2004. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires EPA to publish information about EPA's annual achievements in this area. This notice discusses the integration of tolerance reassessment with the reregistration process, and describes the status of various regulatory activities associated with reregistration and tolerance reassessment. The notice gives total numbers of chemicals and products reregistered, tolerances reassessed, Data Call-Ins issued, and products registered under the ''fast-track'' provisions of FIFRA. Finally, this notice contains the schedule for completion of activities for specific chemicals during fiscal years 2005 through 2008.

DATES: This notice is not subject to a formal comment period. Nevertheless, EPA welcomes input from stakeholders and the general public. Written comments, identified by the docket ID number [OPP–2005–0013], should be received on or before November 22, 2005.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Carol P. Stangel, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (703) 308–8007; e-mail:*stangel.carol@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who are interested in the progress and status of EPA's pesticide reregistration and tolerance reassessment programs, 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 information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0013. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, CrystalMall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in 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. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's

electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0013. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2005–0013. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP– 2005–0013.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall#2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0013. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

EPA must establish and publish in the **Federal Register** its annual performance measures and goals for pesticide reregistration, tolerance reassessment, and expedited registration, under section 4(l) of FIFRA, as amended by the Food Quality Protection Act of 1996 (FQPA). Specifically, such measures and goals are to include:

- The status of reregistration.
- The number of products reregistered, canceled, or amended.
- The number and type of data requests or Data Call-In (DCI) notices under section 3(c)(2)(B) issued to support product reregistration by active ingredient.
- Progress in reducing the number of unreviewed, required reregistration studies.
- The aggregate status of tolerances reassessed.
- The number of applications for registration submitted under subsection (k)(3), expedited processing and review of similar applications, that were approved or disapproved.
- The future schedule for reregistrations in the current and succeeding fiscal year.
- The projected year of completion of the reregistrations under section 4.

FIFRA, as amended in 1988, authorizes EPA to conduct a comprehensive pesticide reregistration program--a complete review of the

human health and environmental effects of older pesticides originally registered before November 1, 1984. Pesticides meeting today's scientific and regulatory standards may be declared ''eligible'' for reregistration. To be eligible, an older pesticide must have a substantially complete data base, and must not cause unreasonable adverse effects to human health or the environment when used according to Agency approved label directions and precautions.

In addition, all pesticides with food uses must meet the safety standard of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) of 1996. Under FFDCA, EPA must make a determination that pesticide residues remaining in or on food are ''safe''; that is, ''that there is reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue'' from dietary and other sources. In determining allowable levels of pesticide residues in food, EPA must perform a more comprehensive assessment of each pesticide's risks, considering:

- Aggregate exposure (from food, drinking water, and residential uses).
- Cumulative effects from all pesticides sharing a common mechanism of toxicity.
- Possible increased susceptibility of infants and children; and
- Possible endocrine or estrogenic effects.

As amended by FQPA, FFDCA requires the reassessment of all existing tolerances (pesticide residue limits in food) and tolerance exemptions within 10 years, to ensure that they meet the safety standard of the law. EPA was directed to give priority to the review of those pesticides that appear to pose the greatest risk to public health, and to reassess 33% of the 9,721 existing tolerances and exemptions within 3 years (by August 3, 1999), 66% within 6 years (by August 3, 2002), and 100% in 10 years (by August 3, 2006).The Agency met the first two statutory deadlines and is on schedule to meet the third. EPA's approach to tolerance reassessment under FFDCA is described fully in the Agency's document, ''Raw and Processed Food Schedule for Pesticide Tolerance Reassessment'' (62 FR 42020, August 4, 1997) (FRL–5734–6).

The Pesticide Registration Improvement Act (PRIA) of 2003 became effective on March 23, 2004. Among other things, PRIA directs EPA to complete Reregistration Eligibility Decisions (REDs) for pesticides with food uses/tolerances by August 3, 2006, and to complete all non-food use pesticide REDs by October 3, 2008. EPA's schedule for meeting these deadlines are available on the Agency's website at*www.epa.gov/pesticides/reregistration/candidates.htm.*

III. FQPA and Program Accountability

One of the hallmarks of the FQPA amendments to the FFDCA is enhanced accountability. Through this summary of performance measures and goals for pesticide reregistration, tolerance reassessment, and expedited registration, EPA describes progress made during the past year in each of the program areas included in FIFRA section 4(l).

A. Status of Reregistration

During fiscal year (FY) 2004 (from October 1, 2003, through September 30, 2004), EPA made significant progress in completing risk assessments and risk management decisions for pesticide reregistration (See Table 1).

TABLE 1.—REREGISTRATION/RISK MANAGEMENT DECISIONS COMPLETED: IN FY 2004 AND FY 1991 THROUGH FY 2004

FY 2004 Decisions	Total, FY 1991 through FY 2004
17 REDs Benfluralin Carboxin Cycloate Dihalodialkylhydantoins Ethoxyquin MCPA Methoxychlor (Voluntary Cancellation) Naphthalene Acetic Acid Naptalam Oleic Acid Sulfonates Phenol and Salts PHMB or Poly(hexamethylenebiguanide) Pine Oil Propylene Glycol and Dipropylene Glycol Sabadilla Alkaloids Thiram Zinc Pyrithione (Omadine Salts)	244 REDs
0 IREDs	23 IREDs

TABLE 1.—REREGISTRATION/RISK MANAGEMENT DECISIONS COMPLETED: IN FY 2004 AND FY 1991 THROUGH FY 2004—Continued

FY 2004 Decisions	Total, FY 1991 through FY 2004
18 TREDs Bacillus thuringiensis var. Kurstaki (delta endotoxin) Bacillus thuringiensis var. San Diego Carbon dioxide Chlorimuron ethyl DCPA (Dacthal) Desmedipham Dimethenamid Flumetsulam Fluridone Limonene Nitrogen Oil of Lemon Oil of Menthol Oil of Orange Oryzalin Thifensulfuron-methyl Tribenuron methyl Trifluralin	63 TREDs

The Agency's decisions are embodied in Reregistration Eligibility Decision (RED) documents, Interim Reregistration Eligibility Decisions (IREDs), and Reports on FQPA Tolerance Reassessment Progress and [Interim] Risk Management Decisions (TREDs).

1. *REDs.* Through the reregistration program, EPA is reviewing current scientific data for older pesticides (those initially registered before November 1984), reassessing their effects on human health and the environment, and requiring risk mitigation measures as necessary. Pesticides that have sufficient supporting data and whose risks can be successfully mitigated may be declared ''eligible'' for reregistration. EPA presents these pesticide findings in a RED document.

i. *Overall RED progress.* EPA's overall progress at the end of FY 2004 in completing Reregistration Eligibility Decisions (REDs) for groups of related pesticide active ingredients or cases is summarized in Table 2.

TABLE 2.—OVERALL RED PROGRESS, FY 1991 THROUGH FY 2004

REDs completed	244 (40%)
Cases canceled	231 (38%)
REDs to be completed	137 (22%)
Total reregistration cases	612 (100%)

ii. *Profile of completed REDs.* A profile of the 244 REDs completed by the end of FY 2004 is presented in Table 3.

TABLE 3.—PROFILE OF 244 REDS COMPLETED, FY 1991 THROUGH FY 2004

Pesticide active ingredients	357
Pesticide products	about 10,400
REDs with food uses	128
Post-FQPA REDs	103
Post-FQPA REDs with food uses*	75

*EPA is revisiting tolerances associated with the 53 food use REDs that were completed before FQPA was enacted to ensure that they meet the safety standard of the new law, as set forth in the Agency's August 4, 1997, Schedule for Pesticide Tolerance Reassessment.

iii. *Risk reduction in REDs.* Through the reregistration program, EPA seeks to reduce risks associated with the use of older pesticides. In developing REDs, EPA works with stakeholders including pesticide registrants, growers and other pesticide users, and environmental and public health interests, as well as the States, USDA, and other Federal agencies and others to develop measures to effectively reduce risks of concern. Almost every RED includes some measures or modifications to reduce risks. The options for such risk reduction are extensive and include voluntary cancellation of pesticide products or deletion of uses; declaring certain uses ineligible or not yet eligible (and then proceeding with follow-up action to cancel the uses or require additional supporting data); restricting use of products to certified applicators; limiting the amount or frequency of use; improving use directions and precautions; adding more protective clothing and equipment requirements; requiring special packaging or engineering controls; requiring no-treatment buffer zones; employing ground water, surface water, or other environmental and ecological safeguards; and other measures.

2. *Interim REDs or IREDs.* EPA issues IREDs for pesticides that are undergoing reregistration, require a reregistration eligibility decision, and also must be included in a cumulative assessment under FQPA because they are part of a group of pesticides that share a common mechanism of toxicity. An IRED is issued for each individual pesticide in the cumulative group when EPA completes the pesticide's risk assessment and interim risk management decision. An IRED may include measures to reduce food, drinking water, residential, occupational, and/or ecological risks, to gain the benefit of these changes before the final RED can be issued following the Agency's consideration of cumulative risks. For example, EPA generally has not considered individual organophosphate (OP) pesticide decisions to be completed REDs or tolerance reassessments. Instead, the Agency is issuing IREDs for these chemicals at this time. EPA will complete the risk assessments and reregistration eligibility decisions for OP pesticides with IREDs, once the Agency completes a cumulative assessment of the OPs.

3. *Tolerance reassessment ''TREDs.''* EPA issues Reports on FFDCA Tolerance Reassessment Progress and [Interim] Risk Management Decisions,

known as TREDs, for pesticides that require tolerance reassessment decisions under FFDCA, but do not require a reregistration eligibility decision at present because:

- The pesticide was first registered after November 1, 1984, and is considered a ''new'' active ingredient, not subject to reregistration;
- EPA completed a RED for the pesticide before FQPA was enacted; or
- The pesticide is not registered for use in the U.S. but tolerances are established that allow crops treated with the pesticide to be imported from other countries.

As with IREDs, EPA will not complete risk assessment and risk management for pesticides subject to TREDs that are part of a cumulative group until cumulative risks have been considered for the group.

During FY 2004, in addition to completing 18 TREDs, EPA also completed 27 tolerance assessment decisions for pesticide inert ingredients that are exempted from the tolerance requirement. Almost 900 of the 9,721 tolerance reassessment decisions required by the amended FFDCA are for such inert ingredient tolerance exemptions. EPA has reassessed 404 of these inert ingredient tolerance exemptions to date, and plans to complete the reassessment of all the inert ingredient tolerance exemptions by August 2006.

As a result of the Food Quality Protection Act of 1996, food-contact surface sanitizers previously regulated by both EPA and the Food and Drug Administration were transferred to EPA's sole jurisdiction. Consequently, the approximately 107 ingredients that made up these sanitizer solutions in 21 CFR 178.1010 were transferred to 40 CFR part 180, subpart D. In addition to reassessing the 9,721 tolerances and exemptions for food and feed commodities, EPA also must reassess these sanitizer tolerance exemptions by August 3, 2006. The Antimicrobials Division (AD) in EPA's Office of Pesticide Programs is responsible for reassessing exemptions from the requirement of a tolerance for the food-contact surface sanitizing solutions requiring reassessment. AD is reassessing 60 of the 107 exemptions, either as free-standing decisions or through REDs. During FY 2004, AD completed tolerance exemption reassessments for 14 of these 60 food-contact surface sanitizing solution ingredients. EPA is reassessing tolerance exemptions for the other food-contact surface sanitizing solutions through other REDs and inert exemption decisions.

4. *Goals for FY 2005 and future years.* EPA's major pesticide reregistration and tolerance reassessment goals for FY 2005 and future years are as follows.

i. *Complete individual pesticide risk management decisions.* EPA's goal in conducting the reregistration and tolerance reassessment program is to complete 30–40 Reregistration Eligibility Decisions (REDs) and Interim REDs each year during fiscal years 2005 and 2006, for pesticides with associated tolerances, and to complete a total of 40 REDs in FY 2007 and in FY 2008 for pesticides with no food uses or tolerances. This will satisfy PRIA requirements and support the Agency's tolerance reassessment goal. EPA's schedule for completing these decisions appears near the end of this document, and also is available on the Agency's website at *http://www.epa.gov/pesticides/reregistration/candidates.htm.*

ii. *Complete 100% of tolerance reassessment decisions.* EPA is continuing to reassess tolerances within time frames set forth in FFDCA as amended by FQPA, giving priority to those food use pesticides that appear to pose the greatest risk. Integration of the reregistration and tolerance reassessment programs has added complexity to the reregistration process for food use pesticides. The Agency successfully reached its first two tolerance reassessment milestones by completing over 33% of all tolerance reassessment decisions by August 3, 1999, and over 66% by August 3, 2002. EPA plans to meet the final FQPA tolerance reassessment goal: To complete 100% of all required tolerance reassessment decisions by August 3, 2006.

iii. *Evaluate cumulative risks.* Once EPA completes individual risk assessments for the OPs, carbamates and others, the Agency will make cumulative risk findings for each of these common mechanism groups of pesticides. For further information, see EPA's cumulative risk website, *http://www.epa.gov/pesticides/cumulative/.*

B. Product Reregistration; Numbers of Products Reregistered, Canceled, and Amended

At the end of the reregistration process, after EPA has issued a RED and declared a pesticide reregistration case eligible for reregistration, individual end-use products that contain pesticide active ingredients included in the case still must be reregistered. This concluding part of the reregistration process is called ''product reregistration.''

In issuing a completed RED document, EPA sends registrants a Data Call-In (DCI) notice requesting any product-specific data and specific revised labeling needed to complete reregistration for each of the individual pesticide products covered by the RED. Based on the results of EPA's review of these data and labeling, products found to meet FIFRA and FFDCA standards may be reregistered.

A variety of outcomes are possible for pesticide products completing this final phase of the reregistration process. Ideally, in response to the DCI notice accompanying the RED document, the pesticide producer, or registrant, will submit the required product-specific data and revised labeling, which EPA will review and find acceptable. At that point, the Agency may reregister the pesticide product. If, however, the product contains multiple active ingredients, the Agency instead issues an amendment to the product's registration, incorporating the labeling changes specified in the RED; a product with multiple active ingredients may not be fully reregistered until the last active ingredient in its formulation is eligible for reregistration. In other situations, the Agency may temporarily suspend a product's registration if the registrant has not submitted required product-specific studies within the time frame specified. The Agency may cancel a product's registration because the registrant did not pay the required registration maintenance fee. Alternatively, the registrant may request a voluntary cancellation of their end-use product registration.

1. *Product reregistration actions in FY 2004.* EPA counts each of the post-RED product outcomes described above as a product reregistration action. A single pesticide product may be the subject of several product reregistration actions within the same year. For example, a product's registration initially may be amended, then the product may be reregistered, and later the product may be voluntarily canceled, all within the same year. During FY 2004, EPA completed the product reregistration actions detailed in Table 4.

TABLE 4.—PRODUCT REREGISTRATION ACTIONS COMPLETED DURING FY 2004

Product reregistration actions	78
Product amendment actions	35
Product cancellation actions	14
Product suspension actions	0
Total actions	127

2. *Status of the product reregistration universe*. The status of the universe of pesticide products subject to reregistration at the end of FY 2004 is shown in Table 5 below. This overall status information is not ''cumulative''--it is not derived from summing up a series of annual actions. Adding annual actions would result in a larger overall number since each individual product is subject to multipleactions--it can be amended, reregistered, and/or canceled, over time. Instead, the ''big picture'' status information in Table 5 should be considered a snapshot in time. As registrants and EPA make marketing and regulatory decisions in the future, the status of individual products may change, and numbers in this table are expected to fluctuate.

TABLE 5.—STATUS OF THE UNIVERSE OF PRODUCTS SUBJECT TO PRODUCT REREGISTRATION, FOR FY 2004 (AS OF SEPTEMBER 30, 2004)

Products reregistered	1,770
Products amended	427
Products canceled	4,033
Products sent for suspension	30
Total products with actions completed	6,260
Products with actions pending	4,143
Total products in product reregistration universe	10,403

The universe of 10,403 products in product reregistration at the end of FY 2004 represented an increase of 747 products from the FY 2003 universe of 9,656 products. The increase consists of 713 products associated with FY 2004 REDs, and 34 products that were added as a result of DCI activities and processing for several previously issued REDs and IREDs.

At the end of FY 2004, 4,143 products had product reregistration decisions pending. Some pending products await science reviews, label reviews, or reregistration decisions by EPA. Others are not yet ready for product reregistration actions; they are associated with more recently completed REDs, and their product-specific data are not yet due to be submitted to or reviewed by the Agency. EPA's goal is to complete 450 product reregistration actions during fiscal year 2005.

C. Number and Type of DCIs to Support Product Reregistration by Active Ingredient

1. *DCIs for REDs*. The number and type of Data Call-In requests or DCIs that EPA is preparing to issue under FIFRA section 3(c)(2)(B) to support product reregistration for pesticide active ingredients included in FY 2004 REDs are shown in Table 6.

TABLE 6.—DCIS PREPARED TO SUPPORT PRODUCT REREGISTRATION FOR FY 2004 REDS

Case Name	Case Number	Number of Products Covered by the RED[1]	Number of Product Chemistry Studies Required[2]	Number of Acute Toxicology Studies Required[3]	Number of Efficacy Studies Required
Benfluralin	2030	119	31	138 (15 batches/ 8 products not batched)	0
Carboxin	0012	44	31	186 (2 batches/ 29 products not batched)	0
Cycloate	2125	9	31	6 (1 Batch)	0
Dihalodialkyldantoins	3955	106	34	Antimicrobial RED - Acute toxicity batching not completed yet.	2
Ethoxyquin	0003	4	31	18 (No batch)	0
MCPA	0017	170	31	Acute toxicity batching not completed yet	0
Methoxychlor (Voluntary Cancellation)	0249	2	NA	NA	NA
Napthalene acetic acid (NAA)	0379	46	31	Acute toxicity batching not completed yet.	0
Naptalam	0183	1	31	6 (No Batch)	0
Oleic acid sulfonates	4069	1	34	6 (No Batch)	1
Phenol and salts	4074	6	34	Antimicrobial RED - Acute toxicity batching not completed yet.	5

TABLE 6.—DCIS PREPARED TO SUPPORT PRODUCT REREGISTRATION FOR FY 2004 REDS—Continued

Case Name	Case Number	Number of Products Covered by the RED[1]	Number of Product Chemistry Studies Required[2]	Number of Acute Toxicology Studies Required[3]	Number of Efficacy Studies Required
PHMB	3122	17	34	42 (3 batches/4 products not batched)	4
Pine oils	3113	89	34	Antimicrobial RED - Acute toxicity batching not completed yet.	4
Propylene/Dipropylene glycol	3126	14	34	Antimicrobial RED - Acute toxicity batching not completed yet.	5
Sabadilla alkaloids	3128	1	31	6 (No Batch)	0
Thiram	0122	66	31	Acute toxicity batching not completed yet.	0
Zinc pyrithione	2480	18	34	84 (3 batches/11 products not batched)	0
Total No. of Products	713				

[1] The number of registered products containing a pesticide active ingredient can change over time. The product total that appears in the RED document (counted when the RED is signed) may be different than the number of products that EPA is tracking for product reregistration (counted later, when the RED is issued). This table reflects the final number of products associated with each RED, as they are being tracked for product reregistration.

[2] This column shows the number of product chemistry studies that are required for each product covered by the RED.

[3] In an effort to reduce the time, resources, and number of animals needed to fulfill acute toxicity data requirements, EPA ''batches'' products that can be considered similar from an acute toxicity standpoint. For example, one batch could contain five products. In this instance, if six acute toxicology studies usually were required per product, only six studies (rather than 30 studies) would be required for the entire batch. Factors considered in the sorting process include each product's active and inert ingredients (e.g., identity, percent composition, and biological activity), type of formulation (e.g., emulsifiable concentrate, aerosol, wettable powder, granular), and labeling (e.g., signal word, use classification, precautionary labeling). The Agency does not describe batched products as ''substantially similar,'' because all products within a batch may not be considered chemically similar or have identical use patterns.(Note: FIFRA section 24(c) or Special Local Need (SLN) registrations are not included in the acute toxicity batchings because they are supported by a valid parent product (section 3) registration.)

2. *DCIs for IREDs.* EPA completed no IREDs during FY 2004.

3. *DCIs not needed for TREDs.* The Agency does not issue product-specific data requests or DCIs for pesticides included in tolerance reassessment decisions or TREDs because, at present, these pesticides do not require product reregistration decisions; they are subject to tolerance reassessment only.

D. Progress in Reducing the Number of Unreviewed, Required Reregistration Studies

EPA has made making progress in reviewing scientific studies submitted by pesticide registrants in support of pesticides undergoing reregistration (See Table 7). The percent of studies reviewed by EPA remained constant in FY 2004.

TABLE 7.—REVIEW STATUS OF STUDIES SUBMITTED FOR PESTICIDE REREGISTRATION, END OF FY 2004

Pesticide Reregistration List, per FIFRA Section 4(c)(2)	Studies Reviewed + Extraneous [1]	Studies Awaiting Review	Total Studies Received
List A	11,220 + 583 = 11,803 (87%)	1,786 (13%)	13,589
List B	6,520 + 1,032 = 7,552 (81%)	1,748 (19%)	9,300
List C	2,087 + 334 = 2,421 (84%)	464 (16%)	2,885
List D	1,233 + 133 = 1,366 (86%)	229 (14%)	1,595
Total Lists A - D	21,060 + 2,082 = 23,142 (84.6%)	4,227 (15.4%)	27,369 (100%)

[1] Extraneous studies is a term used to classify those studies that are not needed because the guideline or data requirement has been satisfied by other studies or has changed.

E. Aggregate Status of Tolerances Reassessed

During FY 2004, EPA completed 467 tolerance reassessments and ended the fiscal year with a total of 7,093 tolerance reassessment decisions to date, addressing 73% of the 9,721 tolerances that require reassessment (See Table 8).

EPA reassessed over 33% of all food tolerances by August 3, 1999, and completed over 66% of all required tolerance reassessment decisions by August 3, 2002, meeting two important statutory deadlines established by the FQPA. EPA's general schedule for tolerance reassessment (62 FR 42020, August 4, 1997) identified three groups of pesticides to be reviewed; this grouping continues to reflect the Agency's overall scheduling priorities. In completing tolerance reassessment, EPA continues to give priority to pesticides in Group 1, the Agency's highest priority group for reassessment.

1. *Aggregate accomplishments through reregistration and other programs.* EPA is accomplishing tolerance reassessment through the registration and reregistration programs; by revoking tolerances for pesticides that have been canceled (many as a result of reregistration); by reevaluating pesticides with pre-FQPA REDs, and through other decisions not directly related to registration or reregistration, described further below. EPA is using the Tolerance Reassessment Tracking System (TORTS) to compile this updated information and report on the status of tolerance reassessment (See Table 8).

TABLE 8.—TOLERANCE REASSESSMENTS COMPLETED POST-FQPA BY FISCAL YEAR, THROUGH FY 2004*

Tolerances Reassessed Through...	During Late FY 96	During FY 1997	During FY 1998	During FY 1999	During FY 2000	During FY 2001	During FY 2002	During FY 2003	During FY 2004	Total, End of FY 2004
Reregistration/ REDs	25	339	277	359	44	46	231	79	87	1,487
Tolerance Reassessments/ TREDs	0	0	0	0	0	0	776	14	119	909
Registration	0	224	308	340	55	216	200	0	71	1,414
Tolerance revocations	3	0	810	513	22	35	545	0	172	2,100
Other decisions	0	1	0	233	0	0	905	26	18	1,183
Total tolerances reassessed	28	564	1,395	1,445	121	297	2,657	119	467	7,093

*Includes corrected counts for some previous years.

i. *Reregistration/REDs.* EPA is using the reregistration program to accomplish much of tolerance reassessment. For each of the tolerance reassessment decisions made through REDs since enactment of the FQPA, the Agency has made the finding as to whether there is a reasonable certainty of no harm, as required by FFDCA. Many tolerances reassessed through reregistration remain the same while others may be raised, lowered, or revoked.

ii. *Tolerance reassessments/TREDs.* Tolerances initially evaluated through REDs that were completed before FQPA was enacted in August 1996 now are being reassessed to ensure that they meet the new FFDCA safety standard. EPA issues these post-RED tolerance reassessment decisions as TREDs. The Agency also issues TREDs summarizing tolerance reassessment decisions for some developing REDs, for new pesticide active ingredients not subject to reregistration, and for pesticides with import tolerances only. Tolerance reassessments for pesticides that are not part of a cumulative group may be counted at present and are included in the FY 2004 accomplishments. Tolerance reassessments for pesticides that are part of a cumulative group are not included in the Agency's lists of accomplishments. These tolerances will be considered again and their reassessment will be completed after EPA completes a cumulative risk evaluation for the group.

iii. *Registration.* Like older pesticides, all new pesticide registrations must meet the safety standard of FFDCA. Many of the registration applications EPA receives are for new uses of pesticides already registered for other uses. To reach a decision on a proposed new food use of an already registered pesticide, EPA must reassess the aggregate risk of the the existing tolerances, as well as the proposed new tolerances, to make sure there is reasonable certainty that no harm will result to the public from aggregate exposure from all uses.

iv. *Tolerance revocations.* Revoked tolerances represent uses of many different pesticide active ingredients that have been canceled in the past. Some pesticides were canceled due to the Agency's risk concerns. Others were canceled voluntarily by their manufacturers, based on lack of support for reregistration. Tolerance revocations are important even if there are no domestic uses of a pesticide because residues in or on imported commodities treated with the chemical could still present dietary risks that may exceed the FFDCA ''reasonable certainty of no harm'' standard, either individually or cumulatively with other substances that share a common mechanism of toxicity.

v. *Other reassessment decisions.* In addition to the types of reassessment actions described above, a total of 1,182 additional tolerance reassessment decisions have been made, some for inert ingredient tolerance exemptions, through actions not directly related to registration or reregistration. A list of these other tolerance reassessment decisions with their **Federal Register** citations is available in the docket for this **Federal Register** notice. Other support documents are available in docket ID number OPP–2002–0162.

2. *Accomplishments for priority pesticides.* During FY 2004, EPA completed tolerance reassessment decisions for many high priority pesticides in review, including OPs, carbamates, organochlorines, and carcinogens (See Table 9).

TABLE 9.—TOLERANCE REASSESSMENTS COMPLETED FOR PRIORITY PESTICIDES

Pesticide Class	Tolerances to be Reassessed	Reassessed by End of FY 2004
Carbamates	545	309 (56.7%)
Carcinogens	2,008	1,425 (70.97%)
High hazard inerts	5	5 (100%)
Organochlorines	253	253 (100%)
Organophosphates (OPs)	1,691	1,131 (66.88%)
Other	5,219	3,970 (76.07%)
Total	9,721	7,093 (72.97%)

3. *Tolerance reassessment and the organophosphates.* EPA developed an approach for assessing cumulative risk for the OP pesticides as a group, as required by FFDCA, and applied this methodology in conducting an OP cumulative risk assessment. The Agency issued preliminary and revised OP cumulative risk assessment documents in December 2001 and June 2002, available on EPA's website at *http://www.epa.gov/pesticides/cumulative.*

Through this assessment of the OP pesticides, EPA has evaluated several hundred OP tolerances and found that most require no modification to meet the new FFDCA safety standard. The Agency's regulatory actions on individual OP pesticides during the past few years have substantially reduced the risks of these pesticides. EPA plans to complete IREDs for the three remaining individual OP pesticides (DDVP, dimethoate, and malathion) in FY 2006.

Most of the reregistration and tolerance reassessment decisions that EPA has made for the OP pesticides will not be considered complete until after the Agency concludes its cumulative evaluation of the OPs. The results of individual OP assessments (IRED and TRED documents) include significant risk mitigation measures, however, and any resulting tolerance revocations are counted as completed tolerance reassessments. In addition, some OP tolerances that make at most a minimal or negligible contribution to the cumulative risk from OP pesticides were counted as reassessed during FY 2002. Once EPA completes a cumulative evaluation of the OPs, the Agency will reconsider individual OP IREDs and TREDs, and complete reregistration eligibility and tolerance reassessment decisions for these pesticides.

F. Applications for Registration Requiring Expedited Processing; Numbers Approved and Disapproved

By law, EPA must expedite its processing of certain types of applications for pesticide product registration, i.e., applications for end use products that would be identical or substantially similar to a currently registered product; amendments to current product registrations that do not require review of scientific data; and products for public health pesticide uses. During FY 2004, EPA considered and approved the numbers of applications for registration requiring expedited processing (also known as ''fast track'' applications) shown in Table 10.

TABLE 10.—FAST TRACK APPLICATIONS APPROVED IN FY 2004

Me-too product registrations/Fast track	328
Amendments/Fast track	4,379
Total applications processed by fast track means	4,707

For those applications not approved, the Agency generally notifies the registrant of any deficiencies in the application that need to be corrected or addressed before the application can be approved. Applications may have been withdrawn after discussions with the Agency, but none were formally ''disapproved'' during FY 2004.

On a financial accounting basis, EPA devoted over 32.7 full-time equivalents (FTEs) in FY 2004 to reviewing and processing applications for fast track me-too product registrations and label amendments. The Agency spent approximately $3.6 million in FY 2004 in direct costs (i.e., time on task, not including administrative expenses, computer systems, management overhead, and other indirect costs) on expedited processing and reviews.

G. Future Schedule for Reregistrations

EPA plans to complete tolerance reassessment by August 3, 2006, as required by FFDCA, and also to complete reregistration eligibility decisions for pesticides with food uses by that date. REDs for pesticides that have no food uses or tolerances will be completed by October 3, 2008. The Agency's schedule for completing these decisions is as follows. This schedule also is available on EPA's website at *http://www.epa.gov/pesticides/reregistration/candidates.htm.*

1. *RED, IRED, and TRED Schedules for FY 2005 and FY 2006.* Lists 1 and 2 contain pesticides scheduled for Reregistration Eligibility Decisions (REDs), Interim REDs (IREDs), and Reports on FQPA Tolerance Reassessment Progress and Risk Management Decisions (TREDs) in FY 2005 and FY 2006. Although these lists may change due to the dynamic nature of the review process, EPA is committed to meeting the reregistration and tolerance reassessment deadlines. Any pesticides for which decisions are not completed during the current fiscal year will be rescheduled for decisions the following year.

List 1.—FY 2005 RED, IRED, and TRED Schedule

REDs

2,4-D

2,4-DB
Ametryn
4-t-Amylphenol
Aquashade
Aromatic solvents
Azadioxabicyclo-octane
Benzisothiazoline-3-one
Chloroneb
Chlorsulfuron
Dimethipin
Endothall
Ethofumesate
Ferbam (Dimethyldithiocarbamate salts; case has completed RED)
Fluometuron
Inorganic polysulfides
Inorganic sulfites
Iodine
Mancozeb
Maneb
Metiram
Napropamide
Nitrapyrin
PCNB
Phenmedipham
Phytophtora palmivora
Pyrazon
Trichloromelamine

IREDs

None

TREDs

Bromine
Cyhexatin
Fluazifop-p-butyl
Flumiclorac-pentyl
Imazamethabenz methyl
Imazaquin
Maleic hydrazide
Methyl eugenol
Nicosulfuron
Procymidone
Putrescent whole egg solids
Sulfuric acid monourea

List 2.—FY 2006 RED, IRED, and TRED Schedule

REDs

ADBAC
Aliphatic alkyl quarternaries
Aliphatic solvents
Alkylbenzene sulfonates
Aromatic solvents
Cacodylic acid
Chlorine dioxide
Chloropicrin
Chromated arsenicals (CCA)
Coal tar/creosote
Copper and oxides
Copper compounds
Copper sulfate
Cypermethrin
Dicamba
Dichloran (DCNA)
Dodine
Ethylene oxide
Fluvalinate
Formaldehyde
Glutaraldehyde
Imazapyr
Inorganic chlorates
MCPB
Metaldehyde
Methanearsonic acid, salts (DSMA, MSMA, CAMA)
Methyl bromide
Methyldithiocarbamate salts (Metam sodium/metam potassium)
MGK-264
MITC
Pentachlorophenol
Permethrin
2-Phenylphenol and salts
Piperonyl butoxide
Propiconazole
Propylene oxide
Pyrethrins
Resmethrin
Rotenone
Salicylic acid
Sethoxydim
TCMB
Thiadiazuron
Triadimefon

IREDs

Aldicarb
Carbofuran
Dichlorvos (DDVP)
Dimethoate
Formetanate
Malathion
Simazine

TREDs

Acetochlor
Amitraz
Ammonia
Azadirachtin
Benzaldehyde
Bitertanol
Boric acid group
Ethephon
Fomesafen
Oxytetracycline
Propazine (Interim TRED for triazine pesticide)
Sodium cyanide
Streptomycin
Tetradifon
Triadimenol
Tridemorph

2. *Post-2006 REDs*. REDs for pesticides with no associated tolerances will be completed in FY 2007 and FY 2008, unless decisions for these pesticides can be completed sooner. Lists 3 and 4 contain pesticides scheduled for REDs in FY 2007 and FY 2008.

List 3.—FY 2007 RED Schedule

2,4-DP
Acrolein
Aliphatic alcohols
Aliphatic esters
Alkyl trimethylenediamine
Allethrin stereoisomers
Amical 48
Antimycin A
Benzoic acid
Bioban-p-1487
Bromonitrostyrene
Chlorflurenol
Copper salts
Dazomet
Dikegulac sodium
Grotan
Irgasan
MCPP
Octhilinone

List 4.—FY 2008 RED Schedule

4-Aminopyradine
Busan 77
Flumetralin
Mefluidide
Naphthalene
Naphthalene salts
Nicotine
p-Dichlorobenzene
Polypropylene glycol
Prometon
Siduron
Sodium fluoride
Sodium/potassium dimethyldithiocarbamate salts (case has completed RED)
Sulfometuron methyl
Sumithrin
TBT-containing compounds
Tetramethrin
Triforine
Trimethoxysilyl quats

H. Projected Year of Completion of Reregistrations

EPA generally is conducting reregistration in conjunction with tolerance reassessment, which FFDCA mandates be completed by August 2006. EPA plans to meet the statutory deadline for completing tolerance reassessment, and in so doing, to complete reregistration eligibility decisions for pesticides with tolerances, as required by PRIA. The Agency expects to complete remaining reregistration eligibility decisions for pesticides with no food uses or tolerances during FY 2007 and FY 2008 (by October 3, 2008).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 15, 2005.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–18961 Filed 9–22–05; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0048; FRL–7739–1]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 15, 2005 to August 26, 2005, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2004–0048 and the specific PMN number or TME number, must be received on or before October 24, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0048. 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 EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an

e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2004–0048. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0048 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–20040048 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 15, 2005 to August 26, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 28 PREMANUFACTURE NOTICES RECEIVED FROM: 08/15/05 TO 08/26/05

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0730	08/15/05	11/12/05	CBI	(G) Open non-dispersive (catalyst)	(G) Amine terminated polyether
P–05–0731	08/15/05	11/12/05	CBI	(G) One pack adhesives	(G) Modified polyamine
P–05–0732	08/15/05	11/12/05	CBI	(G) One pack adhesives	(G) Modified imidazole
P–05–0733	08/15/05	11/12/05	CBI	(G) Adhesive for car	(G) Urethane modified epoxy resin
P–05–0734	08/16/05	11/13/05	PPG Aerospace PRC-desoto	(S) Reactive diluent/binder in coatings; reactive diluent/binder in sealants; reactive diluent/binder in primers	(G) Epoxy-terminated polythioether polymer
P–05–0735	08/16/05	11/13/05	Alberdingk Boley Inc.	(G) Industrial coatings; see attachment iv -industrial coatings application	(G) Hexanedioic acid, polymer with hydroxyalkyl-.omega.-hydroxypoly(oxy-1,2-ethanediyl), dimethylcarbonate, 2,2-dimethyl-1,3-propanediol, 1,2-ethanediamine, 1,6-hexanediol, 3-hydroxy-2-[hydroxymethyl]-2-methypropanoic acid and 5-isocyanat o-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, compound with n,n-diethylthaneamine
P–05–0736	08/18/05	11/15/05	Bedoukian Research, Inc.	(S) Uses per Federal Food Drug and Cosmetic Act/flavors; drugs; fragrance material in cosmetics; uses per TSCA: Fragrance uses; scented papers, detergents, candles, etc.; uses per TSCA: Chemical intermediate use	(S) 2,6,10-dodecatrien-1-ol, 3,7,11-trimethyl-, (2e,6e)-
P–05–0737	08/19/05	11/16/05	Umicore Optical Materials USA Inc.	(S) Infrared optical element in thermal imaging cameras	(S) Germanium arsenide selenide
P–05–0738	08/19/05	11/08/05	Umicore Optical Materials USA Inc.	(S) Infrared optical element in thermal imaging cameras	(S) Antimony germanium selenide*
P–05–0739	08/19/05	11/16/05	Dow Corning Corporation	(G) Industrial coating additive	(G) Amino alkyl silicone resin
P–05–0740	08/19/05	11/16/05	CBI	(G) Active for hard surface cleaner.	(G) Peroxyalkanoic acid
P–05–0741	08/19/05	11/16/05	CBI	(G) Active for hard surface cleaner.	(G) Peroxyalkanoic acid
P–05–0742	08/19/05	11/16/05	CBI	(G) Active for hard surface cleaner.	(G) Peroxyalkanoic acid
P–05–0743	08/19/05	11/16/05	CBI	(G) Active for hard surface cleaner.	(G) Peroxyalkanoic acid
P–05–0744	08/19/05	11/16/05	CBI	(G) Active for hard surface cleaner.	(G) Peroxyalkanoic acid
P–05–0745	08/19/05	11/16/05	CBI	(G) Active for hard surface cleaner.	(G) Peroxyalkanoic acid
P–05–0746	08/19/05	11/16/05	CBI	(G) Functional fluid	(G) Polyalphaolefins
P–05–0747	08/19/05	11/16/05	CBI	(G) Functional fluid	(G) Polyalphaolefins
P–05–0748	08/19/05	11/16/05	CBI	(G) Functional fluid	(G) Polyalphaolefins
P–05–0749	08/19/05	11/16/05	CBI	(G) Functional fluid	(G) Polyalphaolefins
P–05–0750	08/19/05	11/16/05	CBI	(G) Functional fluid	(G) Polyalphaolefins
P–05–0751	08/22/05	11/19/05	CBI	(G) Auxiliary for coatings	(G) Hydroxyalkyl carboxylic acid, polymer with alkylamine, dialkyl carbonate, alkanediol, alkyldiisocyanate, compound with alkylamine
P–05–0752	08/24/05	11/21/05	Forbo adhesives, LLC	(G) Liquid polyurethane adhesive	(G) Isocyanate functional polyol urethane polymer
P–05–0753	08/24/05	11/21/05	CBI	(G) Component in the manufacture of paper.	(G) Modified polyacrylamide
P–05–0754	08/24/05	11/21/05	CBI	(G) Binder	(G) Polyurethane resin
P–05–0755	08/25/05	11/22/05	Forbo adhesives, LLC	(G) Hot melt adhesive	(G) Isocyanate functional polyester urethane polymer
P–05–0756	08/25/05	11/22/05	CBI	(S) Master batches of polyolefins; manufacture of polyolefinic films/ fibers	(G) Polypiperidinamino derivative
P–05–0757	08/25/05	11/22/05	CBI	(G) Water repellant	(G) Polymeric sulfurized phenolic compound sulfur mixture

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 21 NOTICES OF COMMENCEMENT FROM: 08/15/05 TO 08/26/05

Case No.	Received Date	Commencement Notice End Date	Chemical
P–01–0625	08/17/05	07/29/05	(G) Polybasic acids, polymers with branched alkyl alchols
P–02–0920	08/23/05	08/12/05	(G) Fluorochemical ester
P–03–0323	08/26/05	08/10/05	(G) Alkyldiisocyanate polymer, alkyl esters blocked
P–03–0324	08/26/05	08/10/05	(G) 2-oxepanone, polymer with alkyldiisocyanate and substituted alkyl diol, alkyl esters blocked
P–04–0196	08/23/05	07/26/05	(G) Silane reaction products with alumina
P–04–0757	08/22/05	08/09/05	(S) Hexanedioic acid, polymer with 1,4-cyclohexanedimethanol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and hexahydro-1,3-isobenzofurandione, 3-mercaptopropanoate 3,5,5-trimethylhexanoate
P–04–0790	08/16/05	07/07/05	(G) Polyethersulfone copolymer
P–05–0044	08/23/05	08/17/05	(G) Urethane modified polycarboxylic resin
P–05–0299	08/25/05	08/09/05	(G) Modified acrylonitrile-butadiene polymer
P–05–0357	08/22/05	08/11/05	(S) Pentadecane, 7-(bromomethyl)-
P–05–0363	08/24/05	07/20/05	(G) Aliphatic, blocked polyisocyanate
P–05–0425	08/23/05	08/05/05	(G) 2-propenoic acid, 2-methyl-, 2-hydroxyalkyl ester, polymer with butyl 2-propenoate, ethenylbenzene, 4-hydroxybutyl 2-propenoate, 2-methylpropyl 2-methyl-2-propenoate, and 2-oxepanone and 2-propenoic acid, tert-bu 2-ethylhexaneperoxoate-initiated, compounds with 2-(dimethylamino)ethanol
P–05–0426	08/23/05	08/05/05	(G) 2-propenoic acid, 2-methyl-, alkyl ester, polymer with butyl 2-propenoate, ethenylbenzene, and 2-propenoic acid, tert-bu 2-ethylhexaneperoxoate-initiated, compounds with 2-(dimethylamino)ethanol
P–05–0437	08/23/05	08/05/05	(G) 2-propenoic acid, 2-methyl-, 2-hydroxyalkyl ester, polymer with butyl 2-propenoate, ethenylbenzene, 4-hydroxybutyl 2-propenoate 2-methylpropyl 2-methyl-2-propenoate, and 2-oxepanone, tert-bu 2-ethylhexaneperoxoate-initiated
P–05–0469	08/25/05	08/15/05	(G) 1,1′-methylenebis[isocyanatobenzene], polymer with polycarboxylic acids and alkanepolyols
P–05–0471	08/19/05	07/20/05	(G) 1,1′-methylenebis[isocyanatobenzene], polymer with polycarboxylic acids and alkanepolyols
P–05–0473	08/25/05	08/09/05	(G) 1,1′-methylenebis[isocyanatobenzene], polymer with polycarboxylic acids and alkanepolyols
P–05–0485	08/17/05	08/12/05	(S) Methanesulfonic acid, bismuth (3+) salt
P–05–0495	08/17/05	08/12/05	(G) Blocked aromatic isocyanate
P–05–0510	08/16/05	08/08/05	(G) Alkenoic acid, hydroxy, reaction products with alkane carboxylic acid, metal salts
P–05–0534	08/15/05	08/05/05	(S) Benzenepropanoic acid, 3,5-bis(1,1-dimethylethyl)-4-hydroxy-, isotridecyl ester

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: September 19, 2005.

Vicki A. Simons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–19060 Filed 9–22–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7973–7]

Notice of Availability of Final NPDES General Permits for Certain Publicly Owned Treatment Works and Other Treatment Works Treating Domestic Sewage in the States of Massachusetts and New Hampshire and Indian Country Lands in the State of Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Final NPDES General Permits MAG580000 and NHG580000.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency-Region 1, is today providing notice of availability of the final National Pollutant Discharge Elimination System (NPDES) general permits for certain Publicly Owned Treatment Works (POTWs) and other treatment works treating domestic sewage in the States of Massachusetts and New Hampshire and Indian Country Lands located in the State of Massachusetts. These general permits establish notification requirements, permit eligibility conditions, effluent limitations, standards, and prohibitions for discharges to fresh and marine waters.

Coverage under these general permits is available to facilities in Massachusetts classified as minor facilities and to facilities in New Hampshire classified as major or minor facilities. Owners and/or operators of POTWs and other treatment works treating domestic sewage, including those facilities currently authorized to discharge under individual NPDES permits, are eligible to apply for coverage under the final general permit and will receive a written notification from EPA whether permit coverage and authorization to discharge under one of the general permits is approved. The eligibility requirements, including the requirement that the facility have a dilution factor equal to or greater than 50:1 in the receiving water, are provided in the general permits. These general permits do not cover new sources as defined under 40 CFR 122.2.

DATES: These general permits shall be effective on September 23, 2005 and will expire five years from the effective date.

ADDRESSES: The required notification information to obtain permit coverage is provided for each general permit. This information shall be submitted to EPA-Region 1, Office of Ecosystem Protection (CMP), 1 Congress Street, Suite 1100,

Boston, Massachusetts 02114–2023 and to the appropriate State Agency.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the final permits may be obtained between the hours of 8 a.m. and 4 p.m. Monday through Friday excluding holidays from: William Wandle, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100 (CMP), Boston, MA 02114—2023, telephone: 617–918–1605, e-mail: *wandle.bill@epa.gov.*

SUPPLEMENTARY INFORMATION: This general permit and the response to comments may be viewed over the Internet via the EPA-Region 1 Web site for dischargers in Massachusetts at *http://www.epa.gov/ne/npdes/mass.html* and for dischargers in New Hampshire at *http://www.epa.gov/ne/npdes/newhampshire.html.* The general permits include the freshwater and marine acute toxicity protocols; guidance documents for endangered species, historic properties, and sludge compliance; and standard permit conditions. To obtain a paper copy of the documents, please contact William Wandle using the contact information provided above. A reasonable fee may be charged for copying requests.

Dated: September 15, 2005.

Ira W. Leighton,

Acting Regional Administrator, Region 1.

[FR Doc. 05–19064 Filed 9–22–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

Summary

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). 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 instrument(s) 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.

For Further Information Contact: Federal Reserve Board Clearance Officer—Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov.*

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Notifications Related to Community Development and Public Welfare Investments of State Member Banks.

Agency form number: FR H–6.

OMB Control number: 7100–0278.

Frequency: Event-generated.

Reporters: State member banks.

Annual reporting hours: 125 hours.

Estimated average hours per response: Investment notice, 2 hours; Application (Prior Approval) 5 hours; and Extension of divestiture period, 5 hours.

Number of respondents: Investment notice, 10; Application (Prior Approval) 20; and Extension of divestiture period, 1.

General description of report: This information collection is required to obtain a benefit (12 U.S.C. 338a, and 12 CFR 208.22). Individual respondent data generally are not regarded as confidential, but information that is proprietary or concerns examination ratings would be considered confidential.

Abstract: Regulation H requires state member banks that want to make community development or public welfare investments to comply with the Regulation H notification requirements: (1) If the investment does not require prior Board approval, a written notice must be sent to the appropriate Federal Reserve Bank; (2) if certain criteria are not met, a request for approval must be sent to the appropriate Federal Reserve Bank; and, (3) if the Board orders divestiture but the bank cannot divest within the established time limit, a request or requests for extension of the divestiture period must be submitted to the appropriate Federal Reserve Bank.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following reports:

1. Report title: Application for a Foreign Organization to Acquire a U.S. Bank or a Bank Holding Company.

Agency form number: FR Y–3F (Formerly FR Y–1F).

OMB control number: 7100–0119.

Frequency: On occasion.

Reporters: Any company organized under the laws of a foreign country seeking to acquire a U.S. subsidiary bank or bank holding company (BHC).

Annual reporting hours: 710 hours.

Estimated average hours per response: Initial application, 90 hours; and subsequent application, 70 hours.

Number of respondents: Initial application, 4; and subsequent application, 5

General description of report: This information collection is required to obtain or retain a benefit under the Bank Holding Company Act (BHCA) (12 U.S.C. 1842(a) and (c) and 1844(a) through (c) and is not given confidential treatment unless the applicant specifically requests confidentiality and the Federal Reserve approves the request.

Abstract: Under the BHCA, submission of this application is required for any company organized under the laws of a foreign country seeking to acquire a U.S. subsidiary bank or BHC. Applicants must provide financial and managerial information, discuss the competitive effects of the proposed transaction, and discuss how the proposed transaction would enhance the convenience and needs of the community to be served. The Federal Reserve uses the information, in part, to fulfill its supervisory responsibilities with respect to foreign banking organizations in the United States.

Current Actions: On July 12, 2005, the Federal Reserve issued for public comment proposed revisions to the FR Y–1F report (70 FR 40025). The comment period ended on September 12, 2005. The Federal Reserve did not receive any comments. The changes will be implemented as proposed. Foreign organizations seeking initial entry are currently required to file the FR Y–1F. However, the filing requirements are ambiguous for foreign organizations that are already subject to the BHCA and seek to acquire a U.S. bank or BHC. In order to clarify and streamline the application process for foreign organizations, the Federal Reserve will explicitly state that these organizations should file the FR Y–1F. Thus, the FR Y–1F will be retitled, renumbered, and modified to achieve consistency with the FR Y–3, the Application for Prior Approval to Become a Bank Holding Company or for a Bank Holding

Company to Acquire an Additional Bank or Bank Holding Company (OMB No. 7100–0121), the form used by domestic holding companies. Also, the Federal Reserve proposed technical clarifications to the instructions that will remove page number references to the Interagency Biographical or Financial Report (FR 2081c; OMB No. 7100–0134) and insert a sentence into the standard commitment language in order to make the commitments more enforceable.

2. *Report title:* International Applications and Prior Notifications Under Subpart B of Regulation K.

Agency form number: FR K–2.

OMB control number: 7100–0284.

Frequency: On occasion.

Reporters: Foreign banks.

Annual reporting hours: 420 hours.

Estimated average hours per response: 35 hours.

Number of respondents: 12.

General description of report: This information collection is required to obtain or retain a benefit under sections 7 and 10 of the International Banking Act (12 USC 3105 and 3107) and Regulation K (12 C.F.R. 211.24(a)) and is not given confidential treatment unless the applicant specifically requests confidentiality and the Federal Reserve approves the request.

Abstract: Foreign banks are required to obtain the prior approval of the Federal Reserve to establish a branch, agency, or representative office; to acquire ownership or control of a commercial lending company in the United States; or to change the status of any existing office in the United States. The Federal Reserve uses the information, in part, to fulfill its statutory obligation to supervise foreign banking organizations with offices in the United States.

Current Actions: On July 12, 2005, the Federal Reserve issued for public comment proposed revisions to the FR K–2 report (70 FR 40025). The comment period ended on September 12, 2005. The Federal Reserve did not receive any comments. The changes will be implemented as proposed. The Federal Reserve proposed technical clarifications to the instructions that will remove page number references to the Interagency Biographical or Financial Report (FR 2081c; OMB No. 7100–0134), correct language pertaining to representative offices, and insert a sentence into the standard commitment language in order to make the commitments more enforceable.

Final approval under OMB delegated authority of the revision, without extension, of the following report:

Report title: Financial Statements for Bank Holding Companies.

Agency form number: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9CS, and FR Y–9ES.

OMB control number: 7100–0128.

Frequency: Quarterly, semiannually, and annually.

Reporters: BHCs.

Annual reporting hours: 400,536 hours.

Estimated average hours per response:
FR Y–9C: 35.55 hours.
FR Y–9LP: 4.75 hours.
FR Y–9SP: 4.85 hours.
FR Y–9ES: 30 minutes.
FR Y–9CS: 30 minutes.

Number of respondents:
FR Y–9C: 2,240.
FR Y–9LP: 2,590.
FR Y–9SP: 3,253.
FR Y–9ES: 87.
FR Y–9CS: 600.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6)and (b)(8) of the Freedom of Information Act (5 U.S.C. 522(b)(4), (b)(6) and (b)(8)).

Abstract: The FR Y–9C collects basic financial data from a domestic BHC on a consolidated basis in the form of a balance sheet, an income statement, and detailed supporting schedules, including a schedule of off-balance-sheet items, similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036). The FR Y–9C collects data from the BHC as of the end of March, June, September, and December. The FR Y–9C is filed by top-tier BHCs with total consolidated assets of $150 million or more and lower-tier BHCs that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

The FR Y–9LP collects basic financial data from domestic BHCs on an unconsolidated, parent-only basis in the form of a balance sheet, an income statement, and supporting schedules relating to investments, cash flow, and certain memoranda items. This report is filed as of the end of March, June, September, and December on a parent company only basis by each BHC that files the FR Y–9C. In addition, for tiered BHCs, a separate FR Y–9LP must be filed for each lower-tier BHC.

The FR Y–9SP is a parent company only financial statement filed by smaller BHCs as of the end of June and December. Respondents include one-bank holding companies with total consolidated assets of less than $150 million and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This form is a simplified or abbreviated version of the more extensive parent company only financial statement for large BHCs (FR Y–9LP). This report collects basic balance sheet and income information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9CS is a free form supplement that may be utilized to collect any additional information deemed to be critical and needed in an expedited manner. It is intended to supplement the FR Y–9C and FR Y–9SP reports.

The FR Y–9ES collects financial information from employee stock ownership plans that are also BHCs on their benefit plan activities as of December 31. It consists of four schedules: Statement of Changes in Net Assets Available for Benefits, Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements.

Current Actions: On July 12, 2005, the Federal Reserve issued for public comment proposed revisions to the BHC reports (70 FR 40025). The comment period ended on September 12, 2005. The Federal Reserve did not receive any comments. The changes will be implemented as proposed effective with the September 30, 2005, report date.

The Federal Reserve will revise the FR Y–9C to collect information on purchased impaired loans in response to Statement of Position 03–3, Accounting for Certain Loans or Debt Securities Acquired in a Transfer issued by the American Institute of Certified Public Accountants, and to collect information related to the Government National Mortgage Association (GNMA) mortgage loan optional repurchase program (rebooked loans backing GNMA securities). The revisions are consistent with the changes to the FFIEC 031 Call Report, effective for the June 2005 report date. In addition to modifying instructions to incorporate the reporting changes, instructions will be revised and clarified in an attempt to achieve greater consistency in reporting by respondents.

Board of Governors of the Federal Reserve System, September 19, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–19029 Filed 9–22–05; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 05–54746) published on page 54746 of the issue for Friday, September 16, 2005.

Under the Federal Reserve Bank of Chicago heading, the entry for Capitol Bancorp, Ltd., Lansing, Michigan, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capitol Bancorp, Ltd., Lansing, Michigan, and Capitol Development Bancorp, Limited I, Lansing, Michigan; to acquire 51 percent of the voting shares of Bank of Belleville, Belleville, Illinois (in organization).

Comments on this application must be received by October 13, 2005.

Board of Governors of the Federal Reserve System,

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–19031 Filed 9–22–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *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 October 17, 2005.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. New York Community Bancorp, Inc., Westbury, New York; to merge with Long Island Financial Corp., Islandia, New York, and thereby indirectly acquire Long Island Commercial Bank, Islandia, New York.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Davis Bancshares, Inc., Underwood, North Dakota; to merge with Underwood Holding Company, Inc., Underwood, North Dakota, and thereby indirectly acquire First Security Bank, Underwood, North Dakota.

Board of Governors of the Federal Reserve System, September 19, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–19034 Filed 9–22–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notices of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activites; Correction

This notice corrects a notice (FR Doc. 05–18466) published on pages 54746–54747 of the issue for Friday, September 16, 2005.

Under the Federal Reserve Bank of New York heading, the entry for Commonwealth Bank of Australia, Sydney, Australia, is revised to read as follows:

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Commonwealth Bank of Australia, Sydney, Australia; to engage *de novo* through its subsidiary, CommSec LLC, New York, New York, in securities brokerage, private placement services, and other transactional services, pursuant to sections 225.28(b)(7)(i), (b)(7)(iii), and (b)(7)(v) of Regulation Y.

Comments on this application must be received by October 3, 2005.

Board of Governors of the Federal Reserve System,September 19, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–19032 Filed 9–22–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 7, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. First Midwest Bancorp, Inc., Itasca, Illinois; to acquire Textura, L.L.C., Lake Bluff, Illinois, and thereby engage in providing data processing services, pursuant to section 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, September 19, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–19033 Filed 9–22–05; 8:45 am]

BILLING CODE 6210–01–S

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer Meeting

The Depository Library Council to the Public Printer (DLC) will meet on Sunday, October 16, 2005, through Wednesday, October 19, 2005, at Hyatt Regency Capitol Hill, in Washington DC.

The sessions will take place from 8 a.m. to 5 p.m. on Sunday through Tuesday, and 8 a.m. to 12 noon on Wednesday. The meeting will be held at the Hyatt Regency Capitol Hill, 400 New Jersey Avenue, NW., Washington DC. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public. There are no more sleeping rooms available at the Hyatt Regency Capitol Hill for the Government rate of $153 per night. We have made arrangements with the Red Roof Inn to get additional sleeping rooms for our attendees. The Red Roof Inn has offered us rooms for Saturday, October 15 through Wednesday, October 19. Rates will be $119.99 per night (plus tax) single or double. This rate will be honored through October 1, 2005. You can reserve your room by calling the hotel directly at 202–289–5959 and mention that you are with the U.S. Government Printing Office group and give them the block code of B254GPO. The Red Roof Inn is in compliance with the requirements of Title III of the Americans With Disabilities Act and meets all Fire Safety Act regulations.

Bruce R. James,

Public Printer of the United States.

[FR Doc. 05–19027 Filed 9–22–05; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Annual Long-Term Care Ombudsman Report and Instructions

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by October 24, 2005.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.6974 or by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Brenda Aguilar, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Sue Wheaton, telephone: (202) 357–3587; e-mail: *sue.wheaton@aoa.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The reporting system, the National Ombudsman Reporting System (NORS), was developed in response to the needs and directives pertaining to the Long Term Care Ombudsman Program and approved by the Office of Management and Budget for use in FY 1995–96 and extended with slight modifications for use in FY 1997–2001 and again for FY 2002–2006.

This request is to continue the use of the existing information collection, State Annual Long-Term Care Ombudsman Report (and Instructions), from state ombudsmen programs under Older Americans Act Titles III and VII. The information also serves as input for work with the Centers for Medicare and Medicaid Services and others on major long-term care issues, planning, training, technical assistance for ombudsmen programs and policy development. We are finalizing our work with the states and local ombudsmen on recommendations which revise and update the form and instructions for use beginning in FY 2007; they are to be available for public comment in the near future.

The reporting form would retain the following elements: a profile of the cases, complainants and complaints by type of facility; action taken on the complaints; a summary of long-term care issues; a detailed profile of the program and its activities, including the number and type of facilities licensed and operating in the state (and the number beds this represents); the staffing and funding of local programs; and an overview of other ombudsman activities (including: training, technical assistance, consultation to organizations and individuals, resident visitation, community education, etc.)

AoA estimates the burden of this collection of information as follows: Approximately 10 minutes per case, per respondent, for a total annual hour burden of 10,258 hours, with 52 State Agencies on Aging responding annually.

Dated: September 20, 2005.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 05–19066 Filed 9–22–05; 8:45 am]

BILLING CODE 4154–01–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 51071–51075, dated August 29, 2005) is amended to reflect the establishment of the Management Information Systems Office, within the Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

After the mission statement for the Office of Security and Emergency Preparedness (CAJJ), Office of the Chief Operating Officer (CAJ), insert the following:

Management Information Systems Office (CAJN). The mission of the Management Information Systems Office (MISO) is to support the Centers for Disease Control and Prevention's (CDC) public health impact through enterprise business systems solutions. In carrying out its mission, MISO: (1) Designs, develops, implements, supports, and evaluates enterprise business information systems for CDC's administrative lines of business; (2) provides data management and integration to support CDC's administrative lines of business and integration with programmatic functions; (3) collaborates with the Department of Health and Human Services (DHHS), other federal agencies, and CDC organizations in the delivery of enterprise business information systems for CDC's major administrative lines of business; (4) integrates emerging and legacy technologies, where appropriate, in order to leverage information assets, using common data structures and business rules to transition toward more robust information solutions; (5) manages the CDC workforce data repository, which is the centralized source of person information and integration point for all systems within CDC to access individual profile data; (6) partners with lines of business stakeholders to provide business management services, including technical project management, technical stewardship, change management, requirements management, quality management, and investment management activities for capital planning and certification and accreditation for CDC's enterprise business information systems; (7) provides knowledge management services including information retrieval, information mapping, information sharing, data categorization, and knowledge capture in support of CDC's lines of business services and programmatic operations; (8) ensures enterprise business information systems meet all federal/DHHS/CDC information technology (IT) security policy and regulatory requirements while implementing appropriate risk mitigation procedures, countermeasures, and safeguards in accordance with the sensitivity and criticality levels of the data or system; (9) provides customer services to end users of enterprise business information systems including call center support, customer analytics, online help, documentation, and training; (10) researches and implements new technologies, methodologies, and architecture for business information system development, data management, project management, performance management, knowledge management, and business intelligence; (11) serves as enterprise IT partner in support of CDC's strategic business intelligence initiatives by providing the business process, data, and technology framework to align goals, performance and knowledge management; and (12) provides the CDC Office of the Director and CDC staff offices with information systems, data, and Web site development, management, and support.

Dated: August 24, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–18974 Filed 9–22–05; 8:45am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document No. CMS–R–232, CMS–9042]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services (CMMS).

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Integrity Program Organizational Conflict of Interest Disclosure Certificate and Supporting Regulations at 42 CFR 421.300–421.316; *Form Number:* CMS–R–232 (OMB#: 0938–0723); *Use:* Section 1893(d)(1) of the Social Security Act requires CMS to establish a process for identifying, evaluating, and resolving conflicts of interest. CMS proposed a process under Section 421.310 to mandate submission of pertinent information regarding conflicts of interest. The entities providing the information will be organizations that have been awarded, or seek award of, a Medicare Integrity Program contract. CMS needs this information to assess whether contractors who perform, or who seek to perform, Medicare Integrity Program functions, such as medical review, fraud review or cost audits, have organizational conflicts of interest and whether any conflicts have been resolved. *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 11; *Total Annual Responses:* 11; Total Annual Hours: 2,200.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Accelerated Payments and Supporting Regulations in 42 CFR, sections 412.116, 412.632, 413.64, 413.350, and 484.245; *Form Number:* CMS–9042 (OMB#: 0938–0269); *Use:* Section 1815(a) of the Social Security Act describes payment to providers of services. 42 CFR 412.116, 42 CFR 412.632, 42 CFR 413.64, 42 CFR 413.350, and 42 CFR 484.245 define the conditions under which accelerated payments may be requested. Sections 2412.2 and 2412.3 of the Provider Reimbursement Manual identify the information that providers must supply to their intermediary to request an accelerated payment. A request for an accelerated payment can be made by a hospital, skilled nursing facility, home health agency, inpatient rehabilitation facility, critical access hospital, or hospice that is not receiving periodic interim payments. Accelerated payment request forms are used by fiscal intermediaries to assess a provider's eligibility for accelerated payments. *Frequency:* Reporting—On occasion; *Affected Public:* Business or

other for-profit, Not-for-profit institutions; *Number of Respondents:* 822; *Total Annual Responses:* 822; Total Annual Hours: 411.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/regulations/pra/*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on November 22, 2005. CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Bonnie L. Harkless, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 15, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–19068 Filed 9–22–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document No. CMS–10170]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare & Medicaid Services (CMMS).

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because the normal procedures are likely to cause a statutory deadline to be missed.

Under Section 1860D–22 of the Social Security Act, added by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) and implementing regulations at 42 CFR Section 423.880 plan sponsors (employers, unions etc.) who offer prescription drug coverage to their qualified covered retirees are eligible to receive a 28% tax-free subsidy for allowable drug costs. Plan sponsors must submit a complete application to CMS in order to be considered for the Retiree Drug Subsidy (RDS) program. All systems must be operational January 1, 2006, the effective date for the MMA. In order to meet this statutorily mandated date, CMS is working diligently to establish the systems, procedures, and documents necessary to implement the RDS program. CMS is seeking an emergency Paperwork Reduction Act (PRA) approval for the RDS Payment and Reconciliation specifications and instructions.

CMS is requesting OMB review and approval of this collection by October 24, 2005, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by October 22, 2005.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Retiree Drug Subsidy (RDS) Payment Request and Instructions; *Use:* Under the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 and implementing regulations at 42 CFR Subpart R plan sponsors (employers, unions) who offer prescription drug coverage to their qualified covered retirees are eligible to receive a 28% tax-free subsidy for allowable drug costs. In order to qualify, plan sponsors must submit a complete application to CMS with a list of retirees for whom it intends to collect the subsidy; *Form Number:* CMS–10170 (OMB#: 0938–NEW); *Frequency:* Quarterly, Monthly, Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal, State, Local and Tribal Government; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 2,025,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be received by the designees referenced below by October 22, 2005:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn: Melissa Musotto, CMS–10170

and,

OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 20, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–19070 Filed 9–22–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–2227–PN]

Medicare and Medicaid Programs; Application by the Accreditation Commission for Healthcare for Deeming Authority for Home Health Agencies

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice acknowledges the receipt of an application from the Accreditation Commission for Healthcare for recognition as a national accreditation program for home health agencies that wish to participate in the Medicare or Medicaid programs. Section 1865(b)(3)(A) of the Social Security Act requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at the appropriate address, as provided below, no later than 5 p.m. on October 24, 2005.

ADDRESSES: In commenting, please refer to file code CMS–2227–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

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

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

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2227–PN, P.O. Box 8018, Baltimore, MD 21244–8018.

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

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2227–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call Yolanda Hayes at telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

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

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

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786–0310.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a home health agency (HHA) provided certain requirements are met. Sections 1861(o) and 1891 of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as an HHA. Regulations concerning provider agreements are at 42 CFR part 489, and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 484 specify the conditions that an HHA must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for home health care.

Generally, in order to enter into an agreement, an HHA must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 484 of our regulations. Then, the HHA is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(b)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization that all applicable Medicare conditions are met or exceeded, we will ''deem'' those provider entities as having met the requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

If an accreditation organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accreditation organization applying for approval of deeming authority under part 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions.

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and the Community Health Accreditation Program (CHAP) are currently the only approved national accreditation organizations for HHAs.

II. Approval of Deeming Organizations

Section 1865(b)(2) of the Act and our regulations at § 488.8(a) require that our findings concerning review and reapproval of a national accrediting organization's requirements consider, among other factors, the applying accreditation organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(b)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from our receipt of a completed application to publish approval or denial of the application.

The purpose of this proposed notice is to inform the public of our consideration of the Accreditation Commission for Healthcare's (ACHC's) request to become a national accreditation organization for HHAs.

This notice also solicits public comment on the ability of ACHC requirements to meet or exceed the Medicare conditions for participation for home health agencies.

III. Evaluation of Deeming Authority Request

On August 8, 2005, ACHC submitted all the necessary materials to enable us to make a determination concerning its request for approval as a deeming organization for HHAs. Under section 1865(b)(2) of the Act and our regulations at § 488.8 (Federal review of accreditation organizations), our review and evaluation of ACHC will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of ACHC standards for home health care as compared with our comparable home health conditions of participation.
- ACHC's survey process to determine the following:

—The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

—The comparability of ACHC processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

—ACHC's processes and procedures for monitoring providers or suppliers found out of compliance with ACHC program requirements. These monitoring procedures are used only when ACHC identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(d).

—ACHC's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

—ACHC capacity to provide us with electronic data in ASCII comparable code, and reports necessary for effective validation and assessment of the organization's survey process.

—The adequacy of ACHC's staff and other resources, and its financial viability.

—ACHC's capacity to adequately fund required surveys.

—ACHC's policies with respect to whether surveys are announced or unannounced.

—ACHC's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Response to Public Comments and Notice Upon Completion of Evaluation

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

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

V. Executive Order 12866 Statement

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 14, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare and Medicaid Services.

[FR Doc. 05–18922 Filed 9–22–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9032–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April Through June 2005

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

ACTION: Notice.

SUMMARY: This notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from April 2005 through June 2005, relating to the Medicare and Medicaid programs. This notice provides information on national coverage determinations (NCDs) affecting specific medical and health care services under Medicare. Additionally, this notice identifies certain devices with investigational device exemption (IDE) numbers approved by the Food and Drug Administration (FDA) that potentially may be covered under Medicare. This notice also includes listings of all approval numbers from the Office of Management and Budget for collections of information in CMS regulations. Finally, this notice includes a list of Medicare-approved carotid stent facilities.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, and to foster more open and transparent collaboration efforts, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this 3-month time frame.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. (See Section III of this notice for how to obtain listed material.)

Questions concerning items in Addendum III may be addressed to Timothy Jennings, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2134.

Questions concerning Medicare NCDs in Addendum V may be addressed to Patricia Brocato-Simons, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–0261.

Questions concerning FDA-approved Category B IDE numbers listed in Addendum VI may be addressed to John Manlove, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, S3–26–10, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6877.

Questions concerning approval numbers for collections of information in Addendum VII may be addressed to Jim Wickliffe, Office of Strategic Operations and Regulatory Affairs,

Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–4596.

Questions concerning Medicare-approved carotid stent facilities may be addressed to Sarah J. McClain, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2994.

Questions concerning all other information may be addressed to Gwendolyn Johnson, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Centers for Medicare & Medicaid Services, C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6954.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of the two programs involves (1) furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) maintaining effective communications with regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, and to foster more open and transparent collaboration, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the respective 3-month time frame.

II. How To Use the Addenda

This notice is organized so that a reader may review the subjects of manual issuances, memoranda, substantive and interpretive regulations, NCDs, and FDA-approved IDEs published during the subject quarter to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare NCD Manual (NCDM, formerly the Medicare Coverage Issues Manual (CIM)) may wish to review the August 21, 1989, publication (54 FR 34555). Those interested in the revised process used in making NCDs under the Medicare program may review the September 26, 2003, publication (68 FR 55634).

To aid the reader, we have organized and divided this current listing into eight addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published CMS Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique CMS transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the—
  - Date published;
  - **Federal Register** citation;
  - Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);
  - Agency file code number; and
  - Title of the regulation.
- Addendum V includes completed NCDs, or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision.
- Addendum VI includes listings of the FDA-approved IDE categorizations, using the IDE numbers the FDA assigns. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B), and identified by the IDE number.
- Addendum VII includes listings of all approval numbers from the Office of Management and Budget (OMB) for collections of information in CMS regulations in title 42; title 45, subchapter C; and title 20 of the CFR.
- Addendum VIII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS's standards for performing carotid artery stenting for high risk patients.

III. How To Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, most manuals are available at the following Internet address: *http://cms.hhs.gov/manuals/default.asp*.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through *GPO Access*. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59,

Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is *http://www.gpoaccess.gov/fr/index.html*, by using local WAIS client software, or by telnet to *swais.gpoaccess.gov,* then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. Interested individuals can obtain copies from the nearest CMS Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the CMS Home Page. The Internet address is *http://cms.hhs.gov/rulings*.

D. CMS' Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- CMS-related regulations.
- CMS manuals and monthly revisions.
- CMS program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1999. (Updated titles of the Social Security Laws are available on the Internet at *http://www.ssa.gov/OP_Home/ssact/comp-toc.htm*.) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal Government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. For each CMS publication listed in Addendum III, CMS publication and transmittal numbers are shown. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the Medicare NCD publication titled ''Percutaneous Transluminal Angioplasty,'' use CMS–Pub. 100–03, Transmittal No. 33.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: September 6, 2005.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

March 28, 2003 (68 FR 15196)
June 27, 2003 (68 FR 38359)
September 26, 2003 (68 FR 55618)
December 24, 2003 (68 FR 74590)
March 26, 2004 (69 FR 15837)
June 25, 2004 (69 FR 35634)
September 24, 2004 (69 FR 57312)
December 30, 2004 (69 FR 78428)
February 25, 2005 (70 FR 9338)
June 24, 2005 (70 FR 36620)

Addendum II—Description of Manuals, Memoranda, and CMS Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the former CIM (now the NCDM) was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

Addendum III.—Medicare and Medicaid Manual Instructions

[April Through June 2005]

Transmittal No.	Manual/Subject/Publication No.
	Medicare General Information (CMS—Pub. 100–01)
20	Medicare Authorization to Disclose Personal Health Information Form and Information to Help You Fill Out the Medicare Authorization to Disclose Personal Health Information Form.
21	Removal of Medicare Number from Reimbursement Checks.
22	Provider Extract File.
23	Procedures for Modifying Shared Systems Edits and Capturing Audit Trail Data.
24	2005 Scheduled Release for July Updates to Software Programs and Pricing/Coding Files.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April Through June 2005]

Transmittal No.	Manual/Subject/Publication No.
	Medicare Benefit Policy (CMS—Pub. 100–02)
31	List of Medicare Telehealth Services
	Telehealth Services.
	Payment for End-Stage Renal Disease-Related Services as a Telehealth Service Originating Site Facility Fee Payment (End-Stage Renal Disease-Related Services).
32	This Transmittal is rescinded and replaced by Transmittal 33.
33	Issued to a specific audience, not posted to the Internet/Intranet due to the Confidentiality of Instruction.
34	This Transmittal is rescinded and replaced by Transmittal 36.
35	Automated Multi-Channel Chemistry for Continuous Ambulatory Peritoneal Dialysis and Non-Continuous Ambulatory Peritoneal Dialysis Patients.
36	Pub. 100–02, Chapter 15, Section 220 and 230 Therapy Services.
	Coverage of Outpatient Rehabilitation Therapy Services (Physical Therapy, and Speech-Language Pathology Services) Under Medical Insurance.
	Conditions of Coverage and Payment for Outpatient Physical Therapy, Occupational Therapy or Speech-Language Pathology Services.
	Outpatient Therapy Must be Under the Care of a Physician/Non physician Practitioners (Orders/Referrals and Need for Care).
	Plans of Care for Outpatient Physical Therapy, Occupational Therapy, or Speech-Language Pathology Services.
	Certification and Recertification of Need for Treatment and Therapy Plans of Care.
	Requirement that Services Be Furnished on an Outpatient Basis.
	Reasonable and Necessary Outpatient Rehabilitation Therapy Services.
	Practice of Physical Therapy, Occupational Therapy, and Speech-Language Pathology.
	Practice of Physical Therapy.
	Practice of Occupational Therapy.
	Practice of Speech-Language Pathology.
	Services Furnished by a Physical or Occupational Therapist in Private Practice.
	Physical Therapy, Occupational Therapy, and Speech-Language Pathology.
	Services Provided Incident to the Services of Physicians and Non-physician Practitioners.
	Therapy Services Furnished Under Arrangements with Providers and Clinics.
	Medicare National Coverage Determinations (CMS—Pub. 100–03)
31	Positron Emission Tomography (PET) for Brain, Cervical, Ovarian, Pancreatic, Small Cell Lung, and Testicular Cancers.
	PET Scans.
	PET for Perfusion of the Heart.
	FDG PET for Lung Cancer.
	FDG PET for Esophageal Cancer.
	FDG PET for Colorectal Cancer.
	FDG PET for Lymphoma.
	FDG PET for Melanoma.
	FDG PET for Head and Neck Cancers.
	FDG PET for Myocardial Viability.
	FDG PET for Refractory Seizures.
	FDG PET for Breast Cancer.
	FDG PET for Thyroid Cancer.
	FDG PET for Soft Tissue Sarcoma.
	FDG PET for Dementia and Neurodegenerative Diseases.
	FDG PET for Brain, Cervical, Ovarian, Pancreatic, Small Cell Lung, and Testicular Cancers.
	FDG PET for All Other Cancer Indications Not Previously Specified.
32	Autologous Stem Cell Transplantation.
	Stem Cell Transplantation.
33	Percutaneous Transluminal Angioplasty.
34	Abarelix for the Treatment of Prostate Cancer.
35	Continuous Positive Airway Pressure Therapy for Obstructive Sleep Apnea.
36	Smoking and Tobacco-Use Cessation Counseling.
37	Mobility Assistive Equipment.
	Durable Medical Equipment Reference List.
38	Coverage of Colorectal Anti-Cancer Drugs Included in Clinical Trials Anti-Cancer Chemotherapy for Colorectal Cancer.
39	Cochlear Implantation.
40	Coverage of Aprepitant for Chemotherapy-Induced Emesis.
41	Osteogenic Stimulators.
	Medicare Claims Processing (CMS Pub. 100—04)
515	Update to 100–04 and Therapy Code Lists.
	Health Common Procedure Coding System Coding Requirement.
	Part B Outpatient Rehabilitation and Comprehensive Outpatient Rehabilitation.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April Through June 2005]

Transmittal No.	Manual/Subject/Publication No.
	Facility Services—General.
	Discipline Specific Outpatient Rehabilitation Modifiers—All Claims.
	The Financial Limitation.
	Reporting of Service Units With Health Common Procedure Coding System—Form CMS–1500 and Form CMS–1450.
516	Clarification for Outpatient Prospective Payment System Hospitals Billing.
	Initial Preventive Exam.
	Outpatient Prospective Payment System Hospitals Billing.
	Advanced Beneficiary Notice as Applied to the IPPE.
517	List of Medicare Telehealth Services.
	Submission of Telehealth Claims for Distant Site Practitioners.
	Carrier Editing of Telehealth Claims.
518	This Transmittal is rescinded and replaced by Transmittal 527.
519	This Transmittal is rescinded and replaced by Transmittal 525.
520	Payment Policy Clarification Regarding the Healthcare Common Procedure.
	Coding System Q3001 Performed in an Ambulatory Surgery Center.
521	Hemophilia Blood Clotting Factors.
	Billing for Hemophilia Clotting Factors.
522	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
523	Implementation of the Physician Scarcity Area and Revision to the Health Professional Shortage Area Payment to a Critical Access Hospital.
524	Clarification to the Health Professional Shortage Area Language in the Medicare Claims Processing Manual.
	Services Eligible for Health Professional Shortage Area and Physician Scarcity Bonus Payments.
525	Flu/PPV Revisions.
	Billing Requirements.
	Healthcare Common Procedural Coding System and Diagnosis Codes.
	Carrier Payment Requirements.
	Roster Claims Submitted to Carriers for Mass Immunization.
	Centralized Billing for Flu and Pneumococcal (PPV) Vaccines to Medicare.
	Common Working File Edits.
	Common Working File Edits on Carrier Claims.
526	Updated Requirements for Autologous Stem Cell Transplantation.
	Autologous Stem Cell Transplantation.
	Billing for Stem Cell Transplantation.
	Stem Cell Transplantation.
	Health Common Procedure Coding System and Diagnosis Coding Non-Covered Conditions.
527	New Coding for FDG PET Scans and Billing Requirements for Specific.
	Indications of Cervical Cancer.
	Positron Emission Tomography Scans—General Information.
	Billing Instructions.
	Use of Gamma Cameras and Full Ring and Partial Ring Pet Scanners for Positron Emission Tomography Scans.
	Positron Emission Tomography Scan Qualifying Conditions and Health.
	Common Procedure Coding System/Common Procedural Terminology Code Chart.
	Appropriate Common Procedural Terminology Codes Effective for Positron.
	Emission Tomography Scan Services Performed on or After January 28, 2005.
	Expanded Coverage of Positron Emission Tomography Scans for Breast Cancer Effective for Services on or After October 1, 2002.
	Coverage of Positron Emission Tomography Scans for Thyroid Cancer.
	Coverage of Positron Emission Tomography Scans for Dementia and Neurodegenerative Diseases.
	Billing Requirements for Positron Emission Tomography Scans for Specific Indications of Cervical Cancer for Services Performed on or After January 28, 2005.
	Billing Requirements for Positron Emission Tomography Scans for Non-Covered Conditions.
528	July 2005 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing File, Effective July 1, 2005.
529	Update to Current National Uniform Billing Committee Codes.
	General Instructions for Completion of Form CMS–1450 for Billing.
530	Billing Requirements for Physician Services Rendered in Method II Critical Access Hospital.
	Payment for Inpatient Services Furnished by a Critical Access Hospital.
	Optional Method for Outpatient Services: Cost-Based Facility Services Plus 115 Percent Fee Schedule Payment for Professional Services.
	Billing and Payment in a Physician Scarcity Area.
531	Percutaneous Transluminal Angioplasty (Effective March 17, 2005).
532	Abarelix for Treatment of Prostate Cancer.
533	Modification to the Common Working File (CWF) Edit Process for Non-Assigned Medicaid Coordination of Benefits Agreement (COBA) Crossover Claims.
	Consolidated Claims Crossover Process.
534	Changes to the Laboratory National Coverage Determination Edit Software for July 2005.
535	Modification to Appeals Language on Medicare Summary Notice.
	Appeals Section.
	Back of the Medicare Summary Notice—Carriers and Intermediaries.
	Carrier Spanish Medicare Summary Notice Back.
	Intermediary Spanish MSN Back.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April Through June 2005]

Transmittal No.	Manual/Subject/Publication No.
536	July Quarterly Update for 2005 Durable Medical Equipment, Prosthetics, Orthotics & Supplies Fee Schedule.
537	Instructions for Downloading the Medicare Zip Code File.
538	New Waived Tests.
539	Expansion of Various Alpha and Numeric Fields with in the Outpatient Prospective Payment System Outpatient Code Editor.
540	Addition to Chapter 6 of the Claims Processing Manual—Skilled Nursing Facility Inpatient Part A Billing: SNF Prospective Payment System Pricer Software.
	Skilled Nursing Facility Prospective Payment System Pricer Software Input/Output Record Layout.
	Skilled Nursing Facility Prospective Payment System Rate Components Decision Logic Used by the Pricer on Claims.
	Annual Updates to the Skilled Nursing Facility Pricer.
541	Correction to the use of Group Codes for The Enforcement of Mandatory Electronic Submission of Medicare Claims Enforcement.
542	Modification of Roster Billing for Mass Immunizers Billing for Inpatient Part B Services (Type of Bills 12x and 22x).
	Claims Submitted to Intermediaries for Mass Immunizations of Influenza and PPV.
543	Healthcare Provider Taxonomy Code Update.
544	Modification of FISS Edits for Colorectal Cancer Screening Services (HCPCS Codes G0104, G0106, G0107, G0120, and G0328) Furnished at Skilled Nursing Facilities.
	Common Working Files Edits.
545	The Teaching Adjustment for Inpatient Psychiatric Facility Prospective Payment System.
546	Number of Durable Medical Equipment Prosthetic, Orthotic & Supplies Pricing Files That Must Be Maintained Online for Medicare—Durable Medical Equipment Regional Carrier, Fiscal Intermediary and Regional Home Health Intermediary Only.
	Online Pricing Files for Durable Medical Equipment Prosthetic, Orthotics & Supplies.
547	This Transmittal is rescinded and replaced by Transmittal 556.
548	New Healthcare Common Procedure Coding System (HCPCS) Codes and Systems Edits for Supplies and Accessories for Ventricular Assist Devices.
549	Update to the Place of Service Code Set to Add a Code for Pharmacy Place of Service Codes and Definitions.
550	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
551	Dispensing/Supply Fee Code, Payment, and Common Working File Editing for Immunosuppressive Drugs.
	Pharmacy Supplying Fee.
552	Changing the Order of Medicare System Edits Affecting Hospice Claims.
	Submitting Bills In Sequence for a Continuous Inpatient Stay or Course of Treatment.
553	Expansion of State Codes for Office of Standard & Certification Automated Retrieval System Provider Numbers.
554	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction.
555	Fiscal Intermediary Reporting of Add-on-Payments That Do Not Result in a Specific Increase or Decrease in the Amount Reported as Payable for a Claim Or a Service on a Remittance Advice.
	General Remittance Completion Requirements.
556	Revision to the Health Professional Shortage Area and Physician Scarcity Area Payment Rules.
	Services Eligible for Health Professional Shortage Area and Physician Scarcity Bonus Payments.
557	This Transmittal is rescinded and replaced by Transmittal 566.
558	July Update to the 2005 Medicare Physician Fee Schedule Database.
559	Override of Automated Health Professional Shortage Area and/or Physician Scarcity Area Bonus Payments for Globally Billed Services.
560	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
561	New April 2005 Quarterly ASP Medicare Part B Drug Pricing File and Revisions to January 2005 Quarterly ASP Medicare Part B Drug Pricing File.
562	Smoking and Tobacco-Use Cessation Counseling Services.
	Health Common Procedure Coding System and Diagnosis Coding.
	Carrier Billing Requirements.
	Fiscal Intermediary Billing Requirements.
	Remittance Advice Notices.
	Medicare Summary Notices.
	Post-Payment Review for Smoking and Tobacco-Use Cessation Counseling Services.
563	Quarterly Update to Correct Coding Initiative (CCI) Edits, Version 11.2, Effective July 1, 2005.
564	July Update to the Medicare Outpatient Code Editor (OCE) Version 20.3 for Bills From Hospitals That Are Not Paid Under The Outpatient Prospective Payment System.
565	This Transmittal is rescinded and replaced by Transmittal 583.
566	This Transmittal is rescinded and replaced by Transmittal 573.
567	Coverage of Colorectal Anti-Cancer Drugs Included in Clinical Trials.
568	July Quarterly Update to 2005 Annual Update of Health Common Procedure Codes System Codes Used for Skilled Nursing Facility Consolidated Billing Enforcement.
569	This Transmittal is rescinded and replaced by Transmittal 572.
570	Common Working File: Addition of Disease Management Auxiliary File.
571	This Transmittal is rescinded and replaced by Transmittal 575.
572	July 2005 Outpatient Prospective Payment System Code Editor Specifications Version 6.2.
573	Clarifying Manual Instructions for Coding and Payment for Drug Administration Under the Hospital Outpatient Prospective Payment System.
	Billing and Payment for Drugs and Drug Administration.
	Coding and Payment for Drugs and Biologicals.
	Separately Payable Drugs.
	Packaged Drugs.
	Pass-Through Drugs.
	Non-Pass Through Drugs.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April Through June 2005]

Transmittal No.	Manual/Subject/Publication No.
	Coding and Payment for Drug Administration.
	General.
	Administration of Chemotherapy Drugs by Infusion.
	Administration of Chemotherapy Drugs by a Route Other Than Infusion.
	Administration of Non-Chemotherapy Drugs by Infusion.
	Administration of Non-Chemotherapy Drugs by a Route Other Than Infusion.
	Use of Modifier 59.
	Billing for Infusion Hours.
574	Mobility Assistive Equipment.
575	New Remittance Advice Message for Referred Clinical Diagnostic/Purchased Diagnostic Service Duplicate Claims.
576	Correction to Chapter 17, Section 80.2.3, MSN/ANSI X12N Denial Message for Anti-Emetic Drugs.
577	This Transmittal is rescinded and replaced by Transmittal 594.
578	Update-Long Term Care Hospital Prospective Payment System Rate Year 2006.
	Provider Specific File.
	Facility Level Adjustments.
	Inputs/Outputs to Pricer.
579	Update to the National Council for Prescription Drug Program Batch Standard 1.1 Billing Request Companion Document.
580	New Healthcare Common Procedure Coding System (HCPCS) Drug Codes.
581	This Transmittal is rescinded and replaced by Transmittal 587.
582	New Remittance Advice (RA) Message for Referred Clinical Diagnostic/Purchased Diagnostic Service Duplicate Claims.
583	Access Process for HIPAA 270/271.
	X12N Health Care Eligibility Benefit Inquiry and Response 270/271.
	Implementation.
	Background.
	Eligibility Workflow.
	Health Care Claim Status Category Codes and Health Care Codes for Use with The Health Care Claim Status Request and Response ASC X12N 276/277.
584	Update of Health Common Procedure Coding System Codes and File Names, Descriptions and Instructions for Retrieving the 2005 Ambulatory Surgery Center Health Common Procedure Coding System Additions, Deletions and Master Listing.
585	This Transmittal is rescinded and replaced by Transmittal 599.
586	Modifications to the National Coordination of Benefits Agreement File.
	Transfer and Financial Reporting Processes.
	Consolidation of the Claims Crossover Process.
	Coordination of Benefits Agreement Detailed Error Notification Process.
587	New Location for Contractor ID Number on Medicare Summary Notices.
	Title Section of the Medicare Summary Notice.
588	Coverage of Colorectal Anti-Cancer Drugs Included in Clinical Trials.
589	Cochlear Implantation.
	Billing Requirements for Expanded Coverage of Cochlear Implantation.
	Intermediary Billing Procedures.
	Applicable Bill Types.
	Special Billing Requirements for Intermediaries.
	Intermediary Payment Requirements.
	Carrier Billing Procedures.
	Healthcare Common Procedural Coding System.
590	Aprepitant for Chemotherapy-Induced Emesis.
	Oral Anti-Emetic Drugs Used as Full Replacement for Intravenous Anti-Emetic.
	Drugs as Part of a Cancer Chemotherapeutic Regimen.
	Health Common Procedure Coding System Codes for Oral Anti-Emetic Drugs.
	Billing and Payment Instructions for Fiscal Intermediaries.
591	Medicare Contractor Annual Update of the International Classification of Diseases, Ninth Revision, Clinical Modification.
592	Social Security Administration Data for Incarcerated Beneficiaries.
593	Disposition of Misdirected Claims to the Carrier.
	A Local Carrier Receives a Claim for a United Mine Workers of America Beneficiary.
594	Preliminary Instructions: Expedited Determinations/Reviews for Original Medicare.
	Coordination With the Quality Improvement Organization.
	Limitation on Liability (LOL) Under § 1879 Where Medicare Claims Are Disallowed.
	Hospital-Issued Notices of Noncoverage.
	Determining Beneficiary Liability in Claims for Ancillary and Outpatient Services.
	Application of Limitation on Liability to Skilled Nursing Facility and Hospital Claims for Services Furnished in Noncertified or Inappropriately Certified Beds.
	Determining Liability for Services Furnished in a Noncertified Skilled Nursing Facility or Hospital Bed.
595	This Transmittal is rescinded and replaced by Transmittal 598.
596	Indian Health Service or Tribal Hospitals Including Critical Access Hospital Payment Methodology for Inpatient Social Admissions and Outpatient Services Occurring During Concurrent Stays.
597	Coverage and Billing for Ultrasound Stimulation for Nonunion Fracture Healing Coverage Requirements.
	Intermediary Billing Requirements.
	Bill Types.
	Carrier and Intermediary Billing Instructions.
	Durable Medical Equipment Regional Carrier Billing Instructions.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April Through June 2005]

Transmittal No.	Manual/Subject/Publication No.
598	Implementation of Carrier Guidelines for End Stage Renal Disease. Reimbursement for Automated Multi-Channel Chemistry Tests. (Supplemental to Change Request 2813). Automated Multi-Channel Chemistry Tests for End Stage Renal Disease. Beneficiaries—Fiscal Intermediaries. Claims Processing for Separately Billable Tests for End Stage Renal Disease Beneficiaries.
599	July 2005 Update of the Hospital Outpatient Prospective Payment System.
600	New Healthcare Common Procedure Coding System Drug Codes.
	Medicare Secondary Payer (CMS—Pub. 100–05)
28	Working Aged Exception for Small Employers in Multi-Employer Group Health Plans.
29	Assignment of Non-Payment/Denial Code Specific to the Recovery Audit Contractor Created Group Health Plan Occurrences. Identification of Recovery Audit Contractor Created Group Health Plan Records.
30	Process to Address Freedom of Information and Subpoena Requests. Handling Freedom of Information and Subpoena Duces Tecum Received In the Medicare Secondary Payer Units .
	Medicare Financial Management (CMS—Pub. 100–06)
67	Notice of New Interest Rate for Medicare Overpayments and Underpayments.
68	Instructions for Affiliated Contractors Involved in the Recovery Audit Contractor Demonstration. Affiliated Contractor and Program Safeguard Contractor Interaction with the Non-Medicare Secondary Payer Recovery Audit Contractors. Non-Medicare Secondary Payer Recovery Audit Contractors. Program Safeguard Contractor Communication with the Recovery Audit Contractors. Overview of the Recovery Audit Contractor Process. Full Program Safeguard Contractor Requirements Surrounding Recovery. Audit Contractor Non-Medicare Secondary Payer Identification Process. Providing Suppressed Cases to the Recovery Audit Contractor Database. Adjusting the Claim. Disputing/Disagreeing with a Recovery Audit Contractor Decision. Handling Overpayment and Underpayments Resulting from the Recovery. Audit Contractor Findings. Underpayments. Setting up an Accounts Receivable. Recoupments Received on a Recovery Audit Contractor Initiated Overpayment. Extended Repayments Received on a Recovery Audit Contractor Initiated Overpayment. Handling Appeals Resulting from Recovery Audit Contractor Initiated Denials. Referrals to the Department of Treasury. Tracking Overpayments and Appeals. Tracking Overpayments. Tracking Appeals. Reporting Administrative Costs Directly Associated with the Recovery Audit. Contractor Demonstration Project. Potential Fraud. Affiliated Contractor/Full Program Safeguard Contractor Requirements. Involving Recovery Audit Contractor Information Dissemination. Contacting Non-Responders. Voluntary Refunds. Working with the Recovery Audit Contractor Evaluation Contractor.
69	Update to Debt Collection System (DCS) User Guide .
	Medicare State Operations Manual (CMS—Pub. 100–07)
06	Expansion of State Codes for OSCAR Provider Numbers. Provider Identification Number. Home Health Agency Branch Identification Numbers. Outpatient Physical Therapy Extension Identification Numbers.
07	This Transmittal is rescinded and replaced by Transmittal 8.
08	Revision of Appendix PP—Section 483.25(d)—Urinary Incontinence, Tags F315 and F316.
	Medicare Program Integrity (CMS—Pub. 100–08)
107	Updated Chapter 1 to Reflect Changes in Program Requirements. Types of Claims for Which Contractors Are Responsible. Quality of Care Issues.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April Through June 2005]

Transmittal No.	Manual/Subject/Publication No.
	The Medicare Medical Review Program.
	Goal of the Medical Review Program.
	Medical Review Manager.
	Annual Medical Review/Local Provider Education Training Strategy.
	Data Analysis and Information Gathering.
	Problem Identification & Prioritization.
	Intervention Planning.
	Program Management.
	Budget and Workload Management.
	Staffing and Workforce Management.
	Local Provider Education and Training Program.
	Local Provider Education Training Activities.
	One-on-One Provider Education.
	Education Delivered to a Group of Providers.
	Education Delivered via Electronic Media.
	Description of Methods of Education.
	Proactive Local Educational Meetings.
	Comprehensive Educational Interventions.
	Comparative Billing Report Education.
	Frequently Asked Question Regarding Local Education Issues.
	Bulletin Articles/Advisories Regarding Local Education Issues.
	Scripted Response Documents on Local Education Issues.
	Local Provider Education Training Staff.
108	Change in Statistical Sampling Instructions.
	General Purpose.
	The Purpose of Statistical Sampling.
	Steps for Conducting Statistical Sampling.
	Determining When Statistical Sampling May be Used.
	Consultation With a Statistical Expert.
	Use of Other Sampling Methodologies.
	Probability Sampling.
	Selection of Period for Review.
	Defining the Universe, the Sampling Unit, and the Sampling Frame.
	Composition of the Universe.
	The Sampling Unit.
	Stratified Sampling.
	Cluster Sampling.
	Random Number Selection.
	Determining Sample Size.
	Documentation of Sampling Methodology.
	Documentation of Universe and Frame.
	Worksheets.
	Informational Copies to GTL, Co-GTL, SME or CMS RO.
	The Point Estimate.
	Actions Performed Following Selection of Provider or Supplier and Sample.
	Notification of Provider or Supplier of the Review and Selection of the Review Site
	Written Notification of the Review.
	Determining Review Site.
109	Updated Standard System Changes for Provider Enrollment Chain Ownership System and Multi-Carrier System.
110	Revise CERT Shared Systems Modules to Retrieve Claims Files Using Only Internal Control Number as a Key.
111	Revising the Fiscal Intermediary Standard System Shared System.
112	Requirement that Part B/Carriers Submit All Provider Addresses to the Comprehensive Error Rate Testing Program Contractor.
113	Shared System Maintainer Hours for PECOS Problems and/or Implementation Changes.
114	Change in Statistical Sampling Instructions.
	General Purpose.
	The Purpose of Statistical Sampling.
	Steps for Conducting Statistical Sampling.
	Determining When Statistical Sampling May Be Used.
	Consultation With a Statistical Expert.
	Use of Other Sampling Methodologies.
	Probability Sampling.
	Selection of Period for Review.
	Defining the Universe, the Sampling Unit, and the Sampling Frame.
	Composition of the Universe.
	The Sampling Unit.
	Stratified Sampling.
	Cluster Sampling.....
	Random Number Selection.
	Determining Sample Size.
	Documentation of Sampling Methodology.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April Through June 2005]

Transmittal No.	Manual/Subject/Publication No.
	Documentation of Universe and Frame. Worksheets. Informational Copies to GTL, Co-GTL, SME or CMS RO. The Point Estimate. Actions Performed Following Selection of Provider or Supplier and Sample. Notification of Provider or Supplier of the Review and Selection of the Review Site. Written Notification of the Review. Determining Review Site.
	Medicare Contractor Beneficiary and Provider Communications (CMS—Pub. 100–09)
09	Additions and Corrections to Provider Inquiry and Provider Communications Program Requirements.
10	This Transmittal is rescinded and replaced by Transmittal 11.
11	FY 2005 Beneficiary Telephone Customer Services. Beneficiary Services. Guidelines for Beneficiary Telephone Services (Activity Code 13005). Toll Free Network Services. Publication of Toll Free Numbers. Call Handling Requirements. Customer Service Assessment and Management System Reporting Requirements. Customer Service Representative Training. Quality Call Monitoring. Disclosure of Information (Adherence to the Privacy Act and the Health Insurance Portability and Accountability Act Privacy Rule). Second Level Screening of Beneficiary and Provider Inquiries (Activity Code 13201). Second Level Screening of Provider Inquiries (Miscellaneous Code 13201/01). Medicare Customer Service Next Generation Desktop. Publication Requests. Medicare Participating Physicians and Suppliers Directory. Transfer of Part A Telephone/Written Inquiries Workload. Guidelines for Handling Beneficiary Written Inquiries (Activity Code 13002). Contractor Guidelines for High Quality Written Responses to Inquiries Surveys. Guidelines for High Quality Walk-In Services. Customer Service Plans (Activity Code 13004). Beneficiary Internet Web Sites.
	Medicare Managed Care (CMS—Pub. 100–16)
00	None.
	Medicare Business Partners Systems Security (CMS—Pub. 100–17)
00	None
	Demonstrations (CMS—Pub. 100–19)
22	Assignment of Non-Payment/Denial Code Specific to the Recovery Audit Contractor Created Group Health Plan Occurrences.
23	This Transmittal is rescinded and replaced by 25.
24	Instructions for Affiliated Contractors Involved in the Recovery Audit Contractor Demonstration.
25	Low Vision Rehabilitation Demonstration.
	One Time Notification (CMS—Pub. 100–20)
147	Medicare Health Insurance Portability & Accountability Act Electronic Claims Report—Second Reporting Timeframe Extension.
148	Revised Coding Guidelines for Drug Administration Codes.
149	Requirements for Voided, Canceled, and Deleted Claims.
150	Shared System Maintainer Hours for Resolution of Problems Detected During Health Insurance Portability and Accountability Act Transaction Release Testing.
151	Common Working File Calculation of Next Eligible Date for Preventive Services.
152	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
153	This Transmittal is rescinded and replaced by Transmittal 155.
154	Correction 2005 Clinical Laboratory Travel Fee (P9603 P9604).
155	Payment to Ambulatory Surgery Centers for New CPT Code 66711.
156	New Patient Status Code to Define Discharges or Transfers to a Critical Access Hospital.
157	CD–ROM Initiative for Distribution of the Annual Disclosure, ''Dear Doctor'' Letter and Participation Enrollment Material.
158	Instructions for Fiscal Intermediaries to Process Payment Adjustments Resulting from Data Assessment and Verification Program Safeguard Contractor Medical Review.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April Through June 2005]

Transmittal No.	Manual/Subject/Publication No.
159	Requirements for Voided, Canceled, and Deleted Claims.
160	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

[April through June 2005]

Publication date	FR Vol. 70 Page No.	CFR Parts affected	File code	Title of regulation
April 1, 2005	16754	421 and 413	CMS–1213–CN	Medicare Program; Prospective Payment System for Inpatient Psychiatric Facilities; Correction.
April 1, 2005	16720	403, 405, 410, 411, 414, 418, 424, 484, and 486.	CMS–1429–F2	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2005: Correcting Amendment.
April 7, 2005	17697	.....	CMS–5029–N ...	Medicare Program; Rural Hospice Demonstration.
April 8, 2005	18028	.....	CMS–1296–N2	Medicare Program; Request for Nominations to the Advisory Panel on Ambulatory Payment Classification Groups; Extension of Nominations Deadline.
April 12, 2005	19090	.....	CMS–5033–N6	Medicare Program; Cancellation of the April 13, 2005 Advisory Board Meeting on the Demonstration of a Bundled Case-Mix Adjusted Payment System for End-Stage Renal Disease Services.
April 22, 2005	20916	.....	CMS–4107–N ...	Medicare Program; Request for Nominations for the Advisory Panel on Medicare Education.
April 25, 2005	21146	45 CFR Part 146	CMS–2151–F ...	Final Regulations for Health Coverage Portability for Group Health Plans and Group Health Insurance Issuers Under HIPAA Titles I and IV; Correction.
April 29, 2005	22394	418	CMS–1286–P ...	Medicare Program; Proposed Hospice Wage Index for Fiscal Year 2006.
April 29, 2005	22321	.....	CMS–1314–N ...	Medicare Program; Meeting of the Practicing Physicians Advisory Council, May 23, 2005.
April 29, 2005	22320	.....	CMS–5033–N4	Medicare Program; Meeting of the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for End-Stage Disease Services—May 24, 2005.
April 29, 2005	22317	.....	CMS–2207–N ...	Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988; Continuance of Exemption of Laboratories Licensed by the State of Washington.
May 4, 2005	23690	416	CMS–1478–IFC	Medicare Program; Update of Ambulatory Surgical Center List of Covered Procedures.
May 4, 2005	23306	405, 412, 413, 415, 419, 422, and 485.	CMS–1500–P ...	Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates.
May 6, 2005	24168	412	CMS–1483–F ...	Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Annual Payment Rate Updates, Policy Changes, and Clarification.
May 18, 2005	28541	.....	CMS–1269–N4	Medicare Program; Emergency Medical Treatment and Labor Act (EMTALA Technical Advisory Group (TAG) Meeting—June 15, 2005 through June 17, 2005.
May 19, 2005	29070	424	CMS–1282–P ...	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2006.
May 24, 2005	29765	.....	CMS–2214–N ...	Medicaid Program; Establishment of the Medicaid Commission and Request for Nominations for Members.
May 25, 2005	30188	412	CMS–1290–P ...	Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for FY 2006.
May 27, 2005	30840	418	CMS–3844–P ...	Medicare and Medicaid Programs; Hospice Conditions of Participation.
May 27, 2005	30734	.....	CMS–1293–N ...	Medicare Program; Public Meeting in Calendar Year 2005 for New Clinical Laboratory Tests Payment Determinations.
May 27, 2005	30733	.....	CMS–4095–N ...	Medicare Program; Meeting of the Advisory Panel on Medicare Education, June 21, 2005.
May 27, 2005	30731	.....	CMS–3144–N ...	Medicare Program; Calendar Year 2005 Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers (ASCs).

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

[April through June 2005]

Publication date	FR Vol. 70 Page No.	CFR Parts affected	File code	Title of regulation
May 27, 2005	30640	413	CMS–1199–IFC	Medicare Program; Electronic Submission of Cost Reports: Revision to Effective Date of Cost Reporting Period.
June 17, 2005	35204	400 and 421	CMS–6030–P2	Medicare Program; Medicare Integrity Program, Fiscal Intermediary and Carrier Functions, and Conflict of Interest Requirements.
June 24, 2005	36642		CMS–5033–N5	Medicare Program; Meeting of the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for End-Stage Renal Disease Services—July 14 through July 15, 2005.
June 24, 2005	36640		CMS–1480–N	Medicare Program; Inpatient Rehabilitation Facility Compliance Criteria.
June 24, 2005	36620		CMS–9028–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—January through March 2005.
June 24, 2005	36615		CMS–2219–N	State Children's Health Insurance Program; Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2006.
June 24, 2005	36613		CMS–5022–N	Medicare Program; Solicitation for Applications for the Medical Adult Day-Care Services Demonstration.
June 24, 2005	36533	416	CMS–1478–CN	Medicare Program; Update of Ambulatory Surgical Center List of Covered Procedures; Correction.
June 30, 2005	37700	401 and 405	CMS–4064–IFC2.	Medicare Program; Changes to the Medicare Claims Appeal Procedures: Correcting Amendment to an Interim Final Rule.

Addendum V—National Coverage Determinations

[January Through March 2005]

A national coverage determination (NCD) is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Social Security Act, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this title, or determination with respect to the amount of payment made for a particular item or service so covered. We include below all of the NCDs that were issued during the quarter covered by this notice. The entries below include information concerning completed decisions as well as sections on program and decision memoranda, which also announce pending decisions or, in some cases, explain why it was not appropriate to issue an NCD. We identify completed decisions by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site at *http://cms.hhs.gov/coverage.*

NATIONAL COVERAGE DETERMINATIONS

[April Through June 2005]

Title	NCDM section	TN no.	Issue date	Effective date
PET for 6 Cancers (Brain, Ovarian, Testicular, Small-Cell Lung, Pancreatic, Cervical)	220.14	R31NCD	04/01/05	01/28/05
Autologous Stem Cell Transplantations for Amyloidosis	110.8.1	R32NCD	04/15/05	03/15/05
Percutaneous Transluminal Angioplasty (PTA)	20.7	R33NCD	04/22/05	03/17/05
Abarelix/Plenaxis for Treatment of Prostate Cancer	110.19	R34NCD	04/25/05	03/15/05
Continuous Positive Airway Pressure (CPAP) for Obstructive Sleep Apnea (OSA)	240.4	R35NCD	05/06/05	04/04/05
Smoking and Tobacco Use Cessation Counseling	210.4	R36NCD	05/20/05	03/22/05
Mobility Assistive Equipment (MAE)	280.3	R37NCD	05/05/05	03/25/05
Anti-Cancer Chemotherapy for Colorectal Cancer	110.17	R38NCD	06/17/05	01/28/05
Cochlear Implantation	50.3	R39NCD	06/24/05	04/04/05
Aprepitant for Chemotherapy-Induced Emesis	110.18	R40NCD	06/24/05	04/04/05
Osteogenic Stimulators	150.2	R41NCD	06/24/05	04/27/05

Addendum VI.—FDA-Approved Category B IDEs

[April Through June 2005]

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved IDE. Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following list includes all Category B IDEs approved by FDA during the second quarter, April through June 2005.

IDE/Category: B012305, B012314, B012410, G000119, G000165, G020211, G030161, G030165, G030219, G030230, G030263, G040078, G040102, G040158,

G040168, G040172, G040184, G040214, G040229, G050002, G050012, G050034, G050042, G050045, G050049, G050050, G050052, G050053, G050056, G050058, G050059, G050061, G050062, G050063, G050066, G050070, G050074, G050075, G050077, G050078, G050083, G050084, G050085, G050088, G050089, G050089, G050090, G050091, G050094, G050096, G050097, G050099, G050101, G050102, G050105, G050106, G050110, G960204, G970145, G980102, G990106, G990216.

Addendum VII.—Approval Numbers for Collections of Information

Below we list all approval numbers for collections of information in the referenced sections of CMS regulations in Title 42; Title 45, Subchapter C; and Title 20 of the Code of Federal Regulations, which have been approved by the Office of Management and Budget:

OMB Control No.	Approved CFR Sections in Title 42, Title 45, and Title 20 (Note: Sections in Title 45 are preceded by ''45 CFR,'' and sections in Title 20 are preceded by ''20 CFR'')
0938–0008	414.40, 424.32, 424.44
0938–0022	413.20, 413.24, 413.106
0938–0023	424.103
0938–0025	406.28, 407.27
0938–0027	486.100–486.110
0938–0033	405.807
0938–0035	407.40
0938–0037	413.20, 413.24
0938–0041	408.6, 408.22
0938–0042	410.40, 424.124
0938–0045	405.711
0938–0046	405.2133
0938–0050	413.20, 413.24
0938–0062	431.151, 435.1009, 440.220, 440.250, 442.1, 442.10–442.16, 442.30, 442.40, 442.42, 442.100–442.119, 483.400–483.480, 488.332, 488.400, 498.3–498.5
0938–0065	485.701–485.729
0938–0074	491.1–491.11
0938–0080	406.7, 406.13
0938–0086	420.200–420.206, 455.100–455.106
0938–0101	430.30
0938–0102	413.20, 413.24
0938–0107	413.20, 413.24
0938–0146	431.800–431.865
0938–0147	431.800–431.865
0938–0151	493.1405, 493.1411, 493.1417, 493.1423, 493.1443, 493.1449, 493.1455, 493.1461, 493.1469, 493.1483, 493.1489
0938–0155	405.2470
0938–0170	493.1269–493.1285
0938–0193	430.10–430.20, 440.167
0938–0202	413.17, 413.20
0938–0214	411.25, 489.2, 489.20
0938–0236	413.20, 413.24
0938–0242	442.30, 488.26
0938–0245	407.10, 407.11
0938–0246	431.800–431.865
0938–0251	406.7
0938–0266	416.41, 416.47, 416.48, 416.83
0938–0267	410.65, 485.56, 485.58, 485.60, 485.64, 485.66
0938–0269	412.116, 412.632, 413.64, 413.350, 484.245
0938–0270	405.376
0938–0272	440.180, 441.300–441.305
0938–0273	485.701–485.729
0938–0279	424.5
0938–0287	447.31
0938–0296	413.170, 413.184
0938–0301	413.20, 413.24
0938–0302	418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.74, 418.83, 418.96, 418.100
0938–0313	489.11, 489.20
0938–0328	482.12, 482.13, 482.21, 482.22, 482.27, 482.30, 482.41, 482.43, 482.45, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, 482.66, 485.618, 485.631
0938–0334	491.9, 491.10
0938–0338	486.104, 486.106, 486.110
0938–0354	441.60
0938–0355	442.30, 488.26
0938–0357	409.40–409.50, 410.36, 410.170, 411.4–411.15, 421.100, 424.22, 484.18, 489.21
0938–0358	412.20–412.30
0938–0359	412.40–412.52
0938–0360	488.60
0938–0365	484.10, 484.11, 484.12, 484.14, 484.16, 484.18, 484.20, 484.36, 484.48, 484.52
0938–0372	414.330
0938–0378	482.60–482.62
0938–0379	442.30, 488.26
0938–0382	442.30, 488.26
0938–0386	405.2100–405.2171

OMB Control No.	Approved CFR Sections in Title 42, Title 45, and Title 20 (Note: Sections in Title 45 are preceded by "45 CFR," and sections in Title 20 are preceded by "20 CFR")
0938–0391	488.18, 488.26, 488.28
0938–0426	476.104, 476.105, 476.116, 476.134
0938–0429	447.53
0938–0443	473.18, 473.34, 473.36, 473.42
0938–0444	1004.40, 1004.50, 1004.60, 1004.70
0938–0445	412.44, 412.46, 431.630, 456.654, 466.71, 466.73, 466.74, 466.78
0938–0447	405.2133
0938–0448	405.2133, 45 CFR 5, 5b; 20 CFR Parts 401, 422E
0938–0449	440.180, 441.300–441.310
0938–0454	424.20
0938–0456	412.105
0938–0463	413.20, 413.24, 413.106
0938–0467	431.17, 431.306, 435.910, 435.920, 435.940–435.960
0938–0469	417.126, 422.502, 422.516
0938–0470	417.143, 417.800–417.840, 422.6
0938–0477	412.92
0938–0484	424.123
0938–0501	406.15
0938–0502	433.138
0938–0512	486.304, 486.306, 486.307
0938–0526	475.102, 475.103, 475.104, 475.105, 475.106
0938–0534	410.38, 424.5
0938–0544	493.1–493.2001
0938–0564	411.32
0938–0565	411.20–411.206
0938–0566	411.404, 411.406, 411.408
0938–0573	412.230, 412.256
0938–0578	447.534
0938–0581	493.1–493.2001
0938–0599	493.1–493.2001
0938–0600	405.371, 405.378, 413.20
0938–0610	417.436, 417.801, 422.128, 430.12, 431.20, 431.107, 434.28, 483.10, 484.10, 489.102
0938–0612	493.801, 493.803, 493.1232, 493.1233, 493.1234, 493.1235, 493.1236, 493.1239, 493.1241, 493.1242, 493.1249, 493.1251, 493,1252, 493.1253, 493.1254, 493.1255, 493.1256, 493.1261, 493.1262, 493.1263, 493.1269, 493.1273, 493.1274, 493.1278, 493.1283, 493.1289, 493.1291, 493.1299
0938–0618	433.68, 433.74, 447.272
0938–0653	493.1771, 493.1773, 493.1777
0938–0657	405.2110, 405.2112
0938–0658	405.2110, 405.2112
0938–0667	482.12, 488.18, 489.20, 489.24
0938–0679	410.38
0938–0685	410.32, 410.71, 413.17, 424.57, 424.73, 424.80, 440.30, 484.12
0938–0686	493.551–493.557
0938–0688	486.304, 486.306, 486.307, 486.310, 486.316, 486.318, 486.325
0938–0690	488.4–488.9, 488.201
0938–0691	412.106
0938–0692	466.78, 489.20, 489.27
0938–0701	422.152
0938–0702	45 CFR 146.111, 146.115, 146.117, 146.150, 146.152, 146.160, 146.180
0938–0703	45 CFR 148.120, 148.124, 148.126, 148.128
0938–0714	411.370–411.389
0938–0717	424.57
0938–0721	410.33
0938–0723	421.300–421.318
0938–0730	405.410, 405.430, 405.435, 405.440, 405.445, 405.455, 410.61, 415.110, 424.24
0938–0732	417.126, 417.470
0938–0734	45 CFR 5b
0938–0739	413.337, 413.343, 424.32, 483.20
0938–0742	422.300–422.312
0938–0749	424.57
0938–0753	422.000–422.700
0938–0754	441.151, 441.152
0938–0758	413.20, 413.24
0938–0760	Part 484 Subpart E, 484.55
0938–0761	484.11, 484.20
0938–0763	422.1–422.10, 422.50–422.80, 422.100–422.132, 422.300–422.312, 422.400–422.404, 422.560–422.622
0938–0770	410.2
0938–0778	422.64, 422.111
0938–0779	417.126, 417.470, 422.64, 422.210
0938–0781	411.404–411.406, 484.10
0938–0786	438.352, 438.360, 438.362, 438.364
0938–0787	406.28, 407.27

OMB Control No.	Approved CFR Sections in Title 42, Title 45, and Title 20 (Note: Sections in Title 45 are preceded by ''45 CFR,'' and sections in Title 20 are preceded by ''20 CFR'')
0938–0790	460.12, 460.22, 460.26, 460.30, 460.32, 460.52, 460.60, 460.70, 460.71, 460.72, 460.74, 460.80, 460.82, 460.98, 460.100, 460.102, 460.104, 460.106, 460.110, 460.112, 460.116, 460.118, 460.120, 460.122, 460.124, 460.132, 460.152, 460.154, 460.156, 460.160, 460.164, 460.168, 460.172, 460.190, 460.196, 460.200, 460.202, 460.204, 460.208, 460.210
0938–0792	491.8, 491.11
0938–0798	413.24, 413.65, 419.42
0938–0802	419.43
0938–0818	410.141, 410.142, 410.143, 410.144, 410.145, 410.146, 414.63
0938–0829	422.568
0938–0832	Parts 489 and 491
0938–0833	483.350–483.376
0938–0841	431.636, 457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, 457.1180
0938–0842	412.23, 412.604, 412.606, 412.608, 412.610, 412.614, 412.618, 412.626, 413.64
0938–0846	411.352–411.361
0938–0857	Part 419
0938–0860	Part 419
0938–0866	45 CFR Part 162
0938–0872	413.337, 483.20
0938–0873	422.152
0938–0874	45 CFR Parts 160 and 162
0938–0878	Part 422 Subpart F & G
0938–0883	45 CFR Parts 160 and 164
0938–0884	405.940
0938–0887	45 CFR 148.316, 148.318, 148.320
0938–0897	412.22, 412.533
0938–0907	412.230, 412.304, 413.65
0938–0910	422.620, 422.624, 422.626
0938–0911	426.400, 426.500
0938–0916	483.16
0938–0920	438.6, 438.8, 438.10, 438.12, 438.50, 438.56, 438.102, 438.114, 438.202, 438.206, 438.207, 438.240, 438.242, 438.402, 438.404, 438.406, 438.408, 438.410, 438.414, 438.416, 438.710, 438.722, 438.724, 438.810
0938–0921	414.804
0938–0931	45 CFR Part 142.408, 162.408, and 162.406
0938–0933	438.50
0938–0934	403.766
0938–0936	423
0938–0940	484 and 488
0938–0944	422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.279, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350
0938–0950	405.910
0938–0951	423.48
0938–0953	405.1200 and 405.1202

Addendum VIII

Medicare-Approved Carotid Stent Facilities

[April Through June 2005]

On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients.

April 1, 2005

Bon Secours St. Mary's Hospital
5801 Bremo Road
Richmond, VA 23226
Medicare Provider #490059

Clear Lake Regional Medical Center
500 Medical Center Blvd
Webster, TX 77598
Medicare Provider #450617

Louisiana Heart Hospital
64030 Louisiana Highway 434
Lacombe, LA 70445
Medicare Provider #190250

Phoenix Baptist Hospital
Cardiac Catheterization Laboratory/
Interventional Radiology Suite
200 West Bethany Home Road
Phoenix, AZ 85015
Medicare Provider #030030

Saint Joseph Medical Center
Twelfth and Walnut Streets
P.O. Box 316
Reading, PA 19603-0316
Medicare Provider #390096

St. Francis Hospital & Health Centers
1600 Albany Street
Beech Grove, IN 46107
Medicare Provider #150033

University of Pennsylvania Medical Center-Presbyterian
39th and Market Streets
Philadelphia, PA 19104
Medicare Provider #390223

April 4, 2005

Emory University Hospital
1364 Clifton Road, NE
Atlanta, GA 30322
Medicare Provider #110010

Hoag Memorial Hospital Presbyterian
One Hoag Drive
Newport Beach, CA 92663
Medicare Provider #050224

Lakeland Hospital
1234 Napier Avenue
St. Joseph, MI 49085
Medicare Provider #230021

April 7, 2005

The Baldwin County Eastern Shore Health Care Authority
d/b/a Thomas Hospital
750 Morphy Avenue
Fairhope, AL 36532
Medicare Provider #010100

Martha Jefferson Hospital
459 Locust Avenue
Charlottesville, VA 22902
Medicare Provider #490077

Mercy Medical Center
701 10th Street SE.
Cedar Rapids, IA 52403
Medicare Provider #160079

Mount Sinai Medical Center
4300 Alton Road
Miami Beach, FL 33140
Medicare Provider #100034

Skyline Medical Center
3441 Dickerson Pike
Nashville, TN 37207
Medicare Provider #440006

Union Memorial Hospital
201 East University Parkway
Baltimore, MD 21218–2895
Medicare Provider #210024

April 12, 2005

Baptist Hospital East
4000 Kresage Way
Louisville, KY 40207
Medicare Provider #180130

Baptist Hospital of East Tennessee
137 Blount Avenue
Knoxville, TN 37920
Medicare Provider #440019

Borgess Medical Center
1521 Gull Road
Kalamazoo, MI 49048
Medicare Provider #020117

The Cleveland Clinic Foundation
9500 Euclid Avenue
Cleveland, OH 44195
Medicare Provider #360180

Good Samaritan Hospital
1225 Wilshire Boulevard
Los Angeles, CA 90017
Medicare Provider #050471

Good Samaritan Hospital
2425 Samaritan Drive
San Jose, CA 95124
Medicare Provider #050380

Harbor-UCLA Medical Center
1000 West Carson Street
Torrance, CA 90502
Medicare Provider #050376

Hunterdon Medical Center
2100 Wescott Drive
Flemington, NJ 08822
Medicare Provider #310005

Jewish Hospital
200 Abraham Flexner Way
Louisville, KY 40202
Medicare Provider #180040

Mercy Health Center
4300 West Memorial Road
Oklahoma City, OK 73120–8304
Medicare Provider #370013

Mercy Medical Center
1111 6th Avenue
Des Moines, IA 50314
Medicare Provider #160083

Methodist Hospital
300 West Huntington Drive
P.O. Box 60016
Arcadia, CA 91066–6016
Medicare Provider #050238

North Austin Medical Center
12221 MoPac Expressway North
Austin, TX 78758
Medicare Provider #450809

Ochsner Clinic Foundation
Department of Cardiology
1514 Jefferson Highway
New Orleans, LA 70121–2483
Medicare Provider #190036

Princeton Baptist Medical Center
701 Princeton Avenue, SW
Birmingham, AL 35211–1399
Medicare Provider #010103

Resurrection Medical Center
7435 West Talcott
Chicago, IL 60631
Medicare Provider #140117

South Austin Hospital
901 W. Ben White
Austin, TX 78704
Medicare Provider #450713

St. Patrick Hospital and Health Sciences Center
500 West Broadway
Missoula, MT 59802
Medicare Provider #270014

April 14, 2005

Fort Walton Beach Medical Center
1000 Mar Walt Drive
Fort Walton Beach, FL 32547
Medicare Provider #100223

York Hospital
15 Hospital Drive
York, ME 03909
Medicare Provider #200020

April 18, 2005

Alexian Brothers Medical Center
800 W. Biesterfield Road
Elk Grove Village, IL 60007
Medicare Provider #140258

Arizona Heart Hospital
1930 E. Thomas Road
Phoenix, AZ 85106
Medicare Provider #030102

Baptist Memorial Hospital
6019 Walnut Grove Road
Memphis, TN 38102
Medicare Provider #440048

CHRISTUS St. Frances Cabrini Hospital
3330 Masonic Drive
Alexandria, LA 71301
Medicare Provider #190019

Eastern Main Medical Center
489 State Street
P.O. Box 404
Bangor, ME 04402–0404
Medicare Provider #200033

Good Samaritan Hospital
375 Dixmyth Avenue
Cincinnati, OH 45220–2489
Medicare Provider #360134

Iowa Methodist Medical Center
1200 Pleasant Street
Des Moines, IA 50309
Medicare Provider #160082

Lutheran Hospital of Indiana
7950 West Jefferson Boulevard
Fort Wayne, IN 46804
Medicare Provider #150017

Moses H. Cone Memorial Hospital
1200 N. Elm Street
Greensboro, NC 27401
Medicare Provider #340091

Robert Packer Hospital
One Guthrie Square
Sayre, PA 18840–1698
Medicare Provider #390079

Spectrum Health Hospital
100 Michigan Street NE.
Grand Rapids, MI 49503
Medicare Provider #230038

St. Luke's Medical Center
2900 W. Oklahoma Avenue
P.O. Box 2901
Milwaukee, WI 53201–2901
Medicare Provider #520138

April 19, 2005

Harper–Hutzel Hospital
3990 John R Street
Detroit, MI 48201
Medicare Provider #230104

North Florida Regional Medical Center
6500 Newberry Road
Gainesville, FL 32605
Medicare Provider #100204

Sinai-Grace Hospital
6071 W. Outer Drive
Detroit, MI 48235
Medicare Provider #230024

Sioux Valley Hospital USD Medical Center
1305 W. 18th Street
Sioux Falls, SD 57117–5039
Medicare Provider #430027

St. Anthony's Hospital
1200 7th Avenue North
St. Petersburg, FL 33705
Medicare Provider #100067

St. John's Regional Medical Center
2727 McClelland Boulevard
Joplin, MO 64804–1694
Medicare Provider #260001

St. Luke's
915 East First Street
Duluth, MN 55805
Medicare Provider #240047

St. Thomas Hospital
4220 Harding Road
Nashville, TN 37205
Medicare Provider #440082

Strong Memorial Hospital
601 Elmwood Avenue,
Box 679
Rochester, NY 14642
Medicare Provider #330285

UC Davis Cardiac Cath Lab/UC Davis Medical Center
2315 Stockton Blvd
Sacramento, CA 95817
Medicare Provider #050599

April 20, 2005

Baptist Medical Center South
2105 East South Boulevard
P.O. Box 11010
Montgomery, AL 36111–0010
Medicare Provider #010023

Forsyth Medical Center

3333 Silas Creek Parkway
Winston Salem, NC 27103
Medicare Provider #340014

Harris Methodist Fort Worth Hospital
1301 Pennsylvania Avenue
Fort Worth, TX 76104
Medicare Provider #450135

Jupiter Medical Center
1210 S. Old Dixie Hwy
Jupiter, FL 33458
Medicare Provider #100253

Kent Hospital
455 Toll Gate Road
Warwick, RI 02886
Medicare Provider #410009

Lawnwood Medical Center, Inc.
d/b/a Lawnwood Regional Medical Center and Heart Institute
1700 South 23rd Street
Fort Pierce, FL 34950
Medicare Provider #100246

LDS Hospital
8th Avenue and C Street
Salt Lake City, UT 84143
Medicare Provider #460010

Riverside Methodist Hospital
3535 Olentangy River Road
Columbus, OH 43214
Medicare Provider #360006

Rush University Medical Center
1725 West Harrison Street
Suite 364
Chicago, IL 60612–3824

Shady Grove Adventist Hospital
9901 Medical Center Drive
Rockville, MD 20850
Medicare Provider #210057

St. Mary's Hospital and Medical Center
2635 North Seventh Street
P.O. Box 1628
Grand Junction, CO 81501
Medicare Provider #060023

Terrebonne General Medical Center
8166 Main Street
Houma, LA 70360
Medicare Provider #190008

The Valley Hospital
223 N. Van Dien Avenue
Ridgewood, NJ 07450–2736
Medicare Provider #310012

April 26, 2005

Baptist Montclair Medical Center
800 Montclair Road
Birmingham, AL 35213
Medicare Provider #010104

Caritas St. Elizabeth's Medical Center
736 Cambridge Street
Boston, MA 02135–2997
Medicare Provider #220036

Fresno Heart Hospital
15 E. Audubon Drive
Fresno, CA 93720
Medicare Provider #050732

Fountain Valley Regional Hospital and Medical Center
17100 Euclid Street
P.O. Box 8010
Fountain Valley, CA 92708
Medicare Provider #050570

Mountain View Regional Medical Center
4311 E. Lohman Avenue
Las Cruces, NM 88011
Medicare Provider #320085

Northwestern Memorial Hospital
251 East Huron Street
Chicago, IL 60611
Medicare Provider #140281

SSM St. Joseph Health Center
300 First Capitol Drive
St. Charles, MO 63301
Medicare Provider #260005

St. Elizabeth Medical Center
South Unit
1 Medical Village Drive
Edgewood, KY 41017
Medicare Provider #180035

Wyoming Valley Health Care System
575 North River Street
Wilkes Barre, PA 18764
Medicare Provider #390137

April 27, 2005

Baptist Hospital-Pensacola
1000 West Moreno Street
P.O. Box 17500
Pensacola, FL 32522–7500
Medicare Provider #100093

Central Baptist Hospital
1740 Nicholasville Road
Lexington, KY 40503
Medicare Provider #180103

Charleston Area Medical Center
3200 MacCorkle Avenue, SE.
Charleston, WV 25304
Medicare Provider #510022

Dartmouth Hitchcock Medical Center
One Medical Center Drive
Lebanon, NH 03756
Medicare Provider #300003

Doylestown Hospital
595 West State Street
Doylestown, PA 18901
Medicare Provider #390203

Good Samaritan Hospital
255 Lafayette Avenue
Suffern, NY 10901
Medicare Provider #330158

Hackensack University Medical Center
30 Prospect Avenue
Hackensack, NJ 07601
Medicare Provider #310001

Medical College of Ohio
3000 Arlington Avenue
Toledo, OH 43614
Medicare Provider #360048

Memorial Hospital Jacksonville
3625 University Boulevard, South
Jacksonville, FL 32216
Medicare Provider #100179

[The] Ortenzio Heart Center at Holy Spirit
503 North 21st Street
Camp Hill, PA 17011–2288
Medicare Provider #390004

OSF Saint Francis Medical Center
530 N.E. Glen Oak Avenue
Peoria, IL 61637
Medicare Provider #140067

Saint Luke's Hospital of Kansas City
4401 Wornall Road
Kansas City, MO 64111
Medicare Provider #360138

Saints Memorial Medical Center
1 Hospital Drive
Lowell, MA 01852–1389
Medicare Provider #220082

St. John Hospital and Medical Center
22151 Moross Road
Detroit, MI 48236
Medicare Provider #230165

Union Hospital
1606 North Seventh Street
Terre Haute, IN 47804–2780
Medicare Provider #150023

University Health System
4502 Medical Drive
San Antonio, TX 78229
Medicare Provider #450213

Washoe Medical Center
75 Pringle Way
Reno, NV 89502
Medicare Provider #290001

Willis Knighton Bossier
2400 Hospital Drive,
Bossier City, LA 71111
Medicare Provider #190236

Willis Knighton Medical Center
2600 Greenwood Road
Shreveport, LA 71103
Medicare Provider #190111

May 3, 2005

Advocate Christ Medical Center
4440 West 95th Street
Oak Lawn, IL 60453
Medicare Provider #140208

Aurora Sinai Medical Center
945 N. 12th Street
Milwaukee, WI 53201
Medicare Provider #520064

Cascade Healthcare Community
d/b/a St. Charles Medical Center Bend
2500 N.E. Neff Road
Bend, OR 97701
Medicare Provider #380040

CJW Medical Center
Chippenham Hospital
7101 Jahnke Road
Richmond, VA 23225
Medicare Provider #490112

Kaleida Health
Millard Fillmore Hospital
3 Gates Circle
Buffalo, NY 14209
Medicare Provider #330005

Lakeview Regional Medical Center
95 E. Fairway Drive
Covington, LA 70433
Medicare Provider #190177

Massachusetts General Hospital
55 Fruit Street
Boston, MA 02114
Medicare Provider #220071

Methodist Medical Center of Oak Ridge
990 Oak Ridge Turnpike
Oak Ridge, TN 37830
Medicare Provider #440034

North Oakland Medical Centers
461 W. Huron Street
Pontiac, MI 48341–1651
Medicare Provider #230013

Norton Healthcare
P.O. Box 35070
Louisville, KY 40232–5070
Medicare Provider #180088

Our Lady of Lourdes Regional Medical Center
611 St. Landry Street
Lafayette, LA 70506

Medicare Provider #190102

St. John West Shore Hospital
29000 Center Ridge Road
Westlake, OH 44145
Medicare Provider #360123

Swedish American Hospital
1401 East State Street
Rockford, IL 61104
Medicare Provider #140228

UPMC Presbyterian Shadyside
200 Lothrop Street
Pittsburgh, PA 15213
Medicare Provider #390164

May 5, 2005

Advocate Lutheran General Hospital
1775 Dempster Street
Park Ridge, IL 60068
Medicare Provider #140223

Avera Heart Hospital of South Dakota
4500 West 69th Street
Sioux Falls, SD 57108
Medicare Provider #430095

Baptist Medical Center
1225 North State Street
Jackson, MS 39202
Medicare Provider #250102

Baptist Memorial Hospital-DeSoto
7601 Southcrest Parkway
Southaven, MS 38671
Medicare Provider #250141

Barnes-Jewish Hospital
One Barnes-Jewish Hospital Plaza
St. Louis, MO 63110
Medicare Provider #260032

Bethesda Hospital
10500 Montgomery Road
Cincinnati, OH 45242–9508
Medicare Provider #360179

Eliza Coffee Memorial Hospital
P.O. Box 818
Florence, AL 35631
Medicare Provider #010006

Geisinger Medical Center
100 North Academy Avenue
Danville, PA 17822
Medicare Provider #390006

Geisinger Wyoming Valley Medical Center
1000 East Mountain Boulevard
Wilkes-Barre, PA 18711
Medicare Provider #390270

Grandview Hospital and Medical Center
405 Grand Avenue
Dayton, OH 45405
Medicare Provider #360133

Hamot Medical Center
201 State Street
Erie, PA 16550
Medicare Provider #390063

Hialeah Hospital
651 East 25th Street
Hialeah, FL 33013
Medicare Provider #100053

Huntington Hospital
100 W. California Boulevard
P.O. Box 7013
Pasadena, CA 91109–7013
Medicare Provider #050438

Kettering Medical Center
3535 Southern Blvd
Kettering, OH 45429
Medicare Provider #360079

Loyola University Medical Center
2160 South First Avenue
Maywood, IL 60153
Medicare Provider #140276

Mercy Hospital
500 E. Market Street
Iowa City, IA 52245
Medicare Provider #160029

Mercy Hospital and Medical Center
2525 South Michigan Avenue
Chicago, IL 60616
Medicare Provider #140158

New York Presbyterian Hospital
161 Ft. Washington Avenue
HIP1412
New York, NY 10032
Medicare Provider #330101

Ohio State University
University Medical Center
452 West 10th Avenue
Columbus, OH 43210
Medicare Provider #360085

Our Lady of Lourdes Medical Center
1600 Haddon Avenue
Camden, NJ 08103
Medicare Provider #310029

Parkwest Medical Center
9352 Park West Boulevard
Knoxville, TN 37923
Medicare Provider #440173

Parma Community General Hospital
7007 Powers Boulevard
Parma, OH 44129–5495
Medicare Provider #360041

Rogue Valley Medical Center
2825 East Barnett Road
Medford, OR 97504
Medicare Provider #380018

Sacred Heart Health System
5151 N. Ninth Avenue
P.O. Box 2700
Pensacola, FL 32513
Medicare Provider #100025

Saint Raphael Healthcare System
1450 Chapel Street
New Haven, CT 06511
Medicare Provider #070001

Seton Medical Center
1900 Sullivan Avenue
Daly City, CA 94015
Medicare Provider #050289

Southern Baptist Hospital of Florida, Inc.
d/b/a Baptist Medical Center
800 Prudential Drive
Jacksonville, FL 32207
Medicare Provider #100088

St. Bernardine Medical Center
2101 N. Waterman Avenue
San Bernardino, CA 92404–4836
Medicare Provider #050129

St. David's Medical Center
919 East 32nd Street
P.O. Box 4039
Austin, TX 78765–4039
Medicare Provider #450431

Town and Country Hospital
6001 Webb Road
Tampa, FL 33615–3241
Medicare Provider #100255

University of Louisville Hospital
530 South Jackson Street
Louisville, KY 40202
Medicare Provider #180141

Vassar Brother Medical Center
45 Reade Place
Poughkeepsie, NY 12601
Medicare Provider #330023

Western Baptist Hospital
2501 Kentucky Avenue
Paduach, KY 42003–3200
Medicare Provider #180104

The Wisconsin Heart Hospital, LLC
10000 West Blue Mound Road
Wauwatosa, WI 53226
Medicare Provider #520199

May 10, 2005

Aiken Regional Medical Centers
302 University Parkway
P.O. Drawer 1117
Aiken, SC 29802–1117
Medicare Provider #420082

Aspirus Wausau Hospital, Inc.
333 Pine Ridge Boulevard
Wausau, WI 54401
Medicare Provider #520030

Deaconess Medical Center
P.O. Box 248
Spokane, WA 99210–0248
Medicare Provider #500044

El Camino Hospital
2500 Grant Road
P.O. Box 7025
Mountain View, Ca 94039–7025

Exempla St. Joseph Hospital
1835 Franklin Street
Denver, CO 80218–1191
Medicare Provider #060009

Hahnemann University Hospital/Tenet
230 N. Broad Street, Mailstop 119
Philadelphia, PA 19102–1192
Medicare Provider #390290

Irvine Regional Hospital & Medical Center
16200 Sand Canyon Avenue
Irvine, CA 92618
Medicare Provider #050693

John Muir Medical Center
1601 Ygnacio Valley Road
Walnut Creek, CA 94598–3194
Medicare Provider #050180

Mid Michigan Medical Center-Midland
4005 Orchard Drive
Midland, MI 48670
Medicare Provider #230222

Mount Diablo Medical Center
2540 East Street
P.O. Box 4110
Concord, CA 94524–4110
Medicare Provider #050496

Palomar Medical Center
555 East Valley Parkway
Escondido, CA 92025
Medicare Provider #050115

Pomerado Hospital
15615 Pomerado Road
Poway, CA 92064
Medicare Provider #050636

Presbyterian Hospital of Dallas
8200 Walnut Hill Lane
Dallas, TX 75231–4496
Medicare Provider #450462

St. John's Hospital
800 East Carpenter Street
Springfield, IL 62769
Medicare Provider #140053

St. Joseph Regional Medical Center
5000 West Chambers Street

Milwaukee, WI 53210–1688
Medicare Provider #520136

St. Luke's Hospital
1026 A Avenue NE.
P.O. Box 3026
Cedar Rapids, IA 52406–3026
Medicare Provider #160045

Wentworth-Douglass Hospital
789 Central Avenue
Dover, NH 03820
Medicare Provider #300018

William Beaumont Hospital
3601 W. 13 Mile Road
Royal Oak, MI 48073
Medicare Provider #230130

May 11, 2005

Allegheny General Hospital
320 East North Avenue
Pittsburg, PA 15212–4772
Medicare Provider #390050

Central Georgia Health Systems
d/b/a The Medical Center of Central Georgia
777 Hemlock Street
Macon, GA 31208
Medicare Provider #110107

Charlotte Regional Medical Center
809 East Marion Avenue
Punta Gorda, FL 33950
Medicare Provider #100047

Fort Sanders Regional Medical Center
1901 W. Clinch Avenue
Knoxville, TN 37916–2398
Medicare Provider #440125

Greater Baltimore Medical Center
6701 N. Charles Street
Baltimore, MD 21204
Medicare Provider #210044

Northeast Methodist Hospital
12412 Judson Road
Live Oak, TX 78233
Medicare Provider #450388

Parkview Hospital
2200 Randallia Drive
Fort Wayne, IN 46805
Medicare Provider #150021

Provena Saint Joseph Hospital
77 North Airlite Street
Elgin, IL 60123–4912
Medicare Provider #140217

St. Francis Hospital and Health Center
12935 S. Gregory Street
Blue Island, IL 60406
Medicare Provider #140118

May 16, 2005

Akron General Medical Center
400 Wabash Avenue
Akron, OH 44266
Medicare Provider #360027

Albany Medical Center Hospital
43 New Scotland Avenue
Albany, NY 12208
Medicare Provider #330013

Baystate Medical Center
759 Chestnut Street
Springfield, MA 01199
Medicare Provider #220077

Brigham and Women's Hospital
75 Francis Street
Boston, MA 02115
Medicare Provider #220110

Emory Crawford Long Hospital
550 Peachtree Street, N.E.
Atlanta, GA 30308–2225
Medicare Provider #110078

Galichia Heart Hospital
2610 N. Woodlawn
Wichita, KS 67220–2729
Medicare Provider #170192

Harris Methodist HEB
1600 Hospital Parkway
Bedford, TX 76022
Medicare Provider #450639

Hennepin County Medical Center
701 Park Avenue
Minneapolis, MN 55415–1829
Medicare Provider #240004

High Point Regional Health System
601 North Elm Street
P.O. Box HP–5
High Point, NC 27261
Medicare Provider #340004

Hillcrest Hospital
6780 Mayfield Road
Mayfield Heights, OH 44124
Medicare Provider #360230

Lenox Hill Hospital
100 East 77 Street
New York, NY 10021
Medicare Provider #330119

Los Robles Hospital and Medical Center
215 West Janss Road
Thousand Oaks, CA 91360
Medicare Provider #050549

Medical Center of Plano
3901 West 15th Street
Plano, TX 75075
Medicare Provider #450651

Memorial Medical Center
2700 Napoleon Avenue
New Orleans, LA 70115
Medicare Provider #190135

Morton Plant Hospital
300 Pinellas Street
Clearwater, FL 33756
Medicare Provider #100127

Phoenix Memorial Hospital
Cardiac Catheterization Laboratory/
Interventional Radiology Suite
1201 South 7th Avenue
Phoenix, AZ 85007
Medicare Provider #030106

Providence Portland Medical Center
4805 Northeast Glisan Street
Portland, OR 97213–2967
Medicare Provider #380061

Providence St. Vincent Medical Center
9205 S.W. Barnes Road
Portland, OR 97225
Medicare Provider #380004

Saint Joseph Health Center
1000 Carondelet Drive
Kansas City, MO 64114
Medicare Provider #260085

Shawnee Mission Medical Center
9100 W. 74th Street
Shawnee Mission, KS 66204
Medicare Provider #170104

Sierra Medical Center
1625 Medical Center Drive
El Paso, TX 79902
Medicare Provider #450668

St. Joseph Mercy Hospital
5301 E. Huron River Drive
P.O. Box 995
Ann Arbor, MI 48106
Medicare Provider #230156

St. Mary's Medical Center
407 East Third Street
Duluth, MN 55805
Medicare Provider #240002

Swedish Medical Center
501 East Hampden Ave
Engelwood, CO 80113
Medicare Provider #060034

Tallahassee Memorial
1300 Miccosukee Road
Tallahassee, FL 32308
Medicare Provider #100135

United Regional Health Care System
Eleventh Street Campus
1600 Eleventh Street
Wichita Falls, TX 76301
Medicare Provider #450010

University of Kentucky Hospital
800 Rose Street
Lexington, KY 40536–0293
Medicare Provider #180067

Washington Hospital Center
110 Irving Street, NW.
Washington, DC 20010
Medicare Provider #090011

Wellmont Holston Valley Medical Center
Holston Valley Vascular Institute
130 W. Ravine Road
Kingsport, TN 37660
Medicare Provider #440017

Westchester Medical Center
95 Grasslands Road
Valhalla, NY 10595
Medicare Provider #330234

Winchester Medical Center
P.O. Box 3340
Winchester, VA 22604–2540
Medicare Provider #490005

May 17, 2005

Lee's Summit Hospital
530 N.W. Murray Road
Lee's Summit, MO 64081
Medicare Provider #260190

Mercy Hospital Fairfield
3000 Mack Road
Fairfield, OH 45014
Medicare Provider #360056

Saint Louis University Hospital
3635 Vista at Grand Boulevard
P.O. Box 15250
St. Louis, MO 63110
Medicare Provider #260105

Samaritan Hospital
310 South Limestone Street
Lexington, KY 40508
Medicare Provider #180007

St. Joseph Medical Center
Heart Institute
7601 Osler Drive
Towson, MD 21204–7582
Medicare Provider #210007

St. Joseph's Medical Center
1800 N. California Street
Stockton, CA 95204
Medicare Provider #050084

St. Mary's Medical Center
3700 Washington Avenue
Evansville, IN 47740–001
Medicare Provider #150100

Swedish Medical Center
First Hill Campus
747 Broadway
Seattle, WA 98122
Medicare Provider #500027

May 23, 2005

Bakersfield Memorial Hospital
420 34th Street
Bakersfield, CA 93301
Medicare Provider #050036

Banner Good Samaritan Medical Center
1111 E. McDowell Road
Phoenix, AZ 85006
Medicare Provider #030002

Bay Medical Center
615 North Bonita Avenue
Panama City, FL 32401
Medicare Provider #100026

Christiana Care Health Services
4755 Ogletown-Stanton Road
P.O. Box 6001
Newark, DE 19718–6001
Medicare Provider #080001

Clarian Health Partners, Inc.
I–65 at 21st Street
P.O. Box 1367
Indianapolis, IN 46206–1367
Medicare Provider #150056

Community Health Partners
3700 Kolbe Road
Lorain, OH 44052–1697
Medicare Provider #360172

EMH Regional Medical Center
630 East River Street
Elyria, OH 44035
Medicare Provider #360145

Erlanger Health System
975 East Third Street
Chattanooga, TN 37403
Medicare Provider #440104

Hartford Hospital
80 Seymour Street
P.O. Box 5037
Hartford, CT 06102–5037
Medicare Provider #070025

Hays Medical Center
2220 Canterbury Road
Hays, KS 67601
Medicare Provider #170013

Hospital of the University of Pennsylvania
3400 Spruce Street
Philadelphia, PA 19104
Medicare Provider #390111

Kansas Heart Hospital
3601 N. Webb Road
Wichita, KS 67226
Medicare Provider #170186

King's Daughters Medical Center
2201 Lexington Avenue
Ashland, KY 41101
Medicare Provider #180009

Los Alamitos Medical Center
3751 Katella Avenue
Los Alamitos, CA 90720
Medicare Provider #050551

Maricopa Integrated Health System
Maricopa Medical Center
Cardiac Catheterization Laboratory
2601 E. Roosevelt
Phoenix, AZ 85008
Medicare Provider #030022

Mayo Clinic Hospital
5777 East Mayo Boulevard
Phoenix, AZ 85054
Medicare Provider #030103

Missouri Baptist Medical Center
3015 N. Ballas Road
St. Louis, MO 63131
Medicare Provider #260108

Munroe Regional Medical Center
1500 S.W. 1st Avenue
Ocala, FL 34474
Medicare Provider #100062

Norman Regional Hospital
901 North Porter, Box 1308
Norman, OK 73070–1308
Medicare Provider #370008

Oklahoma Heart Hospital
4050 West Memorial Road
Oklahoma City, OK 73120
Medicare Provider #370215

Orlando Regional Healthcare System, Inc.
1414 Kuhl Avenue
Orlando, FL 32806
Medicare Provider #100006

Pinnacle Health Hospitals
111 South Front Street
Harrisburg, PA 17101
Medicare Provider #390067

Plaza Medical Center of Fort Worth
900 Eighth Avenue
Fort Worth, TX 76104
Medicare Provider #450672

Rapides Regional Medical Center
Box 30101
211 Fourth Street
Alexandria, LA 71301–8454
Medicare Provider #190026

Research Medical Center
2316 East Meyer Boulevard
Kansas City, MO 64132
Medicare Provider #260027

St. Luke's-Roosevelt Hospital Center
1000 Tenth Avenue
New York, NY 10019
Medicare Provider #330046

Swedish Medical Center
Providence Campus
747 Broadway
Seattle, WA 98122
Medicare Provider #500025

May 25, 2005

Bakersfield Heart Hospital
3001 Sillect Avenue
Bakersfield, CA 93308
Medicare Provider #050724

College Station Medical Center
1604 Rock Prairie Road
College Station, TX 77845
Medicare Provider #450299

Good Samaritan Hospital
2222 Philadelphia Drive
Dayton, OH 45406–1891
Medicare Provider #360052

Lakeland Regional Medical Center
1324 Lakeland Hills Boulevard
Lakeland, FL 33805
Medicare Provider #100157

Mercy Medical Center
301 St. Paul Place
Baltimore, MD 21202
Medicare Provider #210008

Mount Carmel St. Ann's Hospital
500 South Cleveland Avenue
Westerville, OH 43081–8998
Medicare Provider #360012

Western Medical Center-Santa Ana
1001 North Tustin Avenue
Santa Ana, CA 92705
Medicare Provider #050746

May 26, 2005

Benefits Healthcare
1101 26th Street South
Great Falls, MT 59405
Medicare Provider #270012

Blanchard Valley Regional Health Center
145 West Wallace Street
Findlay, OH 45840
Medicare Provider #360095

Central Dupage Hospital
25 North Winfield Road
Winfield, IL 60190
Medicare Provider #140242

[The] Christ Hospital
2139 Auburn Avenue
Cincinnati, OH 45219
Medicare Provider #360163

Fletcher Allen Health Care
Medical Center Campus
111 Colchester Avenue
Burlington, VT 05401–1473

Medical University of South Carolina Hospital Authority
169 Ashley Avenue
P.O. Box 250347
Charleston, SC 29425
Medicare Provider #420004

[The] Mount Sinai Hospital
1 Gustave L. Levy Place
New York, NY 10029
Medicare Provider #330024

North Memorial Health Care
3300 Oakdale Avenue North
Robbinsdale, MN 55422
Medicare Provider #240001

Our Lady of Bellefonte Hospital
St. Christopher Drive
Ashland, KY 41101
Medicare Provider #180036

Rapid City Regional Hospital
353 Fairmont Boulevard
Rapid City, SD 57701
Medicare Provider #430077

Sacred Heart Medical Center
Oregon Heart & Vascular Institute
1255 Hilyard Street
P.O. Box 10905
Eugene, OR 97440
Medicare Provider #380033

Shands Jacksonville Medical Center
655 West Eighth Street
Jacksonville, FL 32209
Medicare Provider #100001

Southern Maryland Hospital Center
7503 Surratts Road
Clinton, MD 20735
Medicare Provider #520054

Southwest Washington Medical Center
P.O. Box 1600
Vancouver, WA 98668
Medicare Provider #500050

St. Joseph's Mercy Health Center
300 Werner Street
Hot Springs, AR 71903
Medicare Provider #040026

Texan Heart Hospital

6700 IH–10 West
San Antonia, TX 78201
Medicare Provider #450878

University of Alabama Hospital
619 South 19th Street
Birmingham, AL 35233
Medicare Provider #010033

University Health System
1520 Cherokee Trail, Suite 200
Knoxville, TN 37920–2205
Medicare Provider #440015

Utah Valley Regional Medical Center
1034 North 500 West
Provo, UT 84605
Medicare Provider #460001

West Allis Memorial Hospital
8901 West Lincoln Avenue
West Allis, WI 53227
Medicare Provider #520139

June 1, 2005

Community Hospital
901 MacArthur Boulevard
Munster, IN 46321
Medicare Provider #150125

Freeman Health System
1102 West 32nd Street
Joplin, MO 64804
Medicare Provider #260137

Harlingen Medical Center
5501 South Expressway 77
Harlingen, TX 78550
Medicare Provider #450855

Mission Hospital Regional Medical Center
27700 Medical Center Road
Mission Viejo, CA 92691
Medicare Provider #050567

Piedmont Hospital
1968 Peachtree Road, NW.
Atlanta, GA 30309
Medicare Provider #110083

Portsmouth Regional Hospital
333 Borthwick Avenue
P.O. Box 7004
Portsmouth, NH 03802–7004
Medicare Provider #300029

Provena St. Mary's Hospital
500 West Court Street
Kankakee, IL 60901
Medicare Provider #140155

Saint Michael's Medical Center
268 Martin Luther King Jr. Boulevard
Newark, NJ 07012
Medicare Provider #310096

St. Anthony's Medical Center
10010 Kennerly Road
St. Louis, MO 63128
Medicare Provider #260077

St. Francis Hospital
100 Port Washington Boulevard
Roslyn, NY 11576–1348
Medicare Provider #330182

St. Joseph Mercy Oakland
44405 Woodward Avenue
Pontiac, MI 48341–5023
Medicare Provider #230029

St. Mary Medical Center
1201 Langhorne-Newtown Road
Langhorn, PA 19047
Medicare Provider #390258

University Medical Center
1501 N. Campbell Avenue
Tucson, AZ 85724
Medicare Provider #030064

June 2, 2005

Community Hospital
5637 Marine Parkway
P.O. Box 996
New Port Richey, FL 34656
Medicare Provider #100191

Cox Medical Center South
3801 S. National Avenue
Springfield, MO 65807
Medicare Provider #260040

Mary Washington Hospital
1001 Sam Perry Boulevard
Fredericksburg, VA 22401
Medicare Provider #490022

Memorial Health University Medical Center
4700 Waters Avenue
Savannah, GA 31404
Medicare Provider #110036

North Ridge Medical Center
5757 North Dixie Highway
Ft. Lauderdale, FL 33334
Medicare Provider #100237

Oregon Health and Science University
Oregon Stroke Center
3181 SW. Sam Jackson Park Road
CR–131
Portland, OR 97239
Medicare Provider #380009

Riverside Medical Center
350 North Wall Street
Kankakee, IL 60901
Medicare Provider #140186

Sunrise Hospital and Medical Center
Sunrise Children's Hospital
3186 South Maryland Parkway
Las Vegas, NV 89109
Medicare Provider #290003

June 7, 2005

Brackenridge Hospital
601 East 15th Street
Austin, TX 78701–1096
Medicare Provider #450124

Doctors Hospital at Renaissance
5501 S. McColl Road
Edinburg, TX 78539
Medicare Provider #450869

Florida Hospital
601 East Rollins Street
Orlando, FL 32803
Medicare Provider #100007

Gadsden Regional Medical Center
1007 Goodyear Avenue
Gadsden, AL 35903
Medicare Provider #010040

Huntsville Hospital
101 Sivley Road
Huntsville, AL 35801
Medicare Provider #010039

Memorial Medical Center
701 North First Street
Springfield, IL 62781
Medicare Provider #140148

Ohio Valley Medical Center
2000 Eoff Street
Wheeling, WV 26003
Medicare Provider #510039

Providence Alaska Medical Center
3200 Providence Drive
P.O. Box 196604
Anchorage, AK 99519–6604
Medicare Provider #020001

San Ramon Regional Medical Center
6001 Norris Canyon Road
San Ramon, CA 94583
Medicare Provider #050689

St. Bernards Medical Center
225 E. Jackson Avenue
Jonesboro, AR 72401
Medicare Provider #040020

St. Vincent Healthcare
1233 North 30th Street
Billings, MT 59101
Medicare Provider #270049

June 8, 2005

Brotman Medical Center
3828 Delmas Terrace
Culver City, CA 90231–2459
Medicare Provider #050144

Comanche County Memorial Hospital
P.O. Box 129
3401 West Gore Boulevard
Lawton, OK 73502
Medicare Provider #370056

Covenant Health System
3615 19th Street
Lubbock, TX 79410
Medicare Provider #450040

Iberia Medical Center
2315 East Main Street
P.O. Box 13338
New Iberia, LA 70562–3338
Medicare Provider #190054

Lehigh Valley Hospital and Health Network
Cedar Crest Campus
Cedar Crest & I–78
P.O. Box 689
Allentown, PA 18105
Medicare Provider #390133

Midwest Regional Medical Center
2825 Parklawn Drive
Midwest City, OK 73110
Medicare Provider #370094

Mount Carmel Health
(Mount Carmen East and Mount Carmen West)
793 West State Street
Columbus, OH 43222
Medicare Provider #360035

Northwest Texas Healthcare System
1501 South Coulter Drive
Amarillo, TX 79106–1770
Medicare Provider #450209

Saint Joseph's Hospital
611 St. Joseph Avenue
Marshfield, WI 54449–1898
Medicare Provider #520037

Saint Joseph's Hospital of Atlanta
5665 Peachtree
Dunwoody Road N.E.
Atlanta, GA 30342–1764
Medicare Provider #110082

St. Francis Hospital and Medical Center
114 Woodland Street
Hartford, CT 06105
Medicare Provider #070002

Thomas Jefferson University Hospital
111 South 11th Street
Philadelphia, PA 19107
Medicare Provider #390174

Unity Health System
Park Ridge Hospital
1555 Long Pond Road

Rochester, NY 14626
Medicare Provider #330226

York Hospital/Wellspan Health
1001 South George Street
P.O. Box 15198
York, PA 17405–7198
Medicare Provider #390046

June 14, 2005

Abbott Northwestern Hospital
800 East 28th Street
Minneapolis, MN 55407
Medicare Provider #240057

Appleton Medical Center
1818 North Meade Street
Appleton, WI 54911
Medicare Provider #520160

Brookwood Medical Center
2010 Brookwood Medical Center Drive
Birmingham, AL 35209
Medicare Provider #010139

Community Memorial Hospital
W 180 N8085 Town Hall Road
Menomonee Falls, WI 53051
Medicare Provider #520103

Crestwood Medical Center
One Hospital Drive S.E.
Huntsville, AL 35801
Medicare Provider #010131

Lankenau Hospital
100 Lancaster Avenue
Wynnewood, PA 19096
Medicare Provider #390195

Mission Hospitals, Inc.
509 Biltmore Avenue
Asheville, NC 28801
Medicare Provider #340002

North Shore University Hospital
300 Community Drive
Manhasset, NY 11030
Medicare Provider #330105

Palmetto General Hospital
2001 West 68th Street
Hialeah, FL 33016
Medicare Provider #100187

Rockford Memorial Hospital
2400 North Rockton Avenue
Rockford, IL 61103
Medicare Provider #140239

Saint Francis Hospital
6161 South Yale Avenue
Tulsa, OK 74136
Medicare Provider #370091

Sequoia Hospital
170 Alameda de las Pulgas
Redwood City, CA 94062
Medicare Provider #050197

Seton Medical Center
1201 West 38th Street
Austin, TX 78705–1056
Medicare Provider #450056

St. Alexius Medical Center
900 E. Broadway
P.O. Box 5510
Bismark, ND 58506–5510
Medicare Provider #350002

St. John's Regional Health Center
1235 East Cherokee Street
Springfield, MO 65804–2263
Medicare Provider #260065

Tenet Health System
d/b/a Piedmont Medical Center
222 South Herlong Avenue
Rock Hill, SC 29732
Medicare Provider #420002

Theda Clark Medical Center
130 2nd Street
P.O. Box 2021
Neenah, WI 54947–2021
Medicare Provider #520045

Trinity Medical Center
West Campus
2701 17th Street
Rock Island, IL 61201
Medicare Provider #140280

University of Connecticut Health Center
John Dempsey Hospital
263 Farmington Avenue
Farmington, CT 06030
Medicare Provider #070036

Washington Adventist Hospital
7600 Carroll Avenue
Takoma Park, MD 29859
Medicare Provider #210016

June 20, 2005

Augusta Medical Center
78 Medical Center Drive
Fisherville, VA 22939
Medicare Provider #490018

Deaconess Hospital Inc.
600 Mary Street
Evansville, IN 47747
Medicare Provider #150082

Froedtert Memorial Lutheran Hospital
9200 West Wisconsin Avenue
Milwaukee, WI 53226
Medicare Provider #520177

Greenville Memorial Hospital
701 Grove Road
Greenville, SC 29605
Medicare Provider #420078

Heart Hospital of New Mexico
504 Elm Street NE.
Albuquerque, NM 87102

North Arundel Hospital
301 Hospital Drive
Glen Burnie, MD 21061
Medicare Provider #210043

Overlake Hospital Medical Center
1035 116th Avenue NE.
Bellevue, WA 98004
Medicare Provider #050051

Penn State Milton S. Hershey Medical Center
500 University Drive
Hershey, PA 17033
Medicare Provider #390256

Pomona Valley Hospital Medical Center
1798 North Garey Avenue
Pomona, CA 91767
Medicare Provider #050231

Providence St. Peter Hospital
413 Lilly Road Northeast
Olympia, WA 98506–5166
Medicare Provider #500024

Regional Medical Center Bayonet Point
14000 Fivay Road
Hudson, FL 34667
Medicare Provider #100256

Saint Francis Hospital
5959 Park Avenue
Memphis, TN 38199–5198
Medicare Provider #440183

Scripps Memorial Hospital La Jolla
9888 Genesee Avenue
La Jolla, CA 92037
Medicare Provider #050324

Seven Rivers Regional Medical Center
6201 North Suncoast Blvd
Crystal River, FL 34428–6712
Medicare Provider #100249

St. Anthony Hospital
1000 North Lee Street
Oklahoma City, OK 73101
Medicare Provider #370037

St. Joseph's Hospital and Medical Center
350 West Thomas Road
Phoenix, AZ 85013
Medicare Provider #030024

University of Wisconsin Hospitals and Clinics
600 Highland Avenue
Madison, WI 53792
Medicare Provider #520098

June 27, 2005

Atlanta Medical Center
303 Parkway Drive, NE.
Atlanta, GA 30312–1212
Medicare Provider #110115

Bronson Methodist Hospital
601 John Street
Kalamazoo, MI 49007
Medicare Provider #230017

Bryn Mawr Hospital
130 South Bryn Mawr Avenue
Bryn Mawr, PA 19010
Medicare Provider #390139

Cleveland Clinic Hospital
3100 Weston Road
Weston, FL 33331
Medicare Provider #100289

Lake Cumberland Regional Hospital
305 Langdon Street
Somerset, KY 42503
Medicare Provider #180132

Memorial Hospital
1400 East Boulder Street
Colorado Springs, CO 80909
Medicare Provider #060022

Menorah Medical Center
5721 West 119th Street
Overland Park, KS 66209
Medicare Provider #170182

Methodist Medical Center of Illinois
221 Northeast Glen Oak Avenue
Peoria, IL 61636–0002
Medicare Provider #014209

North Carolina Baptist Hospital
Medical Center Blvd
Winston-Salem, NC 27157
Medicare Provider #340047

Osceola Regional Medical Center
700 West Oak Street
P.O. Box 458004
Kissimmee, FL 34745–8004
Medicare Provider #100110

Palm Beach Garden's Medical Center
3360 Burns Road
Palm Beach Gardens, FL 33410
Medicare Provider #100176

Presbyterian Healthcare Services
P.O. Box 26666
Albuquerque, NM 87125–6666
Medicare Provider #320021

Providence Hospital
16001 West Nine Mile Road
Southfield, MI 48075

Medicare Provider #230019
Saint Joseph Medical Center
Creighton University Medical Center
601 North 30th Street
Omaha, NE 68131–2197
Medicare Provider #280030
Shasta Regional Medical Center
1100 Butte Street
Redding, CA 96001
Medicare Provider #050733
South Jersey Healthcare
1505 West Sherman Avenue
Vineland, NJ 08360
Medicare Provider #310032
St. Joseph's Hospital
69 West Exchange Street
St. Paul, MN 55102
Medicare Provider #240063
St. Mary's Hospital
1601 West St. Mary's Road
Tucson, AZ 85745
Medicare Provider #030010
Trident Medical Center
9330 Medical Plaza Drive
Charleston, SC 29406
Medicare Provider #420079
University of Iowa Hospitals and Clinics
Neurointerventional Radiology
Department of Radiology
200 Hawkins Drive
Iowa City, IA 52242
Medicare Provider #160058
Venice Regional Medical Center
540 The Rialto
Venice, FL 34285
Medicare Provider #100070
Virginia Mason Medical Center
1100 Ninth Avenue
P.O. Box 98111
Seattle, WA 98111
Medicare Provider #500005
WellStar Cobb Hospital
805 Sandy Plains Road
Marietta, GA 30060
Medicare Provider #110143
WellStar Kennestone Hospital
805 Sandy Plains Road
Marietta, GA 30060
Medicare Provider #110035

June 29, 2005

Arkansas Heart Hospital
1701 S. Shackleford Road
Little Rock, AR 72211
Medicare Provider #040134
Baptist Healthcare of Oklahoma, Inc.
d/b/a INTEGRIS Bass Baptist Health Center
600 S. Monroe
P.O. Box 3168
Enid, OK 73702
Medicare Provider #370016
Boca Raton Community Hospital
800 Meadows Road
Boca Raton, FL 33486
Medicare Provider #100168
Carolinas Medical Center
1000 Blythe Blvd
Charlotte, NC 28203
Medicare Provider #340113
Decatur Memorial Hospital
2300 North Edward Street
Decatur, IL 62526
Medicare Provider #140135
Doctors Community Hospital
8118 Good Luck Road
Lanham, MD 20706–3586
Medicare Provider #210051
Duke University Medical Center
Department of Radiology
P.O. Box 3808
Durham, NC 27710
Medicare Provider #340030
Heartland Health
5325 Faraon Street
St. Joseph, MO 64506–3398
Medicare Provider #260006
INTEGRIS Baptist Medical Center, Inc.
3300 Northwest Expressway
Oklahoma City, OK 73112
Medicare Provider #370028
Lehigh Valley Hospital
Muhlenberg Campus
2545 Schoenersville Road
Bethlehem, PA 18017
Medicare Provider #390263
McLaren Regional Medical Center
401 South Ballenger Highway
Flint, MI 48532–3685
Medicare Provider #230141
Mountain States Health Alliance
400 North State of Franklin Road
Johnson City, TN 37604–6094
Medicare Provider #440063
New York University Medical Center
550 First Avenue, HCC–15
New York, NY 10016–6481
Medicare Provider #330214
Overlook Hospital
99 Beauvoir Avenue
P.O. Box 220
Summit, NJ 07802–0220
Medicare Provider #310051
Saint Marys Hospital
1216 Second Street S.W.
Rochester, MN 55902
Medicare Provider #240010
Sarasota Memorial Hospital
1700 S. Tamiami Trail
Sarasota, FL 34239
Medicare Provider #100087
Shands Hospital at the University of Florida
P.O. Box 100326
Gainesville, FL 32610–0326
Medicare Provider #100113
Sisters of Charity Hospital
2157 Main Street
Buffalo, NY 14214
Medicare Provider #330078
St. Luke's Hospital
4202 Belfort Road
Jacksonville, FL 32216–5898
Medicare Provider #100151
University Medical Center
602 Indiana Avenue
Lubbock, TX 79415
Medicare Provider #450686
Vanderbilt University Medical Center
D–3300 Medical Center North
Nashville, TN 37232–2104
Medicare Provider #440039
West Virginia University Hospitals, Inc.
Medical Center Drive
P.O. Box 8059
Morgantown, WV 36506
Medicare Provider #510001

[FR Doc. 05–18926 Filed 9–22–05; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8026–N]

RIN 0938–AO00

Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for Calendar Year 2006

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

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2006 under Medicare's Hospital Insurance program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts.

For CY 2006, the inpatient hospital deductible will be $952. The daily coinsurance amounts for CY 2006 will be: (a) $238 for the 61st through 90th day of hospitalization in a benefit period; (b) $476 for lifetime reserve days; and (c) $119.00 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

EFFECTIVE DATE: This notice is effective on January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390. For case-mix analysis only: Gregory J. Savord, (410) 786–1521.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires us to determine and publish, between September 1 and September 15 of each year, the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services

furnished in the following calendar year.

II. Computing the Inpatient Hospital Deductible for CY 2006

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by our best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year (FY) that begins on October 1 of the same preceding calendar year, and adjusted to reflect real case-mix. The adjustment to reflect real case-mix is determined on the basis of the most recent case-mix data available. The amount determined under this formula is rounded to the nearest multiple of $4 (or, if midway between two multiples of $4, to the next higher multiple of $4).

Under section 1886(b)(3)(B)(i) of the Act, the percentage increase used to update the payment rates for FY 2006 for inpatient hospitals paid under the prospective payment system is the market basket percentage increase. Under section 501 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, hospitals will receive the full market basket update only if they submit quality data as specified by the Secretary. Those hospitals that do not submit data will receive an update of market basket minus .4 percentage points. In determining the payment-weighted average of the updates to payment rates to hospitals in FY 2006, we are estimating that the payment to hospitals not submitting quality data will be insignificant.

Under section 1886(b)(3)(B)(ii) of the Act, the percentage increase used to update the payment rates for FY 2006 for hospitals excluded from the prospective payment system is the market basket percentage increase, defined according to section 1886(b)(3)(B)(iii) of the Act.

The market basket percentage increase for 2006 is 3.7 percent, as announced in the final rule published in the **Federal Register** entitled ''Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates'' (70 FR 47278). Therefore, the percentage increase for hospitals paid under the prospective payment system is 3.7 percent. The average payment percentage increase for hospitals excluded from the prospective payment system is 3.8 percent. Weighting these percentages in accordance with payment volume, our best estimate of the payment-weighted average of the increases in the payment rates for FY 2006 is 3.7 percent.

To develop the adjustment for real case-mix, we first calculated for each hospital an average case-mix that reflects the relative costliness of that hospital's mix of cases compared to those of other hospitals. We then computed the change in average case-mix for hospitals paid under the Medicare prospective payment system in FY 2005 compared to FY 2004. (We excluded from this calculation hospitals excluded from the prospective payment system because their payments are based on reasonable costs.) We used Medicare bills from prospective payment hospitals that we received as of July 2005. These bills represent a total of about 9.5 million Medicare discharges for FY 2005 and provide the most recent case-mix data available at this time. Based on these bills, the change in average case-mix in FY 2005 is 0.15 percent. Based on past experience, we expect the overall case-mix change to be 0.45 percent as the year progresses and more FY 2005 data become available.

Section 1813 of the Act requires that the inpatient hospital deductible be adjusted only by that portion of the case-mix change that is determined to be real. We estimate that the change in real case-mix for FY 2005 is .45 percent.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 3.7 percent, and the real case-mix adjustment factor for the deductible is .45 percent. Therefore, under the statutory formula, the inpatient hospital deductible for services furnished in CY 2006 is $952. This deductible amount is determined by multiplying $912 (the inpatient hospital deductible for CY 2005 by the payment-weighted average increase in the payment rates of 1.037 multiplied by the increase in real case-mix of 1.0045, which equals $950 and is rounded to $952.

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for 2006

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year. Thus, the increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in CY 2006, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th day of hospitalization in a benefit period will be $238 (one-fourth of the inpatient hospital deductible); the daily coinsurance for lifetime reserve days will be $476 (one-half of the inpatient hospital deductible); and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period will be $119.00 (one-eighth of the inpatient hospital deductible).

IV. Cost to Medicare Beneficiaries

Table 1 summarizes the deductible and coinsurance amounts for CYs 2005 and 2006, as well as the number of each that is estimated to be paid.

TABLE 1.—PART A DEDUCTIBLE AND COINSURANCE AMOUNTS FOR CALENDAR YEARS 2005 AND 2006

Type of cost sharing	Value		Number paid (in millions)	
	2005	2006	2005	2006
Inpatient hospital deductible	$912	$952	8.91	8.70
Daily coinsurance for 61st-90th Day	228	238	2.28	2.23
Daily coinsurance for lifetime reserve days	456	476	1.06	1.04
SNF coinsurance	114.00	119.00	32.84	31.92

The estimated total increase in costs to beneficiaries is about $230 million (rounded to the nearest $10 million), due to: (1) The increase in the deductible and coinsurance amounts and (2) the change in the number of

deductibles and daily coinsurance amounts paid.

V. Waiver of Proposed Notice and Comment Period

The Medicare statute, as discussed previously, requires publication of the Medicare Part A inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services for each calendar year. The amounts are determined according to the statute. As has been our custom, we use general notices, rather than notice and comment rulemaking procedures, to make the announcements. In doing so, we acknowledge that, under the Administrative Procedure Act (APA), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts are statutorily directed, and we can exercise no discretion in following those formulae. Moreover, the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). As stated in Section IV of this notice, we estimate that the total increase in costs to beneficiaries associated with this notice is about $230 million due to: (1) The increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2), and is an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice has no consequential effect on State or local governments.

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

Authority: Sections 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e–2(b)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 12, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 15, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–18838 Filed 9–16–05; 4:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1307–GNC]

RIN 0938–ZA74

Medicare Program; Criteria and Standards for Evaluating Intermediary, Carrier, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carrier Performance During Fiscal Year 2006

AGENCY: Centers for Medicare and Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: General notice with comment period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries (FIs), carriers, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) regional carriers in the administration of the Medicare program beginning on the first day of the first month following publication of this notice in the **Federal Register**. The results of these evaluations are considered whenever we enter into, renew, or terminate an intermediary agreement, carrier contract, or DMEPOS regional carrier contract or take other contract actions, for example, assigning or reassigning providers or services to an intermediary or designating regional or national intermediaries. We are requesting public comment on these criteria and standards.

DATES: *Effective Date:* The criteria and standards are effective on October 24, 2005.

Comment Date: To be assured consideration, comments must be received at one of the addresses

provided below, no later than 5 p.m. beginning on the first day of the first month following publication of this notice in the **Federal Register**.

ADDRESSES: In commenting, please refer to file code CMS–1307–GNC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

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

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

2. *By mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1307–GNC, P.O. Box 8013, Baltimore, MD 21244–8013.

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

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7197 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

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

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late. All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. After the close of the comment period, CMS posts all electronic comments received before the close of the comment period on its public website.

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

FOR FURTHER INFORMATION CONTACT: Richard Johnson, (410) 786–5633.

SUPPLEMENTARY INFORMATION: *Submitting Comments:* We welcome comments from the public on all issues set forth in this notice to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–1307-GNC and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all electronic comments received before the close of the comment period on its public website as soon as possible after they are received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

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

A. Part A—Hospital Insurance

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with us. These agencies or organizations, known as FIs, determine whether medical services are covered under Medicare, determine correct payment amounts and then make payments to the health care providers (for example, hospitals, skilled nursing facilities (SNFs), and community mental health centers) on behalf of the beneficiaries. Section 1816(f) of the Act requires us to develop criteria, standards, and procedures to evaluate an intermediary's performance of its functions under its agreement.

Section 1816(e)(4) of the Act requires us to designate regional agencies or organizations, which are already Medicare intermediaries under section 1816 of the Act, to perform claim processing functions for freestanding Home Health Agency (HHA) claims. We refer to these organizations as Regional Home Health Intermediaries (RHHIs). See § 421.117 and the final rule published on May 19, 1988 in the **Federal Register** (53 FR 17936) for more details about the RHHIs.

The evaluation of intermediary performance is part of our contract management process. These evaluations need not be limited to the current fiscal year (FY), other fixed term basis, or agreement term.

B. Part B—Supplementary Medical Insurance

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B, Supplementary Medical Insurance of the Medicare program. Beneficiaries, physicians, and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the amount payable for the services or supplies, and then make payment to the appropriate party.

Under section 1842(b)(2) of the Act, we are required to develop criteria, standards, and procedures to evaluate a carrier's performance of its functions under its contract. Evaluations of Medicare fee-for-service (FFS) contractor performance need not be limited to the current FY, other fixed term basis, or contract term. The evaluation of carrier performance is part of our contract management process.

C. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carriers

In accordance with section 1834(a)(12) of the Act, we have entered into contracts with four DMEPOS regional carriers to perform all of the duties associated with the processing of claims for DMEPOS, under Part B of the Medicare program. These DMEPOS regional carriers process claims based on a Medicare beneficiary's principal residence by State. Section 1842(a) of the Act authorizes contracts with carriers for the payment of Part B claims for Medicare covered services and items. Section 1842(b)(2) of the Act requires us to publish in the **Federal Register** criteria and standards for the efficient and effective performance of carrier contract obligations. Evaluation of Medicare FFS contractor performance

need not be limited to the current FY, other fixed term basis, or contract term. The evaluation of DMEPOS regional carrier performance is part of our contract management process.

D. Development and Publication of Criteria and Standards

In addition to the statutory requirements, § 421.120, § 421.122 and § 421.201 provide for publication of a **Federal Register** notice to announce criteria and standards for intermediaries and carriers before the beginning of each evaluation period. The current criteria and standards for intermediaries, carriers, and DMEPOS regional carriers were published in the **Federal Register** (68 FR 74613) on November 26, 2004.

To the extent possible, we make every effort to publish the criteria and standards before the beginning of the Federal FY, which is October 1. If we do not publish a **Federal Register** notice before the new FY begins, readers may presume that until and unless notified otherwise, the criteria and standards that were in effect for the previous FY remain in effect.

In those instances in which we are unable to meet our goal of publishing the subject **Federal Register** notice before the beginning of the FY, we may publish the criteria and standards notice at any subsequent time during the year. If we publish a notice in this manner, the evaluation period for the criteria and standards that are the subject of the notice will be effective beginning on the first day of the first month following publication of this notice in the **Federal Register**. Any revised criteria and standards will measure performance prospectively; that is, any new criteria and standards in the notice will be applied only to performance after the effective date listed on the notice.

It is not our intention to revise the criteria and standards that will be used during the evaluation period once this information is published in a **Federal Register** notice. However, on occasion, either because of administrative action or statutory mandate, there may be a need for changes that have a direct impact on the criteria and standards previously published, or that require the addition of new criteria or standards, or that cause the deletion of previously published criteria and standards. If we must make these changes, we will publish an amended **Federal Register** notice before implementation of the changes. In all instances, necessary manual issuances will be published to ensure that the criteria and standards are applied uniformly and accurately. Also, as in previous years, this **Federal Register** notice will be republished and the effective date revised if changes are warranted as a result of the public comments received on the criteria and standards.

The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108–173) was enacted on December 8, 2003. Section 911 of the MMA establishes the Medicare FFS Contracting Reform (MCR) initiative that will be implemented over the next several years. This provision requires that we use competitive procedures to replace our current FIs and carriers with Medicare Administrative Contractors (MACs). The MMA requires that we compete and transition all work to MACs by October 1, 2011.

FIs and or carriers will continue administering Medicare FFS work until the final competitively selected MAC is up and operating. We will continue to develop and publish standards and criteria for use in evaluating the performance of FIs, carriers, and DMERCs as long as these types of contractors exist.

II. Analysis of and Response to Public Comments Received on FY 2005 Criteria and Standards

We received three comments in response to the November 26, 2004 **Federal Register** general notice with comments. All comments were reviewed, but none necessitated our reissuance of the FY 2005 Criteria and Standards. Comments submitted did not pertain specifically to the FY 2005 criteria and standards.

III. Criteria and Standards—General

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

Basic principles of the Medicare program are to pay claims promptly and accurately and to foster good beneficiary and provider relations. Contractors must administer the Medicare program efficiently and economically. The goal of performance evaluation is to ensure that contractors meet their contractual obligations. We measure contractor performance to ensure that contractors do what is required of them by statute, regulation, contract, and our directives.

We have developed a contractor oversight program for FY 2006 that outlines expectations of the contractor, measures the performance of the contractor; evaluates the performance against the expectations; and provides for appropriate contract action based upon the evaluation of the contractor's performance.

As a means to monitor the accuracy of Medicare FFS payments, we have established the Comprehensive Error Rate Testing (CERT) program that measures and reports error rates for claims payment decisions made by carriers, DMERCs, and FIs. Beginning in November 2003, the CERT program measures and reports claims payment error rates for each individual carrier and DMERC. FI-specific rates became available November 2004. These rates measure not only how well contractors are doing at implementing automated review edits and identifying which claims to subject to manual medical review but they also measure the impact of the contractor's provider outreach/education, as well as the effectiveness of the contractor's provider call center(s). We will use these contractor-specific error rates as a means to evaluate a contractor's performance.

Several times throughout this notice, we refer to the appropriate reading level of letters, decisions, or correspondence that are going to Medicare beneficiaries from intermediaries or carriers. In those instances, appropriate reading level is defined as whether the communication is below the 8th grade reading level unless it is obvious that an incoming request from the beneficiary contains language written at a higher level. In these cases, the appropriate reading level is tailored to the capacities and circumstances of the intended recipient.

In addition to evaluating performance based upon expectations for FY 2006, we may also conduct follow-up evaluations throughout FY 2006 of areas in which contractor performance was out of compliance with statute, regulations, and our performance expectations during prior review years where contractors were required to submit a Performance Improvement Plan (PIP).

We may also utilize Statement of Auditing Standards-70 (SAS–70) reviews as a means to evaluate contractors in some or all business functions.

In FY 2001, we established the Contractor Rebuttal Process as a commitment to continual improvement of contractor performance evaluation (CPE). We will continue the use of this process in FY 2006. The Contractor Rebuttal Process provides the contractors an opportunity to submit a written rebuttal of CPE findings of fact. Whenever we conduct an evaluation of contractor operations, contractors have 7 calendar days from the date of the CPE review exit conference to submit a written rebuttal. The CPE review team or, if appropriate, the individual reviewer will consider the contents of

the rebuttal before the issuance of the final CPE report to the contractor.

The FY 2006 CPE for intermediaries and carriers is structured into five criteria designed to meet the stated objectives. The first criterion, claims processing, measures contractual performance against claims processing accuracy and timeliness requirements, as well as activities in handling appeals. Within the claims processing criterion, we have identified those performance standards that are mandated by legislation, regulation, or judicial decision. These standards include claims processing timeliness, the accuracy of Medicare Summary Notices (MSNs), the timeliness of intermediary redeterminations, the timeliness of carrier redeterminations and hearings, and the appropriateness of the reading level and content of intermediary and carrier redetermination letters. Further evaluation in the Claims Processing Criterion may include, but is not limited to, the accuracy of claims processing, the percent of claims paid with interest, and the accuracy of redeterminations and carrier hearings.

The second criterion, customer service, assesses the adequacy of the service provided to customers by the contractor in its administration of the Medicare program. The mandated standard in the customer service criterion is the need to provide beneficiaries with written replies that are responsive, that is, they provide in detail the reasons for a determination when a beneficiary requests this information, they have a customer-friendly tone and clarity, and they are at the appropriate reading level. Further evaluation of services under this criterion may include, but will not be limited to, the following: Timeliness and accuracy of all correspondence both to beneficiaries and providers; monitoring of the quality of replies provided by the contractor's telephone customer service representatives (quality call monitoring); beneficiary and provider education, training, and outreach activities; and service provided by the contractor's customer service representatives to beneficiaries and providers who come to the contractor's facility (walk-in inquiry service).

The third criterion, payment safeguards, evaluates whether the Medicare Trust Fund is safeguarded against inappropriate program expenditures. Intermediary and carrier performance may be evaluated in the areas of Medical Review (MR), Medicare Secondary Payer (MSP), Overpayments (OP), and Provider Enrollment (PE). In addition, intermediary performance may be evaluated in the area of Audit and Reimbursement (A&R).

In FY 1996 the Congress enacted the Health Insurance Portability and Accountability Act (HIPAA), Medicare Integrity Program, giving us the authority to contract with entities other than, but not excluding, Medicare carriers and intermediaries to perform certain program safeguard functions. In situations where one or more program safeguard functions are contracted to another entity, we may evaluate the flow of communication and information between a Medicare FFS contractor and the payment safeguard contractor. All benefit integrity functions have been transitioned from intermediaries, carriers, and one DMERC to the program safeguard contractors. Since, the other three DMERC contractors will continue to conduct benefit integrity activities in FY 2006, we may evaluate their performance of that function.

Mandated performance standards for intermediaries in the payment safeguards criterion include the accuracy of decisions on SNF demand bills and the timeliness of processing Tax Equity and Fiscal Responsibility Act (TEFRA) target rate adjustments, exceptions, and exemptions. There are no mandated performance standards for carriers in the payment safeguards criterion. Intermediaries and carriers may also be evaluated on any Medicare Integrity Program (MIP) activities if performed under their agreement or contract.

The fourth criterion, fiscal responsibility, evaluates the contractor's efforts to protect the Medicare program and the public interest. Contractors must effectively manage Federal funds for both the payment of benefits and the costs of administration under the Medicare program. Proper financial and budgetary controls, including internal controls, must be in place to ensure contractor compliance with its agreement with HHS and CMS.

Additional functions reviewed under this criterion may include, but are not limited to, adherence to approved budget, compliance with the Budget and Performance Requirements (BPRs), and compliance with financial reporting requirements.

The fifth and final criterion, administrative activities, measures a contractor's administrative management of the Medicare program. A contractor must efficiently and effectively manage its operations. Proper systems security (general and application controls), Automated Data Processing (ADP) maintenance, and disaster recovery plans must be in place. A contractor's evaluation under the administrative activities criterion may include, but is not limited to, establishment, application, documentation, and effectiveness of internal controls that are essential in all aspects of a contractor's operation, as well as the degree to which the contractor cooperates with us in complying with the Federal Managers' Financial Integrity Act of 1982 (FMFIA). Administrative activities evaluations may also include reviews related to contractor implementation of our general instructions and data and reporting requirements.

We have developed separate measures for RHHIs in order to evaluate the distinct RHHI functions. These functions include the processing of claims from freestanding HHAs, hospital-affiliated HHAs, and hospices. Through an evaluation using these criteria and standards, we may determine whether the RHHI is effectively and efficiently administering the program benefit or whether the functions should be moved from one intermediary to another in order to gain that assurance.

In sections IV through VII of this notice, we list the criteria and standards to be used for evaluating the performance of intermediaries, RHHIs, carriers, and DMEPOS regional carriers.

IV. Criteria and Standards for Intermediaries

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

A. Claims Processing Criterion

The claims processing criterion contains the following four mandated standards:

Standard 1. Not less than 95.0 percent of clean electronically submitted non-Periodic Interim Payment claims are paid within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare intermediaries to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, the statute specifies that clean non-Periodic Interim Payment electronic claims be paid no earlier than the 14th day after the date of receipt, and that interest is payable for any clean claims if payment is not issued by the 31st day after the date of receipt. The HIPAA Administrative Simplification provisions and the implementing regulations established standards for electronic transmission of claims. We issued instructions that effective July 1, 2004, electronic claims that do not comply with the appropriate HIPAA

claim standard will no longer qualify for payment as early as the 14th day after the date of receipt. These ''non-HIPAA'' claims will not be paid earlier than the 27th day after the date of receipt. These ''non-HIPAA'' claims will continue to have interest payable if payment is not issued by the 31st day after the date of receipt. Our expectation is that contractors will pay 95 percent of these clean claims by the 31st day (30 days after date of receipt) on a monthly basis.

Standard 2. Not less than 95.0 percent of clean paper non-Periodic Interim Payment claims are paid within specified time frames. Specifically, clean non-Periodic Interim Payment paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. Redetermination letters prepared in response to beneficiary-initiated appeal requests are written in a manner calculated to be understood by the beneficiary. Letters must contain the required elements as specified in § 405.956.

Standard 4. All redeterminations must be concluded and mailed within 60 days of receipt of the request, unless the appellant submits documentation after the request, in which case the decision making timeframe is extended for 14 calendar days for each submission.

Because intermediaries process many claims for benefits under the Part B portion of the Medicare Program, we also may evaluate how well an intermediary follows the procedures for processing appeals of any claims for Part B benefits.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Accuracy of claims processing.
- Remittance advice transactions.
- Establishment and maintenance of a relationship with Common Working File (CWF) Host.
- Accuracy of redeterminations as well as the appropriateness of the reading level of any redetermination decision letters.
- Accuracy and timeliness of processing appeals under section 521 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) and sections 933 and 940 of the MMA.

Note: Section 521 of BIPA and sections 933 and 940 of MMA amend section 1869 of the Act by requiring major revisions to the Medicare appeals process. Section 937 of MMA also requires the creation of a process outside the appeals process, whereby Medicare contractors can correct minor errors and omissions. We may evaluate compliance with our instructions concerning other provisions of section 521 of BIPA and sections 933, 937 and 940 of MMA as they are implemented.

B. Customer Service Criterion

Functions that may be evaluated under this criterion include, but are not limited to, the following:

- Maintaining a properly programmed interactive voice response system to assist with provider inquiries.
- Performing quality call monitoring.
- Training customer service representatives.
- Entering valid call center performance data in the customer service assessment and management system.
- Providing timely and accurate written replies to beneficiaries and/or providers that address the concerns raised and are written with an appropriate customer-friendly tone and clarity and those written to beneficiaries are at the appropriate reading level.
- Maintaining walk-in inquiry service for beneficiaries and providers.
- Conducting beneficiary and provider education, training, and outreach activities.
- Effectively maintaining an Internet website dedicated to furnishing providers and physicians timely, accurate, and useful Medicare program information.
- Ensuring written correspondence is evaluated for quality.

C. Payment Safeguards Criterion

The Payment Safeguard criterion contains the following two mandated standards:

Standard 1. Decisions on SNF demand bills are accurate.

Standard 2. TEFRA target rate adjustments, exceptions, and exemptions are processed within mandated time frames. Specifically, applications must be processed to completion within 75 days after receipt by the contractor or returned to the hospitals as incomplete within 60 days of receipt.

Intermediaries may also be evaluated on any MIP activities if performed under their Part A contractual agreement. These functions and activities include, but are not limited to, the following:

- Audit and Reimbursement

+ Performing the activities specified in our general instructions for conducting audit and settlement of Medicare cost reports.

+ Establishing accurate interim payments.

- Benefit Integrity

+ Referring allegations of potential fraud that are made by beneficiaries, providers, CMS, Office of Inspector General (OIG), and other sources to the Payment Safeguard Contractor.

+ Putting in place effective detection and deterrence programs for potential fraud.

- Medical Review

+ Increasing the effectiveness of medical review activities.

+ Exercising accurate and defensible decision making on medical reviews.

+ Effectively educating and communicating with the provider community.

+ Collaborating with other internal components and external entities to ensure the effectiveness of medical review activities.

- Medicare Secondary Payer

+ Accurately reporting MSP savings.

+ Accurately following MSP claim development and edit procedures.

+ Auditing hospital files and claims to determine that claims are being filed to Medicare appropriately.

+ Supporting the Coordination of Benefits Contractors' efforts to identify responsible payers primary to Medicare.

+ Identifying, recovering, and referring mistaken/conditional Medicare payments in accordance with appropriate Medicare Manual instructions and any other pertinent general instructions, in the specified order of priority.

- Overpayments

+ Collecting and referring Medicare debts timely.

+ Accurately reporting and collecting overpayments.

+ Adhering to our instructions for management of Medicare Trust Fund debts.

- Provider Enrollment

+ Complying with assignment of staff to the provider enrollment function and training the staff in procedures and verification techniques.

+ Complying with the operational standards relevant to the process for enrolling providers.

D. Fiscal Responsibility Criterion

We may review the intermediary's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their agreements with us.

Additional functions that may be reviewed under the fiscal responsibility criterion include, but are not limited to, the following:

- Adherence to approved program management and MIP budgets.

- Compliance with the BPRs.
- Compliance with financial reporting requirements.
- Control of administrative cost and benefit payments.

E. Administrative Activities Criterion

We may measure an intermediary's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives.

We may measure an intermediary's efficiency and effectiveness in managing its operations. Proper systems security (general and application controls), ADP maintenance, and disaster recovery plans must be in place. An intermediary must also test system changes to ensure the accurate implementation of our instructions.

Our evaluation of an intermediary under the administrative activities criterion may include, but is not limited to, reviews of the following:

- Systems security.
- ADP maintenance (configuration management, testing, change management, and security).
- Implementation of the Electronic Data Interchange (EDI) standards adopted for use under HIPAA.
- Disaster recovery plan and systems contingency plan.
- Data and reporting requirements implementation.
- Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.
- Implementation of our general instructions.

V. Criteria and Standards for Regional Home Health Intermediaries (RHHIs)

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

The following four standards are mandated for the RHHI criterion:

Standard 1. Not less than 95.0 percent of clean electronically submitted non-Periodic Interim Payment home health and hospice claims are paid within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare intermediaries to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, the statute specifies that clean non-Periodic Interim Payment electronic claims be paid no earlier than the 14th day after the date of receipt, and that interest is payable for any clean claims if payment is not issued by the 31st day after the date of receipt. The HIPAA Administrative Simplification provisions and the implementing regulations established standards for electronic transmission of claims. We issued instructions that effective July 1, 2004, electronic claims that do not comply with the appropriate HIPAA claim standard will no longer qualify for payment as early as the 14th day after the date of receipt. These ''non-HIPAA'' claims will not be paid earlier than the 27th day after the date of receipt. These ''non-HIPAA'' claims will continue to have interest payable if payment is not issued by the 31st day after the date of receipt. Our expectation is that contractors will pay 95 percent of these clean claims by the 31st day (30 days after date of receipt) on a monthly basis.

Standard 2. Not less than 95.0 percent of clean paper non-periodic interim payment home health and hospice claims are paid within specified time frames. Specifically, clean, non-periodic interim payment paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. Redetermination letters prepared in response to beneficiary initiated appeal requests are written in a manner calculated to be understood by the beneficiary. Letters must contain the required elements as specified in § 405.956.

Standard 4: All redeterminations must be concluded and mailed within 60 days of receipt of the request, unless the appellant submits documentation after the request, in which case the decision making timeframe is extended for 14 calendar days for each submission.

We may use this criterion to review an RHHI's performance for handling the HHA and hospice workload. This includes processing HHA and hospice claims timely and accurately, properly paying and settling HHA cost reports, and timely and accurately processing BIPA section 521 redeterminations from beneficiaries, HHAs, and hospices.

Note: Section 521 of BIPA and sections 933 and 940 of MMA amend section 1869 of the Act by requiring major revisions to the Medicare appeals process. Section 937 of MMA requires the creation of a process outside the appeals process, whereby Medicare contractors can correct minor errors and omissions. We may evaluate compliance with our instructions concerning other provisions of section 521 of BIPA and sections 933, 937 and 940 of MMA as they are implemented.

VI. Criteria and Standards for Carriers

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

A. Claims Processing Criterion

The Claims Processing criterion contains the following six mandated standards:

Standard 1. Not less than 95.0 percent of clean electronically submitted claims are processed within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare carriers to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, the statute specifies that clean non-Periodic Interim payment electronic claims be paid no earlier than the 14th day after the date of receipt, and that interest is payable for any clean claims if payment is not issued by the 31st day after the date of receipt. The HIPAA Administrative Simplification provisions and the implementing regulations established standards for electronic transmission of claims. We issued instructions that effective July 1, 2004, electronic claims that do not comply with the appropriate HIPAA claim standard will no longer qualify for payment as early as the 14th day after the date of receipt. These ''non-HIPAA'' claims will not be paid earlier than the 27th day after the date of receipt. These ''non-HIPAA'' claims will continue to have interest payable if payment is not issued by the 31st day after the date of receipt. Our expectation is that contractors will pay 95 percent of these clean claims by the 31st day (30 days after date of receipt) on a monthly basis.

Standard 2. Not less than 95.0 percent of clean paper claims are processed within specified time frames. Specifically, clean paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. 98.0 percent of MSNs are properly generated. Our expectation is that MSN messages are accurately reflecting the services provided.

Standard 4. 90.0 percent of carrier hearing decisions are completed within 120 days. Our expectation is that contractors will meet this percentage on a monthly basis. This standard will remain in effect until the Part B hearing officer work is transitioned to the QICs sometime in FY 2006.

Standard 5. Redetermination letters prepared in response to beneficiary

initiated appeal requests are written in a manner calculated to be understood by the beneficiary. Letters must contain the required elements as specified in § 405.956.

Standard 6. All redeterminations must be concluded and mailed within 60 days of receipt of the request, unless the appellant submits documentation after the request, in which case the decision making time frame is extended for 14 calendar days for each submission.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Accuracy of claims processing.
- Remittance advice transactions.
- Establishment and maintenance of relationship with Common Working File (CWF) Host.
- Accuracy of redetermination decisions.
- Accuracy of processing hearing cases with decision letters that are clear and have an appropriate customer-friendly tone. This standard will remain in effect until the Part B hearing officer work is transitioned to the QICs sometime in FY 2006.
- Accuracy and timeliness of appeals decisions issued pursuant to the requirements of BIPA section 521 and sections 933 and 940 of MMA.

Note: Section 521 of BIPA and sections 933 and 940 of MMA amend section 1869 of the Act by requiring major revisions to the Medicare appeals process. Section 937 of MMA also requires the creation of a process outside the appeals process, whereby Medicare contractors can correct minor errors and omissions. We may evaluate compliance with our instructions concerning other provisions of section 521 of BIPA and sections 933, 937 and 940 of MMA as they are implemented.

B. Customer Service Criterion

The customer service criterion contains the following mandated standard: Replies to beneficiary written correspondence are responsive to the beneficiary's concerns, are written with an appropriate customer-friendly tone and clarity, and are written at the appropriate reading level.

Contractors must meet our performance expectations that beneficiaries and providers are served by prompt and accurate administration of the program in accordance with all applicable laws, regulations, and our general instructions.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Maintaining a properly programmed interactive voice response system to assist with provider inquiries.
- Performing quality call monitoring.
- Training customer service representatives.
- Entering valid call center performance data in the customer service assessment and management system.
- Providing timely and accurate written replies to beneficiary and/or providers.
- Maintaining walk-in inquiry service for beneficiaries and providers.
- Conducting beneficiary and provider education, training, and outreach activities.
- Effectively maintaining an internet website dedicated to furnishing providers timely, accurate, and useful Medicare program information.
- Ensuring written correspondence is evaluated for quality.

C. Payment Safeguards Criterion

Carriers may be evaluated on any MIP activities if performed under their contracts. In addition, other carrier functions and activities that may be reviewed under this criterion include, but are not limited to the following:

- Benefit Integrity

+ Referring allegations of potential fraud that are made by beneficiaries, providers, CMS, OIG, and other sources to the payment safeguard contractor.

+ Putting in place effective detection and deterrence programs for potential fraud.

- Medical Review

+ Increasing the effectiveness of medical review activities.

+ Exercising accurate and defensible decision making on medical reviews.

+ Effectively educating and communicating with the provider community.

+ Collaborating with other internal components and external entities to ensure the effectiveness of medical review activities.

- Medicare Secondary Payer

+ Accurately reporting MSP savings.

+ Accurately following MSP claim development/edit procedures.

+ Supporting the Coordination of Benefits Contractor's efforts to identify responsible payers primary to Medicare.

+ Identifying, recovering, and referring mistaken/conditional Medicare payments in accordance with the appropriate *Medicare Manual* instructions, and our other pertinent general instructions.

- Overpayments

+ Collecting and referring Medicare debts timely.

+ Accurately reporting and collecting overpayments.

+ Compliance with our instructions for management of Medicare Trust Fund debts.

- Provider Enrollment

+ Complying with assignment of staff to the provider enrollment function and training staff in procedures and verification techniques.

+ Complying with the operational standards relevant to the process for enrolling suppliers.

D. Fiscal Responsibility Criterion

We may review the carrier's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their contracts.

Additional functions that may be reviewed under the Fiscal Responsibility criterion include, but are not limited to, the following:

- Adherence to approved program management and MIP budgets.
- Compliance with the BPRs.
- Compliance with financial reporting requirements.
- Control of administrative cost and benefit payments.

E. Administrative Activities Criterion

We may measure a carrier's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives.

We may measure a carrier's efficiency and effectiveness in managing its operations. Proper systems security (general and application controls), ADP maintenance, and disaster recovery plans must be in place. Also, a carrier must test system changes to ensure accurate implementation of our instructions.

Our evaluation of a carrier under this criterion may include, but is not limited to, reviews of the following:

- Systems security.
- ADP maintenance (configuration management, testing, change management, and security).
- Disaster recovery plan/systems contingency plan.
- Data and reporting requirements implementation.
- Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.
- Implementation of the Electronic Data Interchange (EDI) standards adopted for use under the Health Insurance Portability and Accountability Act (HIPAA).
- Implementation of our general instructions.

VII. Criteria and Standards for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carriers

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

The five criteria for DMEPOS regional carriers contain a total of six mandated standards against which all DMEPOS regional carriers must be evaluated.

There also are examples of other activities for which the DMEPOS regional carriers may be evaluated. The mandated standards are in the claims processing and customer service criteria. In addition to being described in these criteria, the mandated standards are also described in the DMEPOS regional carrier statement of work (SOW).

A. Claims Processing Criterion

The claims processing criterion contains the following six mandated standards:

Standard 1. Not less than 95.0 percent of clean electronically submitted claims are processed within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare DMEPOS regional carriers to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, the statute specifies that clean non-Periodic Interim Payment electronic claims be paid no earlier than the 14th day after the date of receipt, and that interest is payable for any clean claims if payment is not issued by the 31st day after the date of receipt. The HIPAA Administrative Simplification provisions and the implementing regulations established standards for electronic transmission of claims. We issued instructions that effective July 1, 2004, electronic claims that do not comply with the appropriate HIPAA claim standard will no longer qualify for payment as early as the 14th day after the date of receipt. These ''non-HIPAA'' claims will not be paid earlier than the 27th day after the date of receipt. These ''non-HIPAA'' claims will continue to have interest payable if payment is not issued by the 31st day after the date of receipt. Our expectation is that contractors will pay 95 percent of these clean claims by the 31st day (30 days after date of receipt) on a monthly basis.

Standard 2. Not less than 95.0 percent of clean paper claims are processed within specified timeframes. Specifically, clean paper claims can be paid as early as day 27 (26 days after the date of receipt) and must be paid by day 31 (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. 98.0 percent of MSNs are properly generated. Our expectation is that MSN messages are accurately reflecting the services provided.

Standard 4. 90.0 percent of DMEPOS regional carrier hearing decisions are completed within 120 days. Our expectation is that contractors will meet this percentage on a monthly basis. This standard will remain in effect until the Part B hearing officer work is transitioned to the QICs sometime in FY 2006.

Standard 5. Redetermination letters prepared in response to beneficiary initiated appeal requests are written in a manner calculated to be understood by the beneficiary. Letters must contain the required elements as specified in § 405.956.

Standard 6. All redeterminations must be concluded and mailed within 60 days of receipt of the request, unless the appellant submits documentation after the request, in which case the decision making timeframe is extended for 14 calendar days for each submission.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Claims processing accuracy.
- Accuracy and timeliness of appeals decisions prior to the implementation of BIPA sections 521 and 933 and section 940 of MMA requirements.
- Requests for ALJ hearings are forwarded timely.
- Accuracy and timeliness of appeals decisions issued pursuant to the requirements of BIPA sections 521 and 933 and section 940 of MMA.

Note: Section 521 of BIPA and sections 933 and 940 of MMA amend section 1869 of the Act by requiring major revisions to the Medicare appeals process. Section 937 of MMA also requires the creation of a process outside the appeals process, whereby Medicare contractors can correct minor errors and omissions. We may evaluate compliance with our instructions concerning other provisions of section 521 of BIPA and sections 933, 937 and 940 of MMA as they are implemented.

B. Customer Service Criterion

The customer service criterion contains the following mandated standard: Replies to beneficiary written correspondence are responsive to the beneficiary's concerns, are written with an appropriate customer-friendly tone and clarity, and are written at the appropriate reading level.

Contractors must meet our performance expectations that beneficiaries and suppliers are served by prompt and accurate administration of the program in accordance with all applicable laws, regulations, the DMEPOS regional carrier SOW, and our general instructions.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Maintaining a properly programmed interactive voice response system to assist with provider inquiries.
- Performing quality call monitoring.
- Training customer service representatives.
- Entering valid call center performance data in the customer service assessment and management system.
- Providing timely and accurate written replies to beneficiaries and/or providers.
- Maintaining walk-in inquiry service for beneficiaries and suppliers.
- Conducting beneficiary and provider education, training, and outreach activities.
- Effectively maintaining an internet website dedicated to furnishing providers timely, accurate, and useful Medicare program information.
- Ensuring that communications are made to interested supplier organizations for the purpose of developing and maintaining collaborative supplier education and training activities and programs.
- Ensuring written correspondence is evaluated for quality.

C. Payment Safeguards Criterion

DMEPOS regional carriers may be evaluated on any MIP activities if performed under their contracts. The DMEPOS regional carriers must undertake actions to promote an effective program administration for DMEPOS regional carrier claims. These functions and activities include, but are not limited to the following:

- Benefit Integrity

+ Identifying potential fraud cases that exist within the DMEPOS regional carrier's service area and taking appropriate actions to resolve these cases.

+ Investigating allegations of potential fraud made by beneficiaries, suppliers, CMS, OIG, and other sources.

+ Putting in place effective detection and deterrence programs for potential fraud.

- Medical Review

+ Increasing the effectiveness of medical review activities.

+ Exercising accurate and defensible decision making on medical reviews.

+ Effectively educating and communicating with the supplier community.

+ Collaborating with other internal components and external entities to ensure the effectiveness of medical review activities.

• Medicare Secondary Payer

+ Accurately reporting MSP savings.

+ Accurately following MSP claim development/edit procedures.

+ Supporting the coordination of benefits contractors' efforts to identify responsible payers primary to Medicare.

• Identifying, recovering, and referring mistaken/conditional Medicare payments in accordance with the appropriate program instructions in the specified order of priority.

• Overpayments

+ Collecting and referring Medicare debts timely.

+ Accurately reporting and collecting overpayments.

+ Compliance with our instructions for management of Medicare Trust Fund debts.

D. Fiscal Responsibility Criterion

We may review the DMEPOS regional carrier's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their contracts. Additional matters that may be reviewed under this criterion include, but are not limited to, the following:

• Compliance with financial reporting requirements.

• Adherence to approved program management and MIP budgets.

• Control of administrative cost and benefit payments.

E. Administrative Activities

We may measure a DMEPOS regional carrier's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives. Our evaluation of a DMEPOS regional carrier under this criterion may include, but is not limited to, review of the following:

• Systems security.

• Disaster recovery plan/systems contingency plan.

• Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

• Implementation of the EDI standards adopted for use under HIPAA.

VIII. Action Based on Performance Evaluations

[If you choose to comment on this section, please include the caption ''ACTION BASED ON PERFORMANCE EVALUATIONS'' at the beginning of your comments.]

We evaluate a contractor's performance against applicable program requirements for each criterion. Each contractor must certify that all information submitted to us relating to the contract management process, including, without limitation, all files, records, documents and data, whether in written, electronic, or other form, is accurate and complete to the best of the contractor's knowledge and belief. A contractor is required to certify that its files, records, documents, and data are not manipulated or falsified in an effort to receive a more favorable performance evaluation. A contractor must further certify that, to the best of its knowledge and belief, the contractor has submitted, without withholding any relevant information, all information required to be submitted for the contract management process under the authority of applicable law(s), regulation(s), contract(s), or our manual provision(s). Any contractor that makes a false, fictitious, or fraudulent certification may be subject to criminal or civil prosecution, as well as appropriate administrative action. This administrative action may include debarment or suspension of the contractor, as well as the termination or nonrenewal of a contract.

If a contractor meets the level of performance required by operational instructions, it meets the requirements of that criterion. When we determine a contractor is not meeting performance requirements, we will use the terms ''major nonconformance'' or ''minor nonconformance'' to classify our findings. A major nonconformance is a nonconformance that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose. A minor nonconformance is a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services. The contractor will be required to develop and implement PIPs for findings determined to be either a major or minor nonconformance. The contractor will be monitored to ensure effective and efficient compliance with the PIP, and to ensure improved performance when requirements are not met.

The results of performance evaluations and assessments under all criteria applying to intermediaries, carriers, RHHIs, and DMEPOS regional carriers will be used for contract management activities and will be published in the contractor's annual Report of Contractor Performance (RCP). We may initiate administrative actions as a result of the evaluation of contractor performance based on these performance criteria. Under sections 1816 and 1842 of the Act, we consider the results of the evaluation in our determinations when—

• Entering into, renewing, or terminating agreements or contracts with contractors, and

• Deciding other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These decisions are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, these decisions depend on the following:

+ Relative overall performance compared to other contractors.

+ Number of criteria in which nonconformance occurs.

+ Extent of each nonconformance.

+ Relative significance of the requirement for which nonconformance occurs within the overall evaluation program.

+ Efforts to improve program quality, service, and efficiency.

+ Deciding the assignment or reassignment of providers and designation of regional or national intermediaries for classes of providers.

We make individual contract action decisions after considering these factors in terms of their relative significance and impact on the effective and efficient administration of the Medicare program.

In addition, if the cost incurred by the intermediary, RHHI, carrier, or DMEPOS regional carrier to meet its contractual requirements exceeds the amount that we find to be reasonable and adequate to meet the cost that must be incurred by an efficiently and economically operated intermediary or carrier, these high costs may also be grounds for adverse action.

IX. Collection of Information Requirements

This document does not impose information collection and record keeping requirements. Consequently the Office of Management and Budget need not review it under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

X. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are unable

to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the Comment Period section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble of that document.

Authority: Sections 1816(f), 1834(a)(12), and 1842(b) of the Social Security Act (42 U.S.C. 1395h(f), 1395m(a)(12), and 1395u(b))

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

Dated: May 19, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–18923 Filed 9–22–05; 8:45 am]

BILLING CODE 4120–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8025–N]

RIN 0938–AO01

Medicare Program; Part A Premium for Calendar Year 2006 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

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

ACTION: Notice.

SUMMARY: This annual notice announces Medicare's Hospital Insurance (Part A) premium for uninsured enrollees in calendar year (CY) 2006. This premium is to be paid by enrollees age 65 and over who are not otherwise eligible (hereafter known as the ''uninsured aged'') and for certain disabled individuals who have exhausted other entitlement. The monthly Part A premium for the 12 months beginning January 1, 2006 for these individuals will be $393. The reduced premium for certain other individuals as described in this notice will be $216. Section 1818(d) of the Social Security Act specifies the method to be used to determine these amounts.

EFFECTIVE DATE: This notice is effective on January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare Hospital Insurance program (Medicare Part A), subject to payment of a monthly premium, of certain persons aged 65 and older who are uninsured under the Old-Age, Survivors and Disability Insurance (OASDI) program or the Railroad Retirement Act and do not otherwise meet the requirements for entitlement to Medicare Part A. (Persons insured under the OASDI program or the Railroad Retirement Act and certain others do not have to pay premiums for hospital insurance.)

Section 1818A of the Act provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium, of certain disabled individuals who have exhausted other entitlement. These are individuals who are not currently entitled to Part A coverage, but who were entitled to coverage due to a disabling impairment under section 226(b) of the Act, and who would still be entitled to Part A coverage if their earnings had not exceeded the statutorily defined substantial gainful activity amount (section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the provisions relating to premiums under section 1818(d) through section 1818(f) of the Act for the aged will also apply to certain disabled individuals as described above.

Section 1818(d) of the Act requires us to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services incurred in the following calendar year (including the associated administrative costs) on behalf of individuals aged 65 and over who will be entitled to benefits under Medicare Part A. We must then determine, during September of each year, the monthly actuarial rate for the following year (the per capita amount estimated above divided by 12) and publish the dollar amount for the monthly premium in the succeeding CY. If the premium is not a multiple of $1, the premium is rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not of $1, it is rounded to the next highest $1).

Section 13508 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) amended section 1818(d) of the Act to provide for a reduction in the premium amount for certain voluntary enrollees (section 1818 and section 1818A). The reduction applies to an individual who is eligible to buy into the Medicare Part A program and who, as of the last day of the previous month—

- Had at least 30 quarters of coverage under title II of the Act;
- Was married, and had been married for the previous 1-year period, to a person who had at least 30 quarters of coverage;
- Had been married to a person for at least 1 year at the time of the person's death if, at the time of death, the person had at least 30 quarters of coverage; or
- Is divorced from a person and had been married to the person for at least 10 years at the time of the divorce if, at the time of the divorce, the person had at least 30 quarters of coverage.

Section 1818(d)(4)(A) of the Act specifies that the premium that these individuals will pay for CY 2006 will be equal to the premium for uninsured aged enrollees reduced by 45 percent.

II. Monthly Premium Amount for CY 2006

The monthly premium for the uninsured aged and certain disabled individuals who have exhausted other entitlement for the 12 months beginning January 1, 2006, is $393.

The monthly premium for those individuals subject to the 45 percent reduction in the monthly premium is $216.

III. Monthly Premium Rate Calculation

As discussed in section I of this notice, the monthly Medicare Part A premium is equal to the estimated monthly actuarial rate for CY 2006 rounded to the nearest multiple of $1 and equals one-twelfth of the average per capita amount, which is determined by projecting the number of Part A enrollees aged 65 years and over as well as the benefits and administrative costs that will be incurred on their behalf.

The steps involved in projecting these future costs to the Federal Hospital Insurance Trust Fund are:

- Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base;
- Projecting increases in payment amounts for each of the service types; and
- Projecting increases in administrative costs.

We base our projections for CY 2006 on: (a) current historical data, and (b) projection assumptions derived from current law and the Mid-Session Review of the President's Fiscal Year 2006 Budget.

We estimate that in CY 2006, 35.205 million people aged 65 years and over will be entitled to benefits (without premium payment) and that they will incur $166.121 billion of benefits and related administrative costs. Thus, the estimated monthly average per capita amount is $393.23 and the monthly

premium is $393. The full monthly premium reduced by 45 percent is $216.

IV. Costs to Beneficiaries

The CY 2006 premium of $393 is about 5 percent higher than the CY 2005 premium of $375.

We estimate that approximately 523,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium. We estimate an additional 1,000 enrollees will pay the reduced premium. We estimate that the aggregate cost to enrollees paying these premiums will be about $113 million in CY 2006 over the amount that they paid in CY 2005.

V. Waiver of Proposed Notice and Comment Period

We are not using notice and comment rulemaking in this notification of Part A premiums for CY 2006, as that procedure is unnecessary because of the lack of discretion in the statutory formula that is used to calculate the premium and the solely ministerial function that this notice serves. The Administrative Procedure Act (APA) permits agencies to waive notice and comment rulemaking when notice and public comment thereon are unnecessary. On this basis, we waive publication of a proposed notice and a solicitation of public comments.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). As stated in section IV of this notice, we estimate that the overall effect of these changes in the Part A premium will be a cost to voluntary enrollees (section 1818 and section 1818A of the Act) of about $113 million. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2) and is an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 100 beds.

We have determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice will not have a substantial effect on State or local governments.

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

Authority: Sections 1818(d)(2) and 1818A(d)(2) of the Social Security Act (42 U.S.C. 1395i-2(d)(2) and 1395i-2a(d)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 12, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 15, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–18839 Filed 9–16–05; 4:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8027–N]

RIN 0938–AO02

Medicare Program; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible for Calendar Year 2006

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

ACTION: Notice.

SUMMARY: This notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) beneficiaries enrolled in Part B of the Medicare Supplementary Medical Insurance (SMI) program beginning January 1, 2006. In addition, this notice announces the monthly premium for aged and disabled beneficiaries and the annual deductible to be paid during 2006. The monthly actuarial rates for 2006 are $176.90 for aged enrollees and $203.70 for disabled enrollees. The monthly Part B premium rate for 2006 is $88.50 which is equal to 50 percent of the monthly actuarial rate for aged enrollees or about 25 percent of Part B costs for aged enrollees. (The 2005 premium rate was $78.20.) The Part B deductible for 2006 is $124.00.

EFFECTIVE DATE: January 1, 2006.

FOR FURTHER INFORMATION CONTACT: M. Kent Clemens, (410) 786–6391.

SUPPLEMENTARY INFORMATION:

I. Background

Part B is the voluntary portion of the Medicare program that pays all or part of the costs for physicians' services, outpatient hospital services, certain home health services, services furnished by rural health clinics, ambulatory surgical centers, comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by Medicare Part A, Hospital Insurance. Medicare Part B is available to individuals who are entitled to Medicare Part A, as well as

to U.S. residents who have attained age 65 and are citizens, and aliens who were lawfully admitted for permanent residence and have resided in the United States for 5 consecutive years. Part B requires enrollment and payment of monthly premiums, as provided for in 42 CFR part 407, subpart B, and part 408, respectively. The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal Government.

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1839 of the Social Security Act (the Act) to announce the Part B monthly actuarial rates for aged and disabled beneficiaries as well as the monthly Part B premium. The Part B annual deductible is included because its determination is directly linked to the aged actuarial rate.

The monthly actuarial rates for aged and disabled enrollees are used to determine the correct amount of general revenue financing per beneficiary each month. These amounts, according to actuarial estimates, will equal, respectively, one-half the expected average monthly cost of Part B for each aged enrollee (age 65 or over) and one-half the expected average monthly cost of Part B for each disabled enrollee (under age 65).

The Part B deductible to be paid by enrollees is also announced. Prior to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), the Part B deductible was set in statute. After setting the 2005 deductible amount at $110.00, section 629 of the MMA (amending section 1833(b) of the Act) requires that the Part B deductible be indexed beginning in 2006. The inflation factor to be used each year is the annual percentage increase in the Part B actuarial rate for enrollees age 65 and over. Specifically, the 2006 Part B deductible is calculated by multiplying the 2005 deductible by the ratio of the 2006 aged actuarial rate over the 2005 aged actuarial rate. The amount determined under this formula is then rounded to the nearest $1.

The monthly Part B premium rate to be paid by aged and disabled enrollees is also announced. (Although the costs to the program per disabled enrollee are different than for the aged, the statute provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Pub. L. 92–603), the premium rate, which was determined on a fiscal year basis, was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly Title II social security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) suspended this premium determination process. Section 124 of TEFRA changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Pub. L. 98–21), section 2302 of the Deficit Reduction Act of 1984 (DEFRA 84) (Pub. L. 98–369), section 9313 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA 85) (Pub. L. 99–272), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) (Pub. L. 100–203), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) (Pub. L. 101–239) extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). This extension expired at the end of 1990.

The premium rate for 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act, as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) (Pub. L. 101–508). In January 1996, the premium determination basis would have reverted to the method established by the 1972 Social Security Act Amendments. However, section 13571 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) (Pub. L. 103–66) changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees) for 1996 through 1998.

Section 4571 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) permanently extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees).

The BBA included a further provision affecting the calculation of the Part B actuarial rates and premiums for 1998 through 2003. Section 4611 of the BBA modified the home health benefit payable under Part A for individuals enrolled in Part B. Under this section, beginning in 1998, expenditures for home health services not considered ''post-institutional'' are payable under Part B rather than Part A. However, section 4611(e)(1) of the BBA required that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from Part A to Part B. Section 4611(e)(2) of the BBA also provided a specific yearly proportion for the transferred funds. The proportions were 1/6 for 1998, 1/3 for 1999, 1/2 for 2000, 2/3 for 2001, and 5/6 for 2002. For the purpose of determining the correct amount of financing from general revenues of the Federal Government, it was necessary to include only these transitional amounts in the monthly actuarial rates for both aged and disabled enrollees, rather than the total cost of the home health services being transferred.

Section 4611(e)(3) of the BBA also specified, for the purpose of determining the premium, that the monthly actuarial rate for enrollees age 65 and over be computed as though the transition would occur for 1998 through 2003 and that 1/7 of the cost be transferred in 1998, 2/7 in 1999, 3/7 in 2000, 4/7 in 2001, 5/7 in 2002, and 6/7 in 2003. Therefore, the transition period for incorporating this home health transfer into the premium was 7 years while the transition period for including these services in the actuarial rate was 6 years.

Section 4732(c) of the BBA added section 1933(c) of the Act, which required the Secretary to allocate money from the Part B trust fund to the State Medicaid programs for the purpose of providing Medicare Part B premium assistance from 1998 through 2002 for the low-income Medicaid beneficiaries who qualify under section 1933 of the Act. This allocation, while not a benefit expenditure, was an expenditure of the trust fund and was included in calculating the Part B actuarial rates through 2002. For 2003, 2004, and 2005, the expenditure was made from the trust fund because the allocation was temporarily extended. However, because the extension occurred after the financing was determined, the allocation was not included in the calculation of the financing rates.

A further provision affecting the calculation of the Part B premium is section 1839(f) of the Act, as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (MCCA 88) (Pub. L. 100–360). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) did not repeal the revisions to section 1839(f) made by MCCA 88.) Section 1839(f) of the Act referred to as the ''hold-harmless'' provision, provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the Part B premiums deducted from these benefit

payments, the premium increase will be reduced, if necessary, to avoid causing a decrease in the individual's net monthly payment. This decrease in payment occurs if the increase in the individual's social security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's Part B premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits.

A check for benefits under section 202 or 223 of the Act is received in the month following the month for which the benefits are due. The Part B premium that is deducted from a particular check is the Part B payment for the month in which the check is received. Therefore, a benefit check for November is not received until December, but has December's Part B premium deducted from it.

Generally, if a beneficiary qualifies for hold-harmless protection, that is, if the beneficiary was in current payment status for November and December of the previous year, the reduced premium for the individual for that January and for each of the succeeding 11 months for which he or she is entitled to benefits, under section 202 or 203 of the Act, is the greater of the following—

- The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the Part B premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the Part B premium for December; or
- The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 of the Act do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount is established under section 1839(f) of the Act, it will not be changed during the year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in Part B late or who have reenrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. The increase is a percentage of the premium and is based on the new premium rate before any reductions under section 1839(f) of the Act are made.

II. Provisions of the Notice

A. Notice of Medicare Part B Monthly Actuarial Rates, Monthly Premium Rate, and Annual Deductible

The Medicare Part B monthly actuarial rates applicable for 2006 are $176.90 for enrollees age 65 and over, and $203.70 for disabled enrollees under age 65. Subsection B of this notice below, presents the actuarial assumptions and bases from which these rates are derived. The Part B monthly premium rate for 2006 is $88.50. The Part B annual deductible for 2006 is $124.00.

B. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for Part B Beginning January 2006

1. Actuarial Status of the Part B Account in the Supplementary Medical Insurance Trust Fund

Under the statute, the starting point for determining the monthly premium is the amount that would be necessary to finance Part B on an incurred basis. This is the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the year is added to the trust fund and used when needed.

The rates are established prospectively and are, therefore, subject to projection error. Additionally, legislation enacted after the financing was established, but effective for the period in which the financing is set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets must be maintained at a level that is adequate to cover a moderate degree of variation between actual and projected costs, and the amount of incurred, but unpaid, expenses. Numerous factors determine what level of assets is appropriate to cover a moderate degree of variation between actual and projected costs. The two most important of these factors are: (1) The difference from prior years between the actual performance of the program and estimates made at the time financing was established; and (2) the expected relationship between incurred and cash expenditures. Both factors are analyzed on an ongoing basis, as the trends vary over time.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 2004 and 2005.

TABLE 1.—ESTIMATED ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

Financing period ending	Assets (millions)	Liabilities (millions)	Assets less liabilities (millions)
Dec. 31, 2004	$19,430	$9,920	$9,510
Dec. 31, 2005	f21,349	9,398	11,951

2. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate for enrollees age 65 and older is one-half of the sum of monthly amounts for: (a) the projected cost of benefits; and (b) administrative expenses for each enrollee age 65 and older, after adjustments to this sum to allow for interest earnings on assets in the trust fund and an adequate contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of variation between actual and projected costs and to amortize any surplus or unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for 2006 is determined by first establishing per-enrollee cost by type of service from program data through 2004 and then projecting these costs for subsequent years. The projection factors used for financing periods from January 1, 2003 through December 31, 2006 are shown in Table 2.

As indicated in Table 3, the projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for 2006 is $166.33. The monthly actuarial rate of $176.90 also provides an adjustment of −$1.63 for interest earnings and $12.20 for a contingency margin. Based on current estimates, the assets are not sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, a positive contingency margin is needed to increase assets to a more appropriate level. This situation has arisen primarily due to faster than expected expenditure growth, along with the enactment of the Consolidated Appropriations Resolution (Pub. L. 108–7) in February 2003 and the Medicare Modernization Act in December 2003. Each of these two legislative packages was enacted after the establishment of the Part B premium (for 2003 and 2004, respectively). Because each Act raised Part B expenditures subsequent to the setting of the premium, total Part B revenues from premiums and general fund transfers have been inadequate to cover total costs. As a consequence, the assets of the Part B account in the Supplementary Medical Insurance trust fund were drawn on to cover the shortfall. Due to faster than expected growth in Part B expenditures, only a minimal increase in assets occurred in 2005, despite a large increase in the 2005 Part B premium, in an attempt to partially replenish the assets in the Part B account. Therefore, the remaining level of assets is inadequate for contingency purposes.

The contingency margin included in establishing the 2006 actuarial rate and beneficiary premiums takes another step towards restoring the assets to an adequate level. In an effort to balance the financial integrity of the Part B account with the increase in the Part B premium, the financing rates for 2006 are set to increase the asset level in the Part B account towards the fully adequate level, with the expectation that future financing rates will need to include contingency margins to fully restore the assets.

3. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons under age 65 who are enrolled in Part B because of entitlement to disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease (ESRD) program. Projected monthly costs for disabled enrollees (other than those with ESRD) are prepared in a fashion parallel to the projection for the aged using appropriate actuarial assumptions (see Table 2). Costs for the ESRD program are projected differently because of the different nature of services offered by the program.

As shown in Table 4, the projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for 2006 is $191.42. The monthly actuarial rate of $203.70 also provides an adjustment of −$2.91 for interest earnings and $15.19 for a contingency margin. Based on current estimates, the assets associated with the disabled Medicare beneficiaries are not sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, a positive contingency margin is needed to increase assets to a more appropriate level.

4. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. It is appropriate to test the adequacy of the rates using alternative assumptions. The results of those assumptions are shown in Table 5. One set represents increases that are lower and, therefore, more optimistic than the current estimate. The other set represents increases that are higher and, therefore, more pessimistic than the current estimate. The values for the alternative assumptions were determined from a statistical analysis of the historical variation in the respective increase factors.

Table 5 indicates that, under the assumptions used in preparing this report, the monthly actuarial rates would result in an excess of assets over liabilities of $25,557 million by the end of December 2006. This amounts to 15.0 percent of the estimated total incurred expenditures for the following year. Assumptions that are somewhat more pessimistic (and that therefore test the adequacy of the assets to accommodate projection errors) produce a surplus of $12,409 million by the end of December 2006, which amounts to 6.5 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates would result in a surplus of $38,276 million by the end of December 2006, or 25.2 percent of the estimated total incurred expenditures for the following year.

5. Premium Rate and Deductible

As determined by section 1839(a)(3) of the Act, the monthly premium rate for 2006, for both aged and disabled enrollees, is $88.50. In addition, as specified by section 1833(b) of the Act, the annual deductible for 2006 is $124.00.

TABLE 2.—PROJECTION FACTORS [1] 12-MONTH PERIODS ENDING DECEMBER 31 OF 2003–2006

[In percent]

Calendar Year	Physicians' Services		Durable medical equipment	Carrier lab [4]	Other carrier services [5]	Outpatient hospital	Home Health Agency	Hospital lab [6]	Other intermediary services [7]	Managed care
	Fees [2]	Residual [3]								
Aged										
2003	1.4	4.4	14.2	6.8	16.2	5.3	2.9	7.7	3.0	3.3
2004	3.8	6.2	0.6	7.8	7.8	10.1	13.0	7.3	15.2	12.3
2005	1.5	5.6	−2.3	7.2	4.7	9.2	10.4	9.0	13.1	8.7
2006	−4.5	6.4	−0.3	4.5	10.4	7.9	7.8	4.9	1.7	11.2
Disabled										
2003	1.4	5.3	16.2	6.3	24.8	5.6	22.3	6.9	−2.5	−1.9
2004	3.8	6.5	1.5	10.1	14.8	12.7	11.8	9.6	0.5	4.8
2005	1.5	6.0	−1.8	8.7	16.7	8.8	10.8	10.8	13.9	6.0

TABLE 2.—PROJECTION FACTORS [1] 12-MONTH PERIODS ENDING DECEMBER 31 OF 2003–2006—Continued

[In percent]

Calendar Year	Physicians' Services		Durable medical equipment	Carrier lab [4]	Other carrier services [5]	Out-patient hospital	Home Health Agency	Hospital lab [6]	Other inter-mediary services [7]	Managed care
	Fees [2]	Residual [3]								
2006	−4.5	6.4	−0.3	4.3	9.0	7.8	7.9	4.9	−1.6	11.1

[1] All values for services other than managed care are per fee-for-service enrollee. Managed care values are per managed care enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[5] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[6] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[7] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE .3—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FOR FINANCING PERIODS ENDING DECEMBER 31, 2003 THROUGH DECEMBER 31, 2006

	Financing periods			
	CY 2003	CY 2004	CY 2005	CY 2006
Covered services (at level recognized):				
Physician fee schedule	69.32	76.40	80.84	78.53
Durable medical equipment	9.73	9.78	9.44	8.99
Carrier lab [1]	3.20	3.45	3.65	3.65
Other carrier services [2]	17.62	18.99	19.64	20.72
Outpatient hospital	23.97	26.39	28.45	29.33
Home health	5.90	6.66	7.27	7.49
Hospital lab [3]	2.51	2.70	2.90	2.91
Other intermediary services [4]	9.44	10.88	12.15	11.81
Managed care	20.06	22.55	26.24	36.00
Total services	[5] 161.76	[5] 177.80	[5] 190.58	199.43
Cost-sharing:				
Deductible	−4.07	−4.40	−4.48	–5.04
Coinsurance	−28.64	−30.87	−32.64	−30.73
Total benefits	129.05	142.53	153.47	163.66
Administrative expenses	2.44	3.01	4.21	2.67
Incurred expenditures	131.49	145.55	157.67	166.33
Value of interest	−2.30	−1.63	−1.27	−1.63
Contingency margin for projection error and to amortize the surplus or deficit	−10.49	−10.71	0.00	12.20
Monthly actuarial rate	118.70	133.20	156.40	176.90

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, etc.
[5] Includes transfers to Medicaid. Section 1933(c)(2) of the Act, as added by section 4732(c) of the BBA, allocates an amount to be transferred from the Part B account in the SMI trust fund to the state Medicaid programs. This transfer is for the purpose of paying the Part B premiums for certain low-income beneficiaries. It is not a benefit expenditure but is used in determining the Part B actuarial rates since it is an expenditure of the trust fund.

TABLE 4.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FINANCING PERIODS ENDING DECEMBER 31, 2003 THROUGH DECEMBER 31, 2006

	Financing periods			
	CY 2003	CY 2004	CY 2005	CY 2006
Covered services (at level recognized):				
Physician fee schedule	70.61	78.23	83.54	83.06
Durable medical equipment	16.38	16.64	16.26	15.86
Carrier lab [1]	3.80	4.21	4.59	4.69
Other carrier services [2]	20.01	22.85	26.38	28.17
Outpatient hospital	31.90	35.90	38.67	40.80
Home health	4.72	5.26	5.78	6.11
Hospital lab [3]	3.74	4.11	4.51	4.62
Other intermediary services [4]	35.02	37.46	39.70	39.83

TABLE 4.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FINANCING PERIODS ENDING DECEMBER 31, 2003 THROUGH DECEMBER 31, 2006—Continued

	Financing periods			
	CY 2003	CY 2004	CY 2005	CY 2006
Managed care	9.77	10.57	12.26	17.10
Total services	[5] 195.94	[5] 215.24	[5] 231.68	240.14
Cost-sharing:				
Deductible	−3.78	−3.79	−4.17	−4.70
Coinsurance	−40.38	−43.66	−47.02	−47.09
Total benefits	151.78	167.79	180.49	188.36
Administrative expenses	2.88	[6] 7.83	4.66	3.07
Incurred expenditures	154.66	175.62	185.15	191.42
Value of interest	−1.22	−1.37	−1.75	−2.91
Contingency margin for projection error and to amortize the surplus or deficit	−12.43	1.25	8.40	15.19
Monthly actuarial rate	141.00	175.50	191.80	203.70

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, etc.
[5] Includes transfers to Medicaid. Section 1933(c)(2) of the Act, as added by section 4732(c) of the BBA, allocates an amount to be transferred from the Part B account in the SMI trust fund to the state Medicaid programs. This transfer is for the purpose of paying the Part B premiums for certain low-income beneficiaries. It is not a benefit expenditure but is used in determining the Part B actuarial rates since it is an expenditure of the trust fund.
[6] Includes payment of estimated contingent liability payable to States (to reimburse them for payments they have made on behalf of beneficiaries) for probable unasserted claims that resulted from processing errors where incorrect Medicare eligibility determinations were made.

TABLE 5.—ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2006

As of December 31	2004	2005	2006
This projection:			
Actuarial status (in millions):			
Assets	19,430	21,349	34,766
Liabilities	9,920	9,398	9,209
Assets less liabilities	9,510	11,951	25,557
Ratio (in percent) [1]	6.2	7.3	15.0
Low cost projection:			
Actuarial status (in millions):			
Assets	19,430	21,349	46,939
Liabilities	9,920	8,596	8,664
Assets less liabilities	9,510	12,753	38,276
Ratio (in percent) [1]	6.5	8.5	25.2
High cost projection:			
Actuarial status (in millions):			
Assets	19,430	21,349	22,140
Liabilities	9,920	10,234	9,730
Assets less liabilities	9,510	11,114	12,409
Ratio (in percent) [1]	5.9	6.3	6.5

[1] Ratio of assets less liabilities at the end of the year to the total incurred expenditures during the following year, expressed as a percent.

III. Regulatory Impact Analysis

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1-year. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have

determined that this notice will not have a significant effect on a substantial number of small entities or on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below this threshold as well.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

This notice announces that the monthly actuarial rates applicable for 2006 are $176.90 for enrollees age 65 and over and $203.70 for disabled enrollees under age 65. It also announces that the monthly Part B premium rate for calendar year 2006 is $88.50 and that the Part B deductible for calendar year 2006 is $124.00. The Part B premium rate of $88.50 is 13.2 percent higher than the $78.20 premium rate for 2005. We estimate that this increase will cost approximately 40 million Part B enrollees about $4.9 billion for 2006. In addition, we estimate that the increase in the annual deductible will cost approximately $0.4 billion in 2006. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2) and is an economically significant rule under Executive Order 12866.

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

IV. Waiver of Proposed Notice

The Medicare statute requires the publication of the monthly actuarial rates and the Part B premium amounts in September. We ordinarily use general notices, rather than notice and comment rulemaking procedures, to make such announcements. In doing so, we note that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find, for good cause, that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formula used to calculate the Part B premium is statutorily directed, and we can exercise no discretion in applying that formula. Moreover, the statute establishes the time period for which the premium rates will apply, and delaying publication of the Part B premium rate such that it would not be published before that time would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 12, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: September 15, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–18837 Filed 9–16–05; 4 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1269–N5]

Medicare Program; Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG) Meeting—October 26, 2005 Through October 28, 2005

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

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2), this notice announces the third meeting of the Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG). The purpose of the EMTALA TAG is to review regulations affecting hospital and physician responsibilities under EMTALA to individuals who come to a hospital seeking examination or treatment for medical conditions. The primary purpose of the third meeting is to enable the EMTALA TAG to hear additional testimony and further consider written responses from medical societies and other organizations on specific issues considered by the TAG at previous meetings. However, the public is permitted to attend this meeting and, to the extent that time permits and at the discretion of the Chairperson, the EMTALA TAG may hear comments from the floor.

DATES: *Meeting Date:* The meetings of the EMTALA TAG announced in this notice are as follows: Wednesday, October 26, 2005, 9 a.m. to 5 p.m. e.s.t.; Thursday, October 27, 2005, 11 a.m. to 5 p.m. e.s.t.; Friday, October 28, 2005, 9 a.m. to 12 noon e.s.t.

Registration Deadline: All individuals must register to attend this meeting. Individuals who wish to attend the meeting but do not wish to present testimony must register by October 19, 2005. Individuals who wish both to attend the meeting and to present their testimony must register by October 5, 2005, and must submit copies of their testimony in writing by October 12, 2005.

Comment Deadline: Written comments/statements to be presented to the EMTALA TAG must be received by October 12, 2005.

Special Accommodations: Individuals requiring sign-language interpretation or other special accommodations should send a request to these services to Beverly J. Parker by 5 p.m., October 12, 2005 at address listed below.

ADDRESSES: *Meeting Address:* The EMTALA TAG meeting will be held in the Multipurpose Room at the CMS Headquarters (Central Bldg), 7500 Security Boulevard, Baltimore, MD 21244–1850.

Mailing and E-mail Addresses for Inquiries or Comments: Inquiries or comments regarding this meeting may be sent to—Beverly J. Parker, Division of Acute Care, Centers for Medicare & Medicaid Services, Mail Stop C4–08–06, 7500 Security Boulevard, Baltimore, MD 21244–1850. Inquiries or comments may also be e-mailed to *Beverly.Parker@cms.hhs.gov* or *EMTALATAG@cms.hhs.gov.*

Web Site Address for Additional Information: For additional information on the EMTALA TAG meeting agenda topics, updated activities, and to obtain Charter copies, please search our Internet Web site at: *http://*

www.cms.hhs.gov/faca/emtalatag/emtalatagpage.asp.

FOR FURTHER INFORMATION CONTACT: Beverly J. Parker, (410) 786–5320; George Morey, (410) 786–4653.

Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Social Security Act (the Act) impose specific obligations on Medicare-participating hospitals that offer emergency services. These obligations concern individuals who come to a hospital emergency department and request or have a request made on their behalf for examination or treatment for a medical condition. EMTALA applies to all these individuals, regardless of whether or not they are beneficiaries of any program under the Act. Section 1867 of the Act sets forth requirements for medical screening examinations for emergency medical conditions, as well as necessary stabilizing treatment or appropriate transfer.

Regulations implementing the EMTALA legislation are set forth at 42 CFR 489.20(l), (m), (q) and (r)(1), (r)(2), (r)(3), and 489.24. Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), requires that the Secretary establish a Technical Advisory Group (TAG) for advice concerning issues related to EMTALA regulations and implementation.

Section 945 of the MMA specifies that the EMTALA TAG—

- Shall review the EMTALA regulations;
- May provide advice and recommendations to the Secretary concerning these regulations and their application to hospitals and physicians;
- Shall solicit comments and recommendations from hospitals, physicians, and the public regarding implementation of such regulations; and
- May disseminate information concerning the application of these regulations to hospitals, physicians, and the public.

The EMTALA TAG, as chartered under the legal authority of section 945 of the MMA, is also governed by the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2) for the selection of members and the conduct of all meetings.

In the May 28, 2004 **Federal Register** (69 FR 30654), we specified the statutory requirements regarding the charter, general responsibilities, and structure of the EMTALA TAG. That notice also solicited nominations for members based on the statutory requirements for the EMTALA TAG. In the August 27, 2004 **Federal Register** (69 FR 52699), we solicited nominations again for members in two categories (patient representatives and a State survey agency representative) for which no nominations were received in response to the May 28, 2004 **Federal Register** notice. In the March 15, 2005 **Federal Register** (70 FR 12691), we announced the inaugural meeting of the EMTALA TAG and the membership selection. In the May 18, 2005 **Federal Register** (70 FR 28541) we announced the second meeting of the EMTALA TAG with a purpose to hear public testimony and consider written responses from medical societies and other organizations on specific issues considered by the EMTALA TAG at its inaugural meeting. The EMTALA TAG has established the following three subcommittees:

- *On-Call Subcommittee* (Chairperson, John Kusske, M.D.) charged to review the testimony provided and other materials to identify some specific issues relating to on-call requirements.
- *Action Subcommittee* (Chairperson, Julie Nelson, J.D.) charged to identify issues other than on-call issues.
- *Framework Subcommittee* (Chairperson, Charlotte Yeh, M.D.) charged to clarify the historical context and conceptual basis for the TAG's recommendations and develop a document for review and approval by the TAG.

II. Meeting Format, Agenda, and Presentation Topics

A. Meeting Format

The initial portion of the meeting (convening at 9 a.m. on October 26) will involve opening remarks, followed by a limited period of public testimony on emergency medical services and specialty hospital issues. Participants wishing to present testimony on the EMTALA impact of specialty hospitals are requested to address their comments to the following issues:

- Whether there should be a Federal requirement for specialty hospitals to maintain emergency departments and, if so, whether this is best achieved by amending EMTALA or through some other means.
- Whether specialty hospitals, irrespective of whether they have emergency departments, are subject to the EMTALA requirement under which a Medicare participating hospitals with specialized capabilities or facilities may not refuse to accept an appropriate transfer of an individual who requires such specialized capabilities or facilities if the hospital has the capacity to treat the individual.
- Whether additional or different, on-call requirements should be established for specialty hospitals (for example, whether specialty hospitals should be required to participate in community protocols).

The public testimony will be followed by discussion of emergency medical services (EMS), specialty hospitals, and other issues under consideration by the On-Call, Action, and Framework Subcommittees. TAG members will be afforded the opportunity to ask questions, prioritize the topics presented, and to conduct other necessary business. At the conclusion of each day's meeting, to the extent that time is available and at the discretion of the Chair, the public will be permitted a reasonable time to comment on issues being considered by the TAG.

B. Tentative Meeting Agenda

The tentative agenda for the EMTALA TAG meetings is as follows:

Day 1

Convenes at 9 a.m.

- Welcome, Call to Order, and Opening Remarks.
- Administrative and Housekeeping Issues.
- Public Testimony on Emergency Medical Services and Specialty Hospital Issues.
- Report of On-Call Subcommittee.
- Discussion of On-Call Issues.
- Report of Action Subcommittee.
- Discussion of Action Subcommittee Issues (for example, psychiatric emergency medical conditions and stabilizing treatment; hospitals with specialized capabilities; follow-up on other issues discussed at the last TAG meeting).
- Public Comment.

Day 2

Convenes at 11 a.m.

- Report of Framework Subcommittee.
- Discussion of Framework Issues.
- Discussion of Specialty Hospital Issues.
- Continuation of discussion of On-Call issues.
- Continuation of discussion of Action Subcommittee Issues.
- Discussion of Current Business.
- Public Comment.

Day 3

Convening at 9 a.m.

- Discussion of Current Business (continued).

C. Public Presentations

Only individuals who register and submit written testimony as specified in section IV. of this notice will be considered registered presenters. The time allotted for each presentation will be approximately 5 minutes but will be based on the number of registered presenters. Presenters will speak in their assigned order. If registered presenters are not given an opportunity to speak because of time restrictions, we will accept and present their testimony to the TAG members. Comments from other participants (individuals who are not registered presenters) may be heard after the scheduled testimonies, if time permits.

If there are individuals who cannot attend the meeting but wish to submit comments/statements regarding emergency medical services or specialty hospitals, we will accept and present their written comments/statements at the meeting if their comments/statements are received via postal mail or email at the address listed in the **ADDRESSES** section of this notice by October 12, 2005.

III. Registration Instructions

The Center for Medicare Management is coordinating meeting registration. While there is no registration fee, all individuals must register to attend due to limited seating. As specified in the **DATES** section of this notice, individuals who wish to attend the meeting but do not plan to present testimony must register by October 19, 2005. Individuals who would like both to attend and to present testimony on the topics of emergency medical services or specialty hospitals must register by October 5, 2005 and must state specifically in their registration request that they wish to present testimony for EMTALA TAG consideration. A copy of the presenter's written testimony must be received by CMS at the address specified in the **ADDRESSES** section of this notice by October 12, 2005.

You may register with Marianne Myers at *Marianne.Myers@cms.hhs.gov* or by, fax to the attention of Marianne Myers at (410) 786–0681, or by telephone at (410) 786–5962. All registration requests must include your name, name of the organization (if applicable), address, telephone and fax numbers, e-mail address (if available). You will receive a registration confirmation with instructions for your arrival at the CMS Headquarters. If seating has been reached, you will be notified that the meeting has reached capacity. All registrants are asked to arrive at the CMS (Central Building) no later than 20 minutes before the scheduled starting time of each meeting session they wish to attend.

IV. Security Information

Since this meeting will be held in a Federal government building, Federal security measures are applicable. As noted above, in planning your arrival time, we recommend allowing additional time to clear security. All vehicles will be inspected inside and out at the entrance to the grounds. In order to gain access to the building, participants must bring a government-issued photo identification (driver's license, passport, etc.) and a copy of your registration information for the meeting. Access may be denied to persons without proper identification.

All persons entering the building must pass through a metal detector. In addition, all items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation.

Authority: Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 13, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–18925 Filed 9–22–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3159–N]

Medicare Program; Meeting of the Medicare Coverage Advisory Committee—November 29, 2005

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

ACTION: Notice.

SUMMARY: This notice announces a public meeting of the Medicare Coverage Advisory Committee (MCAC). The Committee provides advice and recommendations about whether scientific evidence is adequate to determine whether certain medical items and services are reasonable and necessary under the Medicare statute. This meeting concerns the treatments for age-related macular degeneration. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: The public meeting will be held on Tuesday, November 29, 2005 from 7:30 a.m. until 4:30 p.m. e.s.t.

Deadlines: Deadline for Presentations and Comments: Written comments and presentations must be received by October 31, 2005, 5 p.m., e.s.t.

Deadline for Registration to Attend Meeting: For security reasons, individuals wishing to attend this meeting must register by close of business on November 22, 2005.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to notify the Executive Secretary by November 22, 2005 (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: The meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: Michelle Atkinson, Executive Secretary, by telephone at 410–786–2881 or by e-mail at *Michelle.Atkinson@cms.hhs.gov.*

Web Site: You may access up-to-date information on this meeting at *http://www.cms.hhs.gov/mcac/default.asp#meetings.*

Presentations And Comments: Interested persons can present data, information, or views orally or in writing on issues pending before the Committee. Please submit written comments to Michelle Atkinson, by e-mail at *Michelle.Atkinson@cms.hhs.gov,* or by mail to the Executive Secretary for MCAC, Coverage and Analysis Group, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C1–09–06, Baltimore, MD 21244.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) to describe the Medicare

Coverage Advisory Committee (MCAC), which provides advice and recommendations to us about clinical issues. This notice announces a public meeting of the Committee.

Meeting Topic: The Committee will discuss evidence and hear presentations and public comments regarding therapies and outcome measures for age-related macular degeneration.

Background information about this topic, including panel materials, is available on the Internet at *http://www.cms.hhs.gov/coverage/.*

II. Procedure

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. The Committee can limit the number and duration of oral presentations to the time available. If you wish to make formal presentations, you must notify the Executive Secretary named in the **FOR FURTHER INFORMATION CONTACT** section and submit the following by the *Deadline for Presentations and Comments* date listed in the **DATES** section of this notice: a brief statement of the general nature of the evidence or arguments you wish to present, the names and addresses of proposed participants, and a written copy of your presentation. Your presentation should consider the questions we have posed to the Committee and focus on the issues specific to the topic. The questions will be available on our Web site at *http://www.cms.hhs.gov/mcac/default.asp* meetings. We require that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public and CMS presentations, the Committee will deliberate openly on the topic. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15 minute unscheduled open public session for any attendee to address issues specific to the topic. At the conclusion of the day, the members will vote, and the Committee will make its recommendation.

III. Registration Instructions

The Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register by contacting Maria Ellis at 410–786–0309, mailing address: Coverage and Analysis Group, OCSQ; Centers for Medicare & Medicaid Services; 7500 Security Blvd, Mailstop: C1–09–06; Baltimore, MD 21244, or by e-mail at *Maria.Ellis@cms.hhs.gov*. Please provide your name, address, organization, telephone and fax number, and e-mail address.

You will receive a registration confirmation with instructions for your arrival at the CMS complex. You will be notified if the seating capacity has been reached.

This meeting is located on Federal property; therefore, for security reasons, any individuals wishing to attend this meeting must register by close of business on November 22, 2005.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security.

In order to gain access to the building and grounds, individuals must present photographic identification to the Federal Protective Service or Guard Service personnel before being allowed entrance.

Security measures also include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all individuals entering the building must pass through a metal detector. All items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

Parking permits and instructions will be issued upon arrival.

Note: *Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.* The public may not enter the building earlier than 30 to 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a).

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

Dated: July 21, 2005.

Barry M. Straube,

Acting Chief Medical Officer and Acting Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 05–18924 Filed 9–22–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Improper Payments Information Survey for the TANF Program.

OMB No.: New Collection.

Description: This survey for the Temporary Assistance for Needy Families (TANF) program will request that States voluntarily provide information including how they define improper payments in their State, the process used to identify such payments and what actions are taken in the State to reduce or eliminate improper payments. HHS/ACF intends to establish a repository for the State submissions, which will be available to all States for viewing on an HHS/ACF website. This website will provide information that will help States improve their program integrity systems so that improper payments in the TANF program can be reduced.

Respondents: The 50 States of the United States, the District of Columbia, and the Territories of Guam, Puerto Rico and the Virgin Islands

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Improper Payments Information Survey for the TANF Program	54	1	24	1,296

Estimated Total Annual Burden Hours: 1,296 hours

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: September 16, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–19011 Filed 9–22–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: DHHS/ACF/ASPE/DOL Enhanced Services for the Hard-to-Employ Demonstration and Evaluation: Rhode Island 15-Month Survey Amendment.

OMB No.: 0970–0276.

Description: The Enhanced Services for the Hard-to-Employ Demonstration and Evaluation Project (HtE) is the most ambitious, comprehensive effort to learn what works in this area to date and is explicitly designed to build on previous and on going research by rigorously testing a wide variety of approaches to promote employment and improve family functioning and child well-being. The HtE project will ''conduct a multi-site evaluation that studies the implementation issues, program design, net impact and benefit-costs of selected programs'' [1] designed to help Temporary Assistance for Needy Families (TANF) recipients, former TANF recipients, or low-income parents who are hard-to-employ. The project is sponsored by the Office of Planning, Research and Evaluation (OPRE) of the Administration for Children and Families (ACF), the Office of the Assistant Secretary for Planning and Evaluation (ASPE) in the U.S. Department of Health and Human Services (HHS), and the U.S. Department of labor (DOL).

The evaluation involves an experimental, random assignment design in four sites, testing a diverse set of strategies to promote employment for low-income parents who face serious obstacles to employment. The four include: (1) Intensive care management to facilitate the use of evidence-base treatment for major depression among parents receiving Medicaid in Rhode Island; (2) job-readiness training, worksite placements, job coaching, job development and other training opportunities for recent parolees in New York City; (3) pre-employment services and transitional employment for long-term TANF participants in Philadelphia; and (4) home- and center-based care, enhanced with self-sufficiency services, for low-income families who have young children or are expecting in Kansas and Missouri.

Materials for follow-up surveys for each of these sites were previously submitted to OMB and were approved on April 29, 2005. The purpose of this submission is to introduce an addition to the OMB-approved follow-up survey effort in the Rhode Island site that will be used to collect follow-up data on children's development.

The additional content we propose for the follow-up survey effort will be used to address two questions: (1) What are the effects of a telephonic care management intervention for parents' depression on parents' parenting and on children's health, behavior, and development; and (2) To what extent can intervention effects on children's development be attributed to changes in maternal depressive symptomatology that result from the intervention?

Two follow-up surveys are included in this submission:

1. A 15-month follow-up parent survey that will supplement other information already collected from parents by addressing questions about parenting and children's well-being.

2. A 15-month follow-up direct child assessment for up to two selected children of these parents. For younger children, this assessment will consist of cognitive and behavioral assessments conducted directly with the children; older children will be administered a survey, in addition to direct assessments.

Respondents: The respondents to these follow-up surveys will be low-income parents and their children from the Rhode Island site currently participating in the HtE Project. As described in the prior OMB submission, these parents are Medicaid recipients between the ages of 18 and 45 receiving Medicaid through the managed care provider United Behavioral Health (UBH) in Rhode Island who meet study criteria with regard to their risk for depression. Children are the biological, adopted, and step-children of these parents, between the ages of 1 and 18 years of age.

Prior to this follow-up survey, all parents will have completed a more detailed baseline survey, which is required to establish baseline measures of depression and related conditions, in addition to providing critical demographic data. The baseline survey was previously approved by OMB.

The annual burden estimates are detailed below, and the substantive content of each survey will be detailed in the supporting statement attached to the forthcoming 30-day notice.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
RI 15-month, parent survey	560	1	45 minutes or .75 hrs	420
RI 15-month, direct child assessment	980	1	45 minutes or .75 hrs	735

[1] From the Department of Health and Human Services RFP No.: 233–01–0012.

Estimated Total Annual Burden Hours: 1,155

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 16, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–19012 Filed 9–22–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Improper Payments Information Survey for the CCDF Program.

OMB No.: New Collection.

Description: This survey for the Child Care and Development Fund (CCDF) program will request that States Voluntarily provide information including how they define improper payments in their State, the process used to identify such payments and what actions are taken in the State to reduce or eliminate improper payments. HHS/ACF intends to establish a repository for the State submissions, which will be available to all States for viewing on an HHS/ACF Web site. This Web site will provide information that will help States improve their program integrity systems so that improper payments in the program can be reduced.

Respondents: The 50 States of the United States, the District of Columbia, and the Territories of Guam, Puerto Rico and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Improper Payments Information Survey for the CCDF Program	54	1	24	1,296

Estimated Total Annual Burden Hours: 1,296 hours.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB received it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich_@omb.eop.gov.*

Dated: September 16, 2005.

Robert Sargin,

Reports Clearance Officer.

[FR Doc. 05–19013 Filed 9–22–05; 8:45am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0363]

Preparation for International Conference on Harmonization Meetings in Chicago, Illinois; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled ''Preparation for ICH meetings in Chicago, Illinois'' to provide information and receive comments on the International Conference on Harmonization (ICH) as well as the upcoming meetings in Chicago, IL. The topics to be discussed are the topics for discussion at the forthcoming ICH Steering Committee Meeting. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Groups meetings in Chicago, IL, November 7 through 10, 2005, at which discussion of the topics underway and the future of ICH will continue.

Date and Time: The meeting will be held on October 20, 2005, from 1:30 p.m. to 4 p.m.

Location: The meeting will be held at 5600 Fishers Lane, 3rd Fl., Maryland Conference Room, Rockville, MD 20857. For security reasons, all attendees are asked to arrive no later than 1:25 p.m., as you will be escorted from the front entrance of 5600 Fishers Lane to the Maryland Conference Room.

Contact: Sema Hashemi, Office of the Commissioner (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3050, FAX: 301–480–0716, e-mail: *Sema.Hashemi@fda.hhs.gov*.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax

number), written material and requests to make oral presentations, to the contact person by October 14, 2005. If you need special accommodations due to a disability, please contact Sema Hashemi at least 7 days in advance.

SUPPLEMENTARY INFORMATION: The ICH was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labor and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations. The ICH Steering Committee includes representatives from each of the ICH sponsors and Health Canada, the European Free Trade Area and the World Health Organization. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found at the following Web site: *http://www.ich.org*.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Oral presentations from the public will be scheduled between approximately 3:30 p.m. and 4 p.m. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by October 14, 2005, and submit a brief statement of the general nature of the evidence or arguments they which to present, the names and addresses, phone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

The agenda for the public meeting will be made available on October 7, 2005, via the Internet at *http://www.fda.gov/cder/meeting/ICH/ICH_fall2005.htm*.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: September 16, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–19017 Filed 9–22–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0375]

Stakeholder Meeting on the Implementation of A New Direction for the Food and Drug Administration's Radiological Health Program; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public meeting: A New Direction for FDA's Radiological Health Program. The topics of discussion are the agency's activities to implement its radiological health program (the program).

DATES: The public meeting will be held on October 31 and November 1, 2005, from 8:30 a.m. to 5 p.m. The agency is requiring registration by October 17, 2005.

All parties wishing to make a presentation or to speak on an issue specific to the topics of the meeting should indicate their intent, the topics to be addressed, and provide an abstract of their comments to be presented by October 17, 2005. FDA will limit the time for presentations to the public comment periods; the number of parties requesting to participate will determine the amount of time allotted to each presentation.

ADDRESSES: The public meeting will be held at the Hilton Washington DC North/Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD 20877.

Submit written requests to make an oral presentation to Kaye Chesemore (see **FOR FURTHER INFORMATION CONTACT**). Include your name, title, firm or organization name (if representing such), address, telephone, and fax number with your request. All requests and presentation materials should include the docket number found in brackets in the heading of this document. Submit all requests for suggestions and recommendations to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kaye Chesemore, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3309, FAX: 301–594–3306, e-mail: *kfc@cdrh.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In May 2004, FDA's Center for Devices and Radiological Health (CDRH) began an effort to examine how the program could best adapt to current public health needs. This effort culminated in a report that outlines key elements of the program and states how the new direction will impact the most pressing public health problems in the radiological health area. A copy of the report is available on CDRH's Web site at *http://www.fda.gov/cdrh/radhlth/initiative.html*.

The agency has determined that it must shift the focus of resources to the products and procedures with the highest risks to the public, including those that affect the greatest number of people or present the potential for the greatest harm.

The benefits that FDA expects from this focus are that the new program will:

(1) Align CDRH efforts with current and evolving public health needs,

(2) Expand focus on patient and consumer protection,

(3) Allow for a more targeted approach to FDA's programs and activities,

(4) Increase information dissemination and training, and

(5) Improve coordination across the radiological health community.

II. Agenda

On October 31, 2005, FDA is providing the opportunity for a number of stakeholder organizations to discuss how they can assist FDA in implementing the program and in addressing important public health problems. FDA and its stakeholders will discuss the following aspects of the radiological health plan overview:

• Standards—Discussion will consider the following topics: Increased reliance by FDA on consensus radiation safety performance standards, the role of national and international standards, and the role of State regulations in assuring product safety and proper use.

• Monitoring the Use of Radiation—Discussion will consider the following topics: The shift of CDRH's focus from products to users, patients, and consumers; adverse event reporting; State program roles in ensuring appropriate use of radiation; facility quality assurance programs; and the establishment of a voluntary patient radiation dose reporting system for diagnostic imaging procedures that use ionizing radiation. This system could be used to monitor national exposure trends and provide a basis for establishing diagnostic reference levels of patient dose for use in facility quality improvement programs.

• Monitoring the Industry—Discussion will consider the following topics: The shift of FDA emphasis from testing products, to inspecting manufacturers to assure quality manufacturing and products; the reduction of reporting requirements; and the development of electronic reporting methods.

• Education—Discussion will consider education and training for manufacturers, regulators, and users.

On November 1, 2005, FDA will hold concurrent discussion sessions throughout the day on the Standards, Monitoring, and Education topics to provide further opportunity for stakeholder comment and discussion.

FDA will provide an opportunity for comment during the public comment period for individuals and/or organizations on October 31, 2005. In addition, the agency will provide an opportunity to present individual viewpoints during the concurrent discussion sessions on November 1, 2005. FDA reserves the right to limit the time of speakers during the public comment periods.

III. Registration

Participants must register for the meeting by October 17, 2005. Acceptance will be on a first-come, first-served basis. There will be no onsite registration and unregistered participants will not be added to the program. Please register online at *http://www.fda.gov/cdrh/meetings/120303.html*. Persons without Internet access may register for the onsite meeting by calling 301–594–3309 by October 17, 2005.

If you need special accommodations due to a disability, please fax information regarding those needs to Kaye Chesemore at 301–594–3306, at least 7 days in advance of the meeting.

IV. Request for Suggestions, Recommendations, and Materials

FDA is particularly interested in receiving suggestions from stakeholders related to the topics listed previously in this document. Send suggestions or recommendations to the Division of Dockets Management (see **ADDRESSES**).

FDA will place an additional copy of any material it receives in the docket for this document (2005N–0375). Suggestions, recommendations, and materials may be seen at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday (see **ADDRESSES**).

V. Transcripts

Following the meeting, transcripts will be available for review at the Division of Dockets Management (see **ADDRESSES**).

Dated: September 19, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–19077 Filed 9–20–05; 3:31 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–04–8000]

Memorandum of Understanding Between the Food and Drug Administration and the Food and Drug Administration Alumni Association

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Food and Drug Administration Alumni Association, Inc. The purpose of this MOU is to establish a greater collaboration between FDA and the Food and Drug Administration Alumni Association, Inc., regarding FDAs 2006 Centennial Observance.

DATES: The agreement became effective July 28, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Hitch, Senior Advisor, Office of External Relations (HF–10), 5600 Fishers Lane, Rockville, MD 20857, 301–827–4406.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: September 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

225-04-8000

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,
FOOD AND DRUG ADMINISTRATION

AND THE

FOOD AND DRUG ADMINISTRATION ALUMNI ASSOCIATION, INC.
AGREE TO CO-SPONSOR FDA'S 2006 CENTENNIAL OBSERVANCE
ACCORDING TO THE TERMS EXPRESSED BELOW:

Background

On June 30, 2006, the Nation will celebrate the 100th anniversary of the enactment of the Pure Food and Drugs Act. The centennial anniversary offers a unique opportunity to work with the Food and Drug Administration Alumni Association, Inc. (FDAAA) and other groups to broaden public awareness of the Food and Drug Administration's (FDA) wide-ranging responsibilities in order to enhance its capacities to carry out its mission in the new millennium.

This agreement is between the U.S. Department of Health and Human Services (HHS), FDA, and the FDAAA -- Taxpayer Identification Number 41-2051166. In March 2003, FDA and FDAAA entered into a Memorandum of Understanding (MOU) to partner on future specific undertakings that are considered beneficial to both organizations, are directly related to the mission of FDA, and are within FDA's statutory authorities. In accordance with the MOU, it is understood that FDA and FDAAA may work together on future efforts and that FDA and FDAAA will formalize such activities in specific agreements, such as this Co-sponsorship agreement that set forth the responsibilities of each party in co-sponsoring FDA's 2006 Centennial Observance.

FDA is responsible for protecting the public health by ensuring the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, our Nation's food supply, cosmetics, and products that emit radiation.

The FDAAA is an incorporated 501(c)(3) educational public service organization dedicated to supporting the mission of FDA and to advancing its goals of protecting and promoting the public health.

FDA and the FDAAA have common interests in collaborating on various programs and materials for FDA's 2006 Centennial Observation. Through this collaboration, FDA and FDAAA hope to:

- Broaden public awareness of FDA's services and programs and thereby increase public appreciation of FDA's impact on public health and safety;
- Commemorate the first 100 years of contributions to health in America and the worldwide community;

- Inspire the next generation of science, innovation, and public health, and strengthen FDA's capacity to meet future challenges; and
- Recognize contributions of FDA employees, legislators, academicians, industry, advocacy groups, and public health leaders who support FDA's mission.

Responsibilities for Developing the Event

FDA and FDAAA agree to collaborate on developing various events in celebration of FDA's 2006 Centennial Observances related to the mission of FDA. FDA and FDAAA may independently sponsor portions of the Centennial Observance. FDA resources, including staff, shall not be used to develop, promote, or otherwise support any portion of independently supported events. Official announcements and brochures associated with those events may contain factual references to the schedule of the entire event, including portions supported by private donors.

Registration Fees and Other Charges

FDAAA shall not charge fees higher than necessary to recover its share of the costs of the Centennial Observance. FDAAA intends to sell educational materials about the Centennial. All educational materials, transcripts, and recordings of the events shall be sold at cost. As discussed at the June 28, 2004, meeting, FDA employees will be charged a nominal fee for these materials like others to defray costs.

Fundraising

FDAAA shall make clear, in all FDAAA's solicitations of funds from private donors, that it is FDAAA, not FDA, that is asking for any funds to cover its share of the Centennial Observance costs. FDAAA shall not imply that FDA endorses any FDAAA fund-raising for the Centennial Observance. FDAAA will make clear to donors that donations shall be applied exclusively toward defraying the expenses of FDAAA, and not FDA.

Promotional Activity

FDAAA shall not use the event mainly as a way to sell or promote products or services. FDAAA shall ensure that any incidental promotions do not imply that FDA endorses FDAAA's actions or messages. FDAAA shall make reasonable efforts, subject to FDA review, to separate any incidental promotions from the approved Centennial programs, events, and materials. Donors who are public officials or candidates for public office will not include political comment as part of their participation. Donors who have a preexisting business relation with FDA shall be informed that their donations will not result in special consideration by FDA on any other matter.

All Centennial Observance materials bearing the FDA name, logo, or HHS Seal must display the authorization number, be approved in advance by FDA, and contain the following statements: (1) "FDA's participation in this co-sponsorship is not an approval of the views, opinions, products or services of any co-sponsor or other person or entity;" (2) "All FDA programs or co-sponsored programs are extended to the public on a nondiscriminatory basis;" and (3) "Reasonable arrangements for anyone with disabilities shall be made if requested at least 2 weeks in advance."

FDAAA is responsible for: 1) soliciting any advertisement, 2) general layout and event preparations, 3) collection of advertising fees, and 4) payment of all production expenses. FDAAA may not receive or benefit from any funds associated with advertisements or production of the Centennial Observance. FDAAA must avoid advertising solicitations from organizations focused on gaming, alcoholic beverage, or tobacco. FDAAA shall not use the FDA name to imply that FDA endorses products or services of any entity. FDA may help compile information, prepare articles, and distribute publications.

Event Publicity and Endorsements

FDA requires appropriate recognition for its co-sponsorship of Centennial Observance and educational material used or distributed. Within reasonable discretion, FDA retains the right to decide what constitutes appropriate recognition. FDAAA will not use the name of FDA, except in factual publicity for the Centennial Observance and associated materials. Factual publicity includes dates, times, locations, purposes, agendas, fees, and speakers involved with the Centennial Observance. Such factual publicity shall not imply FDA's endorsement of any of the opinions, products, or services of any donor. Where confusion could result, a disclaimer should clearly state that no endorsement is intended. FDAAA will clear all publicity materials for the event with FDA to ensure compliance with this paragraph. There will be no promotion of individual products or services of FDAAA, or of any donor or contractor involved in FDA's Centennial Observance.

Records

FDA and FDAAA shall maintain records that account fully and accurately for the financial commitments and expenditures of FDA and FDAAA for the 2006 Centennial Observance. Such records shall reflect, at a minimum, the amounts, sources, and uses of all funds.

Public Availability

This co-sponsorship agreement, as well as the financial records maintained by the parties, shall be publicly available.

Amendments

This agreement can only be amended in writing, and all parties to this agreement who are affected by it must agree to any amendment.

Effect and Termination

This agreement is effective on the date of approval and will continue until close of business on February 28, 2007. Any party may terminate its participation in the co-sponsorship by providing written notice to the other party. Such termination will not require changes to materials already produced, and will not entitle the terminating party to a return of funds or property contributed.

Contacts

Lawrence L. Bachorik, Ph.D.
Acting Associate Commissioner for External Relations
Food and Drug Administration

James S. Benson, Chair
Food and Drug Administration Alumni Association, Inc.
Ad hoc Committee on the FDA Centennial

Co-Sponsorship Guidance

FDA and FDAAA will abide by the legal memorandum of August 8, 2002, entitled "Co-Sponsorship Guidance," issued by the HHS Designated Agency Ethics Official. See attachment.

Approval

Each person approving this agreement is sanctioned to enter this agreement on behalf of their respective organization. Except as properly amended, this agreement is the final and complete agreement of FDA and FDAAA.

Food and Drug Administration:

Lester M. Crawford, D.V.M., Ph.D., Acting Commissioner for Food and Drugs — Date 07/22/04

Food and Drug Administration Alumni Association:

Mr. John Villforth, Chairman, FDAAA Board of Directors — Date 07-28-04

[FR Doc. 05–19016 Filed 9–22–05; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[CFDA 93.223]

Cooperative Agreement for Border Health Best Practices

AGENCY: Office of Rural Health Policy, HRSA, DHHS.

ACTION: Notice of Single Source Award.

SUMMARY: The Office of Rural Health Policy (ORHP), in cooperation with the Office of Global Health Affairs (OGHA), Office of Minority Health (OMH), Office on Women's Health (OWH), and Centers for Disease Control and Prevention (CDC) will award a one year single source award to the U.S.-Mexico Border Health Association (USMBHA) to identify and promote best practices in border communities. As defined in the La Paz Agreement, the border region is 100 km north and south of the international boundary line between the United States and Mexico. Funds will be used on both sides of the U.S.-Mexico border for the development of activities under the second annual Border Binational Health Week (October 10–16, 2005).

FOR FURTHER INFORMATION CONTACT: Elizabeth Rezai-zadeh, Office of Rural Health Policy, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301–443–4107. E-mail: *erezai@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award

U.S.-Mexico Border Health Association in El Paso, TX.

Amount of the Award

$383,000.

Authority

42 U.S.C. 912; 42 U.S.C. 300u–2; 42 U.S.C. 300u–6; and 42 U.S.C. 247b.

Project Period

The project period of the award will begin on September 1, 2005 and will last through August 31, 2006.

Justification for the Exception to Competition

On March 31, 2005, ORHP announced a Border Health Best Practices Cooperative Agreement (Announcement #HRSA 05–130). ORHP received only one application that was from an entity, as ORHP understood, would have had significant administrative issues to overcome in order to fulfill the requirements of the announcement. Given the response from the initial competition, there are not many applicants along the border who are capable of performing the breadth of these activities. ORHP has identified USMBHA as the only entity with the capacity to fill the void and to work in partnership with HRSA to organize events in the short time frame before the Border Binational Health Week (BBHW) celebration with Mexico is scheduled to take place. USMBHA is eminently qualified to receive a single source award. USMBHA was formally created in 1943 and is composed of health professionals from both Mexico and the United States. Annual meetings have occurred without interruption since this time with involvement from senior Federal, State, and local officials from both countries. Furthermore, USMBHA has worked with the U.S.-Mexico Border Health Commission, HRSA and other Federal Agencies in the past and were involved in last year's BBHW celebration.

Dated: September 16, 2005.

Elizabeth M. Duke,

Administrator.

[FR Doc. 05–19018 Filed 9–22–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers

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

ACTION: Notice.

SUMMARY: Each year FEMA is required by the Write-Your-Own (''WYO'') program Financial Assistance/Subsidy Arrangement (''Arrangement'') to notify the private insurance companies (''Companies'') and make available to the Companies the terms for subscription or re-subscription to the Arrangement. In keeping with that requirement, this notice provides the terms to the Companies to subscribe or re-subscribe to the Arrangement.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, FEMA, 500 C Street, SW., Washington, DC 20472, 202–646–3429 (Phone), 202–646–3445 (facsimile), or *Edward.Connor@dhs.gov* (e-mail).

SUPPLEMENTARY INFORMATION: Under the Arrangement, approximately 95 private sector property insurers issue flood insurance policies and adjust flood insurance claims under their own names based on the Arrangement with the Federal Insurance Administration (FIA) (44 CFR part 62, appendix A). The WYO insurers receive an expense allowance and remit the remaining premium to the Federal Government. The Federal Government pays WYO insurers for flood losses and pays loss adjustment expenses based on a fee schedule. Litigation costs, including court costs, attorney fees, judgments, and settlements, are paid by FIA based on submitted documentation. The Arrangement provides that under certain circumstances reimbursement for litigation costs will not be made. The complete Arrangement is published in 44 CFR part 62, appendix A.

Each year FEMA is required to publish in the **Federal Register** and make available to the Companies the terms for subscription or re-subscription to the Financial Assistance/Subsidy Arrangement. During the 2004–2005 Arrangement year FEMA published (69 FR 45608, Jul. 30, 2004) an interim final rule which made changes to the Arrangement. No changes have been made to the Arrangement since the publication of the interim final rule.

During September 2005, FEMA will send a copy of the offer for the 2005–2006 Arrangement year, together with related materials and submission instructions, to all private insurance companies participating under the current 2004–2005 Arrangement. Any private insurance company not currently participating in the WYO Program but wishing to consider FEMA's offer for 2005–2006 may request a copy by writing: Federal Emergency Management Agency, Mitigation Division, Attn: WYO Program, 500 C Street, SW., Washington, DC 20472, or contact Edward Connor 202–646–3445 (facsimile), or *Edward.Connor@dhs.gov* (e-mail).

R. David Paulison,

Acting Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–19072 Filed 9–22–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Department of Homeland Security—Vulnerability Identification Self-Assessment Tool—Transportation (DHS–VISAT–T)

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on one currently approved information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act.

DATES: Send your comments by November 22, 2005.

ADDRESSES: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer at the above address or by telephone (571) 227–1995 or facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Department of Homeland Security—Vulnerability Identification Self-Assessment Tool—Transportation (DHS–VISAT–T).

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0037.

Forms(s): NA.

Affected Public: Various modal transportation sector owners and operators.

Abstract: After its inception, TSA faced the challenge of securing all of the different modes within the transportation sector. A methodology was required in order to support inter- and intra-modal analysis and decision-making. Millions of assets exist within the transportation sector, ranging from over 500,000 highway-bridges to over 19,000 general aviation airports. Given this population of assets, it became apparent that a mechanism was needed to solicit data from the asset owners/operators. TSA needs this data, such as the assets' security measures currently deployed, along with a high-level assessment of system security effectiveness, in order to prioritize resources.

In response to this need, TSA's Office of Threat Assessment and Risk Management (OTRM) developed the Department of Homeland Security—Vulnerability Identification Self-Assessment Tool—Transportation (DHS–VISAT–T), formerly called the TSA Self-Assessment Risk Module (TSARM), as a means to gather security-related data and provide a cost-free service to the transportation sector. TSA designed this tool to be flexible to support the unique characteristics of each transportation mode, while still providing a common framework from which analysis and trends can be identified. DHS–VISAT–T represents the U.S. Government's first self-assessment tool that provides the following features:

- The tool is provided to users at no cost;
- The tool is voluntary (potential users contact TSA to access the tool);
- The tool is web-based, easily accessible; and
- All ratings are determined by the user.

Upon completion of the tool assessment, users receive a report that summarizes their inputs. They may then use this report to develop a security plan or to identify areas of potential vulnerability. Users have the option to submit the completed assessment to DHS. If submitted, DHS reviews the assessment for consistency and provides feedback to the users.

Owners and operators within the transportation sector can access information about the tool by visiting TSA's Web site: *www.tsa.gov,* selecting ''Industry Partners,'' then ''Risk Management,'' then finally selecting the ''DHS–VISAT'' link. Thus far, TSA has developed modules of the tool for maritime, mass transit, highway bridges, and rail passenger stations, with more in development.

TSA is seeking OMB approval to renew this control number for the maximum three-year period to continue to provide this tool to transportation owners and operators.

Number of Respondents: Of the possible 3,002,450 respondents from the various transportation sectors, TSA expects that approximately 10 percent, or 300,245, will use the tool.

Estimated Annual Burden Hours: An estimated 2,401,960 hours annually.

Issued in Arlington, Virginia, on September 19, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–19089 Filed 9–22–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4984–C–03]

Public Housing Graduation Incentive Bonus Program; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability; correction.

SUMMARY: On June 2, 2005, HUD published its notice of funding availability (NOFA) for the Public Housing Graduation Incentive Bonus program. The NOFA includes a provision that disqualifies applicants that request funding in excess of the applicable maximum award. The Department has determined that this provision was erroneously included in this NOFA. This notice corrects this error by removing the provision from the NOFA. Except for the changes discussed here, and the other technical change published on July 29, 2005, the original NOFA published on June 2, 2005, is unchanged.

FOR FURTHER INFORMATION CONTACT: For questions and technical assistance, applicants may call the Public and Indian Housing Information and Resource Center at 800–955–2232. Hearing- or speech-impaired persons may call the Federal Relay Service at 800–877–8339. (These are toll-free numbers.)

SUPPLEMENTARY INFORMATION: On June 2, 2005 (70 FR 32470), HUD published a NOFA for the Public Housing Graduation Incentive Bonus program. The purpose of the program is to invite Public Housing Authorities (PHAs) to apply for a graduation incentive bonus. The graduation incentive bonus is awarded to PHAs that can show their public housing residents are moving away from long-term dependence on housing assistance. This showing is evidenced by the proportion of households that leaves public housing and end their participation in assisted housing programs during calendar year 2004 plus the average length of stay among public housing residents.

The NOFA announced the availability of up to $10 million under the Graduation Incentive Bonus program in fiscal year 2005. Eligible applicants are PHAs that operated a public housing program during calendar year 2004, have reported Public and Indian Housing Information Center (PIC) Family Household form HUD–50058 data for residents who ended their residency in public housing during calendar year 2004, have a minimum of 100 dwelling units in management status as reported in PIC as approved by the field office as of January 15, 2005, have a minimum of twenty-five Family Household form HUD–50058 records reported in PIC and have met the minimum threshold criteria based upon its size category.

Following publication of the June 2, 2005, NOFA, HUD determined that paragraph III.C.2. (Excess Funding Requests) was erroneously included in the June 2, 2005, NOFA. That paragraph provides that ''Applicants that request funding in excess of the maximum award that they are eligible to receive will not receive funding consideration.'' This provision, adopted in error in the June 2, 2005, NOFA, is inappropriate as a basis for awarding the funds reserved in the NOFA. As discussed in the June 2, 2005, NOFA, the funding is predetermined and will be awarded based on PHA size and certain

identified historical data. Consequently, a PHA cannot receive an award in excess of the amount predetermined for its size. The formulaic nature of the allocation process makes it irrelevant that a PHA may inadvertently or otherwise apply for an amount larger than HUD decided to award. HUD will not exceed the respective award limits for the different sizes of PHAs.

Accordingly, in the Public Housing Graduation Incentive Bonus Program, HUD will remove paragraph III.C.2. entitled Excess Funding Requests.

Dated: September 15, 2005.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 05–18986 Filed 9–22–05; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–668–1040–AA]

Santa Rosa and San Jacinto Mountains National Monument Advisory Committee—Notice of Renewal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of renewal.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Notice is hereby given that the Secretary of the Interior and the Secretary of Agriculture have renewed the Bureau of Land Management's Santa Rosa and San Jacinto Mountains National Monument Advisory Committee.

The purpose of the Committee is to advise the Secretaries with respect to the preparation and implementation of the Santa Rosa and San Jacinto Mountains National Monument Management Plan.

Certification Statement

I hereby certify that the renewal of the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee is necessary and in the public interest in connection with the Secretary of the Interior's and the Secretary of Agriculture's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management and the Forest Service.

FOR FURTHER INFORMATION CONTACT: Maggie Langlas, National Landscape Conservation System (WO–170), Bureau of Land Management, 1849 C Street, NW., Room 301 LS, Washington, DC 20240–9998, telephone (202) 452–7787.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 05–19057 Filed 9–22–05; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Inv. Nos. 731–TA–846–850 (Review)]

Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From the CZECH Republic, Japan, Mexico, Romania, and South Africa

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on carbon and alloy seamless standard, line, and pressure pipe from the Czech Republic, Japan, Mexico, Romania, and South Africa.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on carbon and alloy seamless standard, line, and pressure pipe from the Czech Republic, Japan, Mexico, Romania, and South Africa would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: September 12, 2005.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 18, 2005, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (70 FR 49680, August 24, 2005). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on February 10, 2006, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on March 2, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the

Commission on or before February 23, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 27, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is February 21, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is March 13, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before March 13, 2006. On April 4, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 6, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 19, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–18988 Filed 9–22–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 751–TA–28–29]

Certain Frozen Warmwater Shrimp and Prawns From India and Thailand

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On May 5, 2005, the Commission published notice (70 FR 23884) of its institution of and schedule for investigations to be conducted pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) (the Act) to review its determinations in investigation Nos. 731–TA–1066–1067 (Final). In that notice, the Commission found good cause existed to waive rule 207.45(c), concerning the time for completion of changed circumstances review investigations, and established a completion deadline of October 31, 2005. The Commission has now found that good cause exists to extend further the completion date for these review investigations, and has set a deadline for completion of these reviews of November 21, 2005.

The Commission's new schedule for the investigations is as follows: The deadline for filing posthearing briefs is October 5, 2005; the Commission will make its final release of information on October 25, 2005; and final party comments are due on October 28, 2005.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 16, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–18989 Filed 9–22–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–550]

In the Matter of Certain Modified Vaccinia Ankara (''MVA'') Viruses and Vaccines and Pharmaceutical Compositions Based Thereon; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on

August 19, 2005 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Bavarian Nordic A/S. A letter supplementing and amending the complaint was filed on September 9, 2005. The complaint, as supplemented and amended, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain Modified Vaccinia Ankara viruses and vaccines and pharmaceutical compositions based thereon by reason of infringement of claims 1, 4, 5, and 34 of U.S. Patent No. 6,761,893 and claims 1, 2–9, and 13–16 of U.S. Patent No. 6,913,752, and misappropriation of trade secrets. The complaint further alleges that there exists an industry in the United States as required by section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplemental letter, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Erin D.E. Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2550 or Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 19, 2005, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain Modified Vaccinia Ankara (''MVA'') viruses and vaccines and pharmaceutical compositions based thereon by reason of infringement of claims 1, 4, 5, or 34 of U.S. Patent No. 6,761,893 or claims 1, 2–9, 13–15 or 16 of U.S. Patent No. 6,913,752, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337; and

(b) Whether there is a violation of subsection (a)(1)(A) of section 337 in the importation of certain MVA viruses and vaccines and pharmaceutical compositions based thereon or in the sale of such articles by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States, and whether an industry in the United States.

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact on this issue.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Bavarian Nordic A/S, Bogeskovvej 9, DK–3490 Kvistgard, Denmarky.

(b) The respondent is the following company alleged to be in violation of Section 337 and upon which the complaint is to be served—Acambis, Plc, Peterhouse Technology Park, 100 Fulbourne Road, Cambridge, CB1 9PT, United Kingdom.

(c) Erin D.E. Joffre and Thomas S. Fusco, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436, who shall be the Commission investigative attorneys, party to this investigation;

(4) For the investigation so instituted, the Honorable Robert L. Barton, Jr. is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 19, 2005

Marilyn Abbott,

Secretary to the Commission.

[FR Doc. 05–19037 Filed 9–22–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–454]

In the Matter of Certain Set-Top Boxes and Components Thereof; Notice of Commission Determination To Terminate the Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3090, or Michael Liberman, Esq., Office of the General Counsel, U.S.

International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential 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) 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 patent-based investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain set-top boxes, on March 21, 2001. 66 FR 15887 (March 21, 2001). Complainants Gemstar-TV Guide International, Inc. of Pasadena, California, and StarSight Telecast, Inc. of Fremont, California (collectively, ''Gemstar''), named Pioneer Corporation, Pioneer North America, Inc., Pioneer Digital Technologies, Inc., and Pioneer New Media Technologies, Inc. (collectively, ''Pioneer''); EchoStar Communications Corporation and SCI Systems, Inc. (collectively, ''Echostar''); and Scientific-Atlanta, Inc. (''Scientific-Atlanta'') as respondents. Gemstar alleged that these respondents infringed certain claims of its patents, including: U.S. Patent No. 4,706,121 (''the '121 patent''); U.S. Patent No. 5,479,268 (''the '268 patent''); and U.S. Patent No. 5,809,204 (''the '204 patent'').

The presiding administrative law judge (''the ALJ'') issued his final initial determination (''final ID'') on June 21, 2002, in which he concluded that there was no violation of section 337, based on the following findings: (a) Complainants had failed to establish that asserted claims 18–24, 26–28, 31–33, 36, 42–43, 48–50, 54, 57, 59–61, and 66 of the '121 patent; claims 1, 3, 8, and 10 of the '268 patent; and claims 1, 3, 8, and 10 of the '204 patent are infringed by respondents; (b) respondents had failed to establish that the asserted claims are not valid; (c) respondents had established that the '121 patent is unenforceable for failure to name a co-inventor; (d) complainants had engaged in patent misuse with respect to the '121 patent; (e) no industry existed in the United States, as required by subsection (a)(2) of section 337, that exploits each of the '121, '268, and '204 patents in issue; and (f) there had been an importation of the set-top boxes which are the subject of this investigation.

On July 5, 2002, all parties to the investigation, including the Commission investigative attorney, filed petitions for review of various portions of the final ID.

On August 29, 2002, the Commission issued notice that it had determined to review in part, to take no position in part, and to not review in part the ALJ's final ID. Specifically, the Commission determined to review the issue of the technical prong of the domestic industry as it relates to claim 42 of '204 patent for the purpose of making a finding as to claim 42 of that patent. This finding had been omitted by the ALJ. The Commission also determined to take no position on the issue of patent misuse and not to review the remainder of the final ID. Finally, the Commission determined to affirm three ALJ rulings (involving ALJ Order No. 62, an ALJ ruling excluding evidence concerning the doctrine of equivalents, and an ALJ ruling limiting the testimony time of one witness) that were appealed to the Commission by the complainants. In light of these determinations, the Commission determined that there was no violation of section 337 in this investigation.

Gemstar appealed the Commission's final determination to the United States Court of Appeals for the Federal Circuit (''the Federal Circuit'' or ''the Court''). During the course of the appeal, Gemstar settled with Pioneer and EchoStar, and these respondents were dismissed from the appeal. On September 16, 2004, the Federal Circuit issued its decision in the appeal, in which the Commission's final determination was affirmed in part, vacated in part, and reversed in part, and the case remanded for further proceedings consistent with the Court's opinion. *Gemstar-TV Guide International, Inc.* v. *International Trade Commission,* 383 F.3d 1352 (Fed. Cir. 2004).

On November 29, 2004, the Court denied Scientific-Atlanta's petitions for rehearing and rehearing en banc. On January 11, 2005, the Court denied Scientific-Atlanta's motion to stay issuance of the mandate and simultaneously issued its mandate, returning the case to the Commission, with Scientific-Atlanta as the sole respondent.

On February 8, 2005, the Commission issued an order seeking comments from the parties as to how they believed the Commission should proceed with the remanded investigation. The original 30-day deadline for receiving comments from the parties was extended twice, to June 13, 2005. On that date the private parties filed a joint motion to terminate the investigation based on a settlement agreement, including a patent license agreement. On June 23, 2005, the Commission investigative attorney filed a response supporting the joint motion. On August 5, 2005, the private parties filed a public version of the joint motion.

Having examined the joint motion to terminate the investigation, the response thereto, and other relevant documents of record in this investigation, the Commission has determined to grant the joint motion, terminating this investigation in its entirety.

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 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21).

Issued: September 19, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–19036 Filed 9–22–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ControlNet International, Ltd

Notice is hereby given that, on September 1, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ControlNet International, Ltd. (''ControlNet'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, McNaughton-McKay Electric Company, Madison Heights, MI; IDC Corporation, Dimondale, MI; and Kawasaki Robotics (USA), Inc., Wixom, MI have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned

activity of the group research project. Membership in this group research project remains open, and ControlNet intends to file additional written notification disclosing all changes in membership.

On February 3, 2005, ControlNet filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 1, 2005 (70 FR 9979).

The last notification was filed with the Department on May 18, 2005. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2005 (70 FR 34150).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–19007 Filed 9–22–05; 8:45am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Devicenet Vendor Association, Inc.

Notice is hereby given that, on September 1, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open DeviceNet Vendor Association, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, National Semiconductor Corporation, Santa Clara, CA; Siemens Energy & Automation, Inc., Alpharetta, GA; Wizardry Inc., Gardnerville, NV; Bihl+Wiedemann GmbH, Mannheim, Germany; Ametek, Inc., Paoli, PA; Spyder Controls Corporation, Lacombe, Alberta, Canada; and Keyence Corporation, Osaka, Japan have been added as parties to this venture.

Also, Jeongil Intercom Co., Ltd., Kyunggi-do, Republic of Korea; Embedded Systems Korea, Seoul, Republic of Korea; Agilicom, Tours, France; and Micro Mo Electronics, Inc., Clearwater, FL have withdrawn as parties to this venture. The following member has changed its name: Max Stegmann GmbH to Sick Stegmann GmbH, Donaueschingen, Germany.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notification disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on May 18, 2005. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2005 (70 FR 34151).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–19008 Filed 9–12–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 15, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), 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 Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Payment of Compensation Without Award.

OMB Number: 1215–0022.

Form Number: LS–206.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 700.

Estimated Annual Responses: 24,500.

Average Response Time: 15 minutes.

Total Annual Burden Hours: 6,125.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $10,903.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing or building a vessel. Under Sections 914(b) and (c) of the Longshore Act, a self-insured employer or insurance carrier is required to pay compensation within 14 days after the employer has knowledge of the injury or death. Upon making the first payment, the employer or carrier shall immediately notify the district director of payment. Form LS–206 has been designated as the proper form on which report of first payment is to be made. The LS–206 is also used by OWCP district offices to determine the payment status of a given case.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–19014 Filed 9–22–05; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 14, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), 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: Bureau of Labor Statistics.

Type of Review: Reinstatement, without change, of a previously approved collection.

Title: Displaced Worker, Job Tenure, and Occupational Mobility Supplement to CPS.

OMB Number: 1220–0104.

Type of Response: Reporting.

Affected Public: Individuals or households.

Frequency: Biennially.

Number of Respondents: 55,000.

Annual Responses: 55,000.

Average Response Time: 8 minutes.

Estimated Annual Burden Hours: 7,333.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: This supplement will gather information on workers who have lost or left their jobs because their plant or company closed or moved, there was insufficient work for them to do, or their position or shift was abolished. For those workers who have been reemployed, the survey will gather data on the types of jobs they found and will compare current earnings with those from the lost job. This will assist in developing training programs that will provide other displaced workers with the skills necessary to adjust to the changing economic environment.

The incidence and nature of occupational changes in the preceding year will be queried. The survey also will obtain information on the length of time workers (including those who have not been displaced) have been with their current employer. Tenure data are used to calculate displacement rates for long-tenured workers so that comparisons can be made over time and among different worker groups. Additional data to be collected include information on the receipt of unemployment compensation, the loss of health insurance coverage, and the length of time spent without a job. In combination, these supplemental data will provide the information needed to assess the economic hardship experienced by displaced workers.

The information collected by this survey will be used to determine the size and nature of the population affected by job displacements and the need for and necessary scope of programs serving adult displaced workers. It will also be used to assess employment stability by determining the length of time workers have been with their current employer and estimating the incidence of occupational change over the course of a year. Combining the questions on displacement, job tenure, and occupational mobility will enable analysts to obtain a more complete picture of employment stability.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–19015 Filed 9–22–05; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Prisoner Reentry Initiative (PRI) Reporting System

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, the reporting burden (time and financial resources) is minimized, the collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Employment and Training Administration (ETA) is soliciting comments on the establishment of a reporting and recordkeeping system to support implementation of the Prisoner Reentry Initiative (PRI).

DATES: Submit comments on or before November 22, 2005.

ADDRESSES: Send comments to: Mr. Gregg Weltz, Program Manager, Office of Workforce Investment/Office of Youth Services, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N4459, Washington, DC 20210; telephone: (202) 693–3527 (this is not a toll-free number); fax: (202) 693–3861; e-mail: *weltz.greg@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Gregg Weltz, Program Manager, Office of Workforce Investment/Office of Youth Services, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N4459, Washington, DC 20210; telephone: (202) 693–3527 (this is not a toll-free number); fax: (202) 693–3861; e-mail: *weltz.greg@dol.gov.*

Copies of the Paperwork Reduction Act Submission Package may be obtained directly at the Web site: *http://www.doleta.gov/performance/guidance/ombcontrolnumber.cfm.*

SUPPLEMENTARY INFORMATION:

I. Background

In applying for the Prisoner Reentry Initiative grants, Faith-based and Community Organization grantees agree to submit participant data and quarterly aggregate reports for individuals who receive services through PRI programs and their partnerships with One-Stop Centers, local Workforce Investment Boards, employment providers, the criminal justice system, and local housing authorities. The reports will include aggregate data on demographic characteristics, types of services received, placements, outcomes, and follow-up status. Specifically, they summarize data on participants who received employment and placement services, housing assistance, mentoring, and other services essential to reintegrating ex-offenders through PRI programs.

This is a request for approval to implement the reporting and recordkeeping requirements of the Prisoner Reentry Initiative through an ETA-provided, web-based Management Information System (MIS). In addition to reporting participant information and performance-related outcomes, PRI grantees must demonstrate their ability to establish effective partnerships with the criminal justice system, local Workforce Investment Boards, local housing authorities, and other partner agencies. They must also demonstrate the cost effectiveness of their projects. The MIS reporting and recordkeeping system incorporates each of these aspects necessary for program evaluation.

Five outcome measures will be used to measure success in the PRI grants: entered employment rate, employment retention rate, attainment of a degree or certificate, average six-month post-program earnings, and recidivism rate. Several of these conform to the common performance measures implemented across federal job training programs as of July 1, 2005. By standardizing the reporting and performance requirements of different programs, the common measures give ETA the ability to compare across programs the core goals of the workforce system—how many people entered jobs; how many stayed employed; and how many successfully completed an educational program. Although the common measures are an integral part of ETA's performance accountability system, these measures provide only part of the information necessary to effectively oversee the workforce investment system. ETA will also collect additional data from PRI grantees on program activities, participants, and outcomes that are necessary for program management and to convey full and accurate information on the performance of PRI programs to policymakers and stakeholders.

This request establishes a reporting and record-keeping system for a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, to hold PRI grantees appropriately accountable for the Federal funds they receive, including common performance measures, and to allow the Department to fulfill its oversight and management responsibilities.

II. Desired Focus of Comments

Currently, the Department is soliciting comments concerning the proposed reporting and recordkeeping system for the PRI in order to:

- 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 submissions of responses.

A copy of the proposed ICR can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Actions

Type of Review: New.

Agency: Department of Labor, Employment and Training Administration.

Title: Prisoner Reentry Initiative (PRI) Reporting System.

Office of Management and Budget (OMB) Number: 1205–0NEW.

Affected Public: Faith-based and Community Organization Grantees.

Cite/Reference: Workforce Investment Act of 1998 (Pub. L. 105–220) sections 172, 185, and 189.

Total Respondents: 30 grantees.

Frequency: Quarterly.

ESTIMATED TOTAL BURDEN HOURS

Form/activity	Total respondents	Frequency	Total annual response	Average time per response (hours)	Total annual burden hours
Participant Data Collection	30	Continual	6,250	1.8	11,250
Quarterly narrative progress report	30	Quarterly	120	16	1,920
Quarterly performance report	30	Quarterly	120	16	1,920
Totals	30		6,490		15,090

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Signed in Washington, DC, on September 17, 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 05–19046 Filed 9–22–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modification and supersedes decisions thereto, contain no expiration dates and are effective from the date of notice in the ''Federal Register'', or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration be the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' are listed by Volume and State:

Volume V

TEXAS
TX20030129 (Jun. 13, 2003)

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **''Federal Register''** are in parentheses following the decision being modified.

Volume I

CONNECTICUT
CT20030001 (Jun. 13, 2003)
CT20030003 (Jun. 13, 2003)
CT20030004 (Jun. 13, 2003)
CT20030005 (Jun. 13, 2003)
MASSACHUSETTS
MA20030001 (Jun. 13, 2003)
MA20030002 (Jun. 13, 2003)
MA20030003 (Jun. 13, 2003)
MA20030004 (Jun. 13, 2003)
MA20030006 (Jun. 13, 2003)
MA20030007 (Jun. 13, 2003)
MA20030009 (Jun. 13, 2003)
MA20030010 (Jun. 13, 2003)
MA20030017 (Jun. 13, 2003)
MA20030018 (Jun. 13, 2003)
MA20030019 (Jun. 13, 2003)
MA20030020 (Jun. 13, 2003)
MA20030021 (Jun. 13, 2003)
NEW HAMPSHIRE
NH20030002 (Jun. 13, 2003)
NH20030004 (Jun. 13, 2003)
NEW JERSEY
NJ20030001 (Jun. 13, 2003)
VERMONT
VT20030044 (Jun. 13, 2003)

Volume II

NONE

Volume III

FLORIDA
FL20030001 (Jun. 13, 2003)
FL20030009 (Jun. 13, 2003)
FL20030015 (Jun. 13, 2003)
FL20030032 (Jun. 13, 2003)
FL20030045 (Jun. 13, 2003)
FL20030049 (Jun. 13, 2003)
FL20030053 (Jun. 13, 2003)
FL20030055 (Jun. 13, 2003)
FL20030096 (Jun. 13, 2003)
GEORGIA
GA20030062 (Jun. 13, 2003)

VOLUME IV

INDIANA
IN20030001 (Jun. 13, 2003)

VOLUME V

KANSAS
KS20030002 (Jun. 13, 2003)
KS20030006 (Jun. 13, 2003)
KS20030007 (Jun. 13, 2003)
KS20030008 (Jun. 13, 2003)
KS20030010 (Jun. 13, 2003)
KS20030012 (Jun. 13, 2003)
KS20030015 (Jun. 13, 2003)
KS20030016 (Jun. 13, 2003)
MISSOURI
MO20030006 (Jun. 13, 2003)
MO20030007 (Jun. 13, 2003)
MO20030015 (Jun. 13, 2003)
MO20030016 (Jun. 13, 2003)
MO20030019 (Jun. 13, 2003)
MO20030020 (Jun. 13, 2003)
MO20030043 (Jun. 13, 2003)
MO20030044 (Jun. 13, 2003)

MO20030046 (Jun. 13, 2003)
MO20030052 (Jun. 13, 2003)
MO20030057 (Jun. 13, 2003)
MO20030061 (Jun. 13, 2003)
OKLAHOMA
OK20030013 (Jun. 13, 2003)
OK20030014 (Jun. 13, 2003)
OK20030016 (Jun. 13, 2003)
OK20030017 (Jun. 13, 2003)
OK20030018 (Jun. 13, 2003)
OK20030023 (Jun. 13, 2003)
OK20030024 (Jun. 13, 2003)
OK20030030 (Jun. 13, 2003)
OK20030031 (Jun. 13, 2003)
OK20030032 (Jun. 13, 2003)
OK20030033 (Jun. 13, 2003)
OK20030034 (Jun. 13, 2003)
OK20030035 (Jun. 13, 2003)
OK20030036 (Jun. 13, 2003)
OK20030037 (Jun. 13, 2003)
OK20030038 (Jun. 13, 2003)
TEXAS
TX20030001 (Jun. 13, 2003)
TX20030002 (Jun. 13, 2003)
TX20030003 (Jun. 13, 2003)
TX20030004 (Jun. 13, 2003)
TX20030005 (Jun. 13, 2003)
TX20030007 (Jun. 13, 2003)
TX20030009 (Jun. 13, 2003)
TX20030010 (Jun. 13, 2003)
TX20030014 (Jun. 13, 2003)
TX20030016 (Jun. 13, 2003)
TX20030017 (Jun. 13, 2003)
TX20030018 (Jun. 13, 2003)
TX20030019 (Jun. 13, 2003)
TX20030033 (Jun. 13, 2003)
TX20030034 (Jun. 13, 2003)
TX20030035 (Jun. 13, 2003)
TX20030037 (Jun. 13, 2003)
TX20030046 (Jun. 13, 2003)
TX20030055 (Jun. 13, 2003)
TX20030060 (Jun. 13, 2003)
TX20030061 (Jun. 13, 2003)
TX20030063 (Jun. 13, 2003)
TX20030069 (Jun. 13, 2003)
TX20030081 (Jun. 13, 2003)
TX20030096 (Jun. 13, 2003)
TX20030100 (Jun. 13, 2003)
TX20030105 (Jun. 13, 2003)
TX20030108 (Jun. 13, 2003)
TX20030114 (Jun. 13, 2003)
TX20030117 (Jun. 13, 2003)
TX20030121 (Jun. 13, 2003)
TX20030125 (Jun. 13, 2003)
TX20030129 (Jun. 13, 2003)

VOLUME VI

ALASKA
AK20030001 (Jun. 13, 2003)
AK20030002 (Jun. 13, 2003)
AK20030006 (Jun. 13, 2003)
AK20030008 (Jun. 13, 2003)
WASHINGTON
WA20030001 (Jun. 13, 2003)
WA20030002 (Jun. 13, 2003)
WA20030003 (Jun. 13, 2003)
WA20030005 (Jun. 13, 2003)
WA20030006 (Jun. 13, 2003)
WA20030008 (Jun. 13, 2003)
WA20030010 (Jun. 13, 2003)
WA20030025 (Jun. 13, 2003)
WA20030027 (Jun. 13, 2003)

VOLUME VII

ARIZONA
AZ20030005 (Jun. 13, 2003)
AZ20030009 (Jun. 13, 2003)

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 15th day of September, 2005.

Shirley Ebbesen,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–18700 Filed 9–22–05; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Finance Committee (''Committee'') of the Legal Services Corporation (''LSC'') Board of Directors will meet on September 30, 2005. The meeting will begin at 9 a.m., and continue until conclusion of the Committee's business.

LOCATION: 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Room.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of July 28, 2005.
3. Presentation of LSC's Eleven-Month Financial Report (through August 31, 2005).
4. Report on Status of LSC's FY 2006 Appropriation.
5. Presentation of the Justice Gap Report.
6. Consider and Act on LSC's FY 2007 Budget Request.
   a. Presentation by ABA.
   b. Presentation by NLADA.
   c. Presentation by LSC Management.
   d. Other Public Comment.
7. Consider and act on other business.
8. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Patricia Batie, Manager of Board Operations at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 295–1500.

Dated: September 21, 2005.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 05–19097 Filed 9–21–05;8:53 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of two currently approved information collections. The first information collection is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law, and (2) the information to be provided so that records may be

identified. The second information collection is used when veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before November 22, 2005 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Court Order Requirements.

OMB number: 3095–0038.

Agency form number: NA Form 13027.

Type of review: Regular.

Affected public: Veterans and Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 5,000.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 1,250 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT), the NPRC also administers military service records of veterans after discharge, retirement, and death, and the medical records of these veterans, current members of the Armed Forces, and dependents of Armed Forces personnel. The NA Form 13027, Court Order Requirements, is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law and (2) the information to be provided so that records may be identified.

2. *Title:* Authorization for Release of Military Medical Patient Records, Request for Information Needed to Locate Medical Records, Request for Information Needed to Reconstruct Medical Data, and Questionnaire about Military Service.

OMB number: 3095–0039.

Agency form number: NA Forms 13036, 13042, 13055, and 13075.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 79,800.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel, military medical, and dependent medical record).

Estimated total annual burden hours: 6,650 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT, U.S. Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military personnel and medical records of veterans after discharge, retirement, and death. In addition, NRPC administers the medical records of dependents of service personnel. When veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records, they must provide on forms or in letters certain information about the veteran and the nature of the request. A major fire at the NPRC on July 12, 1973, destroyed numerous military records. If individuals' requests involve records or information from records that may have been lost in the fire, requesters may be asked to complete NA Form 13075, Questionnaire about Military Service, or NA Form 13055, Request for Information Needed to Reconstruct Medical Data, so that NPRC staff can search alternative sources to reconstruct the requested information. Requesters who ask for medical records of dependents of service personnel and hospitalization records of military personnel are asked to complete NA Form 13042, Request for Information Needed to Locate Medical Records, so that NPRC staff can locate the desired records. Certain types of information contained in military personnel and medical records are restricted from disclosure unless the veteran provides a more specific release authorization than is normally required. Veterans are asked to complete NA Form 13036, Authorization for Release of Military Medical Patient Records, to authorize release to a third party of a restricted type of information found in the desired record.

Dated: September 16, 2005.

Shelly L. Myers,

Deputy Chief Information Officer.

[FR Doc. 05–19019 Filed 9–22–05; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COUNCIL ON DISABILITY

Cultural Diversity Advisory Committee Meetings (Teleconferences)

Times and Dates: September 21, 2005, 3 p.m. Eastern; November 4, 2005, 3 p.m. Eastern; March 2, 2006, 3 p.m. Eastern; June 1, 2006, 3 p.m. Eastern; September 7, 2006, 3 p.m. Eastern.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

Agency: National Council on Disability (NCD).

Status: All parts of these meetings will be open to the public. Those interested in participating in these meetings should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the call.

Agenda: Roll call, announcements, reports, new business, adjournment.

Contact Person for More Information: Geraldine (Gerrie) Drake Hawkins, Ph.D., Program Analyst, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov.*

Cultural Diversity Advisory Committee Mission: The purpose of NCD's Cultural Diversity Advisory Committee is to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee will help identify issues, expand outreach, infuse participation, and elevate the voices of underserved and unserved segments of this nation's population that will help NCD develop federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

Dated: August 17, 2005.

Ethel D. Briggs,

Executive Director.

[FR Doc. 05–19067 Filed 9–22–05; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL COUNCIL ON DISABILITY

Youth Advisory Committee Meetings (Teleconferences)

Times and Dates:

September 28, 2005, 2:30 p.m. Eastern.
November 18, 2005, 3 p.m. Eastern.
January 20, 2006, 3 p.m. Eastern.
April 21, 2006, 3 p.m. Eastern.
July 21, 2006, 3 p.m. Eastern.
September 15, 2006, 3 p.m. Eastern.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

Agency: National Council on Disability (NCD).

Status: All parts of these meetings will be open to the public. Those interested in participating should contact the appropriate staff member listed below.

Agenda: Roll call, announcements, reports, new business, adjournment.

Contact Person for More Information: Geraldine Drake Hawkins, Ph.D., Program Analyst, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

Youth Advisory Committee Mission

The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: August 17, 2005.

Ethel D. Briggs,

Executive Director.

[FR Doc. 05–19069 Filed 9–22–05; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Proposed Collection, Submission for OMB Review

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice of requests for information collection.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this proposed information collection request, with applicable supporting documentation, may be obtained by contacting the person as indicated in the Addresses section of the notice. The Institute of Museum and Library Services is seeking clearance for a collection of application information for Partnership for a Nation of Learners projects within the National Leadership Grant program.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 24, 2005.

IMLS is particularly interested in comments that help the agency to:

- 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 collocation 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 submissions of responses.

ADDRESSES: Send comments or requests to: Rebecca Danvers, Director, Office of Research and Technology, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Dr. Danvers can be reached by telephone: 202–653–4680, Fax: 202–653–4625 or by e-mail at *rdanvers@imls.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, 20 U.S.C. 910, *et seq.* The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. The Museum and Library Services Act, 20 U.S.C. 9101, *et seq.* authorizes the Director the Institute of Museum and Library Services to make grants to museums, libraries, and other entities as the Director considers appropriate, and to Indian tribes and to organizations that primarily serve and represent Native Hawaiians. In addition, IMLS awards financial assistance to State Library Administrative Agencies, which are responsible for promoting library services throughout the country.

II. Current Actions

To administer these programs of grants, cooperative agreements and contracts, IMLS must develop application guidelines.

Agency: Institute of Museum and Library Services.

Title: Application Guidelines.

OMB Number: 3137–0035.

Agency Number: 3137.

Frequency: Annually.

Affected Public: Museums, museum organizations, libraries, library organizations, institutions of higher education, Indian tribes and to organizations that primarily serve and represent Native Hawaiians, museum and library professionals, and public broadcasting licensees.

Number of Respondents: 150.

Estimated Time Per Respondent: 40 hours.

Total Burden Hours: 6000.

Total Annualized capital/startup costs: 0.

Total Annual costs: 0.

Contact: Rebecca Danvers, Director, Office of Research and Technology, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Dr. Danvers can be reached on Telephone: 202–653–4680 Fax: 202–653–4625 or by e-mail at *rdanvers@imls.gov*.

Dated: September 19, 2005.

Rebecca Danvers,

Director, Office of Research and Technology.

[FR Doc. 05–19009 Filed 9–22–05; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael McDonald, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* October 4, 2005.

Time: 9 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for U.S. History II, submitted to the Division of Preservation and Access at the July 15, 2005 deadline.

2. *Date:* October 7, 2005.

Time: 9 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for U.S. History III, submitted to the Division of Preservation and Access at the July 15, 2005 deadline.

3. *Date:* October 12, 2005.

Time: 9 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for Music, Dance, and Theater, submitted to the Division of Preservation and Access at the July 15, 2005 deadline.

4. *Date:* October 14, 2005.

Time: 9 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for World Studies I, submitted to the Division of Preservation and Access at the July 15, 2005 deadline.

5. *Date:* October 25, 20.05

Time: 9 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for U.S. History IV, submitted to the Division of Preservation and Access at the July 15, 2005 deadline.

6. *Date:* October 28, 2005.

Time: 9 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for U.S History V, submitted to the Division of Preservation and Access at the July 15, 2005 deadline.

7. *Date:* October 31, 2005.

Time: 8:30 a.m. to 5:30 p.m.

Room: 426.

Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the September 16, 2005 deadline.

Michael McDonald,

Acting Advisory Committee Management Officer.

[FR Doc. 05–18987 Filed 9–22–05; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation (NSF).

ACTION: Notice of permit applications received under the Antarctic Conservation Act.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

Notice is hereby given that the National Science Foundation (NSF) has received three waste management permit applications to conduct camping, climbing or flight operations within Antarctica. The applications were submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene Kennedy at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed Antarctic Waste Regulations, 45 CFR part 671, that requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica.

The waste permit applications received are as follows:

1. *Applicant:* Michael J. Kibecki, 3377 E. Oakledge Road, Salt Lake City, UT 84121. Permit Application No. 2006 WM–001.

Activity for Which Permit Is Requested: The applicant makes this application for a Waste Management Permit for the use and release of

designated pollutants. The applicant along with approximately 2 others will establish a temporary camp in Wohlthat Mountains, Orving Fjella Range, Antarctica in order to ski tour the area and mountain climb. The camp will be established for an approximately five-week period, after which it will be removed. Approximately 15 gallons of white gas (Naphtha Petroleum) will be used for cooking. The fuel will be stored Mountain Safety Research metal fuel bottles. Plastic sinks/catch basins will be used when transferring fuel between bottles. These items will be secured and stove boards will absorb any fuel leaks. If fuel is spilled, the contaminated ice and snow will be contained for return to Cape Town. Daily inspections will be conducted to ensure items are secure. All solid human, paper, kitchen wastes will be removed from Antarctica.

Location: Wohlthat Mountains, Orving Fjella Range, Antarctica.

Dates: November 25, 2005 to January 6, 2006.

2. *Applicant:* Ralph Fedor, 2337 Granite View Road, Waite Park, MN 56387. Permit Application No. 2006 WM—002.

Activity for Which Permit Is Requested: The applicant along with approximately 20 others will establish a temporary camp on Peter 1st Island using several Weather Haven shelters for sleeping, cooking and eating, and two small lab or work areas. The camp will be established for approximately 2.5 weeks, after which it will be removed. Propane tanks for cooking and 55 gallon drums of unleaded gas will be used to operate electric generators. These items will be secured and have tarps underneath to contain any possible spills. Daily inspections will be conducted to ensure items are secure. All human, paper, kitchen wastes will be removed from Antarctica. All items brought ashore will be returned to the ship for proper disposition.

Location: Peter I Island.

Dates: February 1, 2006 to March 1, 2006.

2. *Applicant:* Gustavus A. McLeod, 21717 Glendalough Road, Gaithersburg, MD 20882. Permit Application No. 2006 WM—003.

Activity for Which Permit Is Requested: The applicant is an aviator and leader of an expedition to fly to the South Pole and makes this application for a Waste Management Permit for the use and release of designated pollutants. The applicant plans to fly solo in a Firefly aircraft from South America, land at Marambio Station to refuel, then fly round-trip to South Pole returning to Marambio, then onward to South America. Other than Marambio Station the applicant does not plan to make other landings in Antarctica and will not establish any camps.

Location: Marambio Station and Antarctic continent.

Dates: November 15, 2005 to February 15, 2006.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 05–19040 Filed 9–22–05; 8:45 am]

BILLING CODE 7555–02–M

PEACE CORPS

Information Collection Request Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of submission to the Office of Management and Budget of a request for approval of information collection (OMB Control Number 0420–0005).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and budget a request for approval of information collection, OMB Control Number 0420–0005, PC–1502, the Volunteer Application Package. The initial **Federal Register** notice seeking public comment was published in 70 FR 39811 (July 11, 2005), also available at *http://www.gpo.gov* access, Wais.GPO. No comments, inquiries, or responses to that notice were received. A copy of the information collection may be obtained from Mr. Wilferdo Sauri, Peace Corps, Office of Volunteer Recruitment and Selection, 1111 20th Street, NW., Room 6112, Washington, DC 20526. Mr. Sauri can be contacted by telephone at (202) 692–1819 or 800–424–8580, ext 1819. Comments on the form should be addressed to the OMB reviewer, Mr. David Rostker, Peace Corps Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (202) 395–3897, Washington DC 20503, and to Mr. Sauri at the address listed above. For general information about the Peace Corps, visit our Web site at *http://www.peacecorps.gov.*

Peace Corps invites comment on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collections information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments should be received on or before October 24, 2005.

Information Collection Abstract

Title: Peace Corps Volunteer Application, PC–1502 form number.

Need and Uses: The Volunteer Application must be completed by applicants to the Peace Corps and is used by staff in the Peace Corps' volunteer Recruitment and Selection office to determine candidate eligibility and suitability for Peace Corps service. Applicants complete the volunteer application either online or via paper. The information is used initially to determine which applicants should be interviewed and which should be nominated. Following nomination, information on the volunteer application is used by Peace Corps staff in the Office of Placement to make a suitability determination and to determine the specific assignment area and country of service for the applicant.

Respondents: Potential Peace Corps Volunteers.

Respondent's Obligation To Reply: Required for application for Peace Corps service.

Burden On The Public:

a. *Annual reporting burden:* 39,000 hours.

b. *Annual record keeping burden:* 0 hours.

c. *Estimated average burden per response:* 3 hours.

d. *Frequency of response:* One time.

e. *Estimated number of likely respondents:* 13,000.

f. *Estimated cost to respondents:* 0

This notice is issued in Washington, DC on September 23, 2005.

Dated: September 15, 2005.

Gilbert Smith,

Associate Director for Management.

[FR Doc. 05–19022 Filed 9–22–05; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Privacy Act: System of Records

AGENCY: Peace Corps.

ACTION: Notice of adoption of new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Peace Corps issued public notice of its proposal to adopt a new system of

records, PC–28, titled Applications for Employment. This second publication reflects technical revisions to the new system of records based on internal Agency comments and gives notice of the Agency's adoption of the new system of records.

DATES: This New System of Records was effective on July 26, 2005.

FOR FURTHER INFORMATION CONTACT: The Records Management Officer, Peace Corps Headquarters, 1111 20th St., NW., Washington, DC 20526.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, the Peace Corps issued public notice on June 16, 2005, of its proposal to adopt a new systems of records titled PC–28, Applications for Employment. The Agency did not receive any public comments. However, it did receive internal agency comments. This second publication reflects technical changes but does not include any substantive revisions. The publication also gives notice of the Agency's adoption of the new system of records.

Peace Corps (PC–28)

SYSTEM NAME:

Applications for Employment.

SYSTEM LOCATION:

Office of Management, Human Resources Management, 1111 20th Street NW., Washington DC 20526. Occasionally located on a temporary basis in domestic offices and overseas Posts. Electronic records are stored offsite by a contracted agent of the agency in a secure facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants for employment with the Peace Corps (including unsuccessful applicants).

CATEGORIES OF RECORDS IN THE SYSTEM:

To the extent that an agency utilizes an automated medium in connection with maintenance of records in this system of records.

Application forms, resumes and related correspondence. Position vacancy announcement information such as position title, series and grade level(s), office and duty location, opening and closing date of the announcement, and dates of referral and return of lists of qualified candidates; applicant personal data such as name, address, social security number, date of birth, sex, veterans' preference and federal competitive status; and applicant qualification and processing information such as qualifications, grade level eligibility, reason for ineligibility, referral status, and dates of notification.

Related correspondence may include referral letters and memoranda relating to the application process; education and training related documentation; employment history and earnings; honors, awards or fellowships; military service; convictions or offenses against the law; names of relatives employed in the Federal service; qualification determinations; employment consideration; priority groupings; correspondence relating to the consideration of the individual for employment. These records may also include copies of correspondence (electronic and otherwise) between the applicant and the office or agency and other items provided by applicants but not specifically requested by the agency.

The system also includes any Peace Corps employment application materials established for making appointments outside a register; or reassignments, promotions, reinstatements, or transfers of Federal employees into positions at Peace Corps.

The records also contain information on the ranking of an applicant, his or her placement on a list of eligibles, what certificates/rosters applicant's names appeared on, requests for office approval of or opposition to an eligible's qualifications and the office's decision in the matter, an office's request for approval for the agency to pass over an eligible and the office's decision in the matter, and an agency's decision to object/pass over an eligible when the agency has authority to make such decisions. Reasons for when the objection/pass over decision applies to a compensable preference eligible with 30 percent or more disability. Records may also include: Agency applicant file systems where the agency retains applications, resumes, and other related records for hard-to-fill or unique positions for future consideration. Records and statements related to an applicant's involvement in intelligence related activities.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

The Peace Corps Act, 22 U.S.C. 2501, *et seq.,* including 22 U.S.C. 2506 and 22 U.S.C. 3901 *et seq.* (Foreign Service Act of 1980).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, I, J, and K apply to this system.

RECORDS MAY ALSO BE DISCLOSED TO:

(a) Evaluate qualifications of potential candidates by the Director, Human Resource Management and his/her delegates, Executive Staff, Hiring Managers and their delegates, other supervisors and personnel security staff. These records also may be reviewed by staff with internal audit responsibilities. The records are available to personnel specialists who review the applicants' qualifications and consider them for appropriate agency vacancies;

(b) Persons named as references, and present or former supervisors, for purposes of commenting upon, rating or verifying information about past performance submitted as part of job application;

(c) Other Federal agencies, state governments, foreign governments and international organizations where employees are being considered for detail, assignment or secondment;

(d) Attorneys, union representatives or other persons designated by employees in writing to represent them in complaints, grievances, appeals, litigation cases, or administrative processes;

(e) The Department of Labor, Department of Veterans Affairs, Social Security Administration, Department of Defense, or any other Federal agency that has special civilian employee retirement and disability programs; or to a national, state, county, municipal, or other publicly recognized charitable or income security, administration agency (e.g., State unemployment compensation agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment or health benefits programs of the agency or an agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid or to be paid under such programs;

(f) Offices within Peace Corps with an official need to know;

(g) Other persons, entities, or organizations, as specified in the Privacy Act, 5 U.S.C. 552a(b)(1)–(b)(12).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored by electronic means and hard copy. Records are maintained on data storage devices, lists, forms and hard copy record files. Electronic records are maintained within Peace Corps on proprietary systems or within an automated application system on data storage devices. Information contained in the automated system is housed offsite in a secure location as government owned and retrievable information.

RETRIEVAL:

The records may be retrieved by the names of the individuals on whom they are maintained or by vacancy announcement number. In the Personnel Office, the records are recorded by name and vacancy announcement number. They can also be retrieved, by any common identifier in the automated application. These may be by individual name, social security number, vacancy announcement, demographic fields, veteran's status, current grade, grade applied for, or any other data fields completed by the applicant. Records are generally retrieved by the name with the social security number or date of birth as a secondary identifier when necessary.

ACCESSIBILITY/SAFEGUARDS:

All Peace Corps employees have undergone background investigations. Access to the Agency is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. The Human Resource Management (HRM) office is in a secondary secured area where even Peace Corps employees not within the HRM organization are required to have escorts. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager and contractor have the capability of printing audit trails of access through the computer media, thereby permitting regular and ad hoc monitoring of system usage. Automated media is access limited to authorized personnel whose duties require access. Access to and use of these records are limited to those persons whose official duties require such access. Systems administered by contractors are secured by password and through a permissions based system. Permission is granted by a system administrator. Remote data storage facilities are secured through physical and system-based safeguards. Electronic files are password protected and accessible only by authorized personnel. Data maintained electronically at Peace Corps is on network servers and located in a locked room with physical access limited to authorized personnel.

RETENTION AND DISPOSAL:

Applications from individuals who are selected for positions with the Peace Corps are placed on the permanent side of the employee's Official Personnel Folder. Paper applications rejected in the initial review because they do not meet requirements for Agency employment and applications which appear to meet requirements for Agency employment, but which are subsequently rejected, are retained for two years and then destroyed. Electronic media files are maintained indefinitely. These files remain available for the Agency when searching for qualified applicants for the variety of positions available agency-wide. Paper files on applicants may also be retained indefinitely. In divisional or regional offices, the paper records may be retained for an indefinite period of time. They are then forwarded to HRM or discarded. Applicant records, whether electronic media or hard copy will be maintained until they become inactive at which time they will be retired or destroyed in accordance with published records schedules of the Peace Corps or as approved by the National Archives and Records Administration. Most records are retained for a period of 2 years. Some records are destroyed by shredding or burning while magnetic tapes or disks are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Management *OR* Records Management Officer Peace Corps Headquarters, 1111 20th St., NW., Washington, DC 20526.

NOTIFICATION PROCEDURES:

Any individual who wants to known whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Request should be accepted for processing if they contain sufficient information to convince the System Manager that the requester is the subject of the records, including identifying information needed to locate your record and a brief description of the item or items of information required. Requesters will be required to provide adequate information, such as a driver's license, employment identification card, passport, or other identifying documents. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed as indicated in the notification section above. Individuals who wish to amend records pertaining to themselves should also address their requests as described in the Notification section above.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reasons for contesting it, and the proposed amendment to such information. Individuals have the right to request that we amend a record pertaining to them when it is believed to be inaccurate, or lacks relevance, timeliness, or completeness. At the time we grant access to a record, we will furnish guidelines on how to make a request to amend a record.

Requests for amendments to records must be in writing and mailed or delivered to the FOIA/Privacy Act Officer, FOIA/Privacy Act Office, Peace Corps Headquarters, 1111 20th St., NW., Washington, DC 20526, who will coordinate the review of the request to amend the record with the appropriate office(s). Such requests must contain, at a minimum, identifying information needed to locate the record, a brief description of the item or items of information to be amended, and the reason for the requested change. The requester should submit as much documentation, arguments or other data as seems warranted to support the request for amendment. We will review all requests for amendments to records within 20 working days of receipt of the request and either make the changes or inform you of our refusal to do so and the reasons.

RECORD SOURCE CATEGORIES:

These records are normally submitted by the individuals seeking employment. Some records could come from individuals or employment agencies sponsoring the applications. Information in this system of records is provided by:

(a) The individual to whom the information pertains;

(b) Peace Corps officials;

(c) Other sources contacted to provide additional information about the individual. System exempted from certain provisions of the Privacy Act: Pursuant to 5 U.S.C. 552a(k)(4), records contained within this system that are required by statute to be maintained and used solely for statistical purposes are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Pursuant to 5 U.S.C. 552a(k)(5), certain records contained within this system contain confidential source information and are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Pursuant to 552a(k)(6),

records that contain testing or examination material the release of which may compromise testing or examination procedures are also exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

Dated: August 15, 2005.

Gilbert Smith

Associate Director for Management.

[FR Doc. 05–19023 Filed 9–22–05; 8:45 am]

BILLING CODE 6501–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52462; File No. SR–ISE–2005–43]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

September 19, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] 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 ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on the DIAMONDS® Trust, Series 1, an exchange-traded fund.[5] The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the DIAMONDS® Trust, Series 1 (''DIA''), an exchange-traded fund.[6] Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on DIA.[7] The amount of the execution fee and comparison fee for the product covered by this filing shall be the same for all order types on the Exchange—that is, orders for Public Customers[8] and Non-Customers[9] (which include Market Makers and Firm Proprietary)—and shall be equal to the execution fee and comparison fee, respectively, that are currently charged by the Exchange for transactions by Non-Customers in equity options.[10] The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] which requires that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(2)[13] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[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).

[5] DIAMONDS® is a registered trademark of Dow Jones & Company, Inc. (''Dow Jones'') for securities issued by the Diamonds® Trust, Series 1 and has been licensed for use for certain purposes by Dow Jones to PDR Services Corporation (''PDR'') and the American Stock Exchange LLC (''Amex'') pursuant to a license agreement with Dow Jones. DIAMONDS and options which have DIAMONDS as their sole underlying interest (''DIAMONDS Options'') are not sponsored, endorsed, sold, or promoted by Dow Jones. Dow Jones, PDR, and Amex have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of DIAMONDS Options or (ii) to use and refer to the DIAMONDS® trademark in connection with the listing, provision of a market for trading, marketing, and promotion of DIAMONDS Options or with making disclosures concerning DIAMONDS Options under any applicable federal or state laws, rules or regulations, and do not sponsor, endorse, or promote such activity by ISE. ISE is not affiliated in any manner with Dow Jones, PDR, or Amex.

[6] The ISE represents that DIA constitutes ''Fund Shares,'' as defined in ISE Rule 502(h). Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Richard Holley III, Special Counsel, Division of Market Regulation, Commission, on September 8, 2005.

[7] The ISE represents that these fees will be charged only to Exchange members. Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Richard Holley III, Special Counsel, Division of Market Regulation, Commission, on September 8, 2005.

[8] *See* ISE Rule 100(32) (defining ''Public Customer'' as a person that is not a broker or dealer in securities).

[9] *See* ISE Rule 100(22) (defining ''Non-Customer'' as a person or entity that is a broker or dealer in securities).

[10] The Commission notes that the applicable execution fee is currently between $.21 and $.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $.03 per contract per side.

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 19b–4(f)(2).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2005–43 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–43 and should be submitted on or before October 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 05–19035 Filed 9–22–05; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52463; File No. SR–NYSE–2005–35]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Changes to Listed Company Manual Section 902.00 Regarding Listing Fees

September 16, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 18, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On July 29, 2005, NYSE filed Amendment No. 1 to the proposed rule change.[3] On August 16, 2005, NYSE filed Amendment No. 2 to the proposed rule change.[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 filing proposes a number of changes to the current fee chapter set out in Sections 902.01 to 902.04 of the Listed Company Manual. In addition, the Exchange is proposing a reorganization of the relevant sections of the Listed Company Manual into a clearer and more concise format setting out fees by type of listed security.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

Listed Company Manual

* * * * *

902.00 [Listing] Fees *for Listed Securities*

902.01 List*ed*[ing] *Securities* Fee Agreement [, Current Form]

Each Listing Application submitted to the Exchange should must be accompanied by a Listed Securities Fee Agreement, in which the Company undertakes to pay Listing Fees and Annual Fees, unless such an agreement in the form shown below has previously been filed with the Exchange.

AGREEMENT made this ____ day of _____ 20____ by _____ organized and existing under the laws of the State of _____ (hereinafter called the ''Company'') with the New York Stock Exchange, Inc. (hereinafter called the ''Exchange'').

WITNESSETH:

I. WHEREAS the Company has applied for the listing upon the Exchange of:

_____

2. WHEREAS it is a condition precedent to the consideration of listing applications that this fee agreement be in effect between the Company and the Exchange covering the payment of Listing Fees [initial] and [continuing] A[a]nnual F[f]ees.

NOW, THEREFORE, in consideration of the Exchange receiving and considering the application for the listing of the aforementioned securities, and subsequent applications, if any, for the listing of additional shares of such securities and/or other securities of the Company, the Company covenants and agrees to pay, when due, any applicable *L*[l]isting *F*[f]ees *and Annual Fees* established from time to time by the Exchange.

IN WITNESS WHEREOF, the Company has caused these presents to be executed by its proper officers thereunto duly authorized and its corporate seal to be hereunto affixed, as of the day and year first above written.

_____

by_____ _____

(Name and Title)

902.02 GENERAL INFORMATION ON FEES

There are two types of fees applicable to listed issuers—Listing Fees and Annual Fees. All fees are payable upon receipt of invoice. This chapter sets out fees by type of security, with different fees applicable to equity securities, closed-end funds, structured products (defined as securities listed under Sections 703.18, 703.19 and 703.21), short-term securities (defined as securities having a term of seven years or less), investment company units

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified and supplemented certain aspects of its proposal. Amendment No. 1 supplements the information provided in various sections of the Exchange's Form 19b–4.

[4] In Amendment No. 2, the Exchange made technical and clarifying changes to its proposal. Amendment No. 2 supplements the information provided in various sections of the Exchange's Form 19b–4. The Commission has made minor technical changes to this notice with Nasdaq's consent. Telephone conversation between Susie Cho, Special Counsel, Jan Woo, Attorney, Division of Market Regulation, Commission, and John Carey, Assistant General Counsel, NYSE, on August 19, 2005.

listed under Section 703.16 and debt securities.

Listing Fees

Listing Fees are billed for each security listed at the time an issuer first lists on the Exchange, each subsequent time a new class of security is listed, or at any subsequent time that additional shares of a listed security are issued. Listing Fees are based on the number of shares issued and outstanding and are calculated separately for each class of security listed. Treasury stock, restricted stock and shares issued in conjunction with the exercise of an over-allotment option, if applicable, are included in the number of shares an issuer is billed for at the time the class of security is first listed.

Timing of Listing Fees for Subsequent Issuances

To the extent that an issuer submits a supplemental listing application for shares that are immediately issued, such as in connection with a merger or acquisition, stock split or stock dividend, Listing Fees for those shares are billed at the time the supplemental listing application is processed.

To the extent that an issuer submits a supplemental listing application for shares that are not issued at the time of listing, such as for an equity compensation plan or for convertible securities where the listed securities will be issued over time, only the applicable minimum supplemental listing application fee will be billed at the time the supplemental listing application is processed. Listing Fees will accrue on these securities as of the date of issuance and the accrued Listing Fees will be billed at the beginning of the following year along with the issuer's Annual Fees.

Calculating Listing Fees

Generally, when an issuer lists a new class of equity securities, a structured product or a short-term security, Listing Fees are calculated according to Listing Fee schedules that set a per share rate based on the number of shares issued and outstanding. When a closed-end fund, however, first lists on the Exchange, Listing Fees are not calculated at a per share rate but are, instead, based on a range of fixed Listing Fees set according to the total number of shares issued and outstanding at the time of listing.

For all listed securities, Listing Fees for subsequent listings of additional shares are calculated starting at the rate applicable to the number of shares already listed and outstanding (including treasury stock and restricted stock). Listing Fees for additional issuances are calculated according to the applicable Listing Fee schedule on a per share rate, subject to a minimum application fee.

U.S. Issuers

For all issuers other than those that meet the SEC's definition of foreign private issuer, Listing Fees are calculated for each separate class being listed based on the total number of shares issued and outstanding at the time of listing. In this chapter, such issuers are referred to as ''U.S. issuers.''

Foreign Private Issuers

For issuers that satisfy the SEC's definition of foreign private issuer, Listing Fees are calculated for each separate class being listed based on the number of shares issued and outstanding in the United States at the time of listing.

Annual Fees

Annual Fees are calculated for each class or series of security listed based on the number of shares issued and outstanding, including treasury stock and restricted stock. In its first year of listing, an issuer is billed at the time of listing for Annual Fees that are prorated from the listing date through the end of the year. At the beginning of each subsequent year, the Exchange will invoice issuers for Annual Fees applicable to that year.

Calculating Annual Fees

Annual Fees are calculated on a per share basis subject to a minimum fee. The Annual Fee is equal to the greater of the minimum fee and the fee calculated on a per share basis.

U.S. Issuers

In order to calculate a U.S. issuer's Annual Fees for each class of security listed, the Exchange will include all issued and outstanding shares of that class as of December 31 of the previous year. The Exchange obtains information on the number of securities issued and outstanding from each issuer's transfer agent.

Foreign Private Issuers

In order to calculate a foreign private issuer's Annual Fees, the Exchange will calculate a four-quarter average of securities issued and outstanding in the United States during the preceding year. The quarterly average serves to recognize the possibility of flow-back and flow-in of securities to and from the home country market and more reasonably reflect the number of securities in the United States over the course of the year. The Exchange obtains information on the number of securities issued and outstanding in the United States, including securities registered in the United States and securities held through any U.S. nominee, from each issuer's transfer agent and/or ADR depositary bank.

To the extent that an issuer that is being billed as a foreign private issuer has a change in status that requires the issuer to commence filing U.S. periodic and annual reports with the SEC during the course of a year, the Exchange will bill that issuer as a U.S. issuer at the beginning of the first calendar year following the issuer's change in status. An issuer that changes its status is not subject to new Listing Fees for worldwide securities already issued and outstanding.

Total Maximum Fee Payable in a Calendar Year

The total fees that may be billed to an issuer in a calendar year are capped at $500,000. The fee cap includes most Listing Fees and Annual Fees. The fee cap, however, does not include the following fees:

- *Listing Fees and Annual Fees for Investment Company Units*
- *Listing Fees and Annual Fees for closed-end funds;*
- *Listing Fees for structured products; and*
- *Annual Fees for structured products other than retail debt securities.*

The term ''retail debt securities'' refers to debt securities that are listed under the equity criteria set out in Section 703.19 and traded on the equity floor of the Exchange.

In the case of transactions involving listed issuers (such as the consolidation of two listed issuers into a new issuer, a merger between a listed issuer and an unlisted issuer where the unlisted issuer survives or a new issuer is formed, or a merger between two listed issuers where one listed issuer survives), all Listing Fees and Annual Fees paid by listed issuers party to the transaction in the year, and up to the date, that the transaction concludes will be counted towards calculating the Total Maximum Fee for the ultimate listed issuer in the year of the corporate transaction.

In the case where the ultimate listed issuer was previously unlisted, however, Listing Fees and Annual Fees paid by any listed issuer party to the transaction will only be calculated towards the Total Maximum Fee for the ultimate listed issuer if such issuer lists on the Exchange at the time the transaction concludes.

Refunds of Fees

Listing Fees and Annual Fees are non-refundable.

Cancellation, Retirement or Redemption of Securities

An issuer must promptly advise the Exchange of the cancellation, retirement or partial or full redemption of listed securities. The resulting decrease in the number of securities outstanding does not reduce the fees an issuer has already paid, but will impact future billings.

902.03 FEES FOR LISTED EQUITY SECURITIES

The Listing Fees and Annual Fees set out in this section apply to listings of common and preferred equity securities by U.S. issuers and foreign private issuers. However, the fees in this section do not apply to listings of securities issued by closed-end funds, or to structured products, short-term securities, or debt securities. Fees applicable to such securities are described in Sections 902.04, 902.05, 902.06 and 902.07, respectively.

Listing Fees

Listing Fee Schedule

When determining Listing Fees, calculations are made at each level of the schedule up to and including the last level applicable to the number of shares being listed. The total Listing Fee equals the sum of the amounts calculated at each level of the schedule. For examples of how Listing Fees are calculated, please see ''Calculating Listing Fees'' below. The Listing Fee schedule for equity securities is as follows:

Number of securities issued	Fee per share
Up to and including 75 million ..	$0.0048
Over 75 million up to and including 300 million	0.00375
Over 300 million	0.0019

The first time that an issuer lists a class of common shares, the issuer is also subject to a one-time special charge of $37,500, in addition to fees calculated according to the Listing Fee schedule. Listing Fees for the following types of listings are also calculated under the Listing Fee Schedule:

- *At the time it first lists, an issuer lists one or more classes of preferred stock or warrants, whether or not common shares are also listed at that time;*
- *Once listed, an issuer lists additional shares of a class of previously listed securities; or*
- *Once listed, an issuer lists a new class of preferred stock or warrants.*

These types of listings are not subject to the special charge or to the minimum or maximum Listing Fees applicable to an initial listing of common shares.

Limitations on Listing Fees

Limitation on Listing Fees for Additional Class of Common Shares, including Tracking Stock. An issuer that applies to list an additional class of common shares at any time will be charged a fixed Listing Fee of $5,000 in lieu of the per share schedule. Such additional class of common shares includes, but is not limited to, a tracking stock.

Minimum and Maximum Listing Fees. The minimum and maximum Listing Fees applicable the first time an issuer lists a class of common shares are $150,000 and $250,000, respectively, which amounts include the special charge of $37,500.

Minimum Listing Fees for Subsequent Listing of Additional Securities. The minimum application fee for a subsequent listing of additional securities is $5,000. When listing additional securities, an issuer is billed Listing Fees in an amount equal to the greater of the $5,000 minimum supplemental listing application fee and the fee calculated on a per share basis. This applies to the listing of additional shares of an already listed equity security or to the listing of an additional class of equity security (other than a new class of common shares).

Application Fee for Technical Original Listings and Reverse Stock Splits. The Exchange applies a $15,000 application fee for a Technical Original Listing (see Section 703.10) if the change in the company's status is technical in nature and the shareholders of the original company receive or retain a share-for-share interest in the new company without any change in their equity position or rights. For example, a change in a company's state of incorporation or a reincorporation or formation of a holding company that replaces a listed company would be considered a Technical Original Listing. The $15,000 application fee also applies to a reverse stock split.

Fee for Certain Changes and for Poison Pills. A $5,000 fee will apply to applications for changes that involve modifications to Exchange records, for example, changes of name, par value, title of security or designation, and for applications relating to poison pills.

Maximum Listing Fee for Stock Splits and Stock Dividends. Listing fees on shares issued in conjunction with stock splits and stock dividends are capped at $150,000 per split or issuance.

Maximum Listing Fee for Issuance of Additional Shares of a Listed Class. Listing Fees on the issuance of additional shares of an already listed class of stock are capped at $500,000 per transaction, for example, in the case where shares are issued in conjunction with a merger or consolidation where a listed company survives, subsequent public offerings of a listed security and conversions of convertible securities into a listed security.

Discounts on Listing Fees. In the case of transactions such as a consolidation between two or more listed issuers that results in the formation of a new issuer (where at the conclusion of the transaction the new issuer immediately lists), or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer (where within 12 months from the conclusion of the transaction a previously unlisted issuer lists), Listing Fees for that newly listed issuer are calculated at a rate of 25% of total Listing Fees for each class of securities being listed (to the extent that total calculated listing fee for a class of common shares would be greater than $250,000, the calculation would be 25% of the $250,000 maximum for a new listing of common shares).

The special charge of $37,500 and the $150,000 minimum charge applicable when an issuer first lists a class of common shares do not apply to these types of transactions.

No discount will be applied where a listed issuer survives the merger or consolidation, or in the case of a backdoor listing. See Section 703.08(F) for a discussion of back door listings.

Listing Fees for Pre-emptive Rights. Preemptive rights representing equity securities are not subject to a separate Listing Fee. As of the date that preemptive rights are exercised, Listing Fees will accrue on the securities issued and the issuer will be billed for those Listing Fees at the beginning of the following year.

Calculating Listing Fees

Treasury stock, restricted stock and shares issued in conjunction with the exercise of an over-allotment option, if applicable, are included in the number of shares an issuer is billed for at the time a security is first listed.

The following are examples of how Listing Fees would be calculated in the case of an original listing and subsequent additional issuance of common shares for U.S. and foreign private issuers.

U.S. Issuer

Example A: A U.S. issuer listing 300,500,000 common shares in the context of an initial public offering or transfer from another market would pay total Listing Fees of $250,000 as follows:

- *The special one-time charge is $37,500.*
- *The Listing Fee for the first 75 million shares is calculated at the rate of $0.0048 per share.*
- *The Listing Fee for the next 225 million shares is calculated at the rate of $0.00375 per share.*
- *The Listing Fee for the last 500,000 shares is calculated at a rate of $0.0019 per share.*
- *Since Listing Fees on an original listing of the primary class of Common Shares are subject to a maximum fee of $250,000 and the calculated amount exceeds this maximum, the Listing Fee will be $250,000.*

Example B: The same issuer subsequently applies to list an additional 100 million shares of common stock that are immediately issued. The issuer will pay total Listing Fees of $190,000 for the subsequent listing. Since the company has already paid Listing Fees on more than 300 million shares, the Listing Fee for the additional 100 million shares is calculated at the rate of $0.0019 per share.

Foreign Private Issuer

Example C: A foreign private issuer listing 125 million ADRs representing ordinary shares as part of a worldwide 500 million share offering, assuming that all 125 million ADRs are issued in the United States, will pay total Listing Fees of $250,000 as follows:

- *The special one-time charge is $37,500.*
- *The Listing Fee for the first 75 million ADRs is calculated at the rate of $0.0048 per ADR.*
- *The Listing Fee for the next 50 million shares is calculated at the rate of $0.00375 per ADR.*
- *Since Listing Fees on an original listing of the ADRs are subject to a maximum fee of $250,000 and the calculated amount exceeds this maximum, the Listing Fee will be $250,000.*

Example D: The same issuer subsequently applies to list an additional 50 million ADRs that are immediately issued in the United States. The issuer will pay total Listing Fees of $187,500 for the subsequent listing. Since the company has already paid Listing Fees on 125 million ADRs, Listing Fees for the additional 50 million ADRs are calculated at the rate of $0.00375 per ADR.

The calculations set out in Examples C and D also apply to listings by foreign private issuers of ordinary shares, NY registered shares, and global shares.

Annual Fees

Annual Fee Schedule

The Annual Fee for each class of equity security listed is equal to the greater of the minimum fee or the fee calculated on a per share basis:

Type of security	Minimum fee	Fee per share
Primary class of common shares	438,000	$0.00093
Each additional class of common shares (including tracking stock)	20,000	0.00093
Primary class of preferred stock (if no class of common shares is listed)	38,000	0.00093
Each additional class of preferred stock (whether primary class is common or preferred stock)	5,000	0.00093
Each class of warrants	5,000	0.00093

To the extent that an issuer has more than one class of common shares listed, the class with the greatest number of shares outstanding will be deemed the primary class of common shares. The same analysis is applicable where an issuer has more than one class of preferred stock listed, but no class of common shares listed. Where an issuer lists a class of common shares, as well as a class of preferred stock, Annual Fees on the preferred stock will be billed at the rate applicable to an additional class of preferred stock.

In the case of transactions involving listed companies (such as a consolidation between two or more listed issuers that results in the formation of a new issuer, or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer), where at the conclusion of the transaction a previously unlisted issuer immediately lists, Annual Fees will not be charged to that new issuer for the year in which it lists to the extent that the transaction concludes after March 31. To the extent that the transaction concludes on or before March 31 in any calendar year, however, the newly listing issuer will be charged pro rata Annual Fees from the date of listing to the end of the year, subject to the Total Maximum Fee.

In addition, to the extent that a listed company is involved in a consolidation between two or more listed companies that results in the formation of a new issuer, or a merger or consolidation between a listed company and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer, or a merger between two listed issuers where one listed issuer survives, and the transaction concludes on or before March 31 in any calendar year, the non-surviving listed company(ies) will only be subject to pro rata Annual Fees for that year through the date of the conclusion of the transaction. To the extent that the transaction concludes after March 31, the non-surviving listed company(ies) will be subject to full Annual Fees for that year.

902.04 FEES FOR LISTING SECURITIES OF CLOSED-END FUNDS

The Listing Fees and Annual Fees set out in this section apply to equity securities of closed-end funds.

Original Listing Fee Schedule

This Listing Fee Schedule is applicable when a closed-end fund first lists a class of common stock, or first lists a class of preferred stock in a case where common stock is not already listed.

Number of securities issued	Total listing fee
Up to and including 10 million	$20,000
Over 10 million up to and including 20 million	30,000
Over 20 million	40,000

Listing Fee Schedule for Listing of Additional Securities

In the case of the following types of additional listings, Listing Fees are calculated on a per share basis for each class according to the Listing Fee schedule below:

- *At the time it first lists, a closed-end fund lists one or more classes of preferred stock or warrants in addition to a primary class of common stock or preferred stock;*
- *Once listed, a closed-end fund lists additional shares of a class of previously listed securities; or*

• *Once listed, a closed-end fund lists a new class of preferred stock or warrants.*

To the extent that an issuer lists more than one class of the same type of security, the class with the greatest number of shares issued will be deemed the primary class.

When determining Listing Fees, calculations are made at each level of the schedule up to the last level applicable to the number of securities being listed. The total Listing Fee equals the sum of the amounts calculated at each level of the schedule. For examples of how Listing Fees are calculated, please see ''Calculating Listing Fees'' below.

Number of securities issued	Fee per share
Up to and including 2 million	$0.01475
Over 2 million up to and including 4 million	0.0074
Over 4 million up to and including 300 million	0.0035
Over 300 million	0.0019

Limitations on Listing Fees

Fund Family Discount. If two or more closed-end funds from the same fund family list at approximately the same time, the Exchange will cap the collective Listing Fee for those funds at $75,000. The Exchange will consider funds from the same fund family to be listing at approximately the same time if an issuer provides notice that such funds will be listed as part of the same transaction. A fund family consists of closed-end funds with a common investment adviser or investment advisers who are ''affiliated persons'' as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

Limitation on Listing Fees for Additional Class of Common Shares. A closed-end fund that applies to list a new class of common shares in addition to its primary class will be charged a fixed Listing Fee of $5,000 in lieu of the per share schedule.

Minimum Listing Fee for Subsequent Listing of Additional Securities. The minimum application fee for a subsequent listing of additional securities is $2,500. When listing additional securities, an issuer is billed Listing Fees in an amount equal to the greater of the $2,500 minimum supplemental listing application fee and the fee calculated on a per share basis. This applies to the listing of additional shares of an already listed equity security or to the listing of an additional class of equity security (other than a new class of common shares).

Fee for Certain Changes. A $2,500 fee will apply to applications for changes that involve modifications to Exchange records, for example, changes of name, par value, title of security or designation.

Application Fee for Technical Original Listings and Reverse Stock Splits. The Exchange applies a $15,000 application fee for a Technical Original Listing (see Section 703.10) if the change in the issuer's status is technical in nature and the shareholders of the original issuer receive or retain a share-for-share interest in the new issuer without any change in their equity position or rights. For example, a change in a closed-end fund's state of incorporation or a reincorporation or formation of a holding company that replaces a listed closed-end fund would be considered a Technical Original Listing. The $15,000 application fee also applies to a reverse stock split.

Maximum Listing Fee for Stock Splits and Stock Dividends. Listing fees on shares issued in conjunction with stock splits and stock dividends are capped at $150,000 per split or issuance.

Maximum Listing Fee for Issuance of Additional Shares of a Listed Class. Listing Fees on the issuance of additional shares of an already listed class of stock are capped at $500,000 per transaction, for example, in the case where shares are issued in conjunction with a merger or consolidation where a listed company survives, subsequent public offerings of a listed security and conversions of convertible securities into a listed security.

Discounts on Listing Fees. In the case of transactions such as a consolidation between two or more listed issuers that results in the formation of a new issuer, or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer, where at the conclusion of the transaction a previously unlisted issuer immediately lists, Listing Fees for that new issuer are calculated at a rate of 25% of total Listing Fees for each class of securities being listed (to the extent that total calculated listing fee for a class of common stock would be greater than $250,000, the calculation would be 25% of the $250,000 maximum for a new listing of common stock).

No discount will be applied where a listed issuer survives the merger or consolidation, or in the case of a backdoor listing. See Section 703.08(F) for a discussion of back door listings.

Listing Fees for Pre-emptive Rights. Preemptive rights representing equity securities are not subject to a separate Listing Fee. As of the date that preemptive rights are exercised, Listing Fees will accrue on the securities issued and the issuer will be billed for those Listing Fees at the beginning of the following year.

Calculating Listing Fees

Treasury stock, restricted stock and shares issued in conjunction with the exercise of an over-allotment option, if applicable, are included in the number of shares a closed-end fund is billed for at the time a security is first listed.

The following are examples of how Listing Fees would be calculated by a closed-end fund in the case of an original listing and a subsequent additional issuance of common stock:

Example A: A closed-end fund listing 50 million common shares in the context of an initial public offering or transfer from another market would pay total Listing Fees of $40,000.

Example B: The same closed-end fund subsequently applies to list an additional 5 million shares of common stock that are immediately issued. The closed-end fund will pay total Listing Fees of $17,500 for the subsequent listing. Since the closed-end fund already has 50 million shares outstanding, the Listing Fee for the additional 5 million shares is calculated at a rate of $0.0035 per share.

Annual Fees

Annual Fee Schedule for Primary Listed Security

The following Annual Fee Schedule is applicable to a closed-end fund's primary class of listed security (common stock, or preferred stock if no common stock is listed) and is equal to the greater of the minimum fee or the fee calculated on a per share basis:

Per Share Rate $0.00093 per share
Minimum Fee $25,000

Additional Classes of Listed Equity Issues

The Annual Fee for equity issues other than the primary class of security listed is the greater of the minimum or the fee calculated on a per share basis:

Per Share Rate $0.00093 per share
Minimum Fee $5,000

To the extent that a closed-end fund has more than one class of common shares listed, the class with the greatest number of shares outstanding will be deemed the primary class of common shares. The same analysis is applicable where a closed-end fund has more than one class of preferred stock listed, but no class of common shares listed. Where a closed-end fund lists a class of common shares, as well as a class of preferred stock, Annual Fees on the

preferred stock will be billed at the rate applicable to an additional class of preferred stock.

Limitations on Annual Fees

Fund families that list between 3 and 14 closed-end funds will receive a 5% discount off the calculated Annual Fee for each fund listed, and those with 15 or more listed closed-end funds will receive a discount of 15%. No fund family shall pay aggregate Annual Fees in excess of $1,000,000 in any given year.

In the case of transactions involving listed issuers (such as a consolidation between two or more listed issuers that results in the formation of a new issuer, or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer), where at the conclusion of the transaction a previously unlisted issuer immediately lists, Annual Fees will not be charged to that new issuer for the year in which it lists to the extent that the transaction concludes after March 31. To the extent that the transaction concludes on or before March 31 in any calendar year, however, the newly listing issuer will be charged pro rata Annual Fees from the date of listing to the end of the year.

In addition, to the extent that a listed issuer is involved in a consolidation between two or more listed companies that results in the formation of a new issuer, or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer, or a merger between two listed issuers where one listed issuer survives, and the transaction concludes on or before March 31 in any calendar year, the non-surviving listed issuer(s) will only be subject to pro rata Annual Fees for that year through the date of the conclusion of the transaction. To the extent that the transaction concludes after March 31, the non-surviving listed issuer(s) will be subject to full Annual Fees for that year.

902.05 Fees for Listing Structured Products

The Listing Fees and Annual Fees set out in this section apply to structured products listed under Section 703.18, the equity criteria set out in Section 703.19, and Section 703.21, and traded on the equity floor of the Exchange. The term ''retail debt securities'' refers to debt securities that are listed under the equity criteria set out in Section 703.19 and traded on the equity floor of the Exchange.

For fees applicable to structured products listed under the debt criteria set out in Section 703.19 and traded on the Automated Bond System, see Section 902.06. In addition, for fees applicable to structured products with a term of seven years or less, see Section 902.07.

Listing Fees

Listing Fee Schedule

The Listing Fee billed to an issuer when it lists securities is based on the number of shares issued at the time of listing. For an issuer of a structured product that lists a dollar amount of securities, an implied number of shares will be calculated by dividing the aggregate dollar amount of securities being listed by the denomination of such securities.

When determining Listing Fees, calculations are made at each level of the schedule up to and including the last level applicable to the number of shares being listed. The total Listing Fee equals the sum of the amounts calculated at each level of the schedule. For examples of how Listing Fees are calculated, please see ''Calculating Listing Fees'' below.

Number of securities issued	Fee per share
Up to and including 2 million	$0.01475
Over 2 million up to and including 4 million	0.0074
Over 4 million up to and including 300 million	0.0035
Over 300 million	0.0019

These fees apply the first time an issuer lists a structured product, as well as to the subsequent listing of additional shares of listed structured products or the listing of a new class of structured product. The Exchange treats each series of structured product as a separate issue.

Limitations on Listing Fees

Maximum Listing Fees for Retail Debt Securities. The maximum amount of Listing Fees that will be billed to an issuer listing retail debt securities in a calendar year is $500,000.

Minimum Listing Fee for Subsequent Listing of Additional Securities. The minimum application fee for a subsequent listing of additional securities is $2,500. When listing additional securities, an issuer is billed Listing Fees in an amount equal to the greater of the $2,500 minimum supplemental listing application fee and the fee calculated on a per share basis. This applies to the listing of additional shares of an already listed security or to the listing of an additional class of security.

Fee for Certain Changes. A $2,500 fee will apply to applications for changes that involve modifications to Exchange records, for example, changes of name, par value, title of security or designation.

Calculating Listing Fees

Shares issued in conjunction with the exercise of an over-allotment option, if applicable, are included in the number of shares an issuer is billed for at the time a security is first listed.

The following are examples of how Listing Fees would be calculated in the case of an original listing and a subsequent additional issuance of a structured product, such as a trust preferred security:

Example A: An issuer of trust preferred securities listing 10 million shares in the context of an initial public offering or transferring such securities from another market would pay total Listing Fees of $65,300 as follows:

- *The Listing Fee for the first 2 million shares is calculated at the rate of $0.01475 per share.*
- *The Listing Fee for the next 2 million shares is calculated at the rate of $0.0074 per share.*
- *The Listing Fee for the next 6 million shares is calculated at the rate of $0.0035 per share.*

Example B: The same issuer subsequently applies to list an additional 5 million shares of the same structured product that are immediately issued. The issuer will pay total Listing Fees of $17,500 for the subsequent listing. Since the issuer has already paid Listing Fees on 10 million shares, the Listing Fee for the additional 5 million shares is calculated at the rate of $0.0035 per share.

Annual Fees

Annual Fee Schedule

Annual Fees are based on the total number of securities outstanding per listed issue. The Annual Fee is equal to the greater of the minimum fee or the fee calculated on a per share basis.
Per Share Rate $0.00093 per share
Minimum Fee $5,000

Limitation on Annual Fees on Repackaged Securities.

Any issue of Repackaged Securities will be subject to the Annual Fee schedule in effect at the time of listing of such issue, regardless of any changes to the fee schedule made thereafter. For purposes of this section, Repackaged Securities are securities listed under Section 703.19, issued by a trust with a term of years, where the assets of the trust consist primarily of underlying fixed-income securities, and where the trust is funded (or a reserve is created) at issuance to cover the trust's principal

obligations and associated expenses during the life of the Repackaged Securities.

Annual Fees for Retail Debt Securities

As set out in Section 902.02, the $500,000 Total Maximum Fee billable to an issuer in a calendar year includes all Annual Fees billed to an issuer for listed retail debt securities.

902.06 Listing Fees for Short Term Securities

The Listing Fees and Annual Fees in this section apply to ''short-term'' securities, or those securities having a term of seven years or less, such as, but not limited to, warrants representing equity securities, index warrants, foreign currency warrants, contingent value rights and structured products.

Listing Fees

When determining Listing Fees, calculations are made at each level of the schedule up to and including the last level applicable to the number of shares being listed. The total Listing Fee equals the sum of the amounts calculated at each level of the schedule. For examples of how Listing Fees are calculated, please see ''Calculating Listing Fees'' below.

Number of securities issued	Fee per share
Up to and including 2 million	$0.007375
Over 2 million up to and including 4 million	0.0037
Over 4 million up to and including 300 million	0.00175
Over 300 million	0.00095

These fees apply to the original listing of short-term securities, as well as to the subsequent listing of additional shares of listed short-term securities or the listing of a new class of short-term security. The Exchange treats each series of short-term security as a separate issue.

Limitations on Listing Fees

Minimum Listing Fee for Subsequent Listing of Additional Securities. The minimum application fee for a subsequent listing of additional securities is $2,500. When listing additional securities, an issuer is billed Listing Fees in an amount equal to the greater of the $2,500 minimum supplemental listing application fee and the fee calculated on a per share basis. This applies to the listing of additional shares of an already listed security or to the listing of an additional class of security.

Fee for Certain Changes. A $2,500 fee will apply to applications for changes that involve modifications to Exchange records, for example, changes of name, par value, title of security or designation.

Calculating Listing Fees

Shares issued in conjunction with the exercise of an over-allotment option, if applicable, are included in the number of shares an issuer is billed for at the time a security is first listed.

The following are examples of how Listing Fees would be calculated in the case of an original listing and a subsequent additional issuance of a short-term security, such as index warrants:

Example A: An issuer listing 10 million index warrants in the context of an initial public offering or transferring such securities from another market would pay total Listing Fees of $32,650 as follows:

- *The Listing Fee for the first 2 million shares is calculated at the rate of $0.007375 per share.*
- *The Listing Fee for the next 2 million shares is calculated at the rate of $0.0037 per share.*
- *The Listing Fee for the next 6 million shares is calculated at the rate of $0.00175 per share.*

Example B: The same issuer subsequently applies to list an additional 5 million shares of the same security that are immediately issued. The issuer will pay total Listing Fees of $8,750 for the subsequent listing. Since the company has already paid Listing Fees on 10 million shares, the Listing Fee for the additional 5 million index warrants is calculated at the rate of $0.00175 per share.

Annual Fees

Annual Fees are based on the total number of securities outstanding per listed issue. The Annual Fee is equal to the greater of the minimum fee or the fee calculated on a per share basis.

Per Share Rate $0.00093 per share
Minimum Fee $5,000

902.07 Fees for Listing Investment Company Units

The Listing Fees and Annual Fees set out in this section apply to Investment Company Units listed under Section 703.16.

Listing Fees

A flat Listing Fee of $5,000 will be applied at the time a series of Investment Company Units first lists on the Exchange.

Annual Fees

A flat Annual Fee of $2,000 will apply to each series of Investment Company Units listed on the Exchange.

902.08 Listing Fees for Debt Securities

This fee schedule applies to bonds and other fixed income debt securities that list on the Exchange, including debt securities that list under the debt standard in Section 703.19 and trade on the Automated Bond System.

Debt of NYSE equity issuers and affiliated companies NO FEE*
Debt of issuers exempt from registration under Securities and Exchange Act of 1934 NO FEE
All other debt securities—New issues
$50 per million principal amount or fraction thereof. Minimum per issue $2,500—Issues outstanding one year or more
$25 per million principal amount or fraction thereof. Minimum per issue $1,250
(For zero-coupon issues the principal amount is based on total proceeds received by the issuer.)

** The Exchange shall determine on a case-by-case basis whether a company is related to an issuer in a manner that qualifies the company as an ''affiliated Company.''*

The following applies to Non-NYSE equity companies:

(1) In the case of relisting a previously listed issue so as to change the obligor or guarantor, a fee of $2,500 shall apply.

(2) In the case of a shelf registration application, a fee of $1,400 shall apply, which shall be applied toward the total listing fee.

(3) In the case of American Depositary Receipts (''ADRs'') that represent debt of a foreign company or sovereign, the principal amount of such shall be calculated as follows:

(a) If the issue is only available through a single offering, the principal amount shall be deemed to equal 10 percent of the U.S. dollar value of the worldwide outstanding float.

(b) If future offerings may be added to the issue, the principal amount shall be deemed to equal 12.5 percent of the U.S. dollar value of the worldwide outstanding float.

[902.02 Schedule of Current Listing Fees

Each Listing Application submitted to the Exchange should be accompanied by a check to the order of the New York Stock Exchange, Inc. for the fees payable at that time. A Listing Fee Agreement, in which the Company undertakes to pay initial and continuing annual fees, should accompany the application, unless such an agreement in the form shown in Para. 902.01 has previously been filed with the Exchange.

It is suggested that the calculation of the fees be checked in advance with the

Exchange where there is any question as to the amount of the fee payable. All fees will be calculated to the nearest dollar.

There is a $1 million cap on listing fees per issuer in any given calendar year. This fee cap includes and encompasses all classes of securities except derivatives issued by listed companies as part of their capital structure. This cap will not apply to closed-end funds.

A. Original Listing Fee

A special charge of $36,800 in addition to initial fees (described below) is payable in connection with the original listing of a company's stock. In any event, each issuer is subject to a minimum original listing fee of $150,000 inclusive of the special charge referenced in the preceding sentence.

The special charge is also applicable to an application which in the opinion of the Exchange is a ''back-door listing''. See Para. 703.08 (F) for definition.

Original listings of closed-end funds are not subject to either the special charge or to the minimum original listing fee. Closed end funds will instead pay an original listing fee based on the number of shares outstanding upon listing. Closed-end funds with up to 10 million shares outstanding will be subject to a $20,000 original listing fee, closed-end funds with greater than 10 million shares up to 20 million shares outstanding will be subject to a $30,000 original listing fee, and closed-end funds with more than 20 million shares outstanding will be subject to a $40,000 original listing fee. Original listings of closed-end funds are also not subject to the initial fees described below.

If two or more closed-end funds from the same fund family list at the same time, the Exchange will cap the collective original listing fee for those funds at $75,000. A fund family consists of closed end funds with a common investment adviser or investment advisers who are ''affiliated persons'' as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

B. Initial Fee

The initial fee schedule applies to original listings,** other than to original listings of closed-end funds as described above, and to the listing of additional shares of an already listed class of stock,* new issues of preferred stock, warrants, or similar securities which are the subject of subsequent applications. New issues of additional classes of common stock of listed companies will be charged a fixed initial fee of $5,000 in lieu of the per share schedule.

Each stock or warrant—and in the case of preferred stock, each series—shall be regarded as a separate issue.

Each application must cover the maximum number of shares that may be issued involving the particular transaction in question. However, the initial fee payable at the time of consideration of an application will cover only the determinable number of shares to be issued at or about that time. The balance of any initial fee under this schedule will accrue when subsequent issuance is made of shares not issued and paid for at the time that application is considered. This covers items like future issuances of shares for stock options, employee stock plans, conversion of other securities, contingencies, etc. Billing for such accrued initial fees is made as soon as possible following the close of the calendar year. Payment shall be made within 30 days of date upon receipt of invoice.

The initial fee shall be paid on shares issued at the time of billing by the Exchange. The subsequent reacquisition by the company and/or surrender to it for exchange, cancellation, or retirement shall not reduce this fee. The Exchange should be advised of shares cancelled. The shares authorized for listing on the Exchange should be reduced by the number of shares cancelled as well as by the shares no longer required to be issued under a specific plan for which an application was previously filed with the Exchange.

The pertinent initial fees per million shares are:

Fee bracket	Initial fee
1st and 2nd million shares	$14,750
3rd and 4th million shares	7,400
5th up to 300 million shares	3,500
In excess of 300 million shares	1,900

Reduced Initial Fee—A fee of $15,000 will apply to a company which either changes its state of incorporation or reincorporates, forms a holding company which replaces a listed company or has a reverse stock split. This fee will be applicable only if the change in the company's status is technical in nature and providing also that shareholders of the original company receive a share-for-share interest in the new company without any change in their equity position or rights.

Amalgamations are calculated at 25% of the applicable basic initial fee. An amalgamation is defined as the listing of shares resulting from merger or consolidation of two or more listed companies into a new company or into an unlisted company that becomes listed.

Mergers between an unlisted company and a listed company (other than back door listings (as defined in para.703.08(E))—If listing occurs within 12 months of the merger, 25% of the applicable basic initial fee, except during the first year following the listed company's original listing, where the fee shall be the lesser of (1) 25% of the applicable basic initial fee or (2) the full fee less a credit for the fee the listed company paid at the time of its initial listing.

In all other circumstances, the full initial fee rate will apply. For example: where a change in a listed security is effected which in the opinion of the Exchange in effect represents a new issue or class of security, or where the rights or privileges or the identities of previous shareholders are altered.

Minimum Initial Fee—The minimum fee for the consideration of an application is $2,500. Credit against initial fees will be limited to the determinable number of shares to be issued at or about the time the application is processed where the minimum fee applies.

The minimum initial fee of $2,500 will apply for changes such as change of name, change of par value, the title of the security, etc., since these require changes in Exchange records.

* Fees on shares issued in conjunction with stock splits are capped at $250,000 per split and at $500,000 for all splits over a rolling three calendar-year period. Fees on shares issued in conjunction with a merger or acquisition (other than amalgamations) are capped at $500,000.

** Fees on shares listed in conjunction with the original listing are limited to $250,000 per company, inclusive of the special charge and encompassing all classes of securities.

C. Continuing Annual Fee

This annual fee is payable each year on each equity security listed on the Exchange and subject to the continuing annual fee schedule. A newly listed Company is billed upon listing (prorated based upon the number of days from the listing date through the end of the year. In January of each year a billing for the continuing annual listing fee covering the following twelve months is made.)

Per Share Calculation—All issued shares including treasury shares are included in the calculation.

Continuing Annual Fees (Effective January 1, 2003)

Per Share Rate $930 per million

Minimum Fee $35,000

The continuing annual fees for closed end funds are as follows:

Closed-end funds will pay at a rate of $930 per million shares, subject to a minimum annual fee of $25,000. Fund families with between 3 and 14 closed-end funds listed will receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with more than 14 listed closed-end funds will receive a discount of 15%. No fund family shall pay aggregate continuing annual fees in excess of $1 million in any one year.*

* In SR–NYSE–2003–33 (February 11, 2004), the Exchange eliminated a fee policy under which shares subject to continuing annual fees for a period of 15 consecutive years became exempt from further fees. The Exchange is phasing-in increases in fees for closed-end funds that were previously eligible for the 15-year exemption so that closed-end funds that are affected by the elimination will pay only 50% of increased fees in fiscal year 2004 and 100% in fiscal year 2005 and afterwards.

Companies with more than one class of common stock will pay a minimum fee of $35,000 for the class with the greatest number of shares outstanding, with a minimum fee of $20,000 applicable to each additional class.

Additional classes of common stock are subject to this schedule for continuing fees.

Computation of Fee—Other Equity Issues—The fee is the greater of the minimum of $5,000 per issue or the fee calculated on a per share basis. All issued shares are included in the calculation.

Special Rule for Repackaged Securities

Any issue of Repackaged Securities (as defined below), will be subject to the continuing annual fee schedule in effect at the time of listing of such issue, regardless of any changes to the fee schedule made thereafter. For the purpose of this Para. 902.02.C, Repackaged Securities are securities listed under Para. 703.19 of this Manual, issued by a trust with a term of years, where the assets of the trust consist primarily of underlying fixed-income securities, and where the trust is funded (or a reserve is created) at issuance to cover the trust's principal obligations and associated expenses during the life of the Repackaged Securities.

Overall Fee Cap

In calculating the continuing listing fee for a listed company, the fees for all classes (or series) of listed securities of the company, excluding derivative products, fixed income products, and closed-end funds, are aggregated and the total continuing listing fee is capped at $500,000.

Per Share Rates—Same as those applicable to common stock.

D. Supplements

A fee of $430 will be made for processing information statements which are supplements to previous applications relating to minor changes where no action by the Exchange is involved.

2. Fees for Bonds and Similar Securities

Debt Listing Fees

The fee schedule applies to bonds and other fixed income debt securities that list for trading on the Exchange

Debt of NYSE equity issuers and affiliated companies*—NO FEE

Debt of issuers exempt from registration under Securities and Exchange Act of 1934—NO FEE

All other debt securities—New issues

$50 per million principal amount or fraction thereof. Minimum per issue $2,500—Issues outstanding one-year or more

$25 per million principal amount or fraction thereof. Minimum per issue $1,250

(For zero-coupon issues principal amount based on total proceeds received by the issuer.)

* The Exchange shall determine on a case-by-case basis whether a company is related to an issuer in a manner that qualifies the company as an ''affiliated Company.''

The following applies to Non-NYSE equity companies:

(1) In the case of relisting a previously listed issue so as to change the obligor or guarantor, a fee of $2,500 shall apply.

(2) In the case of a shelf registration application, a fee of $1,400 shall apply, which shall be applied toward the total listing fee.

(3) In the case of American Depositary Receipts (''ADRs'') that represent debt of a foreign company or sovereign, the principal amount of such shall be calculated as follows:

(a) If the issue is only available through a single offering, the principal amount shall be deemed to equal 10 percent of the U.S. dollar value of the worldwide outstanding float.

(b) If future offerings may be added to the issue, the principal amount shall be deemed to equal 12.5 percent of the U.S. dollar value of the worldwide outstanding float.

902.03 Short-Term Securities

Fees for Short-Term Securities

Short-term securities are defined by the Exchange as those securities having a term of seven years or less (*e.g.* index warrants, foreign currency warrants, contingent value rights, etc.)

A. Short-Term Securities Initial Fees

The initial fee schedule applies to the original listing of short-term securities, and any additional short-term securities which are the subject of subsequent applications.

Each short-term security series shall be regarded as a separate issue.

Initial fee security issue	Per million
1st and 2nd million	$7,375
3rd and 4th million	3,700
5th and up to 300 million	1,750
In Excess of 300 million	950

B. Short-Term Securities Continuing Annual Fees

(Effective January 1, 2003)

An annual fee is payable each year on each short-term security listed on the Exchange and subject to the continuing annual fee schedule. Following an initial proration period short-term securities will be billed in January of each year and will be billed for the forthcoming 12 months.

Per Share Rate: $930 per million
Minimum Fee per Issue: $5,000

902.04 Overseas Companies

Rule:

A. Original Listing Fees

There are original and continuing annual fees associated with a New York Stock Exchange listing. The following highlights these fees which are based upon either the number of ordinary shares or ADR's (or similar securities) issued in the United States.

Schedule of Original Listing Fees (effective September 8, 1989):

Original Fee plus $36,800
Shares or ADRs Issued: Per Million (or similar securities)
1st and 2nd million: $14,750
3rd and 4th million: $7,400
5th up to 300 million: $3,500
In excess of 300 million: $1,900
Minimum Fee: $150,000
Maximum Fee: $250,000

Fees for non-U.S. companies whose ordinary shares or ADRs (or similar securities) are traded in the U.S. are based on the number of shares or ADRs actually issued and outstanding in the U.S.

For example, assume ADRs from non-U.S. company are to be listed and traded on the New York Stock Exchange. Currently there are 8.5 million ADRs issued in the United States. The NYSE would levy its initial listing fee based on those 8.5 million ADRs as follows:

Original Fee plus $36,800
Per Share/ADR Fee
1st and 2nd million: $29,500
3rd and 4th million: $14,800
5th and 8.5th million: $15,750
Total: $96,850

Since the per ADR fee of $96,850 does not exceed the minimum fee of $150,000, the company would pay an initial listing fee of $150,000.

Also payable upon listing is the first year's continuing annual listing fee which will be based on the number of ADRs or shares issued in the U.S. and prorated for the balance of the calendar year.

B. Initial Listing Fees

If an Exchange-listed company issues shares or ADRs (or similar security) during the year, an initial fee, using the Schedule of Original Listing Fees, is levied only on those shares or ADRs (or similar security) issued in the U.S.

For example, assume an overseas company which has 8.5 million ADRs issued in the U.S. sells 2.5 million ADRs, only 1.0 million of which are issued in the U.S. The company would pay an initial fee at the rate of $3,500 per million ADRs or $3,500.

C. Continuing Annual Fees

The Exchange, through information provided by ADR or share agents, calculates a four-quarter average of shares or ADRs (or similar security) issued in the U.S. as a basis for an overseas company's annual fee. The quarterly average serves to correct for the possibility of flow-back and flow-in of shares or ADRs (or similar security) to and from the home country market and more accurately represents the number of shares or ADRs (or similar security) in the U.S. over the course of the year.

The annual fee is equal to the greater of the fee calculated on a per share or ADR (or similar security) basis or based on the range minimums listed below.

Schedule of Continuing Annual Fees
Per Share or ADR Rate: $930 per million (or similar securities)
Minimum Fee for Shares or ADRs Listed (or similar securities) (millions) $35,000
Maximum Annual Fee $500,000

Companies with more than one class of common stock will pay the minimum fee of $35,000 for the class with the greatest number of shares outstanding and a minimum fee of $20,000 for any additional class.]

* * * * *

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. 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 the course of analyzing business goals and the competitive environment, the NYSE recently completed a review of the current listing fee schedule. As a result of this review, the Exchange is proposing a number of changes to the current fee chapter set out in Sections 902.01 to 902.04 of the Listed Company Manual. These proposed changes will not impact fees paid by issuers of closed-end funds, structured products, or short-term securities, except as specified. In addition, the Exchange is proposing a reorganization of the relevant sections of the Listed Company Manual into a clearer and more concise format setting out fees by type of listed security.

Reorganization of Fee Chapter. The Exchange proposes to restructure Section 902.00 of the Listed Company Manual. The proposed format sets out general information applicable to all fees, as well as separate fee provisions for listing equity securities, closed-end funds, structured products, short-term securities, investment company units and debt securities. Each proposed section includes guidelines on how fees are calculated, as well as numerical examples. We also propose recategorizing ''original listing'' and ''initial listing fees'' as ''Listing Fees'' and ''continuing annual fees'' as ''Annual Fees'' to minimize confusion regarding terminology.

Overall Fee Cap. The Exchange proposes to decrease the current total issuer per annum fee cap by 50% from $1 million to $500,000, with certain exceptions. The proposed $500,000 annual total maximum fee amount will include all Listing Fees and Annual Fees payable by an issuer other than with respect to the following fees, which are excluded from the cap:

- Listing Fees and Annual Fees for Investment Company Units;[5]
- Listing Fees and Annual Fees for closed-end funds;
- Listing Fees for all structured products; and
- Annual Fees for structured products other than retail debt securities.

The Exchange also proposes to clarify that the term ''structured products'' refers to securities listed under Sections 703.18, 703.19 and 703.21, and that the term ''retail debt securities'' refers to debt securities that are listed under the equity criteria set out in Section 703.19 and traded on the equity floor of the Exchange.

Fees on closed-end funds and structured products (other than Annual Fees for retail debt securities) will continue to be subject to the fee schedules, including fee caps, currently in place for those products.

Listing Fees. The Exchange's current Listing Fee schedule with respect to equity securities was last increased in 1989.[6] The Exchange proposes to modify the Listing Fee schedule applicable to listed equity securities, while also simplifying the schedule. Currently, the Listing Fee schedule includes four tiers. The Exchange proposes reducing this schedule to three tiers. Under the rates as proposed, companies that list up to and including 75 million shares of an equity security will pay $4,800 per million, above 75 million up to and including 300 million shares will pay $3,750 per million, and above 300 million shares will continue to pay $1,900 per million. As a result of these proposed changes, companies may pay higher Listing Fees than under the current rates. The Exchange also proposes to set forth Listing Fees for all types of securities as per share numbers instead of the current per million approach (*i.e.*, $0.0048 per share rather than $4,800 per million). In addition, the Exchange proposes to specify the fees applicable to tracking stocks. The fees with respect to Investment Company Units specified in the filing are the same as those that have been charged traditionally.

[5] Telephone conversation between Susie Cho, Special Counsel, Jan Woo, Attorney, Division of Market Regulation, Commission, and John Carey, Assistant General Counsel, NYSE, on August 19, 2005.

[6] *See* Securities Exchange Act Release No. 26602 (March 6, 1989), 54 FR 10471 (March 13, 1989) (SR–NYSE–88–44). Telephone conversation between Susie Cho, Special Counsel, Jan Woo, Attorney, Division of Market Regulation, Commission, and John Carey, Assistant General Counsel, NYSE, on August 19, 2005.

Currently, Section 902.02 establishes an initial listing fee cap for shares issued in conjunction with stock splits of $250,000 per split and, for a single issuer who transacts multiple splits, a cap of $500,000 over a consecutive three calendar year period. The Exchange proposes to decrease the Listing Fee cap for shares issued in conjunction with stock splits by 40% to $150,000 per stock split. The Exchange also proposes to eliminate the three year cap on stock splits in light of the proposed $500,000 annual total maximum fee. The Exchange also proposes to apply the $150,000 fee cap to stock dividends. These proposed changes would also apply to fees paid by closed-end funds and structured products for stock splits and stock dividends.

The Exchange also proposes increasing from $2,500 to $5,000 the current minimum application fee for the authorization of a subsequent application to list additional securities or another class of equity securities, or to make certain changes (such as a change of name or par value) applicable to issuers that list equity securities. In addition, the Exchange proposes to slightly increase the special charge that is applied when a company first lists a class of common stock from $36,800 to $37,500. Note that the Exchange also proposes to eliminate the current $430.00 application fee applicable to processing minor amendments to previously filed applications.[7]

Annual Fees. The Exchange proposes increasing the current minimum Annual Fee payable on a common stock or a preferred-only listing from $35,000 to $38,000. The Exchange has also clarified that the Annual Fee for each class of equity security listed is equal to the greater of the minimum fee or the fee calculated on a per share basis of $0.00093. The Exchange also proposes to clearly set out the minimum and per share rates applicable to each type of listed security.

Codification and Clarification of Billing Practices. The Exchange is also proposing to make a number of changes and clarifications to its current billing policies. For example, the Exchange proposes to clarify that the current fee cap of $500,000 for shares issued in conjunction with a merger or acquisition is also applicable to all additional issuances of already listed securities (for example, subsequent public offerings and conversions of debt) on a per transaction basis.

[7] Telephone conference between John Carey, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on August 11, 2005.

The Exchange also proposes to specify that a foreign private issuer as defined in Rule 3b–4(c) under the Act [8] that loses that status for purposes of SEC filings will be billed as a U.S. company starting at the beginning of the year following its change in status.

The Exchange proposes to specify, for all types of securities, that, in addition to treasury stock and restricted stock, shares issued pursuant to overallotment options will also be included when calculating Listing Fees at the time an issuer lists a class of security for the first time.

The Exchange proposes to amend its current policy regarding credits for issuers paying the minimum Listing Fee. Under the Exchange's policy since 2000 regarding Listing Fees, if an issuer's Listing Fee when it first lists as calculated based on the Listing Fee schedule is less than $150,000, the difference between the calculated fee and $150,000 is applied as a credit against future Listing Fees billed to the issuer. As proposed, new issuers billed the minimum would not receive a credit towards future Listing Fees. The approximately 140 issuers that currently have an unused Listing Fee credit will be able to apply that unused credit towards future listings until December 31, 2005.

The Exchange also proposes to amend its current policy regarding credits for issuers paying the minimum supplemental listing application fee. Currently, where an issuer pays the minimum application fee, such as where shares of an equity compensation plan are being listed subject to issuance, such minimum fee is applied against the Listing Fees that accrue during the calendar year as shares are issued. As proposed, issuers that pay the minimum supplemental listing application fee will not have that fee applied towards Listing Fees for future issuances.

The Exchange proposes to specify that Listing Fees and Annual Fees are non-refundable in all cases where an issuer delists from the Exchange, whether involuntarily or voluntarily.

The Exchange proposes to clarify that, in the context of the discount provided for Listing Fees to issuers that list more than one fund, the discount will be applicable when funds in the same fund family list at approximately the same time, as opposed to requiring that all such funds list on the same day. The Exchange will consider funds from the same fund family to be listing at approximately the same time if an issuer provides notice that such funds will be listed as part of the same transaction.

[8] 15 U.S.C. 78a.

The Exchange proposes to amend the current limitations on Listing Fees applicable to certain mergers of companies and closed-end funds. The current rule provides that in the case of a consolidation, or ''amalgamation,'' of two listed companies into a new company or an unlisted company, which becomes listed, Listing Fees are calculated at a rate of 25% of basic Listing Fees. The current rule also provides that, in the case of a merger or consolidation of a listed company and an unlisted company that results in the formation of a new company or where the unlisted company survives, Listing Fees are calculated at a rate of 25% of basic Listing Fees, unless the merger occurs within 12 months of the listed company's listing date, in which case the new company or the unlisted company pays Listing Fees equal to the lesser of (1) 25% of basic Listing Fees or (2) full Listing Fees minus a credit for Listing Fees paid by the listed company at the time of listing. The Exchange proposes to simplify the discounts applicable to these transactions so that, in the case of transactions such as a consolidation between two or more listed issuers that results in the formation of a new issuer (where at the conclusion of the transaction the new issuer immediately lists), or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer (where within 12 months from the conclusion of the transaction a previously unlisted issuer lists), Listing Fees for that newly listed issuer will be calculated at a rate of 25% of total Listing Fees for all classes of securities being listed (to the extent that total calculated listing fee for a class of common shares would be greater than $250,000, the calculation would be 25% of the $250,000 maximum for a new listing of common shares). The Exchange also proposes to specify that the current special charge of $36,800 (proposed to be increased to $37,500) and the $150,000 minimum charge applicable when a company first lists a class of common shares do not apply to these types of transactions.

The Exchange also proposes to eliminate the current rule that provides for credit towards Annual Fees in the case where two listed companies merge and one of the listed companies survives. Currently, in this case, a credit is given to the surviving listed company for the pro rata portion of the non-surviving listed company's Annual Fees (for the period from the date of the conclusion of the transaction through the end of the calendar year) towards

the surviving listed company's Annual Fees in the following year. Instead, the Exchange proposes to implement a new policy regarding all corporate mergers and consolidations. As proposed, in the case of transactions involving listed companies (such as the consolidation of two listed issuers into a new issuer, a merger between a listed issuer and an unlisted issuer where the unlisted issuer survives or a new issuer is formed, or a merger between two listed issuers where one listed issuer survives), all Listing Fees and Annual Fees paid by listed companies party to the transaction in the year, and up to the date, that the transaction concludes will be counted towards calculating the $500,000 annual total issuer maximum fee for the ultimate listed issuer in the year of the corporate transaction.

In the case where the ultimate listed issuer was previously unlisted, however, Listing Fees and Annual Fees paid by any listed issuer party to the transaction will only be calculated towards the $500,000 annual total maximum fee for the ultimate listed issuer if such issuer lists on the Exchange at the time the transaction concludes.

In addition, an ultimate listed company previously unlisted listing on the Exchange at the time the transaction concludes will not be required to pay Annual Fees in the year in which it lists to the extent that the transaction concludes after March 31. To the extent that the transaction concludes on or before March 31 in any calendar year, however, the newly listing issuer will be charged pro rata Annual Fees from the date of listing to the end of the year, subject, in the case of an operating company, to the Total Maximum Fee.

In addition, to the extent that a listed company is involved in a consolidation between two or more listed companies that results in the formation of a new issuer, or a merger or consolidation between a listed company and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer, or a merger between two listed issuers where one listed issuer survives, and the transaction concludes on or before March 31 in any calendar year, the non-surviving listed company will only be subject to pro rata Annual Fees for that year through the date of the conclusion of the transaction. To the extent that the transaction concludes after March 31, the non-surviving listed company will be subject to full Annual Fees for that year. The foregoing is a codification of the Exchange's current policy.

Implementation Dates for Proposed Changes. The proposed fee changes will be implemented as of the date of Commission approval of this filing with the exception of the proposed increase in the minimum continuing annual fee for common stock and preferred-only listings from $35,000 to $38,000, which is proposed to be effective as of January 1, 2006 should the Commission approve this filing before that date.

With respect to the proposed decrease in the current total issuer per annum fee cap from $1 million to $500,000, to the extent that, at the time this rule filing is approved by the SEC, a listed issuer has already paid or been invoiced for total fees in an amount greater than $500,000 but less than $1 million, the Exchange does not propose to provide a refund or credit for the amount that exceeds $500,000.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change, as amended, is the requirement under Section 6(b)(5) [9] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

[9] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2005–35 on the subject line.

Paper comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–35. 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 Commissions 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–2005–35 and should be submitted on or before October 14, 2005.

[10] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 05–19041 Filed 9–22–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5193]

30-Day Notice of Proposed Information Collection: Form DS–3083, Training Registration (For Non-U.S. Government Persons), OMB Control No. 1405–0145

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Training Registration (for non-U.S. Government Persons).
- *OMB Control Number:* 1405–0145.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Foreign Service Institute (FSI).
- *Form Number:* DS–3083.
- *Respondents:* Respondents are non-U.S. government persons and/or their eligible family members, authorized by Public Law 105–277 to receive training delivered by the Foreign Service Institute on a reimbursable or advance of funds basis.
- *Estimated Number of Respondents:* 200.
- *Estimated Number of Responses:* 200.
- *Average Hours per Response:* 0.5.
- *Total Estimated Burden:* 100.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required To Obtain or Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from September 23, 2005.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at (202) 395–4718. You may submit comments by any of the following methods:

- E-mail: *Katherine_T._Astrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Wayne A. Oshima, Foreign Service Institute, Office of Management, U.S. Department of State, Washington, DC 20522–4201, who may be reached on (703) 302–6730, or via e-mail at *oshimawa@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: This data collection tool is to be used to obtain information from non-U.S. Government persons so that they can enroll in courses offered by the Department of State's Foreign Service Institute. This includes information of a personal and business nature, and credit card information so that the Department can receive reimbursement.

Methodology

This information will be collected in hard copy format, which is either mailed or transmitted by facsimile machine to the Foreign Service Institute.

Dated: September 7, 2005.

Catherine J. Russell,

Executive Director, Foreign Service Institute, Department of State.

[FR Doc. 05–19053 Filed 9–22–05; 8:45 am]

BILLING CODE 4710–34–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 27, 2005, and comments were due on August 26, 2005. No comments were received.

DATES: Comments must be submitted on or before October 24, 2005.

FOR FURTHER INFORMATION CONTACT: Jean McKeever, Maritime Administration, 400 Seventh Street Southwest, Washington, DC 20590. Telephone: 202–366–5737; FAX: 202–366–7901 or e-mail: *jean.mckeever@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Application for Capital Construction Fund and Exhibits.

OMB Control Number: 2133–0027.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. citizens who own or lease one or more eligible vessels and who have a program to provide for the acquisition, construction or reconstruction of a qualified vessel.

Forms: None.

Abstract: This information collection consists of an application for a Capital Construction Fund (CCF) agreement under section 607 of the Merchant Marine Act, and annual submissions of appropriate schedules and exhibits. The Capital Construction Fund is a tax-deferred ship construction fund that was created to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or other property placed into a CCF.

Annual Estimated Burden Hours: 2198 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC on September 12, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–18981 Filed 9–22–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. 2005 22500]

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 ENCHANTRESS.

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 2005–22500 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 October 24, 2005.

ADDRESSES: Comments should refer to docket number MARAD 2005–22500. 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 ENCHANTRESS is:

Intended Use: ''Passengers for hire, the ENCHANTRESS will act as a eco charter vessel normally carrying 6 passengers for hire and also perform as a platform for sea kayak trips throughout the waters of the San Juan Archipelago and the waters of Puget Sound Washington.''

Geographic Region: ''Washington State, and it's waters.''

Dated: September 16, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–18980 Filed 9–22–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. 2005 22501]

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 *MONTRACHET*.

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 2005–22501 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 October 24, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 22501. 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 *MONTRACHET* is:

Intended Use: ''Passenger vacation charters.''

Geographic Region: Maine to Florida.

Dated: September 16, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–18979 Filed 9–22–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. 2005 22502]

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 *SNOW GOOSE*.

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 2005–22502xxxx 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 October 24, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 22502. 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 *SNOW GOOSE* is:

Intended Use: ''*SNOW GOOSE* is in the charter fleet at San Juan Sailing, Bellingham WA. She is used for bareboat charter and also for sailing instruction in the sailing school. In the latter capacity, a San Juan Sailing skipper (USCG licensed) takes 6 or fewer passengers for American Sailing Association instruction. These are generally multi-day cruises.''

Geographic Region: ''Washington State, USA: Primarily Bellingham area and San Juan Islands.''

Dated: September 16, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–18984 Filed 9–22–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement

AGENCY: Maritime Administration, DOT.

ACTION: Notice of Voluntary Intermodal Sealift Agreement (VISA).

SUMMARY: The Maritime Administration (MARAD) announces the extension of the Voluntary Intermodal Sealift Agreement (VISA) until October 1, 2007, pursuant to the Defense Production Act of 1950, as amended. The purpose of the VISA is to make intermodal shipping services/systems, including ships, ships' space, intermodal equipment and related management services, available to the Department of Defense as required to support the emergency deployment and sustainment of U.S. military forces. This is to be accomplished through cooperation among the maritime industry, the Department of Transportation and the Department of Defense.

FOR FURTHER INFORMATION CONTACT: Taylor E. Jones II, Director, Office of Sealift Support, Room 7304, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2323, Fax (202) 366–3128.

SUPPLEMENTARY INFORMATION: Section 708 of the Defense Production Act of 1950, as amended, (50 U.S.C. App. 2158), as implemented by regulations of the Federal Emergency Management Agency (44 CFR Part 332), ''Voluntary agreements for preparedness programs and expansion of production capacity and supply'', authorizes the President, upon a finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, ''* * * to consult with representatives of industry, business, financing, agriculture, labor and other interests * * *'' in order to provide the making of such voluntary agreements. It further authorizes the President to delegate that authority to individuals who are appointed by and with the advice and consent of the Senate, upon the condition that such individuals obtain the prior approval of the Attorney General after the Attorney General's consultation with the Federal Trade Commission. Section 501 of Executive Order 12919, as amended, delegated this authority of the President to the Secretary of Transportation (Secretary), among others. By DOT Order 1900.9, the Secretary delegated to the Maritime Administrator the authority under which the VISA is sponsored. Through advance arrangements in joint planning, it is intended that participants in VISA will provide capacity to support a significant portion of surge and sustainment requirements in the deployment of U.S. military forces during war or other national emergency.

The text of the VISA was first published in the **Federal Register** on February 13, 1997, to be effective for a two-year term until February 13, 1999. The VISA document has been extended and subsequently published in the **Federal Register** every two years. The last extension was published on March 16, 2005. The text of the VISA herein has been amended to reflect the Emergency Preparedness Agreement requirements as contained in the Maritime Security Act of 2003 for participants in the Maritime Security Program. The text published herein will now be implemented. Copies will be made available to the public upon request.

Text of the Voluntary Intermodal Sealift Agreement:

Voluntary Intermodal Sealift Agreement (VISA)

Table of Contents

Abbreviations

''AMC;''—Air Mobility Command
''CCA;''—Carrier Coordination Agreements
''CFR;''—Code of Federal Regulations
''CONOPS;''—Concept of Operations
''DoD;''—Department of Defense
''DOJ;''—Department of Justice
''DOT;''—Department of Transportation
''DPA;''—Defense Production Act
''EUSC;''—Effective United States Control
''FAR;''—Federal Acquisition Regulations
''FEMA;''—Federal Emergency Management Agency. FEMA is an element of the Emergency Preparedness and Response Directorate, Department of Homeland Security.
''FTC;''—Federal Trade Commission
''JCS;''—Joint Chiefs of Staff
''JPAG;''—Joint Planning Advisory Group
''MARAD;''—Maritime Administration, DOT
''MSP;''—Maritime Security Program
''MSC;''—Military Sealift Command
''NCA;''—National Command Authorities
''NDRF;''—National Defense Reserve Fleet maintained by MARAD
''RRF;''—Ready Reserve Force component of the NDRF
''SecDef;''—Secretary of Defense
''SecTrans''—Secretary of Transportation
''SDDC''Military Surface Deployment and Distribution Command
''Commander''—Commander, United States Transportation Command
''USTRANSCOM''—United States Transportation Command (including its components, Air Mobility Command, Military Sealift Command and Military Surface Deployment and Distribution Command)
''VISA''—Voluntary Intermodal Sealift Agreement
''VSA''—Vessel Sharing Agreement

Definitions

For purposes of this agreement, the following definitions apply:

Administrator—Maritime Administrator.

Agreement—Agreement (proper noun) refers to the Voluntary Intermodal Sealift Agreement (VISA).

Attorney General—Attorney General of the United States.

Broker—A person who arranges for transportation of cargo for a fee.

Carrier Coordination Agreement (CCA)—An agreement between two or more Participants or between Participant and non-Participant carriers to coordinate their services in a Contingency, including agreements to: (i) Charter vessels or portions of the cargo-carrying capacity of vessels; (ii) share cargo handling equipment, chassis, containers and ancillary transportation equipment; (iii) share wharves, warehouse, marshaling yards and other marine terminal facilities; and (iv) coordinate the movement of vessels.

Chairman—FTC—Chairman of the Federal Trade Commission (FTC).

Charter—Any agreement or commitment by which the possession or services of a vessel are secured for a period of time, or for one or more voyages, whether or not a demise of the vessel.

Commercial—Transportation service provided for profit by privately owned (not government owned) vessels to a private or government shipper. The type of service may be either common carrier or contract carriage.

Contingency—Includes, but is not limited to a ''contingency operation'' as defined at 10 U.S.C. 101(a)(13), and a JCS-directed, NCA-approved action undertaken with military forces in response to: (i) Natural disasters; (ii) terrorists or subversive activities; or (iii) required military operations, whether or not there is a declaration of war or national emergency.

Contingency contracts—DoD contracts in which Participants implement advance commitments of capacity and services to be provided in the event of a Contingency.

Contract carrier—A for-hire carrier who does not hold out regular service to the general public, but instead contracts, for agreed compensation, with a particular shipper for the carriage of cargo in all or a particular part of a ship for a specified period of time or on a specified voyage or voyages.

Controlling interest—More than a 50-percent interest by stock ownership.

Director—FEMA—Director of Federal Emergency Management Agency (FEMA). The Director—FEMA is also Under Secretary for Emergency Preparedness and Response, Department of Homeland Security.

Effective U.S. Control (EUSC)—U.S. citizen-owned ships which are registered in certain open registry countries and which the United States can rely upon for defense in national security emergencies. The term has no legal or other formal significance. U.S. citizen-owned ships registered in Liberia, Panama, Honduras, the Bahamas and the Republic of the Marshall Islands are considered under effective U.S. control because these do not have any laws that prohibit U.S. requisition. EUSC registries are recognized by the Maritime Administration after consultation with DoD. (MARAD OPLAN 001A, 17 July 1990)

Enrollment Contract—The document, executed and signed by MSC, and the individual carrier enrolling that carrier into VISA Stage III.

Foreign flag vessel—A vessel registered or documented under the law of a country other than the United States of America.

Intermodal equipment—Containers (including specialized equipment), chassis, trailers, tractors, cranes and other materiel handling equipment, as well as other ancillary items.

Liner—Type of service offered on a definite, advertised schedule and giving relatively frequent sailings at regular intervals between specific ports or ranges.

Liner throughput capacity—The system/intermodal capacity available and committed, used or unused, depending on the system cycle time

necessary to move the designated capacity through to destination. Liner throughput capacity shall be calculated as: Static capacity (outbound from CONUS) X voyage frequency X.5.

Management services—Management expertise and experience, intermodal terminal management, information resources, and control and tracking systems.

Ocean common carrier—An entity holding itself out to the general public to provide transportation by water of passengers or cargo for compensation; which assumes responsibility for transportation from port or point of receipt to port or point of destination; and which operates and utilizes a vessel operating on the high seas for all or part of that transportation. (As defined in 46 App. U.S.C. 1702 and 801 regarding international and interstate commerce respectively).

Operator—An ocean common carrier or contract carrier that owns or controls or manages vessels by which ocean transportation is provided.

Organic sealift—For the purposes of this agreement ships considered to be under government control or long-term charter—Fast Sealift Ships, Ready Reserve Force and commercial ships under long-term charter to DoD.

Participant—A signatory party to VISA, and otherwise as defined within Section VI of this document.

Person—Includes individuals and corporations, partnerships, and associations existing under or authorized by the laws of the United States or any state, territory, district, or possession thereof, or of a foreign country.

Service contract—A contract between a shipper (or a shipper's association) and an ocean common carrier (or conference) in which the shipper makes a commitment to provide a certain minimum quantity of cargo or freight revenue over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule, as well as a defined service level (such as assured space, transit time, port rotation, or similar service features), as defined in the Shipping Act of 1984. The contract may also specify provisions in the event of nonperformance on the part of either party.

Standby period—The interval between the effective date of a Participant's acceptance into the Agreement and the activation of any stage, and the periods between deactivation of all stages and any later activation of any stage.

U.S.-flag Vessel—A vessel registered or documented under the laws of the United States of America.

Vessel Sharing Agreement (VSA) Capacity—Space chartered to a Participant for carriage of cargo, under its commercial contracts, service contracts or in common carriage, aboard vessels shared with another carrier or carriers pursuant to a commercial vessel sharing agreement under which the carriers may compete with each other for the carriage of cargo. In U.S. foreign trades the agreement is filed with the Federal Maritime Commission (FMC) in conformity with the Shipping Act of 1984 and implementing regulations.

Volunteers—Any vessel owner/operator who is an ocean carrier and who offers to make capacity, resources or systems available to support contingency requirements.

Preface

The Administrator, pursuant to the authority contained in Section 708 of the Defense Production Act of 1950, as amended (50 App. U.S.C. 2158)(Section 708)(DPA), in cooperation with DoD, has developed this Agreement [hereafter called the Voluntary Intermodal Sealift Agreement (VISA)] to provide DoD the commercial sealift and intermodal shipping services/systems necessary to meet national defense Contingency requirements.

USTRANSCOM procures commercial shipping capacity to meet requirements for ships and intermodal shipping services/systems through arrangements with common carriers, with contract carriers and by charter. DoD (through USTRANSCOM) and DOT (through MARAD) maintain and operate a fleet of ships owned by or under charter to the Federal Government to meet the logistic needs of the military services which cannot be met by existing commercial service. Government controlled ships are selectively activated for peacetime military tests and exercises, and to satisfy military operational requirements which cannot be met by commercial shipping in time of war, national emergency, or military Contingency. Foreign-flag shipping is used in accordance with applicable laws, regulations and policies.

The objective of VISA is to provide DoD a coordinated, seamless transition from peacetime to wartime for the acquisition of commercial sealift and intermodal capability to augment DoD's organic sealift capabilities. This Agreement establishes the terms, conditions and general procedures by which persons or parties may become VISA Participants. Through advance joint planning among USTRANSCOM, MARAD and the Participants, Participants may provide predetermined capacity in designated stages to support DoD Contingency requirements.

VISA is designed to create close working relationships among MARAD, USTRANSCOM and Participants through which Contingency needs and the needs of the civil economy can be met by cooperative action. During Contingencies, Participants are afforded maximum flexibility to adjust commercial operations by Carrier Coordination Agreements (CCA), in accordance with applicable law.

Participants will be afforded the first opportunity to meet DoD peacetime and Contingency sealift requirements within applicable law and regulations, to the extent that operational requirements are met. In the event VISA Participants are unable to fully meet Contingency requirements, the shipping capacity made available under VISA may be supplemented by ships/capacity from non-Participants in accordance with applicable law and by ships requisitioned under Section 902 of the Merchant Marine Act, 1936 (as amended) (46 App. U.S.C. 1242). In addition, containers and chassis made available under VISA may be supplemented by services and equipment acquired by USTRANSCOM or accessed by the Administrator through the provisions of 46 CFR Part 340.

TheSecDef has approved VISA as a sealift readiness program for the purpose of Section 909 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1248) and (46 U.S.C. 53107).

Voluntary Intermodal Sealift Agreement

I. Purpose

A. The Administrator has made a determination, in accordance with Section 708(c)(1) of the Defense Production Act (DPA) of 1950, that conditions exist which may pose a direct threat to the national defense of the United States or its preparedness programs and, under the provisions of Section 708, has certified to the Attorney General that a standby agreement for utilization of intermodal shipping services/systems is necessary for the national defense. The Attorney General, in consultation with the Chairman of the Federal Trade Commission, has issued a finding that dry cargo shipping capacity to meet national defense requirements cannot be provided by the industry through a voluntary agreement having less anticompetitive effects or without a voluntary agreement.

B. The purpose of VISA is to provide a responsive transition from peace to Contingency operations through pre-coordinated agreements for sealift capacity to support DoD Contingency requirements. VISA establishes procedures for the commitment of intermodal shipping services/systems to satisfy such requirements. VISA will change from standby to active status upon activation by appropriate authority of any of the Stages, as described in Section V.

C. It is intended that VISA promote and facilitate DoD's use of existing commercial transportation resources and integrated intermodal transportation systems, in a manner which minimizes disruption to commercial operations, whenever possible.

D. Participants' capacity which may be committed pursuant to this Agreement may include all intermodal shipping services/systems and all ship types, including container, partial container, container/bulk, container/roll-on/roll-off, roll-on/roll-off (of all varieties), breakbulk ships, tug and barge combinations, and barge carrier (LASH, SeaBee).

II. Authorities

A. MARAD

1. Sections 101 and 708 of the DPA, as amended (50 App. U.S.C. 2158); Executive Order 12919 as amended, 59 FR 29525, June 7, 1994; Executive Order 12148, as amended, 3 CFR 1979 Comp., p. 412, as amended; 44 CFR part 332; DOT Order 1900.9; 46 CFR part 340.

2. Section 501 of Executive Order 12919, as amended, delegated the authority of the President under Section 708 to SecTrans, among others. By DOT Order 1900.9, SecTrans delegated to the Administrator the authority under which VISA is sponsored.

B. USTRANSCOM

1. Section 113 and Chapter 6 of Title 10 of the United States Code.

2. DoD Directive 5158.4 designating the Commander to provide common user air, land, and sea transportation for DoD.

III. General

A. Concept

1. VISA provides for the staged, time-phased availability of Participants' shipping services/systems to meet NCA-directed DoD Contingency requirements in the most demanding defense oriented sealift emergencies and for less demanding defense oriented situations through prenegotiated Contingency contracts between the government and Participants (see Figure 1). Such arrangements will be jointly planned with MARAD, USTRANSCOM, and Participants in peacetime to allow effective, and efficient and best valued use of commercial sealift capacity, provide DoD assured Contingency access, and minimize commercial disruption, whenever possible.

a. Stages I and II provide for prenegotiated contracts between DoD and Participants to provide sealift capacity against all projected DoD Contingency requirements. These agreements will be executed in accordance with approved DoD contracting methodologies.

b. Stage III will provide for additional capacity to DoD when Stages I and II commitments or volunteered capacity are insufficient to meet Contingency requirements, and adequate shipping services from non-Participants are not available through established DoD contracting practices or U.S. Government treaty agreements.

2. Activation will be in accordance with procedures outlined in Section V of this Agreement.

3. Following is the prioritized order for utilization of commercial sealift capacity to meet DoD peacetime and Contingency requirements:

a. U.S.-flag vessel capacity operated by a Participant and U.S.-flag Vessel Sharing Agreement (VSA) capacity of a Participant.

b. U.S.-flag vessel capacity operated by a non-Participant.

c. Combination U.S./foreign flag vessel capacity operated by a Participant and combination U.S./foreign flag VSA capacity of a Participant.

d. Combination U.S./foreign flag vessel capacity operated by a non-Participant.

e. U.S. owned or operated foreign flag vessel capacity and VSA capacity of a Participant.

f. U.S. owned or operated foreign flag vessel capacity and VSA capacity of a non-Participant.

g. Foreign-owned or operated foreign flag vessel capacity of a non-Participant.

4. Under Section VI.F. of this Agreement, Participants may implement CCAs to fulfill their contractual commitments to meet VISA requirements.

B. Responsibilities

1. The SecDef, through USTRANSCOM, shall:

a. Define time-phased requirements for Contingency sealift capacity and resources required in Stages I, II and III to augment DoD sealift resources.

b. Keep MARAD and Participants apprised of Contingency sealift capacity required and resources committed to Stages I and II.

c. Obtain Contingency sealift capacity through the implementation of specific prenegotiated DoD Contingency contracts with Participants.

d. Notify the Administrator upon activation of any stage of VISA.

e. Co-chair (with MARAD) the Joint Planning Advisory Group (JPAG).

f. Establish procedures, in accordance with applicable law and regulation, providing Participants with necessary determinations for use of foreign flag vessels to replace an equivalent U.S.-flag capacity to transport a Participant's normal peacetime DoD cargo, when Participant's U.S.-flag assets are removed from regular service to meet VISA Contingency requirements.

g. Provide a reasonable time to permit an orderly return of a Participant's vessel(s) to its regular schedule and termination of its foreign flag capacity arrangements as determined through coordination between DoD and the Participants.

h. Review and endorse Participants' requests to MARAD for use of foreign flag replacement capacity for non-DoD government cargo, when U.S.-flag capacity is required to meet Contingency requirements.

2. The SecTrans, through MARAD, shall:

a. Review the amount of sealift resources committed in DoD contracts to Stages I and II and notify USTRANSCOM if a particular level of VISA commitment will have serious adverse impact on the commercial sealift industry's ability to provide essential services. MARAD's analysis shall be based on the consideration that all VISA Stage I and II capacity committed will be activated. This notification will occur on an as required basis upon the Commander's acceptance of VISA commitments from the Participants. If so advised by MARAD, USTRANSCOM will adjust the size of the stages or provide MARAD with justification for maintaining the size of those stages. USTRANSCOM and MARAD will coordinate to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse, national economic impact.

b. Coordinate with DOJ for the expedited approval of CCAs.

c. Upon request by the Commander and approval by SecDef to activate Stage III, allocate sealift capacity and intermodal assets to meet DoD Contingency requirements. DoD shall have priority consideration in any allocation situation.

d. Establish procedures, pursuant to section 53107(f) of the Maritime

Security Act of 2003 (MSA 2003) (Pub. L. 108–136, 117 Stat. 1392), for determinations regarding the equivalency and duration of the use of foreign flag vessels to replace U.S.-flag vessel capacity to transport the cargo of a Participant which has entered into an operating agreement under section 53103 of the MSA 2003 and whose U.S.-flag vessel capacity has been removed from regular service to meet VISA contingency requirements. Such foreign flag vessels shall be eligible to transport cargo that is subject to the Cargo Preference Act of 1904 (10 U.S.C. 2631), P.R. 17 (46 App. U.S.C. 1241–1), and Pub. L. 664 (46 App. U.S.C. 1241(a) and (b)). However, any procedures regarding the use of such foreign flag vessels to transport cargo subject to the Cargo Preference Act of 1904 must have the concurrence of USTRANSCOM before it becomes effective.

e. Co-chair (with USTRANSCOM) the JPAG.

f. Seek necessary Jones Act waivers as required. To the extent feasible, participants with Jones Act vessels or vessel capacity will use CCAs or other arrangements to protect their ability to maintain services for their commercial customers and to fulfill their commercial peacetime commitments with U.S.-flag vessels. In situations where the activation of this Agreement deprives a Participant of all or a portion of its Jones Act vessels or vessel capacity and, at the same time, creates a general shortage of Jones Act vessel(s) or vessel capacity on the market, the Administrator may request that the Secretary of Homeland Security grant a temporary waiver of the provisions of the Jones Act to permit a Participant to charter or otherwise utilize non-Jones Act vessel(s) or vessel capacity, with priority consideration recommended for U.S. crewed vessel(s) or vessel capacity. The vessel(s) or vessel capacity for which such waivers are requested will be approximately equal to the Jones Act vessel(s) or vessel capacity chartered or under contract to DoD, and any waiver that may be granted will be effective for the period that the Jones Act vessel(s) or vessel capacity is on charter or under contract to DoD plus a reasonable time for termination of the replacement charters as determined by the Administrator.

C. Termination of Charters, Leases and Other Contractual Arrangements

1. USTRANSCOM will notify the Administrator as soon as possible of the prospective termination of charters, leases, management service contracts or other contractual arrangements made by DoD under this Agreement.

2. In the event of general requisitioning of ships under 46 App. U.S.C. 1242, the Administrator shall consider commitments made with DoD under this Agreement.

D. Modification/Amendment of This Agreement

1. The Attorney General may modify this Agreement, in writing, after consultation with the Chairman-FTC, SecTrans, through his representative MARAD, and SecDef, through his representative the Commander. Although Participants may withdraw from this Agreement pursuant to Section VI.D, they remain subject to VISA as amended or modified until such withdrawal.

2. The Administrator, Commander and Participants may modify this Agreement at any time by mutual agreement, but only in writing with the approval of the Attorney General and the Chairman-FTC.

3. Participants may propose amendments to this Agreement at any time.

E. Administrative Expenses—Administrative and Out-of-pocket Expenses Incurred by a Participant Shall Be Borne Solely by the Participant

F. Record Keeping

1. MARAD has primary responsibility for maintaining carrier VISA application records in connection with this Agreement. Records will be maintained in accordance with MARAD Regulations. Once a carrier is selected as a VISA Participant, a copy of the VISA application form will be forwarded to USTRANSCOM.

2. In accordance with 44 CFR 332.2(c), MARAD is responsible for the making and record maintenance of a full and verbatim transcript of each JPAG meeting. MARAD shall send this transcript, and any voluntary agreement resulting from the meeting, to the Attorney General, the Chairman-FTC, the Director-FEMA, any other party or repository required by law and to Participants upon their request.

3. USTRANSCOM shall be the official custodian of records related to the contracts to be used under this Agreement, to include specific information on enrollment of a Participant's capacity in VISA.

4. In accordance with 44 CFR 332.3(d), a Participant shall maintain for five (5) years all minutes of meetings, transcripts, records, documents and other data, including any communications with other Participants or with any other member of the industry or their representatives, related to the administration, including planning related to and implementation of Stage activations of this Agreement. Each Participant agrees to make such records available to the Administrator, the Commander, the Attorney General, and the Chairman-FTC for inspection and copying at reasonable times and upon reasonable notice. Any record maintained by MARAD or USTRANSCOM pursuant to paragraphs 1, 2, or 3 of this subsection shall be available for public inspection and copying unless exempted on the grounds specified in 5 U.S.C 552(b) or identified as privileged and confidential information in accordance with Section 708(e).

G. MARAD Reporting Requirements—MARAD Shall Report to the Director-FEMA, as Required, on the Status and Use of This Agreement

IV. Joint Planning Advisory Group

A. The JPAG provides USTRANSCOM, MARAD and VISA Participants a planning forum to:

1. Analyze DoD Contingency sealift/intermodal service and resource requirements.

2. Identify commercial sealift capacity that may be used to meet DoD requirements, related to Contingencies and, as requested by USTRANSCOM, exercises and special movements.

3. Develop and recommend CONOPS to meet DoD-approved Contingency requirements and, as requested by USTRANSCOM, exercises and special movements.

B. The JPAG will be co-chaired by MARAD and USTRANSCOM, and will convene as jointly determined by the co-chairs.

C. The JPAG will consist of designated representatives from MARAD, USTRANSCOM, each Participant, and maritime labor. Other attendees may be invited at the discretion of the co-chairs as necessary to meet JPAG requirements. Representatives will provide technical advice and support to ensure maximum coordination, efficiency and effectiveness in the use of Participants' resources. All Participants will be invited to all open JPAG meetings. For selected JPAG meetings, attendance may be limited to designated Participants to meet specific operational requirements.

1. The co-chairs may establish working groups within JPAG. Participants may be assigned to working groups as necessary to develop specific CONOPS.

2. Each working group will be co-chaired by representatives designated by MARAD and USTRANSCOM.

D. The JPAG will not be used for contract negotiations and/or contract discussions between carriers and DoD; such negotiations and/or discussions will be in accordance with applicable DoD contracting policies and procedures.

E. The JPAG co-chairs shall:

1. Notify the Attorney General, the Chairman-FTC, Participants and the maritime labor representative of the time, place and nature of each JPAG meeting.

2. Provide for publication in the **Federal Register** of a notice of the time, place and nature of each JPAG meeting. If the meeting is open, a **Federal Register** notice will be published reasonably in advance of the meeting. If a meeting is closed, a **Federal Register** notice will be published within ten (10) days after the meeting and will include the reasons for closing the meeting.

3. Establish the agenda for each JPAG meeting and be responsible for adherence to the agenda.

4. Provide for a full and complete transcript or other record of each meeting and provide one copy each of transcript or other record to the Attorney General, the Chairman-FTC, and to Participants, upon request.

F. Security Measures—The co-chairs will develop and coordinate appropriate security measures so that Contingency planning information can be shared with Participants to enable them to plan their commitments.

V. Activation of VISA Contingency Provisions

A. General

VISA may be activated at the request of the Commander, with approval of SecDef, as needed to support Contingency operations. Activating voluntary commitments of capacity to support such operations will be in accordance with prenegotiated Contingency contracts between DoD and Participants.

B. Notification of Activation

1. The Commander will notify the Administrator of the activation of Stages I, II, and III.

2. The Administrator shall notify the Attorney General and the Chairman-FTC when it has been determined by DoD that activation of any Stage of VISA is necessary to meet DoD Contingency requirements.

C. Voluntary Capacity

1. Throughout the activation of any Stages of this Agreement, DoD may utilize voluntary commitment of sealift capacity or systems.

2. Requests for volunteer capacity will be extended simultaneously to both Participants and other carriers. First priority for utilization will be given to Participants who have signed Stage I and/or II contracts and are capable of meeting the operational requirements. Participants providing voluntary capacity may request USTRANSCOM to activate their prenegotiated Contingency contracts; to the maximum extent possible, USTRANSCOM, where appropriate, shall support such requests. Volunteered capacity will be credited against Participants' staged commitments, in the event such stages are subsequently activated.

3. In the event Participants are unable to fully meet Contingency requirements, or do not voluntarily offer to provide the required capacity, the shipping capacity made available under VISA may be supplemented by ships/capacity from non-Participants.

4. When voluntary capacity does not meet DoD Contingency requirements, DoD will activate the VISA stages as necessary.

D. Stage I

1. Stage I will be activated in whole or in part by the Commander, with approval of SecDef, when voluntary capacity commitments are insufficient to meet DoD Contingency requirements. The Commander will notify the Administrator upon activation.

2. USTRANSCOM will implement Stage I Contingency contracts as needed to meet operational requirements.

E. Stage II

1. Stage II will be activated, in whole or in part, when Contingency requirements exceed the capability of Stage I and/or voluntarily committed resources.

2. Stage II will be activated by the Commander, with approval of SecDef, following the same procedures discussed in paragraph D above.

F. Stage III

1. Stage III will be activated, in whole or in part, when Contingency requirements exceed the capability of Stages I and II, and other shipping services are not available. This stage involves DoD use of capacity and vessels operated by Participants which will be furnished to DoD when required in accordance with this Agreement. The capacity and vessels are allocated by MARAD on behalf of SecTrans to the Commander.

2. Stage III will be activated by the Commander upon approval by SecDef. Upon activation, SecDef will request SecTrans to allocate sealift capacity based on DoD requirements, in accordance with Title 1 of DPA, to meet the Contingency requirement. All Participants' capacity committed to VISA is subject to use during Stage III.

3. Upon allocation of sealift assets by SecTrans, through its designated representative MARAD, the Commander will negotiate and execute Contingency contracts with Participants, using pre-approved rate methodologies as established jointly by SecTrans and SecDef in fulfillment of section 53107 of the MSA 2003. Until execution of such contract, the Participant agrees that the assets remain subject to the provisions of Section 902 of the Merchant Marine Act of 1936, Title 46 App. U.S.C. 1242.

4. Simultaneously with activation of Stage III, the DoD Sealift Readiness Program (SRP) will be activated for those carriers still under obligation to that program.

G. Partial Activation

As used in this Section V, activation ''in part'' of any Stage under this Agreement shall mean one of the following:

1. Activation of only a portion of the committed capacity of some, but not all, of the Participants in any Stage that is activated; or

2. Activation of the entire committed capacity of some, but not all, of the Participants in any Stage that is activated; or

3. Activation of only a portion of the entire committed capacity of all of the Participants in any Stage that is activated.

VI. Terms and Conditions

A. Participation

1. Any U.S.-flag vessel operator organized under the laws of a State of the United States, or the District of Columbia, may become a ''Participant'' in this Agreement by submitting an executed copy of the form referenced in Section VII, and by entering into a VISA Enrollment Contract with DoD which establishes a legal obligation to perform and which specifies payment or payment methodology for all services rendered.

2. The term ''Participant'' includes the entity described in VI.A.1 above, and all United States subsidiaries and affiliates of the entity which own, operate, charter or lease ships and intermodal equipment in the regular course of their business and in which the entity holds a controlling interest.

3. Upon request of the entity executing the form referenced in Section VII, the term ''Participant'' may include the controlled non-domestic

subsidiaries and affiliates of such entity signing this Agreement, provided that the Administrator, in coordination with the Commander, grants specific approval for their inclusion.

4. Any entity receiving payments under the Maritime Security Program (MSP), pursuant to the MSA 2003 (Pub. L. 108–136, 117 Stat. 1392)), shall become a ''Participant'' with respect to all vessels enrolled in MSP at all times until the date the MSP operating agreement would have terminated according to its original terms. The MSP operator shall be enrolled in VISA as a Stage III Participant, at a minimum. Such participation will satisfy the requirement for an MSP participant to be enrolled in an emergency preparedness program approved by SecDef as provided in section 53107 of the MSA 2003.

5. A Participant shall be subject only to the provisions of this Agreement and not to the provisions of the SRP.

6. MARAD shall publish periodically in the **Federal Register** a list of Participants.

B. Agreement of Participant

1. Each Participant agrees to provide commercial sealift and/or intermodal shipping services/systems in accordance with DoD Contingency contracts. USTRANSCOM will review and approve each Participant's commitment to ensure it meets DoD Contingency requirements. A Participant's capacity commitment to Stages I and II will be one of the considerations in determining the level of DoD peacetime contracts awarded with the exception of Jones Act capacity (as discussed in paragraph 4 below).

2. DoD may also enter into Contingency contracts, not linked to peacetime contract commitments, with Participants, as required to meet Stage I and II requirements.

3. Commitment of Participants' resources to VISA is as follows:

a. *Stage III:* A carrier desiring to participate in DoD peacetime contracts/traffic must commit no less than 50% of its total U.S.-flag capacity into Stage III. Carriers receiving DOT payments under the MSP, or carriers subject to Section 909 of Merchant Marine Act of 1936, as amended, that are not enrolled in the SRP will have vessels receiving such assistance enrolled in Stage III. Participants' capacity under charter to DoD will be considered ''organic'' to DoD, and does not count towards the Participant's Contingency commitment during the period of the charter. Participants utilized under Stage III activation will be compensated based upon a DoD pre-approved rate methodology.

b. *Stages I and II:* DoD will annually develop and publish minimum commitment requirements for Stages I and II. Normally, the awarding of a long-term (i.e., one year or longer) DoD contract, exclusive of charters, will include the annual predesignated minimum commitment to Stages I and/or II. Participants desiring to bid on DoD peacetime contracts will be required to provide commitment levels to meet DoD-established Stage I and/or II minimums on an annual basis. Participants may gain additional consideration for peacetime contract cargo allocation awards by committing capacity to Stages I and II beyond the specified minimums. If the Participant is awarded a contract reflecting such a commitment, that commitment shall become the actual amount of a Participant's U.S.-flag capacity commitment to Stages I and II. A Participant's Stage III U.S.-flag capacity commitment shall represent its total minimum VISA commitment. That Participant's Stage I and II capacity commitments as well as any volunteer capacity contribution by Participant are portions of Participant's total VISA commitment. Participants activated during Stages I and II will be compensated in accordance with prenegotiated Contingency contracts.

4. Participants exclusively operating vessels engaged in domestic trades will be required to commit 50% of that capacity to Stage III. Such Participants will not be required to commit capacity to Stages I and II as a consideration of domestic peacetime traffic and/or contract award. However, such Participants may voluntarily agree to commit capacity to Stages I and/or II.

5. The Participant owning, operating, or controlling an activated ship or ship capacity will provide intermodal equipment and management services needed to utilize the ship and equipment at not less than the Participant's normal efficiency, in accordance with the prenegotiated Contingency contracts implementing this Agreement.

C. Effective Date and Duration of Participation

1. Participation in this Agreement is effective upon execution by MARAD of the submitted form referenced in Section VII, and approval by USTRANSCOM by execution of an Enrollment Contract, for Stage III, at a minimum.

2. VISA participation remains in effect until the Participant terminates the Agreement in accordance with paragraph D below, or termination of the Agreement in accordance with 44 CFR Sec. 332.4. Notwithstanding termination of VISA or participation in VISA, obligations pursuant to executed DoD peacetime contracts shall remain in effect for the term of such contracts and are subject to all terms and conditions thereof.

D. Participant Termination of VISA

1. Except as provided in paragraph 2 below, a Participant may terminate its participation in VISA upon written notice to the Administrator. Such termination shall become effective 30 days after written notice is received, unless obligations incurred under VISA by virtue of activation of any Contingency contract cannot be fulfilled prior to the termination date, in which case the Participant shall be required to complete the performance of such obligations. Voluntary termination by a carrier of its VISA participation shall not act to terminate or otherwise mitigate any separate contractual commitment entered into with DoD.

2. A Participant having an MSP operating agreement with SecTrans shall not withdraw from this Agreement at any time during the original term of the MSP operating agreement.

3. A Participant's withdrawal, or termination of this Agreement, will not deprive a Participant of an antitrust defense otherwise available to it in accordance with DPA Section 708 for the fulfillment of obligations incurred prior to withdrawal or termination.

4. A Participant otherwise subject to the DoD SRP that voluntarily withdraws from this Agreement will become subject again to the DoD SRP.

E. Rules and Regulations

Each Participant acknowledges and agrees to abide by all provisions of DPA Section 708, and regulations related thereto which are promulgated by the Secretary, the Attorney General, and the Chairman-FTC. Standards and procedures pertaining to voluntary agreements have been promulgated in 44 CFR part 332. 46 CFR part 340 establishes procedures for assigning the priority for use and the allocation of shipping services, containers and chassis. The JPAG will inform Participants of new and amended rules and regulations as they are issued in accordance with law and administrative due process. Although Participants may withdraw from VISA, they remain subject to all authorized rules and regulations while in Participant status.

F. Carrier Coordination Agreements (CCA)

1. When any Stage of VISA is activated or when DoD has requested volunteer capacity pursuant to Section V.B. of VISA, Participants may implement approved CCAs to meet the needs of DoD and to minimize the disruption of their services to the civil economy.

2. A CCA for which the parties seek the benefit of Section 708(j) of the DPA shall be identified as such and shall be submitted to the Administrator for approval and certification in accordance with Section 708(f)(1)(A) of the DPA. Upon approval and certification, the Administrator shall transmit the Agreement to the Attorney General for a finding in accordance with Section 708(f)(1)(B) of the DPA. Parties to approved CCAs may avail themselves of the antitrust defenses set forth in Section 708(j) of the DPA. Nothing in VISA precludes Participants from engaging in lawful conduct (including carrier coordination activities) that lies outside the scope of an approved Carrier Coordination Agreement; but antitrust defenses will not be available pursuant to Section 708(j) of the DPA for such conduct.

3. Participants may seek approval for CCAs at any time.

G. Enrollment of Capacity (Ships and Equipment)

1. A list identifying the ships/capacity and intermodal equipment committed by a Participant to each Stage of VISA will be prepared by the Participant and submitted to USTRANSCOM within seven days after a carrier has become a Participant. USTRANSCOM will maintain a record of all such commitments. Participants will notify USTRANSCOM of any changes not later than seven days prior to the change.

2. USTRANSCOM will provide a copy of each Participant's VISA commitment data and all changes to MARAD.

3. Information which a Participant identifies as privileged or business confidential/proprietary data shall be withheld from public disclosure in accordance with Section 708(h)(3) and Section 705(e) of the DPA, 5 U.S.C. 552(b), and 44 CFR Part 332.

4. Enrolled ships are required to comply with 46 CFR Part 307, Establishment of Mandatory Position Reporting System for Vessels.

H. War Risk Insurance

1. Where commercial war risk insurance is not available on reasonable terms and conditions, DOT shall provide non-premium government war risk insurance, subject to the provisions of Section 1205 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1285(a)).

2. Pursuant to 46 CFR 308.1(c), the Administrator (or DOT) will find each ship enrolled or utilized under this agreement eligible for U.S. Government war risk insurance.

I. Antitrust Defense

1. Under the provisions of DPA Section 708, each carrier shall have available as a defense to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out this Agreement, that such act was taken in the course of developing or carrying out this Agreement and that the Participant complied with the provisions of DPA Section 708 and any regulation thereunder, and acted in accordance with the terms of this Agreement.

2. This defense shall not be available to the Participant for any action occurring after termination of this Agreement. This defense shall not be available upon the modification of this Agreement with respect to any subsequent action that is beyond the scope of the modified text of this Agreement, except that no such modification shall be accomplished in a way that will deprive the Participant of antitrust defense for the fulfillment of obligations incurred.

3. This defense shall be available only if and to the extent that the Participant asserting it demonstrates that the action, which includes a discussion or agreement, was within the scope of this Agreement.

4. The person asserting the defense bears the burden of proof.

5. The defense shall not be available if the person against whom it is asserted shows that the action was taken for the purpose of violating the antitrust laws.

6. As appropriate, the Administrator, on behalf of SecTrans, and DoD will support agreements filed by Participants with the Federal Maritime Commission that are related to the standby or Contingency implementation of VISA.

J. Breach of Contract Defense

Under the provisions of DPA Section 708, in any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken by a Participant during an emergency (including action taken in imminent anticipation of an emergency) to carry out this Agreement. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.

K. Vessel Sharing Agreements (VSA)

1. VISA allows Participants the use of a VSA to utilize non-Participant U.S.-flag or foreign-owned and operated foreign flag vessel capacity as a substitute for VISA Contingency capability provided:

a. The foreign flag capacity is utilized in accordance with cargo preference laws and regulations.

b. The use of a VSA, either currently in use or a new proposal, as a substitution to meet DoD Contingency requirements is agreed upon by USTRANSCOM and MARAD.

c. The Participant carrier demonstrates adequate control over the offered VSA capacity during the period of utilization.

d. Service requirements are satisfied.

e. Participant is responsible to DoD for the carriage or services contracted for. Though VSA capacity may be utilized to fulfill a Contingency commitment, a Participant's U.S.-flag VSA capacity in another Participant's vessel shall not act in a manner to increase a Participant's capacity commitment to VISA.

2. Participants will apprise MARAD and USTRANSCOM in advance of any change in a VSA of which it is a member, if such changes reduce the availability of Participant capacity provided for in any approved and accepted Contingency Concept of Operations.

3. Participants will not act as a broker for DoD cargo unless requested by USTRANSCOM.

VII. Application and Agreement

The Administrator, in coordination with the Commander has adopted the following form (''Application to Participate in the Voluntary Intermodal Sealift Agreement'') on which intermodal ship operators may apply to become a Participant in this Agreement. The form incorporates, by reference, the terms of this Agreement.

United States of America, Department of Transportation, Maritime Administration

Application To Participate in the Voluntary Intermodal Sealift Agreement

The applicant identified below hereby applies to participate in the Maritime Administration's agreement entitled ''Voluntary Intermodal Sealift Agreement.'' The text of said Agreement is published in _____ **Federal Register** _____, _____, 20__. This

Agreement is authorized under Section 708 of the Defense Production Act of 1950, as amended (50 App. U.S.C. 2158). Regulations governing this Agreement appear at 44 CFR part 332 and are reflected at 49 CFR subtitle A.

The applicant, if selected, hereby acknowledges and agrees to the incorporation by reference into this Application and Agreement of the entire text of the Voluntary Intermodal Sealift Agreement published in _____ **Federal Register** _____, _____, 20__, as though said text were physically recited herein.

The Applicant, as a Participant, agrees to comply with the provisions of section 708 of the Defense Production Act of 1950, as amended, the regulations of 44 CFR part 332 and as reflected at 49 CFR subtitle A, and the terms of the Voluntary Intermodal Sealift Agreement. Further, the applicant, if selected as a Participant, hereby agrees to contractually commit to make specifically enrolled vessels or capacity, intermodal equipment and management of intermodal transportation systems available for use by the Department of Defense and to other Participants as discussed in this Agreement and the subsequent Department of Defense Voluntary Intermodal Sealift Agreement Enrollment Contract for the purpose of meeting national defense requirement.

Attest:

_____

(Corporate Secretary)

(CORPORATE SEAL)

Effective Date: _____

(Secretary)

(SEAL)

_____

(Applicant-Corporate Name)

_____

(Signature)

_____

(Position Title)

United States of America, Department of Transportation, Maritime Administration

By: _____

Maritime Administrator

Dated: September 19, 2005.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–18982 Filed 9–22–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34749]

Gulf & Ohio Railways Holding Co., Inc., H. Peter Claussen and Linda C. Claussen—Continuance in Control Exemption—Morehead & South Fork Railroad Co., Inc.

Gulf & Ohio Railways Holding Co., Inc. (G&O), and H. Peter Claussen and Linda C. Claussen (the Claussens) (collectively applicants), have filed a verified notice of exemption to continue in control of Morehead & South Fork Railroad Co., Inc. (MHSF), upon MHSF's becoming a Class III rail carrier.

The transaction was scheduled to be consummated on or after September 1, 2005.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34748, *Morehead & South Fork Railroad Co., Inc.—Acquisition and Operation Exemption—Carolina Rail Service, LLC.* In that proceeding, MHSF seeks to acquire from Carolina Rail Service, LLC (CRS), and operate CRS's exclusive freight easement over all railroad tracks at the Port of Morehead City, NC.[1] The tracks are owned by North Carolina State Ports Authority (SPA).[2] MHSF will operate over the rail property pursuant to an operating agreement with SPA.

G&O is a noncarrier that currently controls eight Class III rail carriers: Chattahoochee & Gulf Railroad Co., Inc. (CGR); Conecuh Valley Railroad Co., Inc. (CVR); Knoxville & Holston River Railroad Co., Inc. (KHR); Laurinburg & Southern Railroad Co., Inc. (LSR); Piedmont & Atlantic Railroad, Inc. (PAR); which operates under the trade name of Yadkin Valley Railroad, Rocky Mount & Western Railroad Co., Inc. (RMW); Three Notch Railroad Co., Inc. (TNR); and Wiregrass Central Railroad Company, Inc. (WCR). The Claussens, also noncarriers, control G&O and one Class III rail carrier, H&S Railroad, Inc. (H&S).

Applicants state that: (1) The rail lines operated by CGR, CVR KHR, LSR, PAR, RMW, TNR, WCR, and H&S do not connect with the rail line being acquired by MHSF; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail line being acquired by MHSF with applicants' rail lines; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of establishing MHSF and acquiring the line in STB Finance Docket No. 34748 is to insulate the other affiliated railroads from the financial, legal, and operational risks associated with the transactions contemplated in that proceeding.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34749, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Rose-Michele Nardi, Weiner Brodsky Sidman Kider PC, 1300 19th St., NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 16, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–19026 Filed 9–22–05; 8:45 am]

BILLING CODE 4915–01–P

[1] The transaction includes approximately 0.87 miles of rail line in Carteret County, NC, from approximately milepost 0.0 (in or near Morehead City) to approximately milepost 0.87 at Gallants Channel (in or near Morehead City), serving the intermediate stations of Marsh Island and Radio Island, as well as all spur tracks, yard tracks, side tracks, interchange tracks and industrial tracks located on the Port. The transaction also includes approximately 4 miles of intra-terminal track.

[2] The Board previously determined that SPA's acquisition of the subject line did not require Board action and it declined to exercise jurisdiction over the transaction. *See North Carolina State Ports Authority—Acquisition Exemption—North Carolina Ports Railway Commission,* STB Finance Docket No. 34258 (STB served Oct. 31, 2002).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub–No. 5) (2005–4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the fourth quarter 2005 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter 2005 RCAF (Unadjusted) is 1.185. The fourth quarter 2005 RCAF (Adjusted) is 0.572. The fourth quarter 2005 RCAF–5 is 0.548.

EFFECTIVE DATE: October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Mac Frampton, (202) 565–1541. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov*. To purchase a copy of the full decision, write to, e-mail or call the Board's contractor, ASAP Document Solutions; 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net*; phone (202) 306–4004. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: September 15, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 05–18943 Filed 9–22–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34741]

KWT Railway, Inc.—Lease and Operation Exemption—Murray-Calloway County Economic Development Corporation

KWT Railway, Inc. (KWT), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate approximately one mile of rail line. The line is being leased from Murray-Calloway County Economic Development Corporation (EDC) and runs between milepost 38.34 and approximately milepost 37.34 near Murray, in Calloway County, KY.[1]

KWT certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction was scheduled to be consummated on or after September 1, 2005.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34741, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Eric M. Hocky, Four Penn Center, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 14, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–18842 Filed 9–22–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34748]

Morehead & South Fork Railroad Co., Inc.—Acquisition and Operation Exemption—Carolina Rail Service, LLC

Morehead & South Fork Railroad Co., Inc. (MHSF), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Carolina Rail Service, LLC (CRS), and operate CRS's exclusive freight easement over all railroad tracks at the Port of Morehead City, NC.[1] The tracks are owned by North Carolina State Ports Authority (SPA).[2] MHSF will operate over the rail property pursuant to an operating agreement with SPA.

This transaction is related to STB Finance Docket No. 34749, *Gulf & Ohio Railways Holding Co., Inc., H. Peter Claussen and Linda C. Claussen—Continuance in Control Exemption—Morehead & South Fork Railroad Co., Inc.*, wherein Gulf & Ohio Railways Holding Co., Inc. (G&O), and H. Peter Claussen and Linda C. Claussen, all noncarriers, have concurrently filed a verified notice of exemption to continue in control of MHSF, upon its becoming a Class III rail carrier.[3]

MHSF certifies that the projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million. The transaction was scheduled to be consummated on or after September 1, 2005.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34748, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Rose-Michele Nardi, Weiner Brodsky Sidman Kider PC, 1300 19th St., NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

[1] This transaction is related to STB Finance Docket No. 34742, *Murray-Calloway County Economic Development Corporation—Acquisition Exemption—Hardin Southern Railroad, Inc.*, wherein EDC, a noncarrier, has filed a notice of exemption to acquire by purchase from Hardin Southern Railroad, Inc. an 8.34-mile rail line between milepost 38.34 near Murray and milepost 30, near Hardin, Ky. That exemption was effective on August 15, 2005.

[1] The transaction includes approximately 0.87 miles of rail line in Carteret County, NC, from approximately milepost 0.0 (in or near Morehead City) to approximately milepost 0.87 at Gallants Channel (in or near Morehead City), serving the intermediate stations of Marsh Island and Radio Island, as well as all spur tracks, yard tracks, side tracks, interchange tracks and industrial tracks located on the Port. The transaction also includes approximately 4 miles of intra-terminal track.

[2] The Board previously determined that SPA's acquisition of the subject line did not require Board action and it declined to exercise jurisdiction over the transaction. *See North Carolina State Ports Authority—Acquisition Exemption—North Carolina Ports Railway Commission*, STB Finance Docket No. 34258 (STB served Oct. 31, 2002).

[3] MHSF is wholly owned by G&O, which controls several Class III rail carriers; G&O, in turn, is wholly owned by H. Peter Claussen and Linda C. Claussen. The Claussens also own and control H&S Railroad, Inc., a Class III rail carrier.

Decided: September 16, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–19025 Filed 9–22–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34744]

R.J. Corman Railroad Company/ Pennsylvania Lines Inc.—Lease and Operation Within a Corporate Family Transaction Exemption—R.J. Corman Railroad Property, LLC

R.J. Corman Railroad Company/ Pennsylvania Lines Inc. (RJCP), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1180.2(d)(3). The exemption involves what RJCP describes as a corporate family transaction whereby R.J. Corman Railroad Property, LLC (Railroad Property) will lease to RJCP and RJCP will operate a line of railroad, known as the Loup Creek Branch, extending from milepost 0.0 at Thurmond, WV, to milepost 12.0 at Mt. Hope, WV, a distance of approximately 12 miles.[1]

The transaction was scheduled to be consummated on or shortly after September 1, 2005, the effective date of the exemption.

This transaction is within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). RJCP states that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside of the corporate family.

According to RJCP, the purpose of the transaction is to substitute one Corman affiliate for another as the leasee and operator of the line, which will address certain tax and financing considerations within the Corman family of companies, and will not result in any changes in rail service or operations.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34744, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Ronald A. Lane, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 19, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–19024 Filed 9–22–05; 8:45 am]

BILLING CODE 4915–01–P

[1] Prior to this transaction, the Loup Creek Branch was leased and operated by R.J. Corman Railroad Company/Bardstown Lines (RJCR). RJCP, Railroad Property and RJCR are commonly controlled by Richard J. Corman (Corman).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 16, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 24, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0619.

Type of Review: Revision.

Title: Credit for Increasing Research Activities.

Form: IRS form 6765.

Description: IRC section 38 allows for credit against income tax (Determined under IRC section 41) for an increase in research activities in a trade or business. Form 6765 is used by businesses and individuals engaged in a trade or business to figure and report credit. The data is used to verify that the credit claimed is correct.

Respondents: Business or other-for-profit.

Estimated Total Burden Hours: 455,233 hours.

OMB Number: 15451257.

Type of Review: Extension.

Title: Credit for Prior Year Minimum Tax—Corporation.

Form: IRS form 8827.

Description: Section 53(d), as revised, allows corporation a minimum tax credit based on the full amount of alternative minimum tax incurred in tax years beginning after 1989, or a carry forward for use in a future year.

Respondents: Business or other for profit.

Estimated Total Burden Hours: 25,000 hours.

OMB Number: 1545–1653.

Type of Review: Extension.

Title: Revenue Procedure 99–26 Secured Employee Benefits Settlement Initiative.

Description: This revenue procedure provides taxpayers options to settle cases in which they accelerated deductions for accrued employee benefits secured by a letter of credit, bond, or other similar financial instrument.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 2,000 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. 05–19043 Filed 9–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Offices; FY 2005 Performance/Bonus Review Board

AGENCY: Treasury Department.

ACTION: Notice of membership of the Departmental Offices Performance/ Bonus Review Board.

EFFECTIVE DATE: Membership is effective on the date of this notice.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental Offices Performance/Bonus Review Board. The purpose of this Board is to review and make recommendations concerning proposed Performance ratings, bonuses and other appropriate personnel actions for incumbents of SES positions. The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the Board members are attached.

FOR FURTHER INFORMATION CONTACT: Melissa Talavera, Supervisory Human Resources Specialist, Department of the Treasury, Office of Human Resources, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, Telephone: (202) 622–1044.

Joy Charles,

Director, Office of Human Resources.

FY 2005 PERFORMANCE/BONUS REVIEW BOARD

[For listing in **Federal Register**]

Name	Official title
Carfine, Kenneth E	DAS for Fiscal Operations and Policy.
Fuller, Reese H	ACD Program Director.
Gardner, Janice B	Assistant Secretary for Intelligence and Analysis.
Gerardi, Geraldine A	Director for Business Taxation.
Granat, Rochelle	Director, Office of DC Pensions.
Hammerle, Barbara C	Deputy Director, Office of Foreign Assets Control.
Hammond, Donald V	Fiscal Assistant Secretary.
Hobbs, Ira L	DAS & Chief Information Officer.
Lee, Nancy	DAS (Eurasia & Middle East).
Loevinger, David G	Director, Office of East Asian Nations.
Nunns, James R	Director for Individual Taxation.
Pointer, Patricia J	Acting Deputy Assistant Secretary for Human Resources/CHCO.
Relic, Rebecca L	DAS (Pub Lia, Str Pl, Bus Dev).
Schott, Charles G	DAS (Trade & Invest Policy).
Shaw, Mary Beth	Executive for DC Pensions Policy Development.
Sills, Gay H	Director, Office of International Investment.
Sobel, Mark D	DAS (Intl Banking & Sec Markets).
Solomon, Eric	DAS (Regulatory Affairs).
Werner, Robert W	Director, Office of Foreign Assets Control.

[FR Doc. 05–19042 Filed 9–22–05; 8:45 am]

BILLING CODE 4811–33–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Guidance on Cashing and Accepting for Deposit Federal Emergency Management Agency (FEMA) Disaster Assistance Checks and Government Benefit Checks Issued by the U.S. Treasury

AGENCY: Financial Management Service, Fiscal Service, Treasury.

SUMMARY: The Financial Management Service (FMS) is publishing additional guidance related to the cashing and accepting for deposit of U.S. Treasury checks for FEMA Disaster Assistance payments and Federal benefit payments (Treasury assistance and benefit checks), such as Social Security payments, to recipients who resided in areas affected by Hurricane Katrina. Depository institutions and retailers have experienced difficulty in confirming the identity of Hurricane Katrina evacuees seeking to cash Treasury checks. To encourage depository institutions and retailers to cash Treasury assistance and benefit checks for these individuals, FMS has established an interim policy to relieve depository institutions from liability in a reclamation action based on a forged or unauthorized indorsement. Under the interim policy, Treasury will relieve depository institutions from liability for cashing or subsequently accepting for deposit a Treasury assistance or benefit check bearing a forged or unauthorized indorsement, provided that the procedures set forth in the interim policy are followed.

DATES: The interim policy is effective for any Treasury assistance or benefit check cashed on or after September 3, 2005 and through November 14, 2005.

ADDRESSES: You can download this notice at the following World Wide Web address: *http://fms.treas.gov/katrina_fedregister_fema.html.*

FOR FURTHER INFORMATION CONTACT: Ronald Cymbor, Director, Financial Processing Division, at (202) 874–7913 or *ronald.cymbor@fms.treas.gov;* or Natalie H. Diana, Senior Counsel, at 202 874–6680 or *natalie.diana@fms.treas.gov.*

SUPPLEMENTARY INFORMATION: Depository institutions and other entities that cash or subsequently accept for deposit [1] U.S. Treasury checks are generally liable to Treasury for the amount of a check cashed over a forged or unauthorized indorsement. 31 CFR part 240. In order to ensure that Treasury checks have been properly indorsed by the payee, depository institutions and retailers typically request certain standard forms of identification from non-customers seeking to cash Treasury checks. However, in the extraordinary circumstances resulting from Hurricane Katrina, many individuals displaced from their homes and communities do not have standard forms of identification. Depository institutions and retailers have experienced difficulty in confirming the identity of Hurricane Katrina evacuees who are seeking to cash Treasury assistance and benefit checks.

Treasury recognizes that it is critical that Hurricane Katrina evacuees be able to cash their Treasury assistance and benefit checks expeditiously and wishes to encourage depository institutions to

[1] In this context, subsequently accepting a check for deposit pertains to the sequence of events by which a check is accepted for deposit by any number of depository institutions (after it is cashed by an individual) in order to present it to Treasury for payment. It does not refer to the depositing of a check by an individual.

assist evacuees in obtaining funds for their basic needs. Accordingly, Treasury has established an interim policy to relieve depository institutions from liability for cashing or subsequently accepting for deposit a Treasury assistance or benefit check containing a forged or unauthorized indorsement if (1) the identity of the individual cashing the check was verified by calling a telephone number provided by the issuing agency for this purpose or (2) other prudent efforts to identify the individual were made. Depository institutions and other entities should consider documenting their efforts to verify the identity of individuals.

Interim Policy for U.S. Treasury Checks for FEMA Disaster Assistance Payments and Federal Benefit Payments to Recipients Who Resided in Areas Affected by Hurricane Katrina

Under Treasury's interim policy, a depository institution will be relieved from liability in a check reclamation action based on a forged or unauthorized indorsement of a Treasury assistance or benefit check if the identity of the individual is verified at the time the check is cashed either by calling a telephone number provided by the issuing agency for this purpose or by other prudent efforts. Prudent efforts depend upon the circumstances of each situation, but might include one or more of the following: Seeking identification documents such as a driver's license, military identification or passport; inspecting other documents such as utility bills, leases, or revolving charge bills; or comparing information provided by the individual to information obtained through electronic searches of consumer reporting agencies, public databases or other sources.

This interim policy is effective for any Treasury assistance or benefit check cashed on or after September 3, 2005 and through November 14, 2005.

Dated: September 21, 2005.

Richard L. Gregg,

Commissioner.

[FR Doc. 05–19130 Filed 9–22–05; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8902

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8902, Alternative Tax on Qualifying Shipping Activities.

DATES: Written comments should be received on or before November 22, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Alternative Tax on Qualifying Shipping Activities.

OMB Number: 1545–XXXX.

Form Number: 8902.

Abstract: Form 8902 is used to elect the alternative tax on notional income from qualifying shipping activities and to figure the alternative tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Emergency.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 17 hours, 19 minutes.

Estimated Total Annual Burden Hours: 3,462.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 19, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–18993 Filed 9–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8820

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8820, Orphan Drug Credit.

DATES: Written comments should be received on or before November 22, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512,

1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *(Larnice.Mack@irs.gov).*

SUPPLEMENTARY INFORMATION:

Title: Orphan Drug Credit.

OMB Number: 1545–1505.

Form Number: 8820.

Abstract: Filers use this form to elect to claim the orphan drug credit, which is 50% of the qualified clinical testing expenses paid or incurred with respect to low or unprofitable drugs for rare diseases and conditions, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 7 hours, 37 minutes.

Estimated Total Annual Burden Hours: 762.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 14, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–18994 Filed 9–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 673

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 673, Statement for Claiming Benefits Provided by Section 911 of the Internal Revenue Code.

DATES: Written comments should be received on or before November 22, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *(Larnice.Mack@irs.gov).*

SUPPLEMENTARY INFORMATION:

Title: Statement for Claiming Benefits Provided by Section 911 of the Internal Revenue Code.

OMB Number: 1545–0666.

Form Number: 673.

Abstract: Under section 911 of the Internal Revenue Code certain income earned abroad is excludable from gross income. Form 673 is completed by a citizen of the United States and is furnished to his or her employer in order to exclude from income tax withholding all or part of the wages paid the citizen for services performed outside the United States.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 25,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 19, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–18995 Filed 9–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4810

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4810, Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).

DATES: Written comments should be received on or before November 22, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).

OMB Number: 1545–0430.

Form Number: 4810.

Abstract: Fiduciaries representing a dissolving corporation or a decedent's estate may request a prompt assessment of tax under Internal Revenue Code section 6501(d). Form 4810 is used to help locate the return and expedite the processing of the taxpayer's request.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, farms, and the Federal government.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 15, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–18996 Filed 9–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–147–87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–147–87 (TD 8376), Qualified Separate Lines of Business (§§ 1.414(r)–3, 1.414(r)–4, and 1.414(r)–6).

DATES: Written comments should be received on or before November 22, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION

Title: Qualified Separate Lines of Business.

OMB Number: 1545–1221.

Regulation Project Number: EE–147–87.

Abstract: Section 414(r) of the Internal Revenue Code requires that employers who wish to test their qualified retirement plans on a separate line of business basis, rather than on a controlled group basis, provide notice to the IRS that the employer treats itself as operating qualified separate lines of business. Additionally, an employer may request an IRS determination that such lines satisfy administrative scrutiny. This regulation elaborates on the notice requirement and the determination process.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 253.

Estimated Time per Respondent: 3 hours, 27 minutes.

Estimated Total Annual Burden Hours: 899.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 13, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–18997 Filed 9–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209828–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209828 (TD 8758), Nuclear Decommissioning Funds; Revised Schedules of Ruling Amounts (§ 1.468A–3).

DATES: Written comments should be received on or before November 22, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Nuclear Decommissioning Funds; Revised Schedules of Ruling Amounts.

OMB Number: 1545–1511.

Regulation Project Number: REG–209828–96.

Abstract: This regulation relates to requests for revised schedules of ruling amounts for nuclear decommisioning reserve funds under section 468A(d) of the Internal Revenue Code. The regulation eases the burden on affected taxpayers by permitting electing taxpayers with qualifying interests in nuclear power plants to adjust their ruling amounts under a formula or method rather than by filing a request for a revised schedule of ruling amounts.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 13, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–18998 Filed 9–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 56

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 56, Notice Concerning Fiduciary Relationship.

DATES: Written comments should be received on or before November 22, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Notice Concerning Fiduciary Relationship.

OMB Number: 1545–0013.

Form Number: 56.

Abstract: Form 56 is used to inform the IRS that a person is acting for another person in a fiduciary capacity so that the IRS may mail tax notices to the fiduciary concerning the person for whom he/she is acting. The data is used to ensure that the fiduciary relationship is established or terminated and to mail

or discontinue mailing designated tax notices to the fiduciary.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 25,000.

Estimated Time per Respondent: 11 hr. 43 min.

Estimated Total Annual Burden Hours: 292,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 15, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–18999 Filed 9–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee September 2005 Public Meeting; Update

SUMMARY: This document updates a notice appearing in the **Federal Register** that announced a public meeting of the Citizens Coinage Advisory Committee (CCAC) scheduled for September 27, 2005, at the United States Mint in Washington, DC. This action is necessary to update the subject of the meeting as stated in the September 2, 2005 notice (70 FR 52484).

Date: September 27, 2005.

Time: 1 p.m. to 4 p.m.

Location: United States Mint, 801 9th Street, NW., Washington, DC 20220

Subject: Review designs for the Dr. Martin Luther King and Coretta Scott King Congressional Gold Medal and review CCAC Annual Report for 2005.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

FOR FURTHER INFORMATION CONTACT: Madelyn Simmons Marchessault, United States Mint Liaison to the CCAC; 801 9th Street, NW., Washington, DC 20220; or call 202–354–7200.

Dated: September 14, 2005.

David A. Lebryk,

Acting Director, United States Mint.

[FR Doc. 05–18992 Filed 9–22–05; 8:45 am]

BILLING CODE 4810–37–P

Federal Register

Friday,
September 23, 2005

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–38]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. V*eterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Ms. Audrey C. Ormerod, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310; (703) 601–2520; ENERGY: Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–4548; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; NAVY: Mr. Warren Meekins, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: September 15, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report 9/23/05

Suitable/Available Properties

Buildings (by State)

California

Trailer 51243
Joshua Tree Natl Park
74485 Natl Park Drive
San Bernardino Co: CA 92277–Landholding Agency: Interior
Property Number: 61200520004
Status: Unutilized
Comment: 600 sq. ft., needs repair, off-site use only

Trailer 510184
Joshua Tree Natl Park
74485 Natl Park Drive
San Bernardino Co: CA 92277–
Landholding Agency: Interior
Property Number: 61200520005
Status: Unutilized
Comment: 576 sq. ft., needs repair, off-site use only

Georgia

Bldg. 01199
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200530072
Status: Excess
Comment: 224 sq. ft., most recent use—storage, off-site use only

Bldg. 01202
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200530073
Status: Excess
Comment: 1014 sq. ft., most recent use—storage, off-site use only

Bldg. 01203
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200530074
Status: Excess
Comment: 18,822 sq. ft., most recent use—vehicle maintenance, off-site use only

Bldg. 01226
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200530075
Status: Excess
Comment: 1092 sq. ft., most recent use—plant, off-site use only

Bldg. 01296
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200530076
Status: Excess
Comment: 269 sq. ft., most recent use—storage, off-site use only

Bldg. 01283
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200530077
Status: Excess
Comment: 1350 sq. ft., most recent use—storage, off-site use only

Bldg. 08585
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200530078
Status: Excess
Comment: 165 sq. ft., most recent use—plant, off-site use only

Hawaii

Bldg. S180
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640039
Status: Unutilized
Comment: 3412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. S181
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640040
Status: Unutilized
Comment: 4258 sq. ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. 219
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640041
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Bldg. 220
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640042
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Idaho

Bldg. CF603
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200020004
Status: Excess
Comment: 15,005 sq. ft. cinder block, presence of asbestos/lead paint, major rehab, off-site use only

Bldg. 79
Section 9
Portion of Tract C
Paul Co: Jeromo ID 83347–
Landholding Agency: Interior
Property Number: 61200520012
Status: Unutilized
Comment: 832 sq. ft., presence of asbestos/lead paint, most recent use—residence, off-site use only

Maryland

Bldg. 00673
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200530079
Status: Unutilized
Comment: 3600 sq. ft., most recent use—ordance, off-site use only

Bldg. 00688
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200530080
Status: Unutilized
Comment: 24,192 sq. ft., most recent use—ammo, off-site use only

Bldg. 0739A
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200530081
Status: Unutilized
Comment: 1474 sq. ft., most recent use—ordance, off-site use only

Bldg. E1511
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200530082
Status: Unutilized
Comment: 201 sq. ft., most recent use—access control, off-site use only

Bldg. 02832
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200530083
Status: Unutilized
Comment: 36 sq. ft., most recent use—access control, off-site use only

Bldg. 05655
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200530084
Status: Unutilized
Comment: 1610 sq. ft., most recent use—access control, off-site use only

Massachusetts

Bldgs. 3263–3266
Westover RAFB
Outer Road
Chicopee Co: MA 01022–
Landholding Agency: Navy
Property Number: 77200520002
Status: Excess
Comment: 3952 sq. ft., military family housing, needs rehab, off-site use only

Bldgs. 3200 thru 3214
Westover RAFB
Cowan Ave/Goodwin St
Chicopee Co: MA
Landholding Agency: Navy
Property Number: 77200520003
Status: Excess
Comment: various sq. ft., needs rehab, most recent use—admin., off-site use only

New Hampshire

Bldg. 288
Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200510018
Status: Excess
Comment: 3600 sq. ft., presence of asbestos/lead paint, most recent use—ship filters shop, off-site use only

Bldg. 344
Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200510019
Status: Excess
Comment: 1406 sq. ft., presence of asbestos/lead paint, most recent use—riggers shop, off-site use only

Bldg. 346
Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200510020
Status: Excess
Comment: 545 sq. ft., presence of asbestos/lead paint, most recent use—locker bldg., off-site use only

Bldg. M–17
Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200510021
Status: Excess
Comment: 760 sq. ft., presence of asbestos/lead paint, most recent use—garage, off-site use only

New York

Building 1
Scotia Navy Depot
Scotia Co: Schenectady NY 12302–9460
Landholding Agency: Navy
Property Number: 77200440021
Status: Excess
Comment: 39,554 sq. ft., needs extensive repairs, presence of asbestos/lead paint, most recent use—office

Tennessee

Tract 01–171
National Military Park
Shiloh Co: Hardin TN 38376–
Landholding Agency: Interior
Property Number: 61200520010
Status: Excess
Comment: 1344 sq. ft. mobile home, off-site use only

Tract 01–174
National Military Park
Shiloh Co: Hardin TN 38376–
Landholding Agency: Interior
Property Number: 61200520011
Status: Excess
Comment: 1179 sq. ft., presence of lead paint most recent use—residential, off-site use only

Texas

Water Tower
Lake Meredith Natl Rec Area
Fritch Co: Hutchinson TX 79036–
Landholding Agency: Interior
Property Number: 61200510002
Status: Unutilized
Comment: off-site use only

Washington

Bldg. 88
1917 Marsh Road
Yakima WA 98901–
Landholding Agency: Interior
Property Number: 61200340007
Status: Unutilized
Comment: 1032 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

West Virginia

Cyrus House/Garage
New River Gorge
Tract 102–33
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520014
Status: Excess
Comment: 2964 sq. ft. & 280 sq. ft., most recent use—residential, off-site use only

Cochran Cabin #1
New River Gorge
Tract 104–04
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520015
Status: Excess
Comment: 624 sq. ft., off-site use only

Cochran Cabin #2
New River Gorge
Tract 104–04
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520016
Status: Excess
Comment: 624 sq. ft., off-site use only

Rhodes Well House
New River Gorge
Tract 169–21
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520017
Status: Excess
Comment: 80 sq. ft., off-site use only

Rhodes Barn/Storage
New River Gorge
Tract 169–21
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520018
Status: Excess
Comment: 70 sq. ft., off-site use only

Rhodes House
New River Gorge
Tract 169–21
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520019
Status: Excess
Comment: 900 sq. ft., most recent use—residential, off-site use only

Land (by State)

Idaho

19.5 acres
Teton Dam Site
Newdale Co: Madison ID 83436–
Landholding Agency: Interior
Property Number: 61200430047
Status: Excess
Comment: narrow strip of land, center of irrigated agriculture fields

19.47 acres
Tract C/Section 11
Paul Co: Minidoka ID 83347–
Landholding Agency: Interior
Property Number: 61200430048
Status: Excess
Comment: agriculture/sagebrush

20.07 acres
Section 15; Lots 9–10
Paul Co: Minidoka ID 83347–
Landholding Agency: Interior
Property Number: 61200430049
Status: Excess
Comment: agriculture production/irrigation sprinkler system

Suitable/Unavailable Properties

Buildings (by State)

Hawaii

Bldg. 1145
Naval Air Station
Barbers Point Co: Honolulu HI 96707–
Landholding Agency: Navy
Property Number: 77200510026
Status: Unutilized
Comment: 11,440 sq. ft., presence of asbestos/lead paint, poor condition, most recent use—youth center

Idaho

Bldg. CFA–613
Central Facilities Area
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199630001
Status: Unutilized
Comment: 1219 sq. ft., most recent use—sleeping quarters, presence of asbestos, off-site use only

Missouri

Bldg. 00467
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–
Landholding Agency: Army
Property Number: 21200530085
Status: Unutilized
Comment: 2790 sq. ft., most recent use—fast food facility, off-site use only

Oklahoma

282 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21200530086
Status: Unutilized
Comment: 1127 sq. ft. to 2629 sq. ft., possible asbestos/lead paint, most recent use—housing, off-site use only

43 Garages
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21200530087
Status: Unutilized
Comment: 703 sq. ft. to 2053 sq. ft., off-site use only

Wisconsin

Bldg. 01352
Fort McCoy
Monroe Co: WI 54656–
Landholding Agency: Army
Property Number: 21200530088
Status: Excess
Comment: 6362 sq. ft., most recent use—vehicle maintenance, off-site use only

Bldg. 01355
Fort McCoy
Monroe Co: WI 54656–
Landholding Agency: Army
Property Number: 21200530089
Status: Excess
Comment: 5282 sq. ft., most recent use—vehicle maintenance, off-site use only

Bldg. 01363
Fort McCoy
Monroe Co: WI 54656–
Landholding Agency: Army
Property Number: 21200530090
Status: Excess
Comment: 3200 sq. ft., most recent use—storage, off-site use only

Bldgs. 01459–01462
Fort McCoy
Monroe Co: WI 54656–
Landholding Agency: Army
Property Number: 21200530091
Status: Excess
Comment: 3108 sq. ft., most recent use—vehicle maintenance, off-site use only

Bldgs. 01464–01466
Fort McCoy
Monroe Co: WI 54656–
Landholding Agency: Army
Property Number: 21200530092
Status: Excess
Comment: 1350 sq. ft., most recent use—storage, off-site use only

Unsuitable Properties

Buildings (by State)

California

Bldgs. M03, MO14, MO17
Sandia National Lab
Livermore Co: Alameda CA 94550–
Landholding Agency: Energy
Property Number: 41200220001
Status: Excess
Reason: Extensive deterioration

Bldgs. 9163, 962, 9621
Sandia National Lab
Livermore Co: Alameda CA 94551–
Landholding Agency: Energy
Property Number: 41200420001
Status: Unutilized
Reason: Secured Area

Bldg. 29D
Berkeley National Lab
Berkeley Co: Alameda CA 94720–
Landholding Agency: Energy
Property Number: 41200430070
Status: Excess
Reason: Extensive deterioration

Mobile Home/T00706
Yosemite Natl Park 5001 Trailer Court
El Portal Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 61200340009
Status: Unutilized
Reason: Extensive deterioration

133/215 Conlon
Golden Gate Natl Rec Area
Mill Valley Co: Marin CA 94941–
Landholding Agency: Interior
Property Number: 61200340011
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3410
Yosemite National Park
Vogelsang
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200420008
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 06240 thru 06245
Yosemite National Park
Tamarack Flat
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200420009
Status: Unutilized
Reason: Extensive deterioration

Bldg./Lodge
Yosemite National Park
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200420011
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 412–414
Yosemite National Park
Lower Pines
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200430001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 416
Yosemite National Park
Lower Pines
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200430002
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 421–424
Yosemite National Park
Upper River
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200430003
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 428–432
Yosemite National Park
Lower River
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200430004
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 451, 452
Yosemite National Park
Group Campgrounds
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200430005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 438
Golden Gate Natl Rec
Camino Del Canyon
Mill Valley Co: Marin CA 94941–
Landholding Agency: Interior
Property Number: 61200430012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 490
Golden Gate Natl Rec
Camino Del Canyon
Mill Valley Co: Marin CA 94941–
Landholding Agency: Interior
Property Number: 61200430013
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 666A, 666B
Golden Gate Natl Rec
Camino Del Canyon
Mill Valley Co: Marin CA 94941–
Landholding Agency: Interior
Property Number: 61200430014
Status: Unutilized
Reason: Extensive deterioration

Bldg. 690
Golden Gate Natl Rec
Camino Del Canyon
Mill Valley Co: Marin CA 94941–
Landholding Agency: Interior
Property Number: 61200430015
Status: Unutilized
Reason: Extensive deterioration

Tract 113–65
Santa Monica Mountains
National Recreation
Malibu Co: Los Angeles CA 90265–
Landholding Agency: Interior
Property Number: 61200430018
Status: Unutilized
Reason: Extensive deterioration

Bldg. YLS–001
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430026
Status: Unutilized
Reason: Extensive deterioration

Bldg. YLS–004
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430027
Status: Unutilized
Reason: Extensive deterioration

Bldg. YLE069
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430028
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1000 A & B
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430029
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1000C, 1000D
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430030
Status: Unutilized
Reason: Extensive deterioration

Post Office
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430031
Status: Unutilized
Reason: Extensive deterioration

Boiler Room
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430032
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4177
Yosemite National Park
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4153
Yosemite National Park
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430037
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4205
Yosemite National Park
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430038
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4730
Yosemite National Park
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430039
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 4176, 4183
Yosemite National Park
Wawona Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200430040
Status: Unutilized
Reason: Extensive deterioration

Randa House
National Recreation Area
Agoura Hills Co: Los Angeles CA 91301–
Landholding Agency: Interior
Property Number: 61200510003
Status: Unutilized
Reason: Extensive deterioration

Quarter #90
Sequoia National Park
Three Rivers Co: Tulare CA 93271–
Landholding Agency: Interior
Property Number: 61200510004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 756
Wastewater Treatment Plant
El Portal Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 61200520001
Status: Unutilized
Reason: Extensive deterioration

FMSS Asset 6727
Sunrise Backpackers Campground
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200520002
Status: Unutilized
Reason: not accessible by road

FMSS Asset 6728
Glen Aulin Backpackers Campground
Tuolumne Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200520003
Status: Unutilized
Reason: not accessible by road

Bldg. 652
Naval Air Station
North Island Co: CA
Landholding Agency: Navy
Property Number: 77200430001
Status: Excess
Reason: Extensive deterioration

Bldg. 2486
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200430002
Status: Excess
Reason: Extensive deterioration

Bldg. 13140
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200430003
Status: Excess
Reason: Extensive deterioration

Bldgs. 22141, 22142
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200430004
Status: Excess
Reason: Extensive deterioration

Bldg. 25170
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200430005
Status: Excess
Reason: Extensive deterioration

Bldgs. 31340, 31341
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200430006
Status: Excess
Reason: Extensive deterioration

Bldg. 52652
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200430007
Status: Excess
Reason: Extensive deterioration

Bldg. 2
Naval Base
Point Loma Co: CA
Landholding Agency: Navy
Property Number: 77200430054
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

4 Bldgs.
Naval Base
Port Hueneme Co: Ventura CA 93043–
Location: PH–1413, PH–1254, PH–1323, PH–1162
Landholding Agency: Navy
Property Number: 77200430055
Status: Unutilized
Reason: Secured Area

Bldg. 03890
Naval Air Weapons Station
China Lake Co: CA 93555–
Landholding Agency: Navy
Property Number: 77200430056
Status: Excess
Reason: Extensive deterioration

Bldg. 440
Naval Base Point Loma
Fleet Warfare Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200440002
Status: Excess
Reason: Extensive deterioration

Bldgs. 20, 25
Naval Base Point Loma
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200440016
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2533
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200520005
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 13111
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200520006
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 53325, 53326
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200520007
Status: Excess
Reasons: Secured Area; Extensive deterioration

5 Bldgs.
Marine Corps Base
53421, 53424 thru 53427
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200520008
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 61311, 61313, 61314
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200520009
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 61320–61324, 61326
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200520010
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 62711 thru 62717
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200520011
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 4 and 15
Naval Submarine Base
Point Loma Co: CA
Landholding Agency: Navy
Property Number: 77200520014
Status: Unutilized
Reason: Extensive deterioration

Bldg. PM4–3
Naval Base
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77200530033
Status: Unutilized
Reason: Extensive deterioration

Colorado

Bldg. 34
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199540001
Status: Underutilized
Reasons: Contamination; Secured Area

Bldg. 35
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199540002
Status: Underutilized
Reasons: Contamination; Secured Area

Bldg. 36
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199540003
Status: Underutilized
Reasons: Contamination; Secured Area

Bldg. 727
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 717
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930022
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 770
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930023
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 771

Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930024
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 771B
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930025
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 771C
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930026
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 774
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930029
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 776
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 777
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 778
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Structure 771 TUN
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 124, 129
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 371, 374, 374A
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 561, 562
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220007
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 701, 705–708
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220011
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 714, 715, 718
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220012
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 731, 732
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220013
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 881, 881F, 881H
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 883–885, 887
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220019
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 891
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 120, 120B
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340004
Status: Excess
Reason: Secured Area

Bldgs. 121, 122, 122S
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340005
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 223
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340008
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 331, 331A
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340010
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 444, 445
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340013
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 447, 448
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340014
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 460
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340016
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 920, 920B
Rocky Flats Env Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200340019
Status: Excess
Reason: Secured Area

Connecticut

Bldgs. 25 and 26
Prospect Hill Road
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 41199440003
Status: Excess
Reason: Secured Area

9 Bldgs.
Knolls Atomic Power Lab, Windsor Site
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 41199540004
Status: Excess
Reason: Secured Area

Bldg. 8, Windsor Site
Knolls Atomic Power Lab
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 41199830006
Status: Unutilized
Reason: Extensive deterioration

Bldg. CT380
Naval Submarine Base
Groton Co: New London CT 06340–

Landholding Agency: Navy
Property Number: 77200510016
Status: Unutilized
Reason: Extensive deterioration

Florida

Bldgs. 1559, 1963
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200430008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. U–150
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200520044
Status: Excess
Reasons: Secured Area; Extensive deterioration

Georgia

Quarters #7
Chattahoochee River Natl Rec Area
Atlanta Co: Cobb GA 30350–
Landholding Agency: Interior
Property Number: 61200510001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5101
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77200520004
Status: Unutilized
Reasons: Floodway; Secured Area; Extensive deterioration

Guam

Bldg. 262
Naval Forces
Marianas Co: Waterfront GU
Landholding Agency: Navy
Property Number: 77200410027
Status: Excess
Reason: Extensive deterioration

Bldg. 369A
Naval Forces
Marianas Co: Waterfront GU
Landholding Agency: Navy
Property Number: 77200410028
Status: Excess
Reason: Extensive deterioration

Bldg. 739
Naval Forces
Marianas Co: Waterfront GU
Landholding Agency: Navy
Property Number: 77200410029
Status: Excess
Reason: Extensive deterioration

Bldg. 741
Naval Forces
Marianas Co: Waterfront GU
Landholding Agency: Navy
Property Number: 77200410030
Status: Excess
Reason: Extensive deterioration

Bldg. 865
Naval Forces
Marianas Co: Waterfront GU
Landholding Agency: Navy
Property Number: 77200410031
Status: Excess
Reason: Extensive deterioration

Bldg. 3011
Naval Forces
Marianas Co: Waterfront GU
Landholding Agency: Navy
Property Number: 77200410032
Status: Excess
Reason: Extensive deterioration

Bldg. 464
Naval Forces
Marianas Co: Waterfront GU
Landholding Agency: Navy
Property Number: 77200410041
Status: Excess
Reason: Extensive deterioration

Bldgs. 122, 171, 198
U.S. Naval Forces
Dededo Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200510001
Status: Unutilized
Reason: Secured Area

Bldg. 224B
U.S. Naval Forces
Dededo Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200510002
Status: Unutilized
Reason: Secured Area

Bldgs. 286, 295
U.S. Naval Forces
Dededo Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200510003
Status: Unutilized
Reason: Secured Area

Bldgs. 304, 322, 387
U.S. Naval Forces
Dededo Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200510004
Status: Unutilized
Reason: Secured Area

Bldgs. 451, 454
U.S. Naval Forces
Dededo Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200510005
Status: Unutilized
Reason: Secured Area

Bldg. 467
U.S. Naval Forces
Dededo Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200510006
Status: Unutilized
Reason: Secured Area

Bldgs. 488, 489
U.S. Naval Forces
Dededo Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200510007
Status: Unutilized
Reason: Secured Area

Bldg. FH5
Naval Forces
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520022
Status: Unutilized
Reason: Extensive deterioration

Bldg. B–32
Naval Forces
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520023
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 76, 77, 79
Naval Forces
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520024
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Naval Forces 261, 262, 263, 269
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520025
Status: Unutilized
Reason: Extensive deterioration

Bldg. 404NM
Naval Forces
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520026
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 635 thru 640
Naval Forces
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520027
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1964
Naval Forces
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520028
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 2013, 2014
Naval Forces
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520029
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 3150, 3268
Naval Forces
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520030
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 5409, 5412, 5413
Naval Forces
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520031
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5500
Naval Forces
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520032
Status: Unutilized
Reason: Extensive deterioration

73 Bldgs.
Naval Computer & Telecommunications Station
Marianas Co: GU
Location: A700–A716, A725, A728, A735, A741–A784, A803–A805, A811–A813, A829–A831
Landholding Agency: Navy

Property Number: 77200520045
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 24
Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520046
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 39, 42
Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520047
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 2006, 2009
Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520048
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 2014, 2916
Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520049
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 2031
Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520050
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 2056, 2057
Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520051
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 2064
Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520052
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 2073, 2077
Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200520053
Status: Excess
Reasons: Secured Area; Extensive deterioration

Hawaii

Bldg. 621
Naval Station, Pearl Harbor
Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200310001
Status: Excess
Reason: Extensive deterioration

Bldg. 517
Naval Station
Beckoning Point
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200430010
Status: Excess
Reason: Extensive deterioration

Bldg. 79
Naval Station
Ford Island Co: Pearl Harbor HI 96860–
Landholding Agency: Navy
Property Number: 77200430029
Status: Underutilized
Reason: Secured Area

Bldg. 62NS
Naval Station
Beckoning Point
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200440003
Status: Unutilized
Reason: Secured Area

Bldg. 63NS
Naval Station
Beckoning Point
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200440004
Status: Unutilized
Reason: Secured Area

Moanalua Community
Church Parsonage
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200530034
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1188, 1239
Fleet Industrial Supply Center
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200530035
Status: Excess
Reason: Extensive deterioration

Bldg. 1143
Naval Station
Barbers Point Co: Honolulu HI 96707–
Landholding Agency: Navy
Property Number: 77200530036
Status: Unutilized
Reason: Extensive deterioration

Idaho

Bldg. CPP–691
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610003
Status: Unutilized
Reason: Secured Area

Bldg. TAN–636
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610008
Status: Unutilized
Reason: Secured Area

Bldg. TAN–670
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610010
Status: Unutilized
Reason: Secured Area

Bldg. TRA–669
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610013
Status: Unutilized
Reason: Secured Area

Bldg. TAN–637
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610014
Status: Unutilized
Reason: Secured Area

Bldg. TAN–651
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610017
Status: Unutilized
Reason: Secured Area

Bldg. TRA–673
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610018
Status: Unutilized
Reason: Secured Area

Bldg. PBF–620
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610019
Status: Unutilized
Reason: Secured Area

Bldg. PBF–619
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610022
Status: Unutilized
Reason: Secured Area

Bldg. PBF–625
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610024
Status: Unutilized
Reason: Secured Area

Bldg. PBF–629
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610025
Status: Unutilized
Reason: Secured Area

Bldg. PBF–604
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610026
Status: Unutilized
Reason: Secured Area

Bldg. TRA–641
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610034
Status: Unutilized
Reason: Secured Area

Bldg. CF–606
Idaho National Engineering Laboratory

Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610037
Status: Unutilized
Reason: Secured Area

8 Bldgs.
Idaho Natl Engineering & Environmental Lab
Test Reactor North
Scovile Co: Butte ID 83415–
Location: TRA 643, 644, 655, 660, 704–706, 755
Landholding Agency: Energy
Property Number: 41199830003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. CPDTB1
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200410009
Status: Excess
Reason: Secured Area

Bldg. CPP620A
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200410012
Status: Excess
Reason: Secured Area

Bldg. CPP637/620
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200410013
Status: Excess
Reason: Secured Area

Bldgs. CPP638, CPP642
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200410014
Status: Excess
Reason: Secured Area

Bldg. CPP 743
Idaho Natl Eng & Env lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200410020
Status: Excess
Reason: Secured Area

Bldgs. CPP1647, 1653
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200410022
Status: Excess
Reason: Secured Area

Bldg. CPP1677
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200410023
Status: Excess
Reason: Secured Area

Bldgs. TAN640, TAN641
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200410024
Status: Excess
Reason: Secured Area

Bldgs. TAN645, TAN646
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200410026
Status: Excess
Reason: Secured Area

Bldg. TAN731
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200410028
Status: Excess
Reason: Secured Area

Bldg. Tan 624
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410031
Status: Excess
Reason: Secured Area

Bldgs. Tan 630, Tan 633
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200410032
Status: Excess
Reason: Secured Area

Bldgs. Tan 649, Tan 650
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200410033
Status: Excess
Reason: Secured Area

Bldg. 694
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200410034
Status: Excess
Reason: Secured Area

Bldg. Tan 719
Idaho Natl Eng & Env Lab
Scoville Co: ID 83415–
Landholding Agency: Energy
Property Number: 41200410035
Status: Excess
Reason: Secured Area

Bldgs. Tan 725, Tan 726
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200410036
Status: Excess
Reason: Secured Area

Bldg. TRA 647
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200420006
Status: Excess
Reason: Secured Area

Bldgs. TRA651, TRA656
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200420007
Status: Excess
Reason: Secured Area

Bldg. TRA 663
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200420008
Status: Excess
Reason: Secured Area

Bldg. TRA 779
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200420009
Status: Excess
Reason: Secured Area

Bldg. PBF 731
Idaho Natl Eng & Env Laboratory
Scovile Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200420023
Status: Excess
Reason: Secured Area

Bldgs. CPP1604–CPP1608
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200430071
Status: Excess
Reason: Secured Area

Bldgs. CPP1617–CPP1619
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200430072
Status: Excess
Reason: Secured Area

6 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1631, CPP1634, CPP1635, CPP1636, CPP1637, CPP1638
Landholding Agency: Energy
Property Number: 41200430073
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1642, CPP1643, CPP1644, CPP1646, CPP1649
Landholding Agency: Energy
Property Number: 41200430074
Status: Excess
Reason: Secured Area

3 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1650, CPP1651, CPP1656
Landholding Agency: Energy
Property Number: 41200430075
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1662, CPP1663, CPP1671, CPP1673, CPP1674
Landholding Agency: Energy
Property Number: 41200430076
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1678, CPP1682, CPP1683, CPP1684, CPP1686
Landholding Agency: Energy
Property Number: 41200430077
Status: Excess
Reason: Secured Area

5 Bldgs.

Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1713, CPP1749, CPP1750, CPP1767, CPP1769
Landholding Agency: Energy
Property Number: 41200430078
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1770, CPP1771, CPP1772, CPP1774, CPP1776
Landholding Agency: Energy
Property Number: 41200430079
Status: Excess
Reason: Secured Area

4 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1778, CPP1779, CPP1780, CPP1784
Landholding Agency: Energy
Property Number: 41200430080
Status: Excess
Reason: Secured Area

4 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1789, CPP1790, CPP1792, CPP1794
Landholding Agency: Energy
Property Number: 41200430081
Status: Excess
Reason: Secured Area

Bldgs. CPP2701, CPP2706
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200430082
Status: Excess
Reason: Secured Area

3 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: TRA603, TRA604, TRA610
Landholding Agency: Energy
Property Number: 41200430089
Status: Excess
Reason: Secured Area

Bldg. TAN611
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200430090
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: TRA626, TRA635, TRA642, TRA648, TRA654
Landholding Agency: Energy
Property Number: 41200430091
Status: Excess
Reason: Secured Area

Bldg. TAN655
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200430092
Status: Excess
Reason: Secured Area

3 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: TRA657, TRA661, TRA668
Landholding Agency: Energy
Property Number: 41200430093
Status: Excess
Reason: Secured Area

Bldg. TAN711
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200430094
Status: Excess
Reason: Secured Area

6 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP602–CPP606, CPP609
Landholding Agency: Energy
Property Number: 41200430095
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP611–CPP614, CPP616
Landholding Agency: Energy
Property Number: 41200430096
Status: Excess
Reason: Secured Area

4 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP621, CPP626, CPP630, CPP639
Landholding Agency: Energy
Property Number: 41200430097
Status: Excess
Reason: Secured Area

4 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP641, CPP644, CPP645, CPP649
Landholding Agency: Energy
Property Number: 41200430098
Status: Excess
Reason: Secured Area

Bldgs. CPP651–CPP655
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200430099
Status: Excess
Reason: Secured Area

Bldgs. CPP659–CPP663
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440001
Status: Excess
Reason: Secured Area

Bldgs. CPP666, CPP668
Idaho Naitonal Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440002
Status: Excess
Reason: Secured Area

3 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP674, CPP675, CPP679
Landholding Agency: Energy
Property Number: 41200440003
Status: Excess
Reason: Secured Area

1 Bldg.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP684
Landholding Agency: Energy
Property Number: 41200440004
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP692, CPP694, CPP697–CPP699
Landholding Agency: Energy
Property Number: 41200440005
Status: Excess
Reason: Secured Area

3 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP701, CPP701A, CPP708
Landholding Agency: Energy
Property Number: 41200440006
Status: Excess
Reason: Secured Area

Bldgs. 711, 719A
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440007
Status: Excess
Reason: Secured Area

4 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP724–CPP726, CPP728
Landholding Agency: Energy
Property Number: 41200440008
Status: Excess
Reason: Secured Area

Bldg. CPP729/741
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440012
Status: Excess
Reason: Secured Area

Bldgs. CPP733, CPP736
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440013
Status: Excess
Reason: Secured Area

Bldgs. CPP740, CPP742
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440014
Status: Excess
Reason: Secured Area

Bldgs. CPP746, CPP748
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440015
Status: Excess
Reason: Secured Area

3 Bldgs.
Idaho National Eng & Env Lab
CPP750, CPP751, CPP752
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440016

Status: Excess
Reason: Secured Area
3 Bldgs.
Idaho National Eng & Env Lab
CPP753, CPP753A, CPP754
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440017
Status: Excess
Reason: Secured Area
Bldgs. CPP760, CPP763
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440018
Status: Excess
Reason: Secured Area
Bldgs. CPP764, CPP765
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440019
Status: Excess
Reason: Secured Area
Bldgs. CPP767, CPP768
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440020
Status: Excess
Reason: Secured Area
Bldgs. CPP791, CPP795
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440021
Status: Excess
Reason: Secured Area
3 Bldgs.
Idaho National Eng & Env Lab
CPP796, CPP797, CPP799
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440022
Status: Excess
Reason: Secured Area
Bldgs. CPP701B, CPP719
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440023
Status: Excess
Reason: Secured Area
Bldgs. CPP720A, CPP720B
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440024
Status: Excess
Reason: Secured Area
Bldg. CPP1781
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440025
Status: Excess
Reason: Secured Area
2 Bldgs.
Idaho National Eng & Env Lab
CPP0000VES–UTI–111, VES–UTI–112
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440026
Status: Excess
Reason: Secured Area
3 Bldgs.
Idaho National Eng & Env Lab
TAN607, TAN666, TAN668
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440027
Status: Excess
Reason: Secured Area
Bldgs. TAN704, TAN733
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440028
Status: Excess
Reason: Secured Area
Bldgs. TAN1611, TAN1614
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440029
Status: Excess
Reason: Secured Area
Bldgs. CF604, CF680
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200440034
Status: Excess
Reason: Secured Area
Bldg. TRA 618
Idaho National Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200510005
Status: Excess
Reason: Extensive deterioration
Bldg. CF633
Idaho Natl Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200520005
Status: Excess
Reason: Extensive deterioration
Bldg. 0708
Middleton Co: Canyon ID 83644–
Landholding Agency: Interior
Property Number: 61200420005
Status: Unutilized
Reason: Extensive deterioration
Bldg. 0709
Middleton Co: Canyon ID 83644–
Landholding Agency: Interior
Property Number: 61200420006
Status: Unutilized
Reason: Extensive deterioration
Bldg. 0717
Fruitland Co: Payette ID 83619–
Landholding Agency: Interior
Property Number: 61200420007
Status: Unutilized
Reason: Extensive deterioration

Illinois

Trailers 009 & T023
FERMILAB
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200520001
Status: Excess
Reason: Extensive deterioration
Trailers 115, T158
FERMILAB
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200520002
Status: Excess
Reason: Extensive deterioration
Bldgs. 144–147
FERMILAB
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200520003
Status: Excess
Reason: Extensive deterioration
Bldg. 325C
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 41200520004
Status: Excess
Reason: Secured Area
#903 Site 3
FERMILAB
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200520006
Status: Excess
Reason: Extensive deterioration
#951 Site 50
FERMILAB
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200520007
Status: Excess
Reason: Extensive deterioration
#993 Site 65
FERMILAB
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200520008
Status: Excess
Reason: Extensive deterioration
Trailer 072
FERMILAB
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200520009
Status: Excess
Reason: Extensive deterioration
Bldgs. 3220, 3221
Naval Station
Great Lakes Co: IL 60088–
Landholding Agency: Navy
Property Number: 77200440008
Status: Excess
Reason: Extensive deterioration
Bldgs. 3311, 3312
Naval Station
Great Lakes Co: IL 60088–
Landholding Agency: Navy
Property Number: 77200510008
Status: Excess
Reason: Extensive deterioration
Bldg. 42
Naval Station
Great Lakes Co: IL 60088–
Landholding Agency: Navy
Property Number: 77200520055
Status: Excess
Reasons: Secured Area; Extensive deterioration

Indiana

Bldg. 2780
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy

Property Number: 77200430015
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 2893
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430016
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldgs. 113, 114
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430017
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 181
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 2109
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430019
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 2777
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 2889
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 2926
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430022
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 3207
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430023
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Louisiana

Weeks Island Facility
New Iberia Co: Iberia Parish LA 70560–
Landholding Agency: Energy
Property Number: 41199610038
Status: Underutilized
Reason: Secured Area

Maine

Bldg. M–6
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240013
Status: Excess
Reason: Secured Area

Bldg. M–9
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240014
Status: Excess
Reason: Secured Area

Bldg. M–10
Portsmouth Naval Shipyard
Kittery Co: York ME 0390–4
Landholding Agency: Navy
Property Number: 77200240015
Status: Excess
Reason: Secured Area

Bldg. M–11
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240016
Status: Excess
Reason: Secured Area

Bldg. M–18
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240017
Status: Excess
Reason: Secured Area

Bldg. H–29
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 33
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240019
Status: Excess
Reason: Secured Area

Bldg. 34
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240020
Status: Excess
Reason: Secured Area

Bldg. 41
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240021
Status: Excess
Reason: Secured Area

Bldg. 55
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240022
Status: Excess
Reason: Secured Area

Bldg. 62/62A
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240023
Status: Excess
Reason: Secured Area

Bldg. 63
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240024
Status: Excess
Reason: Secured Area

Bldg. 65
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240025
Status: Excess
Reason: Secured Area

Bldg. 158
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240026
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 188
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240027
Status: Excess
Reason: Secured Area

Bldg. 189
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240028
Status: Excess
Reason: Secured Area

Bldg. 237
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240029
Status: Excess
Reason: Secured Area

Bldg. 150
Portsmouth Naval Shipyard
Kittery Co: York ME
Landholding Agency: Navy
Property Number: 77200340040
Status: Excess
Reason: Extensive deterioration

Bldg. M–17
Portsmouth Naval Shipyard
York Co: Kittery ME 03904–
Landholding Agency: Navy
Property Number: 77200520057
Status: Excess
Reason: Secured Area

Bldg. 288

Portsmouth Naval Shipyard
York Co: Kittery ME 03904–
Landholding Agency: Navy
Property Number: 77200520058
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 344, 346
Portsmouth Naval Shipyard
York Co: Kittery ME 03904–
Landholding Agency: Navy
Property Number: 77200520059
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Maryland

Tract 399–24
Appalachian Trail
Cascade Co: Washington MD 21719–
Landholding Agency: Interior
Property Number: 61200430019
Status: Unutilized
Reason: Extensive deterioration

Structure 145
Naval Surface Warfare Center
Bethesda Co: MD 20817–5700
Landholding Agency: Navy
Property Number: 77200520015
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Ft. Washington Facility
Interagency Training Center
Ft. Washington Co: Prince George MD 20744–5821
Landholding Agency: Navy
Property Number: 77200520021
Status: Underutilized
Reason: Secured Area

Massachusetts

Jaquith House
National Seashore
Eastham Co: Barnstable MA
Landholding Agency: Interior
Property Number: 61200430017
Status: Unutilized
Reason: Extensive deterioration

Mississippi

Tracts 06–156, 06–152, 06–153
National Military Park
Vicksburg Co: Warren MS 39180–
Landholding Agency: Interior
Property Number: 61200520013
Status: Unutilized
Reason: Extensive deterioration

Montana

Bldg.
Tiber Dam
Chester Co: Liberty MT 59522–
Landholding Agency: Interior
Property Number: 61200410005
Status: Excess
Reason: Extensive deterioration

Nevada

28 Facilities
Nevada Test Site
Mercury Co: Nye NV 89023–
Landholding Agency: Energy
Property Number: 41200310018
Status: Excess
Reasons: Contamination; Secured Area

31 Bldgs./Facilities
Nellis AFB
Tonopah Test Range
Tonopah Co: Nye NV 89049–
Landholding Agency: Energy
Property Number: 41200330003
Status: Unutilized
Reason: Secured Area

42 Bldgs.
Nellis Air Force Base
Tonopah Co: Nye NV 89049–
Location: 49–01, NM104, NM105, 03–35A–H, 03–35J–N, 03–36A–C, 03–36E–H, 03–36J–N, 03–36R, 03–37, 15036, 03–44A–D, 03–46, 03–47, 03–49, 03–88, 03–89, 03–90
Landholding Agency: Energy
Property Number: 41200410029
Status: Unutilized
Reason: Secured Area

241 Bldgs.
Tonopah Test Range
Tonopah Co: Nye NV 89049–
Landholding Agency: Energy
Property Number: 41200440036
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

3 Bldgs.
Nevada Test Site
23–790, 06–CP50, 26–2107
Mercury Co: Nye NV 89023–
Landholding Agency: Navy
Property Number: 77200510025
Status: Excess
Reasons: contamination; Secured Area

New Jersey

Module 3
Calibration Laboratory
Hamilton Co: Mercer NJ 08540–
Landholding Agency: Energy
Property Number: 41200530005
Status: Excess
Reason: Extensive deterioration

Bldg. 263
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77200310002
Status: Unutilized
Reason: Extensive deterioration

Bldg. GB–1
Naval Weapons Station
Colts Neck NJ 07722–
Landholding Agency: Navy
Property Number: 77200310013
Status: Unutilized
Reason: Extensive deterioration

Bldg. D–5
Naval Weapons Station
Colts Neck NJ 07722–
Landholding Agency: Navy
Property Number: 77200310014
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 437, 443, 506
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–
Landholding Agency: Navy
Property Number: 77200520056
Status: Unutilized
Reason: Extensive deterioration

New Mexico

Bldgs. 9252, 9268
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41199430002
Status: Unutilized
Reason: Extensive deterioration

Tech Area II
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87105–
Landholding Agency: Energy
Property Number: 41199630004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 26, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810004
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 2, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810008
Status: Underutilized
Reason: Secured Area

Bldg. 5, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810011
Status: Unutilized
Reason: Secured Area

Bldg. 21, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810012
Status: Unutilized
Reason: Secured Area

Bldg. 116, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810013
Status: Unutilized
Reason: Secured Area

Bldg. 228, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810015
Status: Unutilized
Reason: Secured Area

Bldg. 286, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810016
Status: Unutilized
Reason: Secured Area

Bldg. 516, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 517, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 31
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199930003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 21, TA–2
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940001
Status: Unutilized
Reason: Secured Area

Bldg. 38, TA–14
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940004
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 8, TA–15
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940005
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9, TA–15
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940006
Status: Unutilized
Reason: Secured Area

Bldg. 22, TA–15
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940007
Status: Unutilized
Reason: Secured Area

Bldg. 141, TA–15
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940008
Status: Unutilized
Reason: Secured Area

Bldg. 44, TA–15
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940009
Status: Unutilized
Reason: Secured Area

Bldg. 2, TA–18
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 5, TA–18
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940011
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 186, TA–18
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940012
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 188, TA–18
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940013
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 44, TA–36
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940015
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 45, TA–36
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940016
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 19, TA–40
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940017
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 43, TA–40
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940018
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 258, TA–46
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199940019
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–3, Bldg. 208
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 1
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010011
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 2
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010012
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 3
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010013
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 5
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010014
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 6
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010015
Status: Unutilized
Reason: Secured Area

TA–6, Bldg. 7
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010016
Status: Unutilized
Reason: Secured Area

TA–6, Bldg. 8
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010017
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 9
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010018
Status: Unutilized
Reason: Secured Area

TA–14, Bldg. 5
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010019
Status: Unutilized
Reason: Secured Area

TA–21, Bldg. 150
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010020
Status: Unutilized

Reason: Secured Area

Bldg. 149, TA–21
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010024
Status: Unutilized
Reason: Secured Area

Bldg. 312, TA–21
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010025
Status: Unutilized
Reason: Secured Area

Bldg. 313, TA–21
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010026
Status: Unutilized
Reason: Secured Area

Bldg. 314, TA–21
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010027
Status: Unutilized
Reason: Secured Area

Bldg. 315, TA–21
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010028
Status: Unutilized
Reason: Secured Area

Bldg. 1, TA–8
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010029
Status: Unutilized
Reason: Secured Area

Bldg. 2, TA–8
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200010030
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 3, TA–8
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 51, TA–9
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020002
Status: Unutilized
Reason: Secured Area

Bldg. 30, TA–14
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020003
Status: Unutilized
Reason: Secured Area

Bldg. 16, TA–3
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020009
Status: Unutilized
Reason: Secured Area

Bldg. 339, TA–16
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020010
Status: Unutilized
Reason: Secured Area

Bldg. 340, TA–16
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020011
Status: Unutilized
Reason: Secured Area

Bldg. 341, TA–16
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020012
Status: Unutilized
Reason: Secured Area

Bldg. 342, TA–16
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020013
Status: Unutilized
Reason: Secured Area

Bldg. 343, TA–16
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020014
Status: Unutilized
Reason: Secured Area

Bldg. 345, TA–16
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020015
Status: Unutilized
Reason: Secured Area

Bldg. 48, TA–55
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020017
Status: Unutilized
Reason: Secured Area

Bldg. 125, TA–55
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020018
Status: Unutilized
Reason: Secured Area

Bldg. 162, TA–55
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020019
Status: Unutilized
Reason: Secured Area

Bldg. 22, TA–33
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020022
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 23, TA–49
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020023
Status: Unutilized
Reason: Secured Area

Bldg. 37, TA–53
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020024
Status: Unutilized
Reason: Secured Area

Bldg. 121, TA–49
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200020025
Status: Unutilized
Reason: Secured Area

5 Bldgs.
Kirtland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185–
Location: 9927, 9970, 6730, 6731, 6555
Landholding Agency: Energy
Property Number: 41200210014
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
Kirtland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185–
Location: 6725, 841, 884, 892, 893, 9800
Landholding Agency: Energy
Property Number: 41200210015
Status: Excess
Reason: Extensive deterioration

TA–53, Bldg. 61
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200220023
Status: Unutilized
Reason: Extensive deterioration

TA–53, Bldg. 63
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200220024
Status: Unutilized
Reason: Extensive deterioration

TA–53, Bldg. 65
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200220025
Status: Unutilized
Reason: Extensive deterioration

Bldg. B117
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117–
Landholding Agency: Energy
Property Number: 41200220032
Status: Excess
Reason: Extensive deterioration

Bldg. B118
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117–
Landholding Agency: Energy

Property Number: 41200220033
Status: Excess
Reason: Extensive deterioration

Bldg. B119
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117–
Landholding Agency: Energy
Property Number: 41200220034
Status: Excess
Reason: Extensive deterioration

Bldg. 6721
Kirtland AFB
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41200220042
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs.
Kirtland Air Force Base
#852, 874, 9939A, 6536, 6636, 833A
Albuquerque NM 87185–
Landholding Agency: Energy
Property Number: 41200230001
Status: Excess
Reason: Secured Area

Bldg. 805
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41200240001
Status: Unutilized
Reason: Secured Area

Bldg. 8898
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41200240002
Status: Unutilized
Reason: Secured Area

8 Bldgs., TA–16
Los Alamos National Lab
195, 220–226
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200240003
Status: Unutilized
Reason: Secured Area

Bldg. 2, TA–11
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200240004
Status: Unutilized
Reason: Secured Area

Bldg. 4, TA–41
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200240005
Status: Unutilized
Reason: Secured Area

Bldg. 16, TA–41
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200240006
Status: Unutilized
Reason: Secured Area

Bldg. 30, TA–41
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200240007
Status: Unutilized
Reason: Secured Area

Bldg. 53, TA–41
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200240008
Status: Unutilized
Reason: Secured Area

Bldg. 2, TA–33
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200310001
Status: Unutilized
Reasons:
Secured Area; Extensive deterioration

Bldgs. 228, 286, TA–21
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200310002
Status: Unutilized
Reason: Secured Area

Bldg. 116, TA–21
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200310003
Status: Unutilized
Reason: Secured Area

Bldgs. 1, 2, 3, 4, 5, TA–28
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41200310004
Status: Unutilized
Reason: Secured Area

Bldgs. 447, 1483
Los Alamos Natl Laboratory
Los Alamos NM
Landholding Agency: Energy
Property Number: 41200410002
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 870C & 9830
Kirtland AFB
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41200410037
Status: Excess
Reason: Secured Area

Bldg. 99650
Sandia National Laboratory
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41200510004
Status: Unutilized
Reason: Secured Area

Tract 102–73
El Malpais National Monument
Grants Co: Cibola NM 87020–
Landholding Agency: Interior
Property Number: 61200420002
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 001A, 001B, 001C
Pigeon's Ranch
Glorieta Co: Santa Fe NM 87535–
Landholding Agency: Interior
Property Number: 61200430006
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 002A, 002B, 002C
Pigeon's Ranch
Glorieta Co: Santa Fe NM 87535–
Landholding Agency: Interior
Property Number: 61200430007
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 002D, 002F
Pigeon's Ranch
Glorieta Co: Santa Fe NM 87535–
Landholding Agency: Interior
Property Number: 61200430008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 003A
Pigeon's Ranch
Glorieta Co: Santa Fe NM 87535–
Landholding Agency: Interior
Property Number: 61200430009
Status: Unutilized
Reason: Extensive deterioration

Blgs. 004A, 004B
Pigeon's Ranch
Glorieta Co: Santa Fe NM 87535–
Landholding Agency: Interior
Property Number: 61200430010
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 006A, 006B
Pigeon's Ranch
Glorieta Co: Santa Fe NM 87535–
Landholding Agency: Interior
Property Number: 61200430011
Status: Unutilized
Reason: Extensive deterioration

New York

Bldg. 0086
Brookhaven National Laboratory
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 41200520010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 0527
Brookhaven National Laboratory
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 41200520011
Status: Unutilized
Reason: Extensive deterioration

Bldg. 0650A
Brookhaven National Laboratory
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 41200520012
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 0933B, 0934
Brookhaven National Laboratory
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 41200520013
Status: Unutilized
Reason: Extensive deterioration

North Carolina

Bldg. 82
Marine Corps Air Station
Cherry Point Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200510009
Status: Underutilized
Reason: Secured Area

Bldg. 4314
Marine Corps Air Station

Cherry Point Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200510010
Status: Underutilized
Reason: Secured Area

Bldg. 124
Marine Corps Air Station
Cherry Point Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200510023
Status: Underutilized
Reason: Secured Area

Ohio

Bldg. 77
Fernald Environmental Management Project
Fernald Co: Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41199840003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 82A
Fernald Environmental Mgmt Project
Fernald Co: Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41199910018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 16
RMI Environmental Services
Ashtabula OH 44004–
Landholding Agency: Energy
Property Number: 41199930016
Status: Unutilized
Reason: Secured Area

Bldg. 22B
Fernald Env. Mgmt. Proj.
Hamilton OH 45013–9402
Landholding Agency: Energy
Property Number: 41200020026
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 53A
Fernald Env. Mgmt. Project
Fernald Co: Hamilton OH 45013–9402
Landholding Agency: Energy
Property Number: 41200120009
Status: Excess
Reason: Secured Area

Bldg. 8G
Fernald Environmental Mgmt Project
Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41200210003
Status: Excess
Reason: Secured Area

Bldg. 8H
Fernald Environmental Mgmt Project
Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41200210004
Status: Excess
Reason: Secured Area

Bldg. 94A
Fernald Environmental Mgmt Project
Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41200210005
Status: Excess
Reason: Secured Area

Bldg. 11
Fernald Env. Mgmt. Proj.
Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41200220026
Status: Excess
Reason: Secured Area

Bldg. 14A
Fernald Env. Mgmt. Proj
Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41200220027
Status: Excess
Reason: Secured Area

Bldg. 15C
Fernald Env. Mgmt. Proj.
Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41200220029
Status: Excess
Reason: Secured Area

Bldg. 20K
Fernald Env. Mgmt. Proj.
Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41200220030
Status: Excess
Reason: Secured Area

Bldg. 53B
Fernald Env. Mgmt. Proj.
Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41200220031
Status: Excess
Reason: Secured Area

Modular Ofc. Bldg.
RMI
Ashtabula OH 44004–
Landholding Agency: Energy
Property Number: 41200310008
Status: Excess
Reason: Contamination

Modular Lab Bldg.
RMI
Ashtabula OH 44004–
Landholding Agency: Energy
Property Number: 41200310009
Status: Excess
Reason: Contamination

Soil Storage Bldg.
RMI
Ashtabula OH 44004–
Landholding Agency: Energy
Property Number: 41200310010
Status: Excess
Reason: Contamination

Soil Washing Bldg.
RMI
Ashtabula OH 44004–
Landholding Agency: Energy
Property Number: 41200310011
Status: Excess
Reason: Contamination

Bldg. 16B
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310012
Status: Excess
Reasons: Contamination; Secured Area

Bldg. 24C
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310013
Status: Excess
Reasons: Contamination; Secured Area

Bldg. 50
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310015
Status: Excess
Reasons: Contamination; Secured Area

Bldg. 52A
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310016
Status: Excess
Reasons: Contamination; Secured Area

Bldg. 52B
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310017
Status: Excess
Reasons: Contamination; Secured Area

Oregon

Bldg. 0012–0410–00
Homedale Road
Klamath Falls Co: Klamath OR 97603–
Landholding Agency: Interior
Property Number: 61200410002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 0012–0411–00
Homedale Road
Klamath Falls Co: Klamath OR 97603–
Landholding Agency: Interior
Property Number: 61200410003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 0012–0412–00
Homedale Road
Klamath Falls Co: Klamath OR 97603–
Landholding Agency: Interior
Property Number: 61200410004
Status: Unutilized
Reason: Extensive deterioration

Pennsylvania

Z–Bldg.
Bettis Atomic Power Lab
West Mifflin Co: Allegheny PA 15122–0109
Landholding Agency: Energy
Property Number: 41199720002
Status: Excess
Reason: Extensive deterioration

Bldg. 904
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–
Landholding Agency: Navy
Property Number: 77200430066
Status: Excess
Reason: Extensive deterioration

Bldg. 952
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–
Landholding Agency: Navy
Property Number: 77200430067
Status: Excess
Reason: Extensive deterioration

Bldg. 953
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–
Landholding Agency: Navy
Property Number: 77200430068
Status: Excess
Reason: Extensive deterioration

South Carolina

Bldg. 701–6G
Jackson Barricade
Jackson SC
Landholding Agency: Energy
Property Number: 41200420010
Status: Unutilized
Reason: Secured Area

Bldg. 211–000F
Nuclear Materials Processing Facility
Aiken SC 29802–
Landholding Agency: Energy
Property Number: 41200420011
Status: Excess
Reason: Secured Area

Bldg. 211–002F
Nuclear Materials Processing Facility
Aiken SC 29802–
Landholding Agency: Energy
Property Number: 41200420013
Status: Excess
Reason: Secured Area

Bldg. 221–001F
Nuclear Materials Processing Facility
Aiken SC 29802–
Landholding Agency: Energy
Property Number: 41200420015
Status: Excess
Reason: Secured Area

Bldgs. 183–1R, 183–2R
Savannah River Operations
Aiken SC 29802–
Landholding Agency: Energy
Property Number: 41200420025
Status: Unutilized
Reason: Secured Area

Bldg. 186–C
Savannah River Operations
Aiken SC 29802–
Landholding Agency: Energy
Property Number: 41200420026
Status: Unutilized
Reason: Secured Area

Bldgs. 186–K, 186–1K
Savannah River Operations
Aiken SC 29802–
Landholding Agency: Energy
Property Number: 41200420027
Status: Unutilized
Reason: Secured Area

Bldgs. 186–P, 186–1P
Savannah River Operations
Aiken SC 29802–
Landholding Agency: Energy
Property Number: 41200420028
Status: Unutilized
Reason: Secured Area

Bldg. 190–C
Savannah River Operations
Aiken SC 29802–
Landholding Agency: Energy
Property Number: 41200420029
Status: Unutilized
Reason: Secured Area

Bldg. 190–K
Savannah River Operations
Aiken SC 29802–
Landholding Agency: Energy
Property Number: 41200420030
Status: Unutilized
Reason: Secured Area

Bldg. 190–P
Savannah River Operations
Aiken SC 29802–
Landholding Agency: Energy
Property Number: 41200420031
Status: Unutilized
Reason: Secured Area

Bldg. 704–002N
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430001
Status: Excess
Reason: Secured Area

Bldg. 710–015N
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430002
Status: Excess
Reason: Secured Area

Bldg. 713–000N
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430003
Status: Excess
Reason: Secured Area

Bldg. 717–000C
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430004
Status: Excess
Reason: Secured Area

Bldg. 717–011N
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430005
Status: Excess
Reason: Secured Area

Bldgs. 80–9G, 10G
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430006
Status: Excess
Reason: Secured Area

Bldgs. 105–P, 105–R
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430007
Status: Excess
Reason: Secured Area

Bldg. 183–002P
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430008
Status: Excess
Reason: Secured Area

Bldg. 183–003L
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430009
Status: Excess
Reason: Secured Area

Bldgs. 183–004K, 004L, 004P
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430010
Status: Excess
Reason: Secured Area

6 Bldgs.
Savannah River Operations
Aiken Co SC 29802–
Location: 185–000K, 607–020K, 110–000L, 107–000P, 607–024P, 109–000R
Landholding Agency: Energy
Property Number: 41200430011
Status: Excess
Reason: Secured Area

Bldg. 191–000L
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430012
Status: Excess
Reason: Secured Area

Bldg. 221–016F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430014
Status: Excess
Reason: Secured Area

Bldgs. 221–034F, 035F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430015
Status: Excess
Reason: Secured Area

Bldgs. 221–053F, 054F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430016
Status: Excess
Reason: Secured Area

Bldgs. 252–003F, 005F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430017
Status: Excess
Reason: Secured Area

Bldg. 607–022P
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430018
Status: Excess
Reason: Secured Area

Bldg. 647–000G
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430020
Status: Excess
Reason: Secured Area

Bldg. 704–000P
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430022
Status: Excess
Reason: Secured Area

Bldgs. 723–001L, 002L, 003L
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430025
Status: Excess
Reason: Secured Area

Bldg. 763–000A

Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430027
Status: Excess
Reason: Secured Area

Bldg. 221–013F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430028
Status: Excess
Reason: Secured Area

Bldg. 278–002N
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430029
Status: Excess
Reason: Secured Area

Bldg. 315–M
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430030
Status: Excess
Reason: Secured Area

Bldg. 607–001A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430031
Status: Excess
Reason: Secured Area

Bldg. 607–009C
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430032
Status: Excess
Reason: Secured Area

Bldg. 607–038N
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430034
Status: Excess
Reason: Secured Area

Bldg. 614–002K
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430036
Status: Excess
Reason: Secured Area

Bldg. 614–002L
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430037
Status: Excess
Reason: Secured Area

Bldg. 701–001F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430038
Status: Excess
Reason: Secured Area

Bldg. 701–002C
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430039
Status: Excess
Reason: Secured Area

Bldg. 716–002A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430040
Status: Excess
Reason: Secured Area

Bldg. 901–001K
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430041
Status: Excess
Reason: Secured Area

Bldgs. 221–21F, 22F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430042
Status: Excess
Reason: Secured Area

Bldg. 221–033F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430043
Status: Excess
Reason: Secured Area

Bldg. 254–007F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430044
Status: Excess
Reason: Secured Area

Bldg. 281–001F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430045
Status: Excess
Reason: Secured Area

Bldg. 281–004F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430046
Status: Excess
Reason: Secured Area

Bldg. 281–006F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430047
Status: Excess
Reason: Secured Area

Bldg. 305–000A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430048
Status: Excess
Reason: Secured Area

Bldg. 701–012A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430049
Status: Excess
Reason: Secured Area

Bldg. 703–045A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430050
Status: Excess
Reason: Secured Area

Bldg. 703–071A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430051
Status: Excess
Reason: Secured Area

Bldg. 709–000A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430052
Status: Excess
Reason: Secured Area

Bldg. 716–A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430055
Status: Excess
Reason: Secured Area

Bldg. 719–000A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430056
Status: Excess
Reason: Secured Area

Bldg. 720–000A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430057
Status: Excess
Reason: Secured Area

Bldg. 754–008A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430058
Status: Excess
Reason: Secured Area

Bldg. 763–000A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430059
Status: Excess
Reason: Secured Area

Bldg. 777–010A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430061
Status: Excess
Reason: Secured Area

Bldg. 186–R
Savannah River Site
Aiken Co: SC
Landholding Agency: Energy
Property Number: 41200430063
Status: Unutilized
Reason: Secured Area

Bldg. 190–R
Savannah River Site
Aiken Co: SC
Landholding Agency: Energy
Property Number: 41200430064
Status: Unutilized

Reason: Secured Area

Bldg. 230–H
Savannah River Site
Aiken Co: SC
Landholding Agency: Energy
Property Number: 41200430065
Status: Unutilized
Reason: Secured Area

4 Bldgs.
Savannah River Site
#281–2F, 281–5F, 285–F, 285–5F
Aiken Co: SC
Landholding Agency: Energy
Property Number: 41200430066
Status: Unutilized
Reason: Secured Area

Bldgs. 711–3N, 717–12N
Savannah River Site
Aiken Co: SC
Landholding Agency: Energy
Property Number: 41200430067
Status: Unutilized
Reason: Secured Area

Bldgs. 186L, 190L
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430069
Status: Unutilized
Reason: Secured Area

Bldg. 701–000M
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430084
Status: Unutilized
Reason: Secured Area

Bldg. 701–002A
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430085
Status: Unutilized
Reason: Secured Area

Bldg. 701–003A
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430086
Status: Unutilized
Reason: Secured Area

Bldg. 122–R
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200440009
Status: Unutilized
Reason: Secured Area

Bldg. 151–2R
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200440010
Status: Unutilized
Reason: Secured Area

Bldg. 608–000P
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200440031
Status: Excess
Reason: Secured Area

Bldg. 690–000N
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200440032
Status: Underutilized
Reason: Secured Area

Bldg. 763–106N
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200440033
Status: Underutilized
Reason: Secured Area

Bldgs. 1000 thru 1021
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200440018
Status: Unutilized
Reason: Secured Area

Tennessee

Bldg. 3004
Oak Ridge National Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199710002
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 9714–3, 9714–4, 9983–AY
Y–12 Pistol Range
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41199720004
Status: Unutilized
Reason: Secured Area

5 Bldgs.
K–724, K–725, K–1031, K–1131, K–1410
East Tennessee Technology Park
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199730001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9418–1
Y–12 Plant
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41199810026
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9825
Y–12 Plant
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41199810027
Status: Unutilized
Reason: Secured Area

17 Bldgs.
Oak Ridge Tech Park
Oak Ridge Co: Roane TN 37831–
Location: K–801, A– D, H, K–891, K–892, K1025A– E, K–1064B– E, H, K, L, K1206–E
Landholding Agency: Energy
Property Number: 41200310007
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. SC–3
ORISE
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200340001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Quarters 240
Natchez Trace Pkwy
Hohenwald Co: Lewis TN 38462–
Landholding Agency: Interior
Property Number: 61200520006
Status: Excess
Reason: Extensive deterioration

Tract 01–167
National Military Park
Shiloh Co: Hardin TN 38376–
Landholding Agency: Interior
Property Number: 61200520007
Status: Excess
Reason: Extensive deterioration

Tract 01–168
National Military Park
Shiloh Co: Hardin TN 38376–
Landholding Agency: Interior
Property Number: 61200520008
Status: Excess
Reason: Extensive deterioration

25 Bldgs.
Naval Support Activity
Millington Co: TN 38054–
Location: 2032, 2037, 2041, 2043, 2056, 2072, 2085–2086, 2089–2090, 2099, 2103, 2105–2106, 501, 596, 429, 431–433, 1045, 570–573
Landholding Agency: Navy
Property Number: 77200430024
Status: Excess
Reason: Secured Area

17 Buildings
Naval Support Activity
Mid-South
Millington Co: TN 38054–
Location: 892–893, 1704, 1487, 2020, 2035, 2044–2045, 2071, 2074, 2079–2082, 2094, 2096, 2063
Landholding Agency: Navy
Property Number: 77200520012
Status: Excess
Reason: Secured Area

Texas

Zone 5, Bldg. FS–18
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220044
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–20
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220053
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 12–017E, 12–019E
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200320010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

5 Bldgs.
Pantex Plant
#10–002, 11–009, 12–013, 12–078, 12– R–078

Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200410003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 15–016
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200420017
Status: Unutilized
Reason: Secured Area

Bldg. 4–052P
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200420018
Status: Unutilized
Reason: Secured Area

Bldg. 25
Naval Air Station
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 77200510011
Status: Excess
Reason: Secured Area

Bldg. 1261
Naval Air Station
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 77200510012
Status: Excess
Reason: Secured Area

Bldg. 1739
Naval Air Station
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 77200510013
Status: Excess
Reason: Secured Area

Bldg. 1826
Naval Air Station
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 77200510014
Status: Excess
Reason: Secured Area

Virginia

E. Beale House
Tract 01–132
Appomattox Co: VA 24522–
Landholding Agency: Interior
Property Number: 61200440003
Status: Excess
Reason: Extensive deterioration

Ferguson House
Tract 01–124
Appomattox Co: VA 24522–
Landholding Agency: Interior
Property Number: 61200440004
Status: Excess
Reason: Extensive deterioration

Washington

Barn
Heart K Ranch
Near Thorp Co: Kittitas WA 98946–
Landholding Agency: Interior
Property Number: 61200330014
Status: Unutilized
Reason: Extensive deterioration

Garage/Shop
Heart K Ranch
Near Thorp Co: Kittitas WA 98946–
Landholding Agency: Interior
Property Number: 61200330015
Status: Unutilized
Reason: Extensive deterioration

1–Stall Garage
Heart K Ranch
Near Thorp Co: Kittitas WA 98946–
Landholding Agency: Interior
Property Number: 61200330016
Status: Unutilized
Reason: Extensive deterioration

Residence
Heart K Ranch
Near Thorp Co: Kittitas WA 98946–
Landholding Agency: Interior
Property Number: 61200330017
Status: Unutilized
Reason: Extensive deterioration

Storage
Heart K Ranch
Near Thorp Co: Kittitas WA 98946–
Landholding Agency: Interior
Property Number: 61200330018
Status: Unutilized
Reason: Extensive deterioration

Residence No. 50
1807 Rest Haven Road
Yakima WA 98901–
Landholding Agency: Interior
Property Number: 61200330019
Status: Unutilized
Reason: Extensive deterioration

Cow Barn 1807 Rest Haven Road
Yakima WA 98901–
Landholding Agency: Interior
Property Number: 61200330020
Status: Unutilized
Reason: Extensive deterioration

Chicken Coop
1807 Rest Haven Road
Yakima WA 98901–
Landholding Agency: Interior
Property Number: 61200330021
Status: Unutilized
Reason: Extensive deterioration

Garage/No. 804
Columbia Basin
George Co: Grant WA 98848–
Landholding Agency: Interior
Property Number: 61200330024
Status: Unutilized
Reason: Extensive deterioration

Residence No. 804
Columbia Basin
George Co: Grant WA 98848–
Landholding Agency: Interior
Property Number: 61200330025
Status: Unutilized
Reason: Extensive deterioration

Garage/No. 801
Columbia Basin
George Co: Grant WA 98848–
Landholding Agency: Interior
Property Number: 61200330026
Status: Unutilized
Reason: Extensive deterioration

Residence No. 801
Columbia Basin
George Co: Grant WA 98848–
Landholding Agency: Interior
Property Number: 61200330027
Status: Unutilized
Reason: Extensive deterioration

Garage/No. 305
Columbia Basin
Soap Lake Co: Grant WA 98851–
Landholding Agency: Interior
Property Number: 61200330028
Status: Unutilized
Reason: Extensive deterioration

Residence No. 305
Columbia Basin
Soap Lake Co: Grant WA 98851–
Landholding Agency: Interior
Property Number: 61200330029
Status: Unutilized
Reason: Extensive deterioration

Garage/Residence No. 304
Columbia Basin
Soap Lake Co: Grant WA 98851–
Landholding Agency: Interior
Property Number: 61200330030
Status: Unutilized
Reason: Extensive deterioration

Residence No. 304
Columbia Basin
Soap Lake Co: Grant WA 98851–
Landholding Agency: Interior
Property Number: 61200330031
Status: Unutilized
Reason: Extensive deterioration

Bldg. 81
39307 Kelly Road
Benton City Co: Benton WA 99320–
Landholding Agency: Interior
Property Number: 61200340001
Status: Unutilized
Reason: Extensive deterioration

Garage/81
39307 Kelly Road
Benton City Co: Benton WA 99320–
Landholding Agency: Interior
Property Number: 61200340002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 73
1171 Beane Road
Moxee Co: Yakima WA 98936–
Landholding Agency: Interior
Property Number: 61200340003
Status: Unutilized
Reason: Extensive deterioration

Garage/73
1171 Beane Road
Moxee Co: Yakima WA 98936–
Landholding Agency: Interior
Property Number: 61200340004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 129
1917 Marsh Road
Yakima WA 98901–
Landholding Agency: Interior
Property Number: 61200340005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1101
N. Cascades Natl Park
Whatcom Co: WA
Landholding Agency: Interior
Property Number: 61200520009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 529
Puget Sound Naval Shipyard
Bremerton WA 98314–5000
Landholding Agency: Navy

Property Number: 77200040020
Status: Excess
Reason: Secured Area

Bldg. 8
Naval Reserve Center
Spokane Co: WA 99205–
Landholding Agency: Navy
Property Number: 77200430025
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 10, 11
Naval Reserve Center
Spokane Co: WA 99205–
Landholding Agency: Navy
Property Number: 77200430026
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 2656–2658
Naval Air Station
Lake Hancock
Coupeville Co: Island WA 98239–
Landholding Agency: Navy
Property Number: 77200430027
Status: Unutilized
Reason: Secured Area

Bldgs. 2652, 2705
Naval Air Station
Whidbey
Oak Harbor Co: WA 98277–
Landholding Agency: Navy
Property Number: 77200440010
Status: Unutilized
Reason: Secured Area

Bldgs. 79, 884
NAS Whidbey Island
Seaplane Base
Oak Harbor Co: WA 98277–
Landholding Agency: Navy
Property Number: 77200440011
Status: Unutilized
Reason: Secured Area

Bldg. 121
NAS Whidbey Island
Ault Field
Oak Harbor Co: WA 98277–
Landholding Agency: Navy
Property Number: 77200440012
Status: Unutilized
Reason: Secured Area

Bldg. 419
NAS Whidbey Island
Ault Field
Oak Harbor Co: WA 98277–
Landholding Agency: Navy
Property Number: 77200440013
Status: Unutilized
Reason: Secured Area

Bldgs. 2609, 2610
NAS Whidbey Island
Ault Field
Oak Harbor Co: WA 98277–
Landholding Agency: Navy
Property Number: 77200440014
Status: Unutilized
Reason: Secured Area

Bldg. 2753
NAS Whidbey Island
Ault Field
Oak Harbor Co: WA 98277–
Landholding Agency: Navy
Property Number: 77200440015
Status: Unutilized
Reason: Secured Area

Bldg. 108
Naval Magazine
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200510015
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

West Virginia

Buckland Pump House
New River Gorge
Tract 104–01
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520020
Status: Excess
Reason: Extensive deterioration

Buckland Footbridge
New River Gorge
Tract 104–01
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520021
Status: Excess
Reason: Extensive deterioration

Helms House/Shed
New River Gorge
Tract 104–05
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520022
Status: Excess
Reason: Extensive deterioration

Cochran Pump House
New River Gorge
Tract 104–29
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520023
Status: Excess
Reason: Extensive deterioration

Cochran Camp
New River Gorge
Tract 104–31
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520024
Status: Excess
Reason: Extensive deterioration

Emil Pike Buildings
New River Gorge
Tract 121–20
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520025
Status: Excess
Reason: Extensive deterioration

Poling House/Sheds
New River Gorge
Tract 121–21
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520026
Status: Excess
Reason: Extensive deterioration

Laing House
New River Gorge
Tract 154–19
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520027
Status: Excess
Reason: Extensive deterioration

Truman Dent House
New River Gorge
Tract 166–01
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520028
Status: Excess
Reason: Extensive deterioration

Harris House
New River Gorge
Tract 166–06
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520029
Status: Excess
Reason: Extensive deterioration

Crabtree House
New River Gorge
Tract 169–25
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200520030
Status: Excess
Reason: Extensive deterioration

Land (by State)

California

Trailer Space
Naval Base
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200520013
Status: Unutilized
Reason: Secured Area

Hawaii

Portion/PR111016
Naval Station
Beckoning Point
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200440005
Status: Unutilized
Reason: Secured Area

North Carolina

Sites A,B,C,D,E
Marine Corps Base
Camp Lejeune Co: NC
Landholding Agency: Navy
Property Number: 77200430053
Status: Underutilized
Reason: Secured Area

Portion/Training Area
Marine Corps Base
Camp Lejeune Co: NC –
Landholding Agency: Navy
Property Number: 77200430065
Status: Underutilized
Reason: Secured Area

Puerto Rico

Site 3
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77200320031
Status: Unutilized
Reason: Secured Area

Site 4
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77200320032
Status: Unutilized
Reason: Secured Area

Washington
405 sq. ft./Land
Naval Base Kitsap
Bangor Co: WA
Landholding Agency: Navy
Property Number: 77200520060
Status: Unutilized
Reason: Secured Area

[FR Doc. 05–18743 Filed 9–22–05; 8:45 am]
BILLING CODE 4210–29–P

Federal Register

Friday,

September 23, 2005

Part III

Department of Health and Human Services

Office of the Secretary

45 CFR Part 162

HIPAA Administrative Simplification: Standards for Electronic Health Care Claims Attachments; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 162

[CMS–0050–P]

RIN 0938–AK62

HIPAA Administrative Simplification: Standards for Electronic Health Care Claims Attachments

AGENCY: Office of the Secretary, HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes standards for electronically requesting and supplying particular types of additional health care information in the form of an electronic attachment to support submitted health care claims data. It would implement some of the requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 22, 2005.

ADDRESSES: In commenting, please refer to file code CMS–0050–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

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

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

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

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–0050–P, P.O. Box 8014, Baltimore, MD 21244–8014.

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

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–0050–P, Mail Stop C4–26–05, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the addresses above or below. If you intend to deliver your comments to the Baltimore address, please call (410) 786–7195 in advance to schedule your arrival with one of our staff members.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Lorraine Tunis Doo, (410) 786–6597.

SUPPLEMENTARY INFORMATION: *Submitting Comments:* We welcome comments from the public on all issues set forth in this proposed rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code [CMS–0050–P] and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all comments received before the close of the comment period on its public Web site as soon as possible after they have been received. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Table of Contents

I. Background

A. Summary

This proposed rule recommends the adoption of a set of standards that will facilitate the electronic exchange of clinical and administrative data to further improve the claims adjudication process when additional documentation (also known as health care claim attachments) is required. This rule proposes two X12N transaction standards to be used—one to request the information and one to respond to that request with the answers or additional information. This rule also proposes the use of Health Level 7 (HL7) specifications for the content and format of communicating the actual clinical information. And finally, this rule proposes the adoption of the Logical Observation Identifiers Names and Codes, or LOINC® for specific identification of the additional information being requested, and the coded answers which respond to the requests. The combination of the X12N and HL7 standards for purposes of these transactions is proposed because the X12N standards are standards for exchanging administrative information, and the HL7 standards are standards for exchanging clinical information; the marriage of these standards for the electronic health care claims attachment transactions uses the capabilities and advantages of each type of standard. The LOINC® code set already has the most robust set of codes for laboratory results and clinical reports, and now includes the codes for the attachment ''questions'' or requests proposed in this rule.

Electronic data interchange (EDI) is the electronic transfer of information (such as electronic health care claims and supplemental information) in a standard format. EDI allows entities within the health care system to exchange medical, billing, and other information to process transactions in a more expedient and cost effective manner. Use of EDI reduces handling and processing time and eliminates the risk of lost paper documents. EDI can therefore reduce administrative burdens, lower operating costs, and improve overall data quality.

The health care industry already recognizes the benefits of EDI, and there has been a steady increase in its use over the past decade. In fact, for many years, health plans have been encouraging their health care providers to move toward electronic transmissions of claims and inquiries, both directly and through third parties such as health care clearinghouses, but the transition has been inconsistent across the board. It is assumed that the absence of standardization has made it difficult to encourage widespread increases in EDI and to develop software that could be employed by multiple users. The Health Insurance Portability and Accountability Act (HIPAA) of 1996 (Pub. L. 104–191, enacted on August 21, 1996) Transaction Rule standards, with entity type specific compliance dates in October of either 2002 or 2003, addressed that lack of standardization in the health care industry. Just as experience and process improvements have grown with EDI, experience with the standard transactions and automation will result in additional efficiencies and savings for both health care providers and health plans.

The expectation, when standard national EDI formats and data content for health care transactions were adopted, was that the administrative burdens on health plans, health care providers, and their billing services would decrease. A standard EDI format allows data interchange using a common interchange structure, thus eliminating the need for users to program their data processing systems to accommodate multiple formats. Standardization of the interchange structure also involves specification of which data elements are to be exchanged; uniform definitions of those specific data elements in each type of electronic transaction; and identification of the specific codes or values that are valid for each data element.

B. Legislation

Through subtitle F of title II of HIPAA, the Congress added to title XI of the Social Security Act (''the Act'') a new subpart C, entitled ''Administrative Simplification.'' HIPAA affects several titles in the United States Code. Throughout this proposed rule, we refer to the Social Security Act as ''the Act,'' and we refer to the other laws cited in this document by their names. One purpose of subtitle F was to improve the efficiency and effectiveness of the health care system in general by encouraging the development of a more automated health information system through the establishment of standards and requirements to facilitate the electronic transmission of certain health information. The Congress included provisions to address the need for supplemental health care claim information in the form of electronic attachments to claims.

Part C of title XI consists of sections 1171 through 1179 of the Act. These sections define various terms and impose requirements on the Department of Health and Human Services (HHS), health plans, health care clearinghouses, and certain health care providers, concerning the conduct of electronic transactions, among other things.

HIPAA was discussed in greater detail in Standards for Electronic Transactions (65 FR 50312), published on August 17, 2000 (Transactions Rule), and the Standards for Privacy of Individually Identifiable Health Information (65 FR 82462), published on December 28, 2000 (Privacy Rule). Rather than repeating the discussion here, the reader is referred to those documents for further information. Specific information is provided in those

documents on the content of each section of HIPAA (for example, they explain that section 1173 of the Act requires the Secretary to adopt standards for transactions and data elements to be included in covered transactions; section 1174 of the Act describes the timetable for establishing standards and for compliance with those standards; sections 1176 and 1177 of the Act establish penalties for violations of the established standards; and so forth).

Two provisions of the Act are particularly relevant to the electronic health care claims attachment standards being presented here:

- Section 1172 of the Act contains requirements concerning standard setting. It states that the Secretary must adopt a standard developed, adopted, or modified by a standard setting organization (that is, a standard setting organization accredited by the American National Standards Institute (ANSI) that develops standards for transactions or data elements) after consulting with the National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), Workgroup for Electronic Data Interchange (WEDI), and the American Dental Association (ADA), assuming there is a suitable standard.
- Section 1173(a)(2)(B) identifies a health claim attachment [sic] as one transaction for which electronic standards are to be adopted.

C. Standards Setting Organizations

ANSI accredits organizations to develop standards under the condition that procedures used to develop and approve the standards meet certain due process requirements and that the process is voluntary, open, and based on obtaining consensus. These accredited organizations are referred to by ANSI as Accredited Standards Developer(s) (ASD) or Standards Development Organization(s)(SDO). The standards for the transactions proposed in this rule come from two such accredited organizations, Accredited Standards Committee X12 (ASC X12) and Health Level Seven (HL7).

1. Accredited Standards Committee X12

The Accredited Standards Committee X12 (ASC X12) is the SDO accredited by ANSI to design national electronic standards for a wide range of administrative and business applications across many industries. ASC X12 membership is open to all individuals and organizations. A subcommittee of ASC X12, ASC X12N, develops electronic standards specific to the insurance industry, including health care insurance. Volunteer members of the ASC X12N subcommittee, including health care providers, health plans, bankers, and vendors involved in software development and billing/transmission of health care data, as well as organizations involved in other business aspects of health care administrative activities, worked together to develop standards for electronic health care transactions. These standards included transactions for common administrative activities: claims, remittance advice, claims status, enrollment, eligibility, and authorizations and referrals. Within ASC X12N, Workgroup 9: Patient Information (WG9) undertook the tasks associated with evaluating appropriate standards for electronic health care claims attachments. The WG9 workgroup is comprised of representatives from private and government insurers, software vendors, health care clearinghouses, State and Federal agencies, health insurance standards organizations, and provider associations.

2. Health Level Seven

HL7 is a not-for-profit, ANSI-accredited SDO that provides standards for the exchange, management, and integration of data that support clinical patient care and the management, delivery, and evaluation of health care services. While other standards development or standard setting organizations create standards or protocols to meet the business needs of a particular healthcare domain such as pharmacy, medical devices, or insurance, HL7's domain is principally clinical data. Its specific emphasis is on the interoperability between healthcare information systems. In fact, ''Level Seven'' refers to the highest level of the International Standards Organization's communications model for Open Systems Interconnection—which is the application level of a system. The application level addresses the definition of the data to be exchanged, the timing of the interchange, and the communication of certain errors to the application. The seventh level supports such functions as security checks, participant identification, availability checks, exchange mechanism negotiations, and most significantly, data exchange structuring. HL7 is in a unique position to participate in standard setting for health information because its focus is on the interface requirements of the entire health care organization rather than on a particular domain.

HL7 membership is open to all individuals and organizations. Within HL7, similar to Work Group 9 under X12N, the Attachments Special Interest Group (ASIG) includes industry experts representing health care providers, health plans, and vendors, and is dedicated to developing the criteria and standards for electronic health care claims attachments. This group created the Additional Information Specifications (AIS) referenced in this proposed rule. The ASIG is responsible for those tasks associated with creating and maintaining the documents that specify the content, format and codes for submitting and responding to requests for each type of electronic health care claims attachment. These documents are known as AIS, which again, are each a set of instructions and associated code tables created and maintained by HL7 that describes, lists, or itemizes the additional information that is to be sent and how such information is to be conveyed in an electronic health care claims attachment.

D. Industry Standards, Implementation Guides, and Additional Information Specifications

1. ASC X12N and the HL7 Implementation Guides and HL7 Additional Information Specifications

ASC X12N: The ASC X12 Subcommittee N: Insurance (ASC X12N) publishes documented specifications for standard data interchange structures (message transmission formats) that apply to various business needs. For example, the X12N 820 transaction standard for premium payment can be used to submit payment for automobile insurance or casualty insurance, as well as for health insurance. The X12N 820 was adopted as one of the standards under HIPAA for premium payments from an employer or group health plan to the insurer or health plan. In order to make these general standards functional for industry-specific uses, it became critical to develop implementation specifications. These specifications, referred to by the industry as ''implementation guides,'' are based upon ASC X12 standards and contain the detailed instructions developed by ASC X12N for using a specific transaction to meet a specific business need. Each ASC X12N implementation guide has a unique version identification number (for example, 004010, 004050, or 005010) where the highest version number represents the most recent version. Implementation Guides are written collaboratively by X12N workgroups, and are voted upon as described below.

The ASC X12 committee is the decision-making body responsible for

obtaining consensus from the entire organization, which is necessary before seeking ANSI approval of a standard in the field of health insurance. The ASC X12N Subcommittee develops standards and conducts maintenance activities. The draft documents are made available for public review and comment. After the comments are addressed, the revised document is presented to the entire ASC X12N subcommittee membership group for approval. This work is then reviewed and approved by the membership of ASC X12 as a whole. In sum, Implementation Guides developed by ASC X12N must be ratified by a majority of voting members of the ASC X12N subcommittee and the executive committee of X12 itself.

HL7: To establish its standards, HL7 conducts a three-step process. First, standards are developed and accepted or rejected by voting at the technical committee level. All HL7 members are eligible to vote on standards, without regard to whether they are members of the committee that wrote the standard. Non-members may also vote on a given ballot for a standard, for which privilege they pay an administrative fee. HL7's policy states that it shall assess an administrative fee for the processing, handling, and shipping of the ballot package. The administrative fee does not exceed the fee associated with an individual membership in HL7. Second, HL7 technical committees and special interest groups vote on ''recommendations'' and at least two-thirds of the total votes must be positive for approval. Third, if approved at the technical committee level, the recommended standards are submitted to the entire HL7 organization for approval. Finally, they are submitted to ANSI for certification.

2. Implementation Guides in HIPAA Regulations

Section 1172(d) of the Act directs the Secretary to establish specifications for implementing each of the standards adopted under this part.

For electronic transaction standards, the SDOs developed ''Implementation Guides'' for implementing the same standards for a number of different business purposes. For example, the general ASC X12 claim, the 837, has separate implementation guides that permit its use in automobile, liability, and health care claims. The approach taken in the final Transactions Rule was to adopt a specific ''Implementation Guide'' as both the ''standard'' and the ''implementation specifications'' for each health care transaction.

The regulations text of this proposed rule also adopts the referenced guides as both the standard and the implementation specifications for each electronic health care claim attachment transaction. Accordingly, this rule proposes the adoption of specific X12 Implementation Guides (for example, the ASC X12N 277 version 4050) as both the standard and the implementation specification for each transaction. To avoid confusion in the use of certain similar terms in this proposed rule, we use the term ''Implementation Guide'' only when referring to specific documents published by ASC X12N. Therefore, when we refer to the master HL7 Implementation Guide, we will state the full document name: ''HL7 Additional Information Specification Implementation Guide,'' or HL7 AIS IG. We do not otherwise refer to ''implementation specifications'' or distinguish between ''standards'' and ''implementation specifications.''

The 4050 versions of the X12 Implementation Guides are compatible with the current X12 4010 guides adopted for HIPAA transactions—version 4010–1a so that the two transactions can be used together as necessary. In other words, a claims transaction (837 version 4010–1a) may be accompanied by a health care claims attachment response transaction (275 version 4050). Public comments on the draft versions of the X12 Implementation Guides for version 4050 of the X12N 277 and X12N 275 were solicited between December 5, 2003 and January 9, 2004. The current guides may be obtained from *http://www.wpc-edi.com*.

The other set of documents proposed for use with electronic health care claims attachments are called HL7 Additional Information Specifications (AIS). These were drafted by the HL7 ASIG work group and were balloted and approved by HL7 in September 2003. These AIS are used in concert with the X12 Implementation Guides and provide the instructions for the use of the proposed code set, to be described later in this preamble. The adoption of the HL7 documents would fulfill the legal mandate for the Secretary to establish the implementation specifications for the HIPAA standards proposed for adoption in accordance with 1172(d) of the Act.

The X12N Implementation Guides, HL7 AIS IG, HL7 AIS, and the LOINC® code set proposed for adoption in this proposed rule, are all copyrighted by their respective organizations, and each document includes a copyright statement. The copyright protection ensures the integrity of the materials and provides appropriate attribution to the developers. The materials are all available at no charge. Later in this preamble and in the regulations themselves, we provide the mailing addresses and Internet sites for the documents so that readers can obtain them in a convenient manner that will allow for their review, along with this proposed rule.

II. Provisions of the Proposed Regulations

This proposed rule describes requirements that health plans, covered health care providers, and health care clearinghouses would have to meet to comply with the statutory requirement to use a standard for electronic health care claims attachment transactions, and to facilitate the transmission of certain types of detailed clinical information to support an electronic health care claim.

In the final Transactions Rule, new parts 160 and 162 were added to title 45 of the Code of Federal Regulations (65 FR 50365). The provisions in this proposed rule would be placed in a new subpart S of part 162 which would contain provisions specific to the electronic health care claims attachment standards. The provisions of this new subpart can be implemented consistently with the provisions of the HIPAA Privacy Rule and Security Rule, which are codified mainly at subparts A, C, and E of part 164 of title 45 of the Code of Federal Regulations.

A. Definitions

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

Section 1171 of the Act defines several terms. The definitions set out in section 1171 of the Act and regulations at 45 CFR part 160 and subpart A of part 162 would also apply to the electronic health care claims attachment standards. There are also several new terms and definitions proposed that are related to the standards proposed in this rule, (see proposed §162.103 and §162.1900). The new terms, their definitions and examples or explanations thereof are as follow:

1. Ambulance Services means health care services provided by land, water, or air transport, and the procedures and supplies used during the trip by the transport personnel, to assess, treat or monitor the individual until arrival at the hospital, emergency department, home or other destination. Ambulance documentation may also include non-clinical information such as the destination justification and ordering practitioner.

2. Attachment Information means the supplemental health information

needed to support a specific health care claim. The health care claim attachment information is conveyed using both an X12 transaction and HL7 specification.

3. Clinical Reports means reports, studies, or notes, including tests, procedures, and other clinical results, used to analyze and/or document an individual's medical condition. These include discharge summaries, operative notes, history, physicals, and diagnostic procedures (radiology reports, electrocardiogram (for example, EKG), cardiac echoes, gastrointestinal tests, pathology, etc.) Clinical reports do not include psychotherapy notes.

4. Emergency department means a health care facility or department of a hospital that provides acute medical and surgical care and services on an ambulatory basis to individuals who require immediate care primarily in critical or life-threatening situations.

5. Laboratory Results means the clinical information resulting from tests conducted by entities furnishing biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathology, or other examinations of materials from the human body. Laboratory results are used for the diagnosis, prevention, or treatment of any disease or impairment of, or assessment of, the health of the individual. Laboratory results are generated from the services provided in a laboratory or other facility that conducts those tests and examinations.

6. LOINC stands for Logical Observation Identifiers Names and Codes (LOINC®). It is a code set that provides a standard set of universal names and codes for identifying individual laboratory and clinical results as well as other clinical information. LOINC® codes are developed and maintained by the LOINC® committee and copyrighted 1995–2004, by Regenstrief Institute, Inc., and the Logical Observation Identifiers Names and Codes (LOINC®) Committee.

7. Medications means those drugs and biologics that the individual is already taking, that are ordered for the individual during the course of treatment, or that are ordered for an individual after treatment has been furnished. Medications include drugs and biologics that are ordered by a licensed practitioner, or that are being taken by the individual, independent of a health care provider's orders (for example, over-the-counter drugs). In the AIS documents, these are referred to as ''current medications,'' ''medications administered,'' and ''discharge medications.'' Current medications are those the individual is taking before an encounter that generates a new claim; medications administered are those given to the individual by a health care provider during the encounter; and discharge medications are those that the health care provider orders for the individual to take and use after release or discharge from the encounter, including the medications the individual may already have at home or those he or she may need to obtain following treatment.

8. Rehabilitation services means those therapy services provided for the primary purpose of assisting in an individual's rehabilitation program of evaluation and services. These services are: Cardiac rehabilitation, medical social services, occupational therapy, physical therapy, respiratory therapy, skilled nursing, speech therapy, psychiatric rehabilitation, and alcohol and substance abuse rehabilitation.

B. Effective Dates

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

Covered entities must comply with the standards for electronic health care claims attachments 24 months from the effective date of the final rule unless they are small health plans. Small health plans will have 36 months from the effective date of the final rule to come into compliance.

C. Overview of Key Information for Electronic Health Care Claims Attachments

For the remainder of this document, we will use the terms electronic claims attachments or electronic attachments to mean the same thing as electronic health care claims attachments. Similarly, the term Additional Information Specification may be referred to as an attachment specification or an AIS, and these terms are used interchangeably throughout the text. Since the term ''Implementation Guide'' is used by both HL7 and X12, we therefore use the full title for each document when they are referenced, such as the ''HL7 Additional Information Specification Implementation Guide.''

This rule proposes to establish standards for electronic health care claims attachments. The proposed rule is specific to electronic health care claims attachments rather than paper attachments (hard copy medical records), since the purpose of the HIPAA administrative simplification provisions is to facilitate the development of a national electronic health information system. Standard electronic health care claims attachments will allow for the electronic exchange of additional clinical and administrative information to augment the HIPAA standard claim transaction.

The goal of having a more automated, standardized approach to the exchange of information in the health care industry is longstanding. In 1994, the Workgroup for Electronic Data Interchange (WEDI) conducted a survey of the U.S. health care industry and documented its findings in a paper entitled: *WEDI Attachments Workgroup Report, Initial Findings.* Among other issues, this study examined the state of the health care industry as it related to the use of, and need for, electronic health care claims attachments standards. The survey identified hundreds of different paper-based attachments formats being used with health care claims. The attachments and their formats ranged from simple to complex and varied according to the type of information being requested, the services involved, and who was asking for the information. The WEDI report concluded with a set of recommendations, including the development of an electronic standard for exchanging this type of information between health care providers and health plans. Key among the recommendations were that: (a) Standardized data elements should be created for electronic claims attachments; (b) collaboration between affected entities should be encouraged; (c) standard ways to link data across transaction sets should be developed; and (d) a transaction set (pair of transactions) should be selected to send and respond to requests for additional information (similar to the health care claims status request and response transactions—the X12N 276/277 pair).

CMS's work in the mid-1990s with WEDI, ASC X12, and HL7 resulted in the recommendation to use an HL7 version 2.4 message embedded within version 3040 of the ASC X12N 275 ''Additional Information to Support a Health Care Claim or Encounter Transaction,'' in other words, a response to a request for information. The embedded HL7 message would have contained structured and codified attachment data using the LOINC® coding system. For a variety of reasons, a proposed rule was never released with this recommendation. Since that time, HL7 moved ahead with development of its Clinical Document Architecture (CDA), which was a significant enhancement over the HL7 version 2.4 messaging. The CDA Release 1.0, August 2003, is an XML-based

document specification that enables the standardization of ''clinical documents'' for electronic exchanges of health information (see explanation of XML below). The CDA became the first ANSI-accredited XML-based standard in the health care industry.

There is increasing evidence that many health care organizations, including health plans, health care providers, and health care clearinghouses, plan on implementing more XML-based EDI tools. Thus, building electronic health care claims attachments using XML technology is in concert with the direction of the industry. In light of these developments, we believe that the timing for this proposed rule is reasonable because its publication and the years allowed for implementation should leave ample time for the industry to further develop its skills with XML and EDI exchange methodology.

The HL7 standard being proposed here would allow the same records and data to be ''read'' and used by either people or computers. In other words, regardless of how the data are sent within the proposed transaction, they can be processed either manually or through automation. Furthermore, as entities move toward computer-based methods for adjudication, the costs of copying, coding, transcribing, storing, and processing records should begin to decrease. Thus, this proposal has the potential for helping the industry attain desired efficiencies, expedite payments, reduce fraud and abuse, and improve the accuracy of medical information.

1. Overview of Extensible Markup Language (XML)

Extensible Markup Language, or XML, is a relatively new technology. It allows documents to be formatted and exchanged across the Internet or through EDI.

Hypertext Markup Language (HTML) is a widely used presentation language used to create documents for display on the Web. Using HTML markup with text, links, and graphics creates an HTML document that is attractive in appearance. HTML was created to describe how the content of a page should be displayed, but not the actual contents of the page. XML fills this gap because it provides an intelligence to electronic documents and preserves both the content (the actual information) and semantics for the document, and also formats it attractively, similar to HTML. In fact, XML and HTML are increasingly used together—XML stores and organizes the data, while HTML renders it inside the browser or application.

XML was originally published by the World Wide Web Consortium (*http://www.w3c.org*) and designed as a standard markup language to speed up and simplify data exchange and database connectivity and to enhance the creation of complex documents. XML effectively structures files into logical elements of information by the use and placement of tags which describe the kind of information being sent. Information organized using XML, and bounded by tags, is known as a document whether it is in a file, or whether it is being transmitted over the Internet or in any other technical environment. The process of arranging information between tags is called document markup.

Over the past few years, XML has been adopted by most major companies in information technology as the basis for attaining interoperability among their own products. One of the special features of the XML family is the standard language for describing the transformation or conversion of an XML document into another format. Extensible Stylesheet Language, or XSL, is the language that contains the presentation format instructions for the document, similar to HTML. It allows the display of information in different media, such as a computer screen or a paper copy, and it enables the user to view the document according to his or her preferences and abilities, just by changing the stylesheet. XSL Version 1.0 is important because it can convert an XML document into Extensible HTML, which can be understood by current Web browsers and many common applications. In fact, each HL7 AIS for the electronic claims attachment standards will include a fully functional XSL stylesheet for use by covered entities. If covered entities choose not to use the HL7 supplied stylesheet, they will be able to create their own without significant problems, assuming the expertise exists on staff or is available through a vendor.

2. Overview of Clinical Document Architecture

The HL7 Clinical Document Architecture (CDA)—Release 1.0 was approved by HL7 in November 2000. It is a document markup standard encoded in XML that specifies the structure (format) and semantics (content) of ''clinical documents'' for the purpose of information exchange. These XML-coded documents have the same characteristics and information as hard copy clinical documents, and therefore can be processed by both people and machines. The clinical documents encoded in XML include a hierarchical set of document specifications (the architecture) and are rendered in human readable form using XSL. This makes them usable in either electronic or printed format. The XSL essentially translates the XML into a format that looks like a ''regular'' plain text document.

We are aware that HL7 continues to improve its standards, including the CDA. In fact, CDA Release 2.0 was first balloted in August 2003 and re-balloted in 2004. While Release 2.0 may be approved between the time of this proposed rule and the final rule, this proposed regulatory text does not suggest its adoption at this time. However, if Release 2.0 is approved by HL7 between the time of this proposed rule and the final rule, we may propose its adoption for future AIS, based on the impact of CDA Release 2.0 on the existing AIS. As part of CDA Release 2.0, HL7 is developing an XSL stylesheet that would permit interoperability between Release 1.0 and Release 2.0. However, as this too is incomplete, it is premature to consider its use or viability at this time. We invite comment on the pros and cons of each CDA release, the issues related to the use of a stylesheet to permit use of either CDA release, and the costs and timing associated with implementing one release version over the other.

3. How XML Is Applied Within the Clinical Document Architecture

As with any XML-based standard, the CDA defines tag names and how they nest to structure information. Some of the important tag names are shown in the table below. The indentation in the left column of the table shows the manner in which certain elements nest within other elements.

DEMONSTRATION OF HOW XML IS USED WITHIN A CDA DOCUMENT

Tag name	Purpose
<level one>	Outermost tag, contains an entire CDA document.
<clinical_document_header>	Contains information about the document arranged in subsections.
<Document_typ_ed>	Contains a code that identifies the document type (for example, a discharge summary or cardiac rehabilitation plan).
<Patient>	Contains the name and identification number of the patient (individual).
<Body>	Contains the body of the report expressed in natural language with optional structured information.
<Section>	A subdivision of the body containing a logical unit of information (for example, the discharge medications).
<Caption>	A subdivision of sections and other elements that describes the contents that will follow.
<caption_cd>	A subdivision of a caption that identifies the contents that follow using a LOINC® code.

Source: HL7 white paper August 26, 2003. Specific to Release 1.0 of the CDA.

An important feature of the CDA is that it allows the entire body of the XML document to be replaced by an actual image. The image might be a scanned copy of a page or pages from the medical record. The header is still present to support computer management of the document, but the clinical content can be conveyed entirely by an image or text document. This option is important to those health care providers that do not have a computer-based patient record system and cannot yet create electronic claims attachments in a structured format, but wish to reap some benefits from standardization and a certain level of automation.

4. Transactions for Transmitting Electronic Attachments

As we describe in a later section entitled ''Candidates Considered,'' the standard setting organizations attempted to evaluate existing transactions for their potential to be used to send and receive attachment information electronically. Two transactions were ultimately selected because they only required modifications in a later version. In other words, while the existing X12N version 4010 standards did not satisfy the data content needs of the electronic health care claims attachments, revisions in version 4050 were made to accommodate these needs in time for this proposed rule. Thus, version 4050 of the X12N 277 ''request'' and version 4050 of the X12N 275 ''response'' are proposed to carry the attachment related questions and the related answers or responses. The X12N 277 version 4050 transaction transmits information about the particular claim in question and the question codes. The X12N 275 version 4050 transaction returns the claim identification (ID) information, and, in the Binary Data (BIN) segment, literally transports the responses to each question, with the response codes, narrative text, or actual imaged documents. The X12N transactions are flexible enough to accommodate the two format variants described in the next section, meaning the transaction can be used for either manual processing or computer automated processing.

5. Electronic Claims Attachment Types

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

While it might be considered ideal by some to have electronic attachments for all health care claims business needs, it would be virtually impossible to identify and create standard specifications with appropriate codes for the full array of different attachment types required today. Furthermore, given changes in industry business practices, and new adjudication rules over the past decade, it is more important to determine, from health care providers and health plans, which claims most commonly require additional information for adjudication today, and what types of electronic attachments might be required in the next 5 to 10 years. It is equally important for covered entities to gain experience with a manageable number of electronic attachment types at the outset, so that technical and business issues can be identified to improve the process with each new electronic attachment specification that is developed.

While the attachment information needed to support the full range of health care claims may be diverse, the same general transaction structure and administrative information can be applied to all electronic claims attachments to allow for some level of consistency. This proposal to encourage some form of electronic transmission, even of a scanned document in the early stages of implementation, at least represents a methodical approach towards moving the industry from paper to electronic communication for health care claims attachments. The advantage of the more general X12N transaction standards that can serve as the vehicles to carry any type of electronic attachment information, is that they can be coupled with the specific attachment ''documents''—coded or scanned—and remain available to handle new content-specific electronic attachment types as they are developed and approved.

Based on industry feedback following implementation of the Transactions Rule, it became clear that pilot programs and early testing of new standards and processes were vital to the standards adoption process. In July 2004, HHS awarded funds for a Medicare pilot program to test the X12 request and response transactions, the LOINC® codes and at least two of the attachment types, using the HL7 Additional Information Specifications. The pilot is expected to demonstrate the capability of sending the X12 request transaction from a health plan to a health care provider, and then for the health care provider to send the X12 response, complete with the HL7 CDA in the BIN segment, back to the health plan. The health care provider will send both variants of each attachment type—a human variant (scanned document) and a computer variant (a coded response). These variants are described later in this preamble. We believe this pilot program will provide valuable insight as to the implementation challenges of electronic attachments, and perhaps even as to when health care providers and health plans could begin to move towards more structured, coded communication and adjudication. The SDOs are involved in the pilot as subject matter experts, so that as technical or operational challenges are identified with the standards, a core group of professionals with expertise can address them, and take corrective action on the X12 Implementation Guides, HL7 AIS or

LOINC® code set before the final rule is issued.

In this proposed rule, we propose six specific electronic attachment types, each with data content requirements related to treatment or services provided. These six attachments are: (1) Ambulance services, (2) emergency department, (3) rehabilitation services, (4) clinical reports, (5) laboratory results, and (6) medications. These six specific attachments were originally selected for development because there was industry consensus on their relevance to a significant percentage of covered entities and to those claims that typically require additional documentation. They also contain the types of information commonly found in attachments, for example, narrative text (such as nurses' notes), simple data points (such as the results of a single laboratory test), and more complex information (such as rehabilitation progress over time). In 2003, the HL7 ASIG work group began working on other electronic claim attachment specifications that were identified by the industry as being significant, including home health, periodontal care, and durable medical equipment (DME).

Comments are invited as to whether the six proposed attachment types are still the most frequently requested by health plans, and if there are others that are equally or more pressing for the industry.

In the future, any new electronic attachment types, or changes to the six attachments standards proposed here, would require the Department to follow the usual rulemaking process. If changes are requested of the six proposed attachments standards, as a result of public comments during the period between the proposed and final rule, it is highly likely that HL7 would be able to make and ballot such changes in time for their adoption in the final rule. New electronic attachment standards approved by the SDO but not adopted by the Department may be used on a voluntary basis between trading partners, but there is no regulatory authority over their use.

The effect of adopting a limited number of attachments standards at first is to permit covered entities time to gain experience with new standards and to evaluate the technical and business impacts of such transactions. In the meantime, while the electronic attachment specifications for DME, periodontal care, and home health are still under development, covered entities are strongly encouraged to actively participate in the development, review and modification process, and to advance their own proposals for these and other electronic attachments.

Any new electronic attachment specifications, such as the ones referenced above, will be developed in accordance with the framework of the HL7 CDA Release 1.0. If CDA Release 2.0 is approved, the HL7 ASIG will determine if the next set of AISs will use CDA Release 2.0, or continue to be built on Release 1.0. HL7 will advise HHS as to the industry impact if the later version of CDA is adopted, particularly since covered entities need to be able to use both versions without requiring additional system changes. Industry representatives interested in participating in the development process should work in collaboration with HL7.

In fact, as these and other new electronic attachments are developed, we strongly encourage the health care provider and health plan segments of the industry to review them and then provide substantial input on the ''questions'' or LOINC® codes, and on the cardinality (priority values) of the data elements—in other words, which elements should be required and which should be situational or optional for each electronic attachment type. Health care providers and health plans will recall their implementation experiences with the Transactions Rule and have an appreciation of the extreme importance of evaluating and understanding both the technical and business requirements of the standards and guides, and of submitting their issues and recommendations to the SDOs, DSMOs, and the regulators. We also solicit industry input on the impact to servers and other data storage systems for processing and storing electronic files of clinical information, both coded and text or image based.

6. Format Options (Human vs. Computer Variants) for Electronic Claims Attachments

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

The Department and the standard setting organizations are sensitive to the fact that many health care providers, particularly smaller practices that are not yet fully automated, may be looking for means to convert from paper to electronic records in a cost effective, staged manner. To encourage such a transition, the standard setting organizations have proposed an approach to electronic health care claims attachments that could provide the benefits of electronic transmission of the information for both the health care provider and the health plan but that would not require a large upfront investment in electronic medical records systems, or the immediate merging of financial/administrative and clinical systems. Under this proposal, the electronic health care claims attachments may be sent in one of three formats, shown in the table below. Two of the formats are in the category of Human Decision Variant, and the third format is a Computer Decision Variant. There is a lengthy discussion of these variants along with examples later in this preamble, based on a white paper written by members of HL7's Attachments Special Interest Group.

Human Decision Variants: (1) Many health care providers may choose to send scanned or imaged documents in the X12 transaction, and health plans will use manual procedures to process them; a health plan employee will physically look at the contents of the attachment to adjudicate the claim. Simply put, the health care provider would send a virtual document inside the X12 transaction and the health plan would view it on the computer screen, or a printed hard copy. This process is one of the human decision-making variants because it allows for the transmission of scanned page images. After the image has been rendered (printed or viewed as a document), the information should be clear enough and contain sufficient data for a person—the health plan's employee—to make a decision about the claim. (2) The second type of human decision variant is even simpler: The health care provider responds to the electronic request using narrative text, such as a typed response to the question, again embedding this response into the BIN segment of the X12 transaction. The health plan employee reads the answer off the screen, or prints a hard copy for review.

Computer Decision Variant: The computer decision variant contains additional information that is structured so that it can be electronically extracted for use in computer-based adjudication systems, using automated processing rules. The codes will literally be read and interpreted by the computer. Auto-adjudication is the use of computers, programmed with business rules and logic, to process a claim, making decisions as to whether to pay, how much to pay, and to whom to make the payment. It is a long-term goal for most health plans to be able to support auto-adjudication for as many claims as possible.

Even with this variant, HL7 will supply ''stylesheets'' that will put any data into an HTML or screen readable format. This means that health plans

that do not intend to auto-adjudicate in the short term, may continue to use low-cost technology to print or display the electronic attachment information, regardless of which option or variant the health care provider uses.

The human and computer variants do not differ in actual content. Both types of variants (human and computer) for each electronic attachment type have required and optional content elements, which are listed in the specification for that attachment. Both types of variants will satisfy the standard, as they will differ only with regard to whether or not structured and coded data are required. That is, in the computer variant, coded data are required, whereas in the human variants, coded data are not required. While both variant types will carry a LOINC® code or codes, they will be accompanied by the natural text translation (narrative text) in the same transaction, so the request will be understandable in either the human or the computer variant.

TABLE 1.—HUMAN VS. COMPUTER VARIANTS FOR ELECTRONIC ATTACHMENTS

Variant	Information representation	Information sent as * * *
Human Decision	Scanned image	Scanned image of pages from the medical record. Repeats LOINC® code from the request.
Human Decision	Natural language text	Natural language text with captions that match the specified questions. Repeats LOINC® code from the request.
Computer Decision	Natural language text and structured information.	Natural language text, captions identified by LOINC® codes and supplemented by coded information.

Source: Gartner Research 2003.

7. Combined Use of Two Different Standards Through Standard Development Organization (SDO) Collaboration

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

As discussed in the previous section, claims attachment transactions contain both administrative and clinical information. Thus, attachment data could come from a health care provider's clinical record system, whether paper or electronic, as well as from its practice management or billing system. Historically, these two distinct areas (clinical vs. administrative) have been the domain of two different SDOs: HL7 focuses on clinical data standards, while X12 concentrates on administrative data and transactions. In 1997, a joint effort between HL7 and X12 produced several options that would facilitate the communication of both clinical and administrative data, as well as smooth the transition from paper to a standardized electronic process for health care claims attachment information.

ASC X12N, through its Patient Information Standards Work Group (WG9), developed transactions and the accompanying X12 implementation guides to fulfill the administrative needs of an electronic attachment request and the response to that request. HL7, through its ASIG, developed the message structure and the additional information specifications employing LOINC® codes that were relevant to the major types of clinical data needed in claims attachments. The ASIG included HL7 representatives, members of X12's WG9, and several vendors and health care providers with HL7 experience. The purpose of proposing the combined use of both ASC X12N and HL7 standards is to address both the administrative and clinical aspects of the attachment transactions from a format and content perspective. However, because these two standards have not been used together before, we solicit industry feedback regarding this strategy.

One of the benefits of standardizing health care claims attachments is that it allows health care providers to anticipate requirements from health plans regarding additional documentation for claims adjudication. This should present opportunities for providers to develop procedures and systems to collect the data specified in the X12 Implementation Guides and HL7 Additional Information Specifications. Health care providers would also be given considerable latitude on how to submit the information—with either narrative text, scanned documents or with fully coded data, permitting the use of some form of electronic attachments for health care providers that do not have computer-based medical record systems.

From the health plan perspective, the requirements for use of the two standards can be met with a low impact implementation for claims adjudication, based on a person looking at the content of the electronic attachment in a text/readable format, regardless of how it is submitted. While the proposed process supports auto-adjudication, it does not require it for compliance.

D. Electronic Health Care Claims Attachment Business Use

A health care claims attachment conveys supplemental information pertaining to the services provided to a specific individual to support evaluation of a claim before it is paid. An attachment might contain biometric data; medical history; clinical data (reports, studies, notes); hospital discharge notes; laboratory results; medication information; rehabilitation plans; optical prescriptions; certifications made by the individual and/or the health care provider regarding sterilization, hysterectomy, or other services, as required by Federal or State rules; or other clarifying information for a particular service.

Attachments may be requested or submitted when the supplemental medical information is directly related to the determination of benefits under the subscriber's contract, or when directly related to providing medical justification for health care services provided to the individual when that medical justification can affect the adjudication of payment for services billed by the provider of health care services. Although additional clinical or administrative information may be required following adjudication of claims, such as for post-adjudication review to support quality control, fraud and abuse, or other post-adjudication reviews and reporting requirements, we do not consider these post-adjudication requests for claims-related data to be part of the claims payment process. Therefore, post-adjudication processes are not covered by this proposal. While covered entities may voluntarily choose

to use the standard transaction format and structure for requesting and submitting these types of attachments, those transactions are not considered electronic claims attachments as defined in this proposed rule.

1. Electronic Health Care Claims Attachment vs. Health Care Claims Data

Electronic health care claims attachments must not be used to convey information that is already required on every claim. Information needed for every claim is ''claims data'' that must be conveyed in the appropriate standard claim transaction. The purpose of a claims attachment is to convey supplemental information that is directly related to one or more of the services billed on the claim submitted by the health care provider when further explanation of those services is required before payment can be made by the health plan. There are even some current business practices that include 100 percent pre-payment medical review. This is when a health plan requires a specific health care provider to include certain supplemental information with all claims for a certain type of service.

Over the past few years, health plan rules and policies regarding the additional data necessary to adjudicate a claim have evolved, and in fact, many health plans have begun to limit or reduce their requests for claims attachments. Therefore, it is critical that members of the health plan industry and the health care provider community actively engage themselves in the final development of this proposed rule so that the proposed attachments are indeed those which will yield significant benefits to health care providers and health plans alike.

2. Solicited vs. Unsolicited Electronic Health Care Claims Attachments

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

In general, health care providers will submit their electronic health care claims attachment information to the health plan for certain claim types, upon request, after the health plan has received and reviewed the claim. This follows the course of claims adjudication today. Health plans may also request, in advance, that additional documentation (the attachment) accompany a certain type of claim for a specific health care provider, procedure, or service. The ASIG refers to this scenario, of sending attachment information with the initial claim, as an unsolicited attachment because a request was not made after the fact, using the standard request transaction. We are proposing that health care providers may submit an unsolicited electronic attachment with a claim only when a health plan has given them specific advance instructions pertaining to that type of claim or service.

We are proposing such a restriction around ''unsolicited'' electronic attachments, because we believe that there are legal, business, and technical implications for health care providers, health plans, and their business associates for handling and processing unsolicited attachments without prior direction. If health care providers were permitted to submit unsolicited electronic attachments with any claim without prior arrangement with the health plan, there would be a number of issues, including compliance with the Privacy Rule's minimum necessary standards, and identifying the new business and technical procedures health plans would need to develop to review, evaluate, store, return, or destroy the unsolicited documents. Similarly, health care providers would need systems and processes to track submissions and returns.

We also propose that for each specific claim, health plans may solicit only one electronic attachment request transaction which would have to include all of their required or desired ''questions'' and/or documentation needs relevant to that specific claim. Health care providers would be required to respond completely to the request, using one response transaction. The intent of these proposed requirements is to avoid inefficient, redundant processes. A health plan would not be able to extend adjudication through a lengthy process of multiple individual attachment requests for the same claim: submitting one LOINC® request code at a time, receiving the health care provider's response, and then submitting another transaction with another LOINC® code for additional information related to the same claim. Nor would a health care provider be able to send bits and pieces of the requested information at different times or dates. We propose this because it seems contrary to the goals of administrative simplification for covered entities to engage in a continuous loop of query and response in order to have a claim processed.

We solicit feedback from the industry on this issue.

3. Coordination of Benefits

There is considerable variation in how health care providers and health plans handle Coordination of Benefits (COB) and the communication of related claims information. However, with respect to electronic attachment requests and responses in a COB scenario, we assume that the primary health plan will request only the attachments it needs to adjudicate its portion of the claim. The secondary health plan would request its own attachments in a separate (X12N 277) transaction sent directly to the health care provider. In health plan-to-health plan (also known as payer-to-payer) COB transactions, the primary health plan may not know the secondary health plan's business rules, and therefore would not be expected or required to request an attachment on behalf of the secondary health plan.

4. Impact of Privacy Rule

Before implementation of the Privacy Rule in 2003, health care providers often sent the individual's entire medical record to the health plan for the purpose of justifying a claim. Health plans and health care providers indicated that this practice reduced instances for which follow-up requests for more information were needed, since all possible information was supplied at once. That practice was often wasteful and time consuming, and it is now generally inconsistent with the ''minimum necessary'' standards contained in the HIPAA Privacy Rule at 45 CFR 164.502(b) and 45 CFR 164.514(d). These standards require covered entities to make reasonable efforts to limit requests for, or disclosures of, protected health information to the minimum necessary to accomplish the intended purpose of the request or disclosure. In situations where the minimum necessary standard applies, such as when a covered health care provider discloses protected health information to a health plan for payment, the standards prohibit disclosure of the entire medical record unless the entire medical record is specifically justified as the amount that is reasonably necessary to accomplish the purpose of the disclosure (45 CFR 164.514(d)(5).

The Privacy Rule exempts from the minimum necessary standard any use or disclosure that is required for compliance with the Transactions Rule (45 CFR 164.502(b)(2)); thus, the minimum necessary standard does not apply to any required or situationally required data elements in a standard transaction. For example, if an identifier code were required on all electronic attachment request transactions to create a connection between the electronic attachment request

transaction and the associated health care claim, then health plans would not need to apply the minimum necessary standard to that data element to determine whether they could request that information. However, the minimum necessary standard would apply to data elements for which health plans or health care providers may exercise discretion as to whether the information should be provided or requested in the transaction. For example, health plans must apply the minimum necessary standard when selecting the attachment information to be requested in a particular electronic attachment request transaction.

A health care provider may rely, if such reliance is reasonable under the circumstances, on a health plan's request for information, or specific instructions for unsolicited attachments, as the minimum necessary for the intended disclosure. Such reliance is not required, however, and the covered health care provider always retains the discretion to make its own minimum necessary determination.

For health care providers who choose to submit attachment information in the form of scanned documents, efforts will need to be made to ensure that those documents do not contain more than the minimum necessary information.

We solicit comments on the extent to which the use of the proposed electronic attachment standards will facilitate the application of the ''minimum necessary'' standard by covered entities when conducting electronic health care claims attachment transactions.

5. Impact of the Security Rule

All covered entities need to comply with the Security Rule no later than April 20, 2005, except for small health plans, which must comply no later than April 20, 2006. The Security Rule applies to all covered entities, and, therefore, will apply to the transmission of electronic health care claims attachments. There are four overarching security requirements with which covered entities must comply: (1) Ensure the confidentiality, integrity, and availability of all Electronic Protected Health Information (EPHI) that the covered entity creates, receives, maintains, or transmits; (2) protect against any reasonably anticipated threats or hazards to the security or integrity of EPHI; (3) protect against any reasonably anticipated uses or disclosures of EPHI that are not permitted under the Privacy Rule; and (4) ensure compliance with the security regulations by members of the workforce. The types of security measures required by the Security Rule fall generally into three categories: administrative, physical, and technical safeguards. The Security Rule also has standards for documentation and organization requirements. Since the requirements are intended to be scalable, each covered entity must take into account its size, complexity, capabilities, technical infrastructure, and hardware and software security capabilities; the cost of security measures; and the probability and criticality of potential risks to EPHI.

The systems used to transmit electronic claims attachments will likely be the same systems used for other electronic transactions. Therefore, any efforts to comply with the Security Rule should be effectively incorporated into electronic attachment processing.

Most covered entities (with the possible exception of small health plans) will be in compliance with the Security Rule by the time of this proposed rule; and all health plans will have fully implemented their security programs by the time the final rule is published for electronic health care claims attachments.

6. Connection to Signatures (Hard Copy and Electronic)

This regulation does not propose requirements for Electronic Signatures (e-signatures) because a consensus standard does not presently exist that we could propose to adopt, nor does any Federal standard currently govern the use of electronic signatures for private sector health care services. Federal agencies that are also covered entities have to comply with the Office of Management and Budget (OMB) guidance on e-signatures in the context of the Government Paperwork Elimination Act (OMB notice 5/2000, 65 FR 25508) and the Federal Information Security Management Act (Title III of the E-Government Act of 2002). And, while the OMB has responsibility for coordinating and implementing the adoption and use of electronic signature technologies for Federal agencies, this effort is not related to HIPAA transactions per se, and we do not have authority to require the private sector to comply with rules that are only applicable to Federal agencies. At the time of this proposed rule, other agencies and Federal initiatives involved in the evaluation and development of standards for electronic signatures include the Department of Defense (DOD), the National Institute for Standards and Technology (NIST), and the Federal Consolidated Health Informatics Initiative (CHI).

We are aware that virtually all health plans, including the Medicare and Medicaid programs, require signatures certifying certain types of services, such as sterilization, certain rehabilitation plans, and authorization for certain types of equipment. For example, health plans may request a paper copy of the signature page of a rehabilitation plan, or they may accept the response code indicating that the signature is on file. The CDA Release 1.0 requires the acquisition of the signature to be documented via the <signature_cd> component, so there is an accommodation for signature within the standard, but not a requirement for an electronic signature specific to HIPAA.

We solicit input from the industry on how signatures should be handled when an attachment is requested and submitted electronically.

7. Connection to Consolidated Health Informatics Initiative

Several agencies within the Federal government that deal with the delivery of health services, including the Departments of Health and Human Services, Veterans Affairs, and Defense, have adopted a portfolio of health information interoperability standards that will enable all agencies in the Federal health enterprise to ''speak the same language'' based on common, enterprise-wide business and technology architecture. This program is known as he Consolidated Health Informatics (CHI) initiative. In 2003, CHI targeted 24 ''domains'' for data and messaging, from laboratory results to vocabulary for nursing, to medications. The CHI initiative looked to the private sector to identify particular electronic health clinical data standards for adoption, researched these standards, and is now beginning to build the plan to implement them within Federal agencies as program requirements dictate. On May 6, 2004, the Secretaries adopted standards for 20 domains and subdomains; among others, these included: HL7 messaging standards for clinical data, NCPDP standards for ordering from retail pharmacies, IEEE1073 to allow health care providers to monitor medical devices, DICOM to enable images of diagnostic information to be retrieved and transferred between devices and workstations, LOINC® for the exchange of clinical laboratory results, SNOMED CT® for certain interventions, diagnosis and nursing terminology, and a variety of terminologies for medications. We include a reference to CHI here to clarify that while the Federal government is reviewing and adopting standards for its intra-agency communications, these are

not inconsistent with the private sector, with whom significant transactions are exchanged, and that furthermore, the work and outcome of CHI related activities do not conflict with HIPAA. Indeed, CHI has adopted HIPAA standards as the standards for the exchange of administrative information. The complete list of adopted standards and other details about CHI may be found at *http://www.egov.gov* or *http://www.whitehouse.gov/omb/egov/gtob/health_informatics.htm.*

8. Health Care Provider vs. Health Plan Perspective

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

Health care providers and health plans regard claims attachments quite differently. Health care providers would prefer to keep attachments to a minimum and regard requests for additional claims-related information as unnecessarily lengthening the payment cycle. Health plans consider the use of attachments as a necessary tool to ensure appropriate payment decisions, maintain quality assurance, and minimize fraud and abuse. What a health care provider may regard as an unnecessary and/or onerous request for information may be viewed by the requesting health plan as critical to ensure that payment is being made according to the provisions of the patient's policy and benefits, for which the health plan pays. This rule does not propose to set out requirements for the appropriateness of requests for additional information. However, the proposed attachment standards are designed to reduce miscommunication and multiple requests for information by providing specificity to both the request for information and the response, and by establishing specific limits to the content of the attachment.

Health Care Provider vs. Health Plan Implementation: In accordance with 1175(a) of the Act and 45 CFR part 162, §162.923 and §162.925, health plans may not reject any electronic transaction simply because it is being conducted as a standard transaction. This applies to the proposed transactions for electronic health care claims attachment requests and responses. So, for example, a health care provider may direct a health plan to send any request for additional documentation to it or its business associate in standard form, for those attachment types for which a standard has been adopted here, and the health plan must do so. The health care provider may also request that the health plan accept the attachment information in the standard response transaction.

However, as we have stated in the past, we do not believe that the use of a standard transaction can create a business relationship or liability that does not otherwise exist.

9. Health Care Clearinghouse Perspective

Health care clearinghouses are covered entities under HIPAA, and must be able to accept and transmit a standard transaction when asked by a health care provider or health plan for whom they serve as a business associate for those functions. Since both health care providers and health plans have dependencies on the health care clearinghouses, it is imperative that the health care clearinghouse industry participates actively in the rulemaking process, standards review, and implementation assessment as well. It would be helpful if health care clearinghouses were among the first of all entity types to come into compliance with these standards so that testing between trading partners—health care providers and health plans—could be executed in a timely fashion.

E. Electronic Health Care Claims Attachment Content and Structure

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

As noted, there are two separate transactions associated with the electronic claims attachment. One transaction is a health plan's request for health care claims attachment information, and the other is the health care provider's response, which includes submission of the attachment information.

Each of these transactions contains administrative information that identifies the individual, date of service, and other information that permits the health care provider to identify the appropriate individual and claim, and enables the health plan to associate the electronic attachment material with the proper claim. In addition, the attachment request must have an unambiguous way to specify the clinical or other information needed, and the attachment response must have an unambiguous way to label the information being provided and to convey responses in a consistent, predictable manner.

Example: ABC Ambulance Company submits a claim for transporting M. Smith on a certain date. The health plan cannot adjudicate the claim without knowing M. Smith's weight. The health plan sends a request for the individual's weight to ABC Ambulance Company and includes the individual's name, date of service, type of service, the control number it is using to identify the claim, and other information that will allow ABC to locate the individual's record. This information, when returned along with the response, will also enable the health plan to associate this new piece of data with the correct claim. The ABC Company sends the requested information back to the health plan, it is associated with M. Smith's claim, and the claim continues through the adjudication process.

In this example, the health plan wants the individual's weight as reported by the individual (rather than an estimate made by the attendants) expressed in pounds, not kilograms. The request will contain a code that reflects this exact request, and the response will return the code with the individual's weight, expressed in pounds.

Thus, the standards we are proposing for any of the named electronic attachments types will specify:

- The administrative information contained in the request and response;
- The attachment information (also referred to as the additional information specification) contained in the response;
- A code set for specifically describing the attachment information;
- A code set modifier for adding specificity to the request; and
- The format that will contain all of this information.

The size of the file in the response transaction will be impacted by the option the health care provider chooses for the submission—either text and imaged documents or coded data. With imaged documents, the size of the file within a single response transaction could become large. The implementation guide for the X12 275 response transaction permits up to 64 megabytes of data in a single transaction. Industry comment on file size is also welcome.

In sum, the proposed standards are those that have been under development for over eight (8) years by the HL7 ASIG. Meanwhile, the health care industry itself has undergone significant change. It is, therefore, critical that appropriate industry representation reviews and then weighs in on these standards: The attachment content, and format, and the transaction's function. As discussed throughout this preamble, we are soliciting comments from all affected covered entity types (covered health care providers, health plans, health care clearinghouses and Medicare

prescription drug discount card sponsors) and their business associates (practice management vendors, software vendors, document storage contractors and others) about these proposed standards. In this paragraph, we reference Medicare prescription drug discount card sponsors as a covered entity. These organizations are considered covered entities until 2006, when the new Medicare prescription drug program becomes effective. Based on the timing of the electronic health care claims attachments final rule, the requirements of that final rule may or may not be relevant to such organizations.

F. Alternatives Considered: Candidate Standards for Transaction Types and Code Sets

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

1. Transactions

History: In the early years of the HIPAA standards adoption process, the ANSI Health Informatics Standards Board (HISB) prepared inventories of transaction standards and code sets for HHS so that staff could evaluate the available options. Several standards were selected as potentially viable for electronic health care claims attachments, but no final decision was made at that time, and the proposal was held for additional work. In a 2001 white paper, HISB again documented the potential transaction standards that could be used for electronic health care claims attachments. The list included the ANSI X12N 275 version 4010 (Additional Information in Support of the Health Care Claim or Encounter) as the vehicle to send the electronic attachment information to the health plan. However, that transaction and a number of other ones considered, were not suitable on their own for a general electronic health care claims attachment standard, as they (the transaction standards) were overly service specific. For example, the Institute of Electrical and Electronic Engineers (IEEE) had a standard (IEEE 1073) for communication among bedside devices. Digital Imaging and Communication in Medicine (DICOM) created a standard for the format and transfer of biomedical images and image-related information. The American Society for Testing and Materials (ASTM) had created a framework vocabulary for the patient-based record content. While each of these standards had its place in the industry, none was appropriate as a transaction standard capable of handling a host of different types of electronic health care claims attachments.

a. Health Care Claims Attachment Request Transaction

The HISB did not suggest any candidate transactions for use as a request for additional health care claim information. A review of SDO transaction inventories and a review of relevant literature by the WG9 identified only one transaction that could be modified for use as an electronic claims attachment request transaction: the X12N 277 version 4010 Claim Status Response transaction could satisfy this business need if the implementation specifications were modified. The X12N 277 transaction adopted under HIPAA for claims status inquiries was originally created by ASC X12N to provide the capability to electronically transmit information about the (payment) status of a health care claim (the 277 serves as a response transaction to the 276 inquiry). In order to accommodate the more extensive business requirements of an electronic health care claim attachment request, a new version of the implementation specification of the X12N 277–Health Care Claim Status Notification would have been required. Thus, X12 and HL7 determined that it was more expedient and practical to create a new transaction standard designed for the specific purpose of requesting an attachment rather than trying to modify one designed as a response transaction.

b. Health Care Claims Attachment Response Transaction

The HISB assessment originally suggested one standard as a candidate for the response to a request for health care claims attachment information. The X12N 275–Patient Information transaction had the closest match in capability and business potential for conveying health care claims attachment information, though it had not been adopted as a HIPAA standard for any other purpose. The X12N 275 transaction was designed to provide individual information to be shared among trading partners. When coupled with HL7 message structures, the X12N 275 appeared to represent the best electronic solution for this purpose because of its two key advantages over other ASC X12N transactions: (1) The capability to transmit other standard messages within the transaction; and (2) the ability to transmit large amounts of information within the BIN segment of the transaction, which can contain up to 64 megabytes of data. However, after extensive evaluation, WG9 determined that the existing version of the X12N 275 transaction would have to be modified, with significant structural changes to accommodate the business needs for standardized electronic health care claim attachments. WG9 also determined that most of the supplemental information requested by health plans was clinical information, usually detailed with specific quantitative measurements, laboratory results, and specific medical reports. Clinical information of this nature was already accommodated by HL7 messages, but not by anything in the X12 repertoire. The X12N 275 transaction, when coupled with HL7 message structures, appeared to represent the best electronic solution for this purpose. In 1997, ASC X12N representatives agreed to incorporate the use of HL7 standard messages in the BIN segment of the ASC X12N 275. Over the past two years, ASC X12N developed a new implementation guide for this use, complemented by the HL7 specifications.

2. Code Sets

History: There was virtually no depth in the pool of available code sets for consideration to request or send information—at least not one individual code set with everything that might be needed for electronic health care claims attachments. Thus, the original candidate for the code set to be used with attachments was the X12N version of health care claims status reason codes, tied to the X12N 837 claims transaction and the claims status inquiry and response (X12N 276/277). As this option was being evaluated, HISB also reviewed another code set that could potentially serve to identify the additional information needed to process the claim—this was the LOINC® code set.

Under HIPAA, the Secretary may adopt code sets developed by either private or public entities, including proprietary code sets. The Act also allows the Secretary to adopt standards other than those established by an SDO if the different standards will reduce costs for health care providers and health plans, and other applicable statutory requirements are met. Both of the code set candidates evaluated for inclusion were proprietary code sets that had established mechanisms for maintenance related updates, were available without payment of licensing or use fees, and were already in use by the medical community.

holder of the X12N health care claim status reason codes. The Regenstrief Institute, Inc. and the LOINC® Committee are the copyright holders of the LOINC® code set and database.

LOINC® provides sets of universal names and identification codes for identifying laboratory and clinical test results as well as other units of information that are meaningful in electronic claims attachments. The LOINC® code for a name is unique and permanent and has no intrinsic structure except that the last character in the code is a check digit and must always be transmitted with a hyphen before the check digit (for example, ''10154–3''). The LOINC® codes offer a comprehensive array of coded topics designed to support detailed supplementary information.

The Remark and Reason Code Committee of X12N maintains the health care claim status reason codes that are currently used in version 4010 of the X12N 277 Claims Status response transaction. This transaction provides information about the general status of a claim in response to a request made for such status, using version 4010 of the X12N 276 transaction.

Ultimately, the standards organization determined that the health care claims status codes were significantly less definitive and efficient than the LOINC® codes for communicating detailed or specific clinical information to supplement a claim, and made a recommendation to the Secretary to adopt LOINC® for the electronic health care claims attachment transactions.

The recommendation was supported through a 1996 ''Proof of Concept'' study sponsored by CMS, using an early version of the X12N 277-Health Care Claim Request for Additional Information, coupled with the health care claim status reason codes. Eight provider/vendor partners and five plans that were also Medicare contractors participated in the effort to evaluate the suitability of the X12N 277 and the health care claims status codes for electronic attachment use (Executive Report Medicare Proof of Concept Study: Standard Electronic Requests for Additional Medical Review Information). This study identified a number of barriers related to the use of health care claim status reason codes for the purpose of the electronic attachments transactions. Specifically, the health care providers did not view the codes as sufficiently ''concise'' in providing the request. They predicted that this lack of precision would increase time spent ''pulling and copying medical records'' and submitting responses such as ''sent the whole record,'' which would increase costs to the health care provider and the health plan. There were also concerns about the level of specificity, clarity, and redundancy of the codes. In fact, a cross walk of the claims status codes to the existing standard codes could not be accomplished, and the study showed that, in many cases, several claim status reason codes were required at one time in order to convey an appropriate level of clarity to the request. At the time of the study, there were 406 local (Medicare) codes being used, and 50 percent of them could not be mapped to the health care claim status reason codes.

The example in *Table 2, Comparison of LOINC® Codes and Health Care Claim Status Reason Codes for Requesting Additional Information,* illustrates the brevity and efficiency associated with using LOINC® codes when compared to health care claim status reason codes. In this example, the health plan is requesting information pertaining to treatment, progress notes, and attainment of rehabilitation goals for a rehabilitation service.

TABLE 2.—COMPARISON OF LOINC® CODES AND HEALTH CARE CLAIM STATUS REASON CODES FOR REQUESTING ADDITIONAL INFORMATION

LOINC® code	LOINC® code definition	Health care claim status reason code	Health care claim status reason code definition
R4: 18658–5:LOI	R4 = Requests for additional information and documentation 18658–5 = Psychiatric Rehabilitation treatment plan, progress notes, and attainment of goals LOI = Specifies this is a LOINC® code.	R4:310:3F	R4 = Requests for additional information/documentation; 310 = Progress notes for the 6 months prior to statement date; 3F = Rehabilitation facility.
	.....	R4:436:3F	R4 = Requests for additional information/documentation; 436 = Short term goals; 3F = Rehabilitation facility.
	.....	R4:437:3F	R4 = Requests for additional information/documentation; 437 = Long term goals; 3F = Rehabilitation facility.

The LOINC® code 18658–5 asks the exact question the plan wants answered with a single code. In contrast, the health care claim status reason codes cannot exactly replicate what the plan wants answered; the closest match requires three separate requests. In this example, the use of the existing set of reason codes would result in the health care provider sending data that the health plan did not request and does not need because the code for progress notes includes an instruction to send 6 months of information.

3. Implementation Specifications for Sending and Receiving Additional Health Care Information Within a Transaction

As described earlier, the HISB reviewed available transaction options and recommended that new versions of the X12N 277/275 standards be created and adopted for the transmission of electronic health care claims attachment information. In particular, the X12N 275 response transaction had the advantage of being capable of transmitting other standards within the transaction and the ability to transmit large amounts of information within the BIN segment of the transaction. Most of the supplemental information requested by health plans is clinical information, usually detailed with specific quantitative measurement, lab results, and specific medical reports. Clinical information of this nature could already be accommodated in HL7 transactions.

Thus, the BIN segment of the ASC X12N 275 (response) transaction would be able to hold all of the attachment information requested by the health

plan. In 1997, the NUBC, the NUCC, and the NCVHS were consulted on the data format to be used in the BIN segment. Originally, the NUCC recommended that a choice between unstructured ASCII text alone and structured HL7 be given. However, much discussion occurred during the NCVHS meeting itself, and after considering the comments received, and discussion with health insurance EDI professionals, the NCVHS and WG9 determined that the best options for content structure were the following:

1. HL7 structure—this option would require the structure and content of the Additional Information Specification (AIS) to be based entirely on HL7 defined information for each message. HL7 would define the data content and structure for each AIS based on existing HL7 conventions;

2. HL7 plus ASCII text structured—this option would allow, in addition to the HL7 structure, additional specifically formatted text information (defined lengths, etc.). This would limit the amount and type of additional information that could be submitted; or

3. HL7 plus ASCII text unstructured—this option would allow, in addition to the HL7 information, any additional text information.

The NCVHS Subcommittee on Standards and Security held hearings on this specific issue on June 15, 1998 in Washington DC. Representatives from ASC X12N, HL7, NUBC, NUCC, HHS, providers, a translator firm, and a health care clearinghouse spoke to the advantages and disadvantages of each of the options. After discussion, the NCVHS Subcommittee voted to recommend to the full committee Option 1, which would require HL7 messages within the BIN segment of the ASC X12N 275 version 4020—Additional Information to Support a Health Care Claim or Encounter implementation guide. This approach would accommodate a broad spectrum of possible information since the HL7 standard permits unstructured ASCII text within the body of an HL7 structure. The HL7 standard supports the additional information specifications that represent the specific supplementary information being submitted in the form of an attachment. Thus, the AIS, formatted in accordance with the overarching HL7 Implementation Guide, represents the data to be transmitted in the BIN segment of the X12N 275 transaction.

The LOINC® codes offer a comprehensive array of coded topics that readily support detailed supplementary information that can be transmitted by HL7 messages within the BIN segment, and these codes provide sets of universal names and identifying codes for conveying laboratory and clinical test results as well as other units of information that are important in health care claims attachments. The LOINC® process for reviewing and updating the database of codes and values also offers sufficient opportunities for growth and expansion. Therefore, LOINC® was determined to be the best match along with the recommended X12 transaction standards and HL7 specifications.

G. Proposed Standards

We are proposing certain industry consensus standards that, when used together, provide the functionality necessary for the electronic health care claims attachment. No other industry standards are in use today for this purpose. The proposed standards are fully compatible with the other ASC X12 and HL7 standards and can be translated to and from various systems using software programs (commonly referred to as ''translators'' and ''interface engines'') that are increasingly used by industries using ASC X12 transactions and HL7 messages.

This rule proposes the following for adoption as national standards for electronic health care claims attachments:

1. Code Set

The industry organizations that developed the electronic claims attachment standards proposed the adoption of LOINC® as the code set for representing the specific elements of attachment information. In 1998, NCVHS held several days of hearings on electronic health care claims attachments, including presentations on the status of a pilot for the request transaction, the types of attachments being requested by health plans, and the use of the LOINC® code set for describing and/or itemizing the information being requested, and the information being submitted in response to that request. Based on the testimony, NCVHS recommended that the LOINC® code set be adopted to support electronic health care claims attachments. We support the recommendation, and have included the adoption of LOINC® codes as a part of this proposed rule. HL7 has created companion LOINC® modifiers that would add further specificity to the LOINC® code itself. These modifiers refine the requests in terms of time frame; for example, on, before, or during a particular encounter, or in terms of item modifiers, such as abnormal, worst, first, last, etc. We therefore also propose to adopt the LOINC® modifiers as national standards for the electronic health care claims attachments.

As we have described earlier, the HL7 specification uses LOINC® codes for each proposed electronic claims attachment, and these AIS specify the required content and LOINC® codes for each electronic attachment. It is, therefore, imperative for all segments of the industry to comment on the proposed attachment content, the attachment criteria and the procedures, so that the standards can be validated, and any appropriate revisions to those standards made and approved in time for the final rule.

The LOINC® code set, similar to ICD–9, CPT–4, HCPCS, CDT and other proprietary code sets, may be updated with new codes as needed to reflect new technology, services, and procedures. Similar to other code sets, maintenance updates of the LOINC® code set are permissible and do not require regulatory action, though the formal procedures of the code set maintainer must be followed for requesting, adding and communicating new codes to each code set. The addition of new codes to the LOINC® code set is considered a routine code set maintenance activity and does not require rulemaking because, in part, additions (and deletions) do not change the format or field size of the codes. Such maintenance simply allows the addition or deletion of codes to accommodate clinical advances and industry needs. Modification, on the other hand, involves actual format changes to some or all of the codes, or the code set in its entirety, such as converting a numeric code set to an alphanumeric code set. Such a change would likely require significant business and system changes and programming. Therefore, use of a modified code set would require rulemaking to allow the industry time to evaluate the impact and provide feedback to the Department, the code set maintainers, and other relevant parties with authority.

To date, we have no information to indicate that LOINC® is being evaluated for any kind of modification and therefore we are comfortable recommending its adoption for use with electronic health care claims attachments. The most common updates to LOINC® will likely be in the categories of laboratory results, clinical reports, and medications, as new diagnostic studies, clinical reports, expansion of lab technology, new tests and new drug regimens are adopted by the industry. The proposed HL7 attachment specifications for laboratory

results, clinical reports and medications allow for the use of new LOINC® codes in the response, once these become available in the LOINC® code set and are needed for communication between HIPAA trading partners.

With respect to the attachment data that can be requested, also known as the ''questions'' or attachment components, the AISs for ambulance, emergency department, medications, and rehabilitation contain a finite list of LOINC® codes that may be used. New questions, and therefore potential new LOINC® codes for the current AIS that are proposed as a result of the public comment before publication of the final rule would need to go through the HL7 ballot process; if approved in time, the new questions, in the form of LOINC® codes, could be incorporated in the AIS adopted in the final rule. Any LOINC® question code additions or changes to the specifications made after publication of the final rule would require rulemaking, as do changes to other standards. New LOINC® codes may be requested through Regenstrief, by following the procedures outlined in the LOINC® manual, Appendix D. Submissions may be made via e-mail or regular mail, and the RELMA tool offers use of an ACCESS database to ensure the completeness of the request. Commenters are encouraged to become familiar with the RELMA tool, the LOINC® database and the LOINC® manual.

We specifically do not name a code set for medications or drugs for this proposed rule. NDC was repealed as the code set for non-retail pharmacy drugs and biologics under the Transactions Rule, and no other single code set for drugs has been adopted for non-retail pharmacy transactions. The HL7 AIS for medications allows requests for current medications, medications administered during treatment, and discharge medications. The AIS is written such that it functions with any narrative text, codes or coding system that are agreed to between trading partners; it does not require any single code set to be used. The AIS has a section devoted to special considerations for the drug codes and reporting requirements that will work in both human and computer decision variants. Industry representatives should read this AIS in order to provide feedback to HHS and the SDOs regarding this approach to medication documentation.

2. Electronic Health Care Claims Attachment Request Transaction

We are proposing to adopt the ASC X12N 004050X150 (ASC X12N 277—Health Care Claim Request for Additional Information) transaction to convey the request for the electronic claim attachment. It would identify the claim and related data needed. This transaction would serve as an ''electronic envelope,'' conveying the LOINC® code or codes appropriate to that electronic attachment request. Only LOINC® codes specified in the HL7 AIS booklets and LOINC® code tables for the particular electronic attachment can be requested. Medications, laboratory results, and clinical reports may use any of the relevant codes in the LOINC® code set. The responding transaction (the X12N 275) would echo the requester's LOINC® request codes, and provide the data associated with those LOINC® codes, in either the human or computer decision variants.

In part 162, we would specify the ASC X12N Implementation Guide 004050X150 (ASC X12N 277—Health Care Claim Request for Additional Information) as the standard for requesting electronic health care claims attachment information. Note that LOINC® codes being used to request specific information must be those specified in the appropriate AIS as follows:

a. CDAR1AIS0001R021 Additional Information Specification 0001: Ambulance Service Attachment. The instructions and LOINC® code tables for requesting ambulance supplemental information are contained in this guide.

b. CDAR1AIS0002R021 Additional Information Specification 0002: Emergency Department Attachment. The instructions and LOINC® codes for requesting emergency department supplemental information are contained in this guide.

c. CDAR1AIS0003R021 Additional Information Specifications 0003: Rehabilitation Services Attachment. The instructions and LOINC® code tables for requesting rehabilitation services supplemental information are contained in this guide.

d. CDAR1AIS0004R021 Additional Information Specifications 0004: Clinical Reports Attachment. The instructions and LOINC® code tables for requesting clinical reports supplemental information are contained in this guide.

e. CDAR1AIS0005R021 Additional Information Specifications 0005: Laboratory Results Attachment. The instructions and partial list of LOINC® codes for requesting laboratory results supplemental information are contained in this guide.

f. CDAR1AIS0006R021 Additional Information Specifications 0006: Medications Attachment. The instructions and LOINC® codes for requesting medication supplemental information are contained in this guide.

3. Electronic Health Care Claims Attachment Response Transaction

We are proposing to adopt the ASC X12N 004050X151 (ASC X12N 275—Additional Information to Support a Health Care Claim or Encounter) as the response transaction to convey the claim identification and related data, such as individual name, provider name, date and type of service, that are needed to match the information to the original claim. The claim identification and related data are conveyed in the BIN segment of the transaction that serves as an ''electronic envelope.'' This envelope also conveys the HL7 message that carries the supplementary electronic health care claims attachment data in the form of an AIS.

Information conveyed by the HL7 message would be the specific AIS provided in response to the LOINC® code or codes contained in the request, or as an unsolicited (but pre-arranged) electronic attachment submission. Each electronic attachment type is identified by a unique LOINC® code that indicates its name and appears in the header of the message for identification purposes; for example, psychiatric rehabilitation has its own unique LOINC® code of 18594–2. Other LOINC® codes used in the body of the message will specify the specific information related to that service that is desired (for example, the psychiatric rehabilitation plan). The individual booklets for each HL7 AIS contain the instructions and LOINC® code tables that define all of the data content that may be used in that particular electronic attachment.

The LOINC® code set provides a set of subject modifier codes that are categorical; that is, an identifier code can apply to a group of related reports. For example, Clinical reports can be identified by the type of equipment used (for example, CAT scan report); the body part examined (report of x-ray of left wrist), the subdivision of the laboratory performing the analysis (microbiology), or a challenge to the system (cardiac stress test). Different combinations of these facts can produce information relevant to a clinical reports AIS. Therefore, it is important that the request transaction, based upon the ASC X12N 277 version 004050x150 being submitted, use the LOINC® Report Subject Identifier Code(s) that most clearly represents the attachment information needed. The LOINC® Report Subject Modifier Codes can be found in the LOINC® Committee publication.

In part 162, we would specify the ASC X12N Implementation Guide 004050X151 (ASC X12N 275—Additional Information to Support a Health Care Claim or Encounter and the HL7 CDAR1AIS0000RO21 HL7—Additional Information Specification Implementation Guide, and HL7—Clinical Document Architecture Framework Release 1.0) as the standards for conveying electronic health care claim attachments, and we would specify the following six specifications as the standards for the electronic health care claims attachments:

a. CDAR1AIS0001RO21, Additional Information Specification 0001: Ambulance Service Attachment, Release 2.1, based on HL7 CDA Release 1.0. The Ambulance AIS contains data elements used to describe ambulance services. These include body weight, transport distance, and the reason for the ambulance trip.

b. CDAR1AIS0002RO21, Additional Information Specification 0002: Emergency Department Attachment, Release 2.1, based on HL7 CDA Release 1.0. The Emergency Department AIS is used to provide supporting documentation when an emergency department visit is reported. Data elements include assessment results, medications provided, and the chief complaint reported. This AIS is derived in part from the document *Data Elements for Emergency Department Systems, Release 1.0* (DEEDS), published by the National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. The DEEDS document provides uniform specifications for data elements that may be used for EDI transactions. The emergency department AIS includes a subset of those data elements and adds additional elements on to meet the business needs associated with this attachment. Because this AIS only uses a portion of the DEEDS data element document, DEEDS would not be adopted as a code set for this HIPAA transaction.

c. CDAR1AIS0003R021, Additional Information Specification 0003: Rehabilitation Services Attachment, Release 2.1, based on HL7 CDA Release 1.0. The Rehabilitation Services AIS provides information on rehabilitation care plans associated with nine disciplines: Alcohol/Substance Abuse Rehabilitation, Cardiac Rehabilitation, Medical Social Services, Occupational Therapy, Physical Therapy, Psychiatric Rehabilitation, Respiratory Therapy, Speech Therapy, and Skilled Nursing. This AIS is not intended to accommodate requests for attachments related to Home Health claims. Data elements include information on plan progress, signatures, attending physicians, symptoms, and levels of individual participation.

d. CDAR1AIS0004R021, Additional Information Specification 0004: Clinical Reports Attachment, Release 2.1, based on HL7 CDA Release 1.0. The Clinical Reports AIS allows for the electronic transmission of a wide variety of clinical reports, such as electrocardiograms and radiology reports. Examples of data elements included in this AIS are specimen source, reason for study, and observation values. The instructions and LOINC® codes for transmitting clinical reports by an AIS cover a wide variety of functional topics. These include, but are not limited to, discharge summaries, operative notes, history and physicals, clinic visits, other assessments, and all types of diagnostic procedures including laboratory studies.

e. CDAR1AIS0005R021, Additional Information Specification 0005: Laboratory Results Attachment, Release 2.1, based on HL7 CDA Release 1.0. The Laboratory Results AIS gives health care providers the ability to report a wide variety of laboratory results. Data elements include individual identifiers, reasons for the study, actual laboratory results, and abnormality indicators.

f. CDAR1AIS0006R021, Additional Information Specification 0006: Medications Attachment. Release 2.1, based on HL7 CDA Release 1.0. The Medications AIS allows health care providers to report on the medication an individual is currently taking, or was given during a course of treatment, or was provided upon discharge. Data elements include individual identifiers, medications provided, and units of the medication.

New AIS addressing durable medical equipment, home health, and periodontal charting are currently being developed by HL7. We solicit comments regarding which other attachments most impact the health care industry with respect to the exchange of clinical and administrative information, specifically for the purpose of claims adjudication.

4. Examples of How Electronic Health Care Claims Attachments Could Be Implemented

a. Use of the Proposed Transactions, Specifications, and Codes for Electronic Health Care Claims Attachments

An X12N 277 request for claims attachments may be used to electronically request one or more attachment types, and the X12N 275 response can be used to transport one or more electronic attachment types. The X12 Implementation Guides describe how the LOINC® codes and LOINC® modifiers are to be used, and how the segments within the BIN segment of the response transaction are used to carry the actual attachment information. Individual LOINC® codes and LOINC® modifiers are defined for each component of the electronic attachment, specific to each discipline. The modifiers permit the request to be limited by date, time, number of repetitions, and other factors. Each AIS includes tables of the LOINC® codes needed to request the attachment data specific to each claim type. However, a request for Emergency Department information may include a request for data on laboratory results or diagnostic studies either as part of a full Emergency Department attachment or as a Laboratory Results attachment or a Clinical Reports attachment. In other words, it is possible that an electronic attachment request for one claim may require multiple attachment types. The Emergency Department attachment specification defines all of the LOINC® codes necessary to electronically request attachment data specific to treatment in an emergency department. In fact, there are three codes that represent an explicit request for the complete set of data components relevant to emergency department events, inclusive of laboratory results and diagnostic studies. Alternatively, the health plan may request only one piece of information for a specific attachment type. For example, it may request only the associated lab results for the ER visit. When only lab results or diagnostic studies are requested for an emergency department encounter, the results and studies are to be reported as defined in the Laboratory AIS, but the information is to be sent in the response to the specific request related to the services provided in the emergency department; the claim ID will be used to match up the data.

As another example, using the Rehabilitation AIS, the LOINC® codes for rehabilitation services include some codes that can be used to request or send information about medications the individual reported taking as part of the rehabilitation treatment plan. The specifications for sending medications are described in section two of the AIS for Medications. The sender will use the instructions in the Medications AIS for sending medication information related to the rehabilitation plan claim and the required additional documentation/attachment.

Again, it is critical for the industry to evaluate the HL7 AISs, the X12 Implementation Guides and the LOINC®

code set to fully evaluate and understand their use and the implications on technical systems and business operations.

b. White Paper from HL7

A white paper entitled ''HIPAA and Claims Attachments: Preparing for Regulation'' was written and published in August 2003 by the ASIG at HL7. This white paper, reproduced in part in this preamble with specific written permission from HL7, provides sample scenarios depicting how health care providers and health plans could comply with the proposed standards for electronic attachment transactions. The entire white paper is also available at no charge on the HL7 Web site, *http://www.HL7.org*.

The document is included here to highlight some of the possible approaches to implementation, and to depict how electronic health care claims attachments requests and responses could work between health plans and health care providers. The scenarios may be useful to covered entities in determining which path may be the most appropriate for a particular setting or entity type. These scenarios are not the only options for implementation and compliance; rather, they were crafted by HL7 in an effort to help the industry understand how electronic health care claims attachments could be implemented. The descriptions and pros and cons for each scenario were taken in their entirety from the white paper, and therefore the term ''payer'' instead of ''health plan'' is used throughout this section. These two terms have the same meaning for purposes of this discussion. Any comments on the white paper may be submitted to the ASIG, through the HL7 Web site.

The text for the HL7 white paper begins here:

Providers and payers have the latitude to choose a path that suits their own balance of low/high impact vs. low/high business benefit. In general, the scenarios are listed from low impact/low business benefit to high impact/high business benefit. Both payers and providers also have the latitude to analyze their own business needs and prioritize the accommodation for each individual attachment. For example, if either payers or providers review their current volume of activity and determine that one or two attachments encompass a disproportionate percentage of all their attachment volume, they would prioritize the accommodation of those one or two attachments as structured data to facilitate auto-adjudication.

All following scenarios represent the processing that takes place either after a payer has requested additional documentation from the provider or when the provider has elected to submit additional information in the same transmission as the initial claim. The payer and provider scenarios are not dependent upon each other. Each payer and provider can choose a path most suitable to the situation independent of the means used by the others with whom the payer and provider exchange standardized electronic transactions.

Provider Compliance:

Provider Scenario 1: A provider keeps patient data in paper records. The provider's billing application is adapted to accept scanned images. Once the appropriate attachments documents are scanned from the paper medical record, the billing application associates that scanned image with a claim and includes the scanned image as an attachment in submission to the payer as needed.

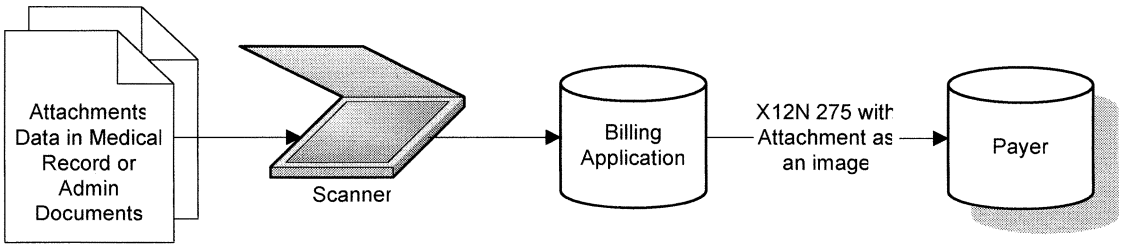


Figure 1: Scanning attachments documents and providing them to the billing application …

Advantages—This scenario requires minimal changes to the billing application. Based on feedback from the healthcare industry, this accommodation was specifically included in the specification as an interim step for providers who plan to eventually adopt one of the other scenarios that result in sending attachments as structured data, but needed an expedient alternative as an interim step.

Disadvantages—This scenario does not provide the payer with the structured data necessary to auto-adjudicate the claim, thus negating much of the advantage of electronic attachments. This scenario requires a staff member to scan the documents that contain the attachments data. Since the required attachments data may exist on forms that also include other, unnecessary data, the staff member may, for privacy reasons, also have to take whatever steps are necessary to ensure the privacy of Protected Health Information under HIPAA.

Likely changes from status quo—The provider's billing vendor would have to accommodate the new X12N 277 and 275 transaction sets and would have to enable the attachment of a scanned image to the 275 transaction set. The provider would have to assign the new task of scanning in attachments data to staff members.

Provider Scenario 2: The provider installs a conversion utility in the billing or practice management software to translate attachments data from its current format into a fully formatted attachment with structured data. The provider is then able to key the attachment data into the conversion utility. The utility creates the attachment and delivers it to the billing application. The billing application then associates the formatted attachment with a claim and includes it in submission to the payer as needed.

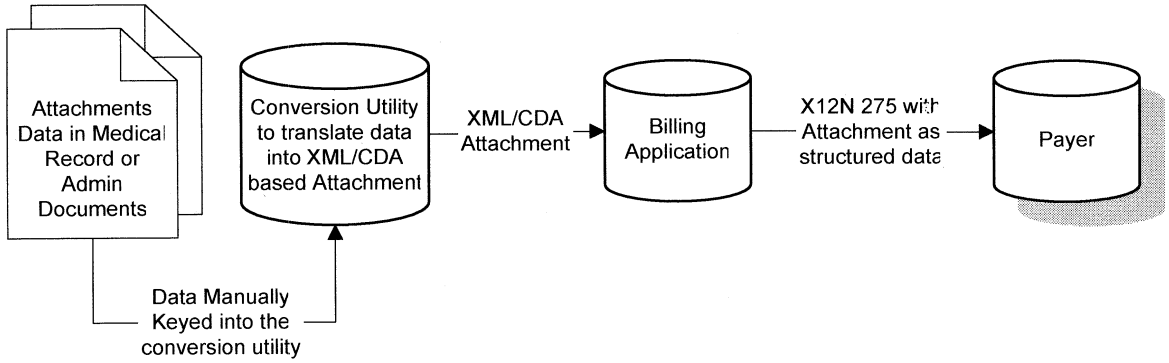


Figure 2: Manually entering attachments data into a conversion utility …

Advantages—This scenario provides the payer with the structured data necessary to auto-adjudicate the claim. It also requires minimal changes to the billing application. This scenario also provides a ''bridge'' between the EMR scenario described in Scenario 4 and the strictly text/image model in Scenario 1. Although this scenario introduces an additional workflow step, it also allows for the elimination of other workflow steps such as copying paper files and dealing with the U.S. mail process.

Disadvantages—This scenario requires the addition of a new conversion utility application into the provider's information systems environment. Attachments data are manually typed into the conversion utility, which is an additional workflow step. Since this scenario requires an additional workflow step, the provider does not have an automated solution for submitting unsolicited attachments with the initial claim. Furthermore, there is an increased opportunity for human error, due to the requirement for manual keying of information.

Likely changes from status quo—The provider would have to select, purchase, install, and support the new conversion utility. The provider's billing vendor would have to accommodate the new request for attachment and the response (with attachment) and join the attachment from the conversion utility with the claim.

Provider Scenario 3: The provider's billing application is adapted to allow attachments information to be keyed directly into the billing application. The billing application then formats the attachment information as structured data and includes it in submission to the payer as needed.

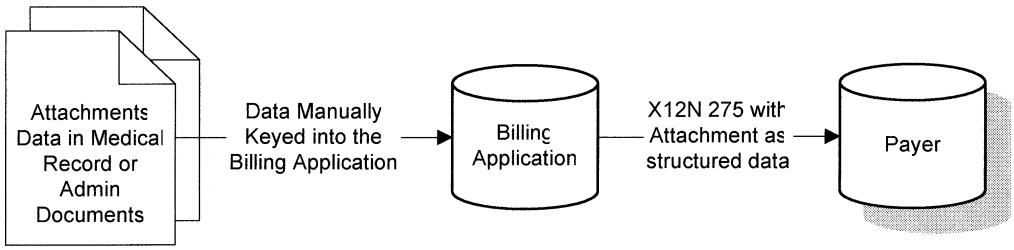


Figure 3: Manually entering attachments data directly into the billing application …

Advantages—This scenario provides the payer with the structured data necessary to auto-adjudicate the claim. Only the billing application needs to be upgraded. This scenario also provides a ''bridge'' between the EMR scenario described in Scenario 4 and the strictly text/image model in Scenario 1. Although this scenario introduces an additional workflow step, it also allows for the elimination of other workflow steps such as copying paper files and dealing with the U.S. mail process.

Disadvantages—This scenario requires the attachments data to be manually typed into the billing application, which is an additional workflow step. Since this scenario requires an additional workflow step, the provider does not have an automated solution for submitting unsolicited attachments with the initial claim. Furthermore, there is an increased opportunity for human error, due to the requirement for manual keying of information.

Likely changes from status quo—The provider's billing vendor would have to enable the provider's billing application to accept attachment data that have been keyed manually, and would have to accommodate the new request for an attachment and sending the response with the attachment data, as well as the creation of the structured data attachment itself. The provider would have to reassign staff to the new task of keying in attachment data, versus their previous task of copying and mailing records manually.

Provider Scenario 4: The provider's Electronic Medical Record (EMR) or clinical information system provides a fully formatted attachment with the appropriate attachment information to the billing application. The billing application then associates the formatted attachment and includes it in submission to the payer as needed.

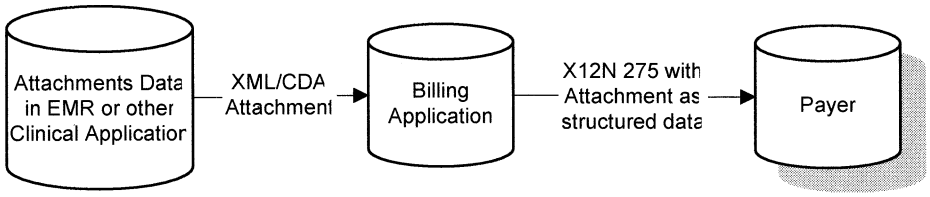


Figure 4: Attachments are created by the EMR or clinical application and sent to the billing application…

Advantages—This scenario provides the payer with the structured data necessary to auto-adjudicate the claim.

Disadvantages—This scenario requires capabilities for data exchange to be present in the provider's billing and one or more EMR/clinical applications.

Likely changes from status quo—The provider's billing application would have to accept attachments as XML documents and transmit them to payers. Various provider systems would have to produce structured attachments in CDA format and route them to the billing system. Examples of potential source systems include the electronic medical record, laboratory, radiology (for reports), rehabilitation, and general transcription. Where the source system already produces HL7 version 2 messages, the provider may use an integration broker to convert the HL7 message into a CDA document. In a few cases, the provider may choose to use desktop productivity applications to accept input.

Payer Options

Payer Scenario 1: If the attachment is sent as an image instead of structured data using CDA, manual adjudication may be done by viewing the image using a Web browser or image viewer.

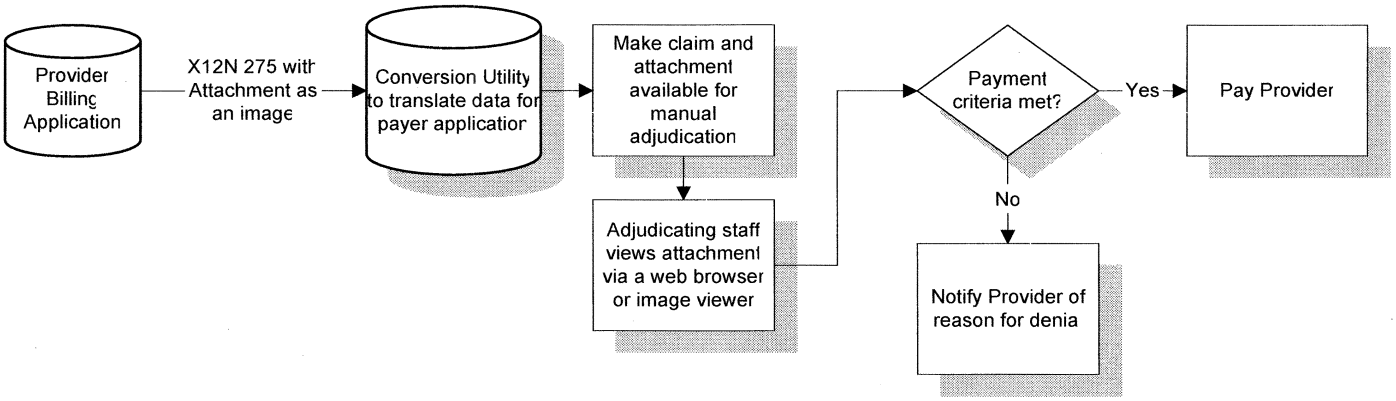


Figure 5: When the attachment is sent as an image, manual adjudication is accomplished using a web browser or image viewer …

Advantages—This option represents the least organizational change for the payer. There may be savings opportunities based on the reduction in mailed requests and the manual tracking systems used to associate hard copy requests, records, and the related claims. It is possible that this option would reduce time delays associated with the manual requests and responses, and minimize the number of ''lost records.''

Disadvantages—None of the benefits of auto-adjudication are realized.

Changes to the Status Quo—Elements of the payer's application suite are modified to associate the CDA (XML) based attachment for human viewing via a browser.

Payer Scenario 2: If the payer already uses a conversion utility to translate X12N transaction sets, and that conversion utility is capable of also translating CDA based attachments, the claim may be auto-adjudicated. Exceptional claims may be manually adjudicated and attachments viewed using a Web browser.

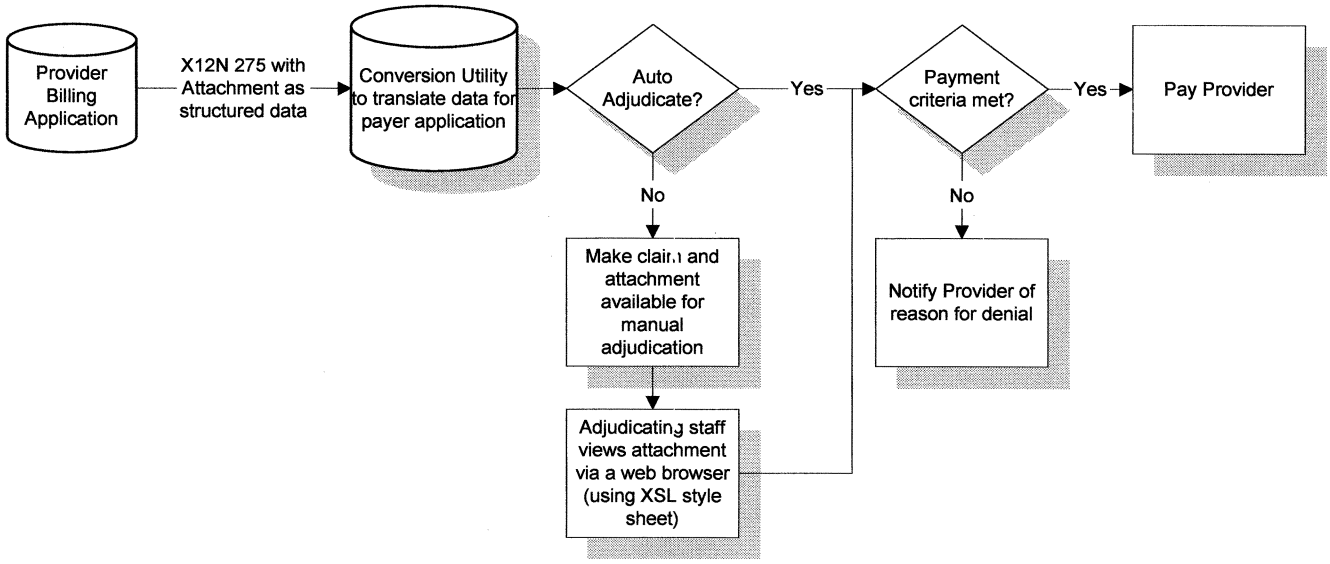


Figure 6: Payer application uses a conversion utility capable of translating both X12N 275 and CDA based attachments…

Advantages—A conversion utility may be more flexible and may more readily accommodate the new tasks for parsing XML based attachments than the payer's main system. This option provides the potential to maximize auto-adjudication and minimize administrative costs.

Disadvantages—Additional responsibility is placed on the conversion utility. This may or may not be a disadvantage.

Changes to the Status Quo—Existing conversion utilities have to be either reconfigured or modified to parse CDA (XML based) attachments.

Payer Scenario 3: If the payer already uses a conversion utility to translate X12N transaction sets, and that conversion utility is not capable of also translating CDA based attachments, a second conversion utility may be used and the claim may be auto-adjudicated. Exceptional claims may be manually adjudicated and attachments viewed using a Web browser.

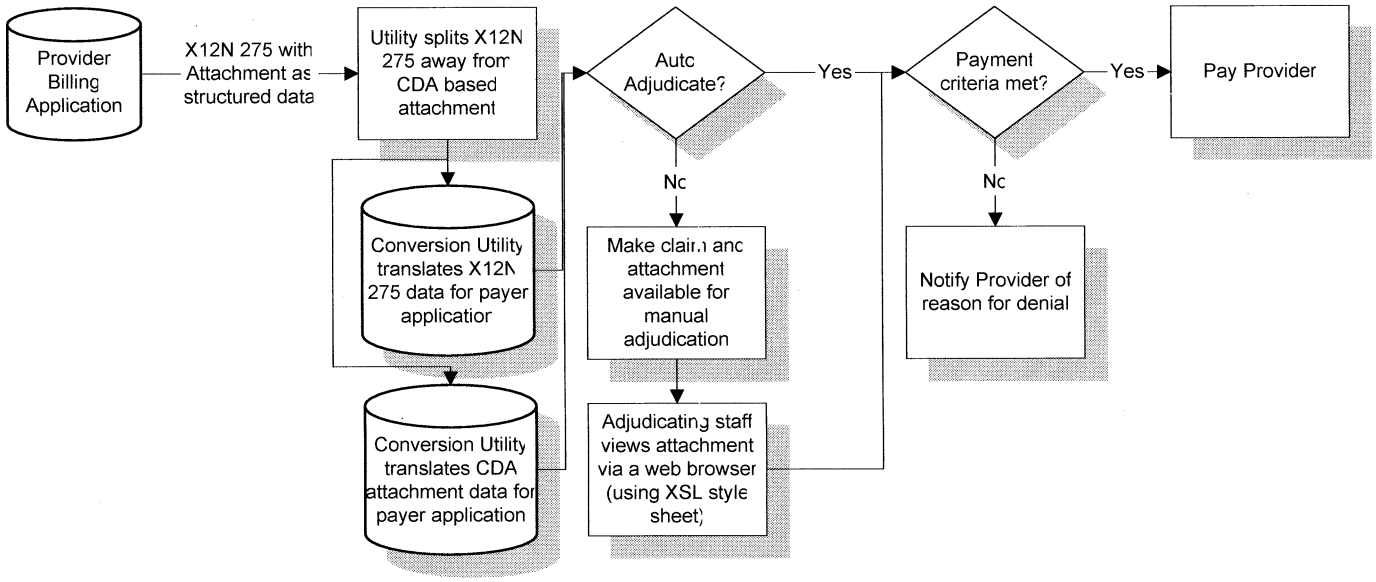


Figure 7: Payer application uses two different conversion utilities to translate X12N 275 and CDA based attachments…

Advantages—Existing components continue to function with little or no modification. Auto-adjudication may still be used to its potential.

Disadvantages—This adds one or more utilities to split the attachment from its X12N transaction set, parse the attachment, and maintain the association between the attachment and its X12N transaction set. This may add significant complexity to the flow of electronic transaction sets.

Changes to the Status Quo—One or more utilities are added to the payer's application suite to split the attachment from its X12N transaction set, parse the attachment, and maintain the association between the attachment and its X12N transaction set.

Payer Scenario 4: If the payer is capable of parsing both X12N 275 transaction sets and CDA based attachments, the claim may be auto-adjudicated. Only exceptional claims are manually adjudicated. When necessary, attachments are viewed using a Web browser.

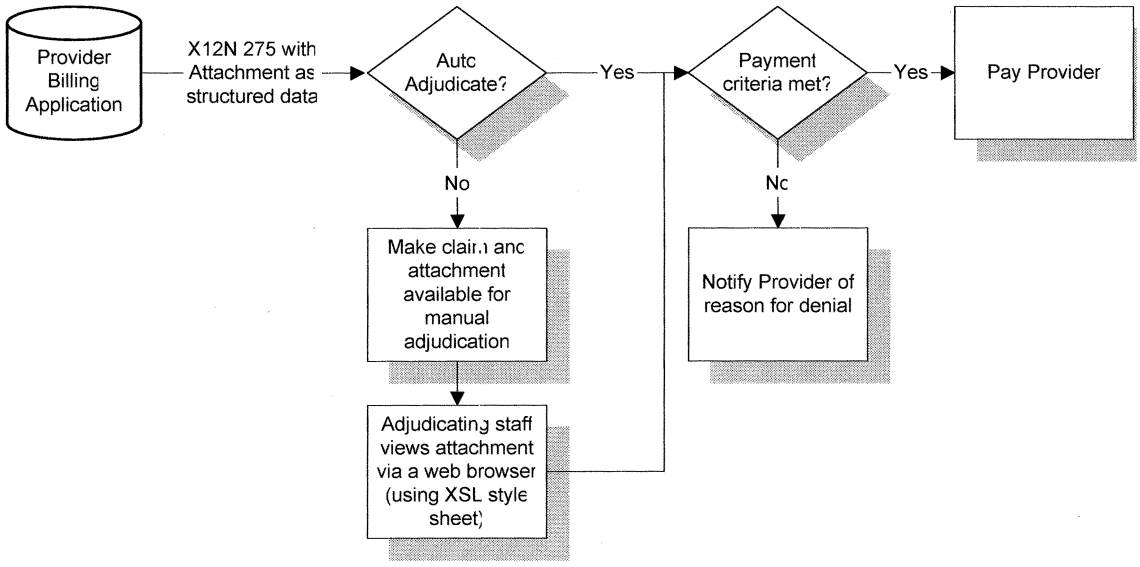


Figure 8: Payer application is capable of parsing both X12N 275 and CDA based attachments …

Advantages—This scenario is the best case and has the best potential to maximize auto-adjudication and minimize administrative costs.

Disadvantages—This may involve the most significant changes to the primary information systems used for processing claims.

Changes to the Status Quo—Most large primary management information systems are legacy based mainframe systems. These systems would need to integrate with XML aware browsers to view XSL ''rendered'' attachment data.

The text for the HL7 white paper ends here.

H. Requirements (Health Plans, Covered Health Care Providers and Health Care Clearinghouses)

Health plans would be required to be prepared to receive and send only the standards specified in § 162.1915 and § 162.1925 for the identified transactions. No other electronic transaction format or content would be permitted for the identified transactions. We intend for covered entities to use the standard transactions and the approved attachment specifications as they apply to the six named attachment types.

The use of the standard electronic health care claims attachments would not preclude the health plan from using other processes or procedures to verify the information reported in the attachment documentation.

Under the proposed rule, health plans may continue to use manual processes (such as paper forms, letters, faxes, etc.) to request additional documentation from a health care provider, even for the attachment types listed in this proposal. However, whenever such a request is made electronically, it must be made using the standard. Furthermore, if the health care provider asks that the transaction be sent using the standard, the health plan must comply.

As stated earlier, it is possible that multiple AIS apply to a particular electronic claim attachment request. The clinical reports, medications, and laboratory results AIS could be used to request additional information about any service in a particular claim. However, the ambulance, emergency department, and rehabilitation services AIS can only be used to request information about the specific type of services to which they refer. When the ASIG developed the first set of attachment types, three were for specific types of services—ambulance, emergency department, and rehabilitation. Since those services often necessitated tests and reports, the supporting attachment specifications—laboratory results, clinical reports and medications—were created. These latter specifications also represented claim types that were subjected to additional documentation requests in their own right, so the six together were a practical fit. Thus, for example, if a health plan needs additional information about an ambulance service, and needs information about the medications an individual is taking in order to adjudicate the ambulance claim, both the ambulance and medication AIS would be used and sent within the same X12N transaction.

Covered Health Care Providers

We would require covered health care providers to be prepared to receive and send the standards specified in § 162.1915 and § 162.1925 for the specific electronic health care claims attachment transactions, if they choose to receive and send requests and responses electronically for any of the six proposed attachments. No other electronic formats would be permitted for these specific business purposes. For information required for other business purposes, the standards proposed here would not limit the type and format of electronic or paper transaction could be used. Health care providers generally have the option of using paper as their regular mode of communication. Any information requested after the claims adjudication process, such as for post-adjudication medical review or quality assurance review, would not be subject to the standards proposed here. In either case, covered health care providers would continue to have the option of using electronic or manual means of conducting business, including responding to a request for attachment information electronically or on paper. However, if they choose to respond electronically to an attachment request for which a standard has been adopted, that standard would have to be used.

Any electronic attachments covered by the rule and that accompany a new claim would have to be submitted based on an advanced instruction from the receiving health plan. These ''unsolicited'' electronic attachments should not be sent without prior agreement or understanding between trading partners.

Health Care Clearinghouses

Health care clearinghouses would be required to be prepared to receive and send only the standards specified in §162.1915 and §162.1925 for the specific electronic health care claims attachment transactions, or to translate proprietary information from their clients into standard format for re-transmission. Health care clearinghouses must already comply with the requirements set out in §162.930, adopted by the Transactions Rule.

1. Additional Information Specification (AIS) Uses: Attachment Types That May Be Used for Any Service

The proposed rule would require that attachment requests, responses, and the AIS be used in the following situations, when the transaction is being conducted electronically:

a. Clinical Reports

Used when the health plan is requesting, or the health care provider is supplying, clinical report information needed to support the adjudication of a claim for any service. The request may cover a wide variety of questions that require information from clinical reports, such as surgical and diagnostic procedures and discharge summaries.

b. Laboratory Results

Used when the health plan is requesting, or the health care provider is supplying, information on laboratory results needed to support the adjudication of a claim for any service. The request may cover the entire set of laboratory tests, from allergy to toxicology.

c. Medications

Used when the health plan is requesting, or the health care provider is supplying, information on medication information needed to support the adjudication of a claim for any service. The request may cover medications administered during a service, medications sent home with the individual, or medications currently being taken by the individual.

2. Additional Information Specification (AIS) Uses: Attachment Types for Specific Services

a. Rehabilitation Services

Used when the health plan is requesting, or the health care provider is supplying, rehabilitation services information needed to support the adjudication of a claim that includes one or more of the nine disciplines designated for rehabilitation services (for example, occupational therapy, cardiac rehabilitation, or substance abuse therapy).

b. Ambulance Services

Used when the health plan is requesting, or the health care provider is supplying, information needed to support the adjudication of a claim that includes ambulance services.

c. Emergency Department

Used when the health plan is requesting, or the health care provider is supplying, information needed to support the adjudication of a claim that includes emergency department services.

3. Maximum Data Set

Each AIS is considered to include the maximum data set for each of the named electronic attachment types. We propose to prohibit health plans from asking for additional data beyond those that are specified in the AIS for that service. Four of the attachment specifications (ambulance services, emergency department, medications, and rehabilitation services) have a finite set of LOINC® codes that can be used to ask the questions (request the information) for those services. The specifications for Laboratory Results and Clinical Reports do not contain pre-defined lists of codes because clinical developments in those two areas necessitate the ability to use and request information about new tests and reports. Any of the laboratory and clinical reports codes in the LOINC® database could be used for these requests and responses.

The proposed AIS documents were drafted several years ago when business practices related to health care claims attachments were likely different than they are today. Therefore, the electronic health care claims attachment data elements, questions, and the cardinality of these elements must be validated for each specification. It is imperative that each AIS be thoroughly reviewed by covered entities to ensure that the proposed data set meets current and projected future business needs. Thus, we ask that during the comment period, health plans and health care providers engage fully in the process of evaluating this maximum data set and the required, situational, and optional elements, and provide us with comments on these issues.

I. Specific Documents and Sources

All code sources that are developed outside of the X12 standard setting process, such as ZIP codes, which are maintained by the United States Postal Service, are referred to as external code sets. These code sets are maintained independent of any HIPAA specific requirements, and no rulemaking is required when changes are made to them. The external code sets are listed in section C of the appropriate ASC X12N implementation guide. All of the code sources listed in the ASC X12N Implementation Guides have mechanisms for modifying their codes. The contact posted on the code source list can provide detailed information regarding the process and timing for updating its codes. If the format of a code set that has been adopted as a HIPAA code set (HCPCS, CPT, ICD–9 etc.) is changed, for example, from alpha to alpha numeric, then the change constitutes a ''modification of the code set.'' Use of a modified code set can only be required through further rulemaking to expressly adopt those modified code sets in place of the existing standard.

The implementation specifications, as expressed in implementation guides for the various ASC X12N transactions and HL7 messages as well as the additional information specifications and the LOINC® Modifier Codes, may all be obtained at no charge from the Washington Publishing Company site at the following Internet address: *http://www.wpc-edi.com/.*

Users without access to the Internet may purchase the X12N implementation guides from the Washington Publishing Company directly: Washington Publishing Company, PMB 161, 5284 Randolph Road, Rockville, MD, 20852; telephone 301–949–9740; FAX: 301–949–9742.

HL7 maintains the XML-based Clinical Document Architecture Release 1.0 and the AISs, and information can be obtained at no charge at the HL7 Web site: *http://www.HL7.org.* Users without access to the Internet may obtain HL7 documents directly from the HL7 organization, c/o Health Level Seven, Inc., 3300 Washtenaw Avenue, Suite 227, Ann Arbor, MI 48104, or 734–677–7777.

The LOINC® database and the publication LOINC® Modifier Codes can be obtained at no charge from the Regenstrief Institute site at the following Internet address: *http://www.regenstrief.org/loinc/loinc.htm.* Users without access to the Internet may obtain the LOINC® database and the LOINC® modifier codes from the Regenstrief Institute, c/o LOINC®, 1050 West Wishard Blvd., Indianapolis, IN 46202, telephone 317–630–7433.

The full set of the Data Elements for Emergency Department Systems, Release 1.0 (DEEDS) is published by the National Centers for Injury Prevention and Control, Centers for Disease Control and Prevention. The Internet address is *http://www.cdc.gov/ncipc/pub-res/deedspage.htm.*

III. Modifications to Standards and New Electronic Attachments

[If you choose to comment on issues in this section, please include the caption ''MODIFICATIONS TO STANDARDS AND NEW ATTACHMENTS'' at the beginning of your comments.]

To encourage innovation and promote development, we propose to adopt a process that will facilitate the development and future use of electronic health care claims attachments. In 1993, WEDI estimated that 400 or more specific attachments were in use to support health care business needs. Comments from the industry are needed to validate and/or update this figure, as it is over 10 years old, and represents many different types of attachments which are not all required solely for health care claims adjudication. For example, the original list of attachments included such documentation types as certification for sterilization and hysterectomy, dental services, eligibility, worker's compensation verification and the like. We do not believe that there are 400 different health care claims attachment types that would in fact be appropriate for electronic health care claims attachment requirements. The industry should identify the relevant attachment types and collaborate to assign priority to each one, so that new electronic attachment specifications that are appropriate to the business needs of the health care industry can be developed.

A. Modifications to Standards

In §162.910, parameters are outlined for requesting and making modifications to the standards. The statute provides that the Secretary of HHS may not modify any standard, including the electronic attachment standards, more frequently than once a year and must permit at least 180 days for implementation of an adopted modification to a standard by all affected entities before compliance with the modified standard may be required. The Secretary may, however, adopt a modification at any time during the first year after the standard or implementation specification is initially adopted, if the Secretary determines that the modification is necessary to permit compliance with the standard.

The addition or deletion of codes in a code set for the purpose of enhancing the electronic attachment's communication capabilities is considered maintenance, because such actions do not constitute format or field length changes to the codes or the code set itself. HIPAA expressly permits the routine maintenance, testing, enhancements, and expansion of a code set. We have stated throughout the preamble, that if the codes or code set were changed structurally—for example, changing from a numeric format to an alphanumeric format, this would be considered an actual modification of the code set that would require system changes. Use of such a modified code set could not be required, and would not be permitted, without a regulatory change.

There are mechanisms in place for LOINC® to add new codes on a regular basis to reflect developments in the industry, just as occurs with ICD–9, CPT–4, and HCPCS, among others. New codes may be used in an electronic health care claims attachment without a change to the rule, if use of a new code is specifically permitted by the AIS, and the use complies with the associated ASC X12N Implementation Guides and HL7 AISs. For example, new LOINC® codes for new types of laboratory results and clinical reports will be added to LOINC® based on medical developments. Use of such new codes is permitted by the AIS for laboratory results, clinical reports and medications in both the request and the response transactions.

Requests for new LOINC® codes are to be addressed to the Regenstrief Institute for Health Care, c/o LOINC® Committee, 1050 West Wishard Blvd, Indianapolis, IN 46202, or electronically, in accordance with the instructions in Appendix D of the LOINC® users guide, to the Regenstrief Web site at *http://www.regenstrief.org.* and will be evaluated through the existing process.

Once a HIPAA standard is adopted in a final rule, requests for changes to that standard must be submitted through the DSMO process, as set forth in §162.910(c). After approval, the DSMOs will forward proposed new implementation specifications to the NCVHS and to the Secretary. The NCVHS serves as a consultative body that, under the provisions of the Public Health Service Act, provides advice concerning specified health care matters to the Secretary. Following consultation with appropriate agencies and organizations, including the NCVHS, the Secretary may adopt the modified versions as HIPAA standards through the notice and comment rulemaking process.

Information pertaining to the designation of DSMOs and their responsibilities can be found in the Transactions Rule and the notice announcing the DSMOs, which were published on August 17, 2000 (65 FR 50365, 50373).

B. Additional Information Specifications for New Electronic Attachments

We expect that the HL7 ASIG will continue to develop new standard AISs using the HL7 CDA Release 1.0 framework, and these will be approved under the established DSMO process. After development and approval by the DSMO, new AISs will be sent to the NCVHS and then to the Secretary for consideration. Upon receipt of new proposed additional information specifications, the Secretary may choose to incorporate them in a future proposed rule and subsequently may adopt them as HIPAA standards.

C. Use of Proposed and New Electronic Attachment Types Before Formal Approval and Adoption

Due to the need to complete this rulemaking, together with the delayed compliance dates provided for by statute, the final rule will not be implemented for several years. There are no Federal prohibitions on the use of the proposed X12 standard transactions or HL7 AIS between now and the time compliance with the final standards is required. Even after the final rule is published, and compliance is required, if the Secretary has not named a standard for a particular type of electronic claims attachment, covered entities are still free to use that attachment type on a voluntary basis for any business purpose they deem appropriate.

For example, if the DME attachment specification is finalized, balloted, and approved by HL7 after publication of the final rule, but DME is not one of the named attachment types, covered entities will be able to use that AIS and the X12N 277/275 implementation guides with no regulatory requirements. In other words, use of a new AIS that has not been formally adopted, as a standard by the Secretary, would be voluntary, based on trading partner agreements or other such contracts, unless and until regulations adopting that AIS are proposed and made final through the regulatory process.

IV. Collection of Information Requirements

The burden associated with the requirements in this regulation are the time and effort of health plans, health care providers and/or health care clearinghouses to modify their systems for the capability of sending health care transactions electronically. This one-time burden has already been approved and accounted for in ''HIPAA Standards for Coding Electronic Transactions'' (OMB #0938–0866) with a current expiration date of February 29, 2008. However, we will amend this currently approved collection to include electronic health claims attachments to the list of covered transactions.

V. Response to Comments

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

VI. Regulatory Impact Analysis

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

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), as amended by Executive Order 13258, and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

The impact analysis in the Transactions Rule assessed the expected costs and benefits associated with the Administrative Simplification regulations (related to employing electronic systems for designated health care related purposes) covering a time span of 10 years. That analysis however did not include electronic health care claims attachments. Nonetheless, this section can be read in conjunction with the Transactions Rule analysis, since the statistics for electronic claims can be considered related to electronic claims attachments.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We consider this proposed rule to be a major rule, as it will have an impact of over $100 million on the economy. This impact analysis shows a potential net savings of between $414 million and $1.1 billion over a 5-year period. We attempt to provide information for the impact analysis, focusing on savings projections, since cost data on the HIPAA transactions are not yet available from the industry. We solicit such data during the comment period for this proposed rule. Also, as referenced earlier, HHS provided funding for a pilot to test the proposed standards, and we anticipate that any cost/benefit information that comes of that study

will be provided before the final rule is published.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. Many hospitals and most health care providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 to $29 million or less in any 1 year. For purposes of the RFA, nonprofit organizations are considered small entities; however, individuals and States are not included in the definition of a small entity. For details, see the Small Business Administration's current regulation that set forth size standards for health care industries at (65 FR 69432).

Effective October 1, 2000, the SBA no longer used the Standard Industrial Classification (SIC) System to categorize businesses and establish size standards, and began using industries defined by the new North American Industry Classifications System (NAICS). The NAICS made several important changes to the Health Care industries listed in the SIC System. It revised terminology, established a separate category (Health Care and Social Assistance) under which many health care providers are located, and increased the number of Health Care industries to 30 NAICS industries from 19 Health Services SIC industries.

On November 17, 2000, the SBA published a final rule, which was effective on December 18, 2000, in which the SBA adopted new size standards, ranging from $5 million to $25 million, for 19 Health Care industries. It retained the existing $5 million size standard for the remaining 11 Health Care industries. The revisions were made to more appropriately define the size of businesses in these industries that SBA believes should be eligible for Federal small business assistance programs.

On August 13, 2002, the SBA published a final rule that became effective on October 1, 2002. The final rule amended the existing SBA size standards by incorporating OMB's 2002 modifications to the NAICS into its table of small business size standards.

On September 6, 2002, the SBA published a subsequent final rule (effective October 1, 2002) that corrected the August 13, 2002 final rule and contained a new table of size standards to clearly identify these organizations by dollar value and by number of employees. Some of the revisions in size standards affected some of the entities that are considered covered entities under this proposed rule. For example, the SBA revisions increased the annual revenues for physician offices to $8.5 million (other practitioners' offices' revenues remained at $6 million) and increased the small business size standard for hospitals to $29 million in annual revenues.

The regulatory flexibility analysis for this proposed rule is linked to the aggregate flexibility analysis for all of the Administrative Simplification standards that appeared in the Transactions Rule (65 FR 50312), published on August 17, 2000, which predated the SBA changes noted above. In addition, all HIPAA regulations published to date have used the SBA size standards that existed at the time of the publication of the Transactions Rule. For this analysis, we use the current SBA small business size standards. Even though the SBA has raised the small business size standards, the revised size standards have no effect on the cost and benefit analysis for this proposal. The revised standards simply increase the number of health care providers that are classified as small businesses.

One source of information about the health data information industry is Faulkner & Gray's Health Data Directory (CY 2000 edition). Using this resource, health care clearinghouses, billing companies, and software vendors may also be considered small entities. However, for the same reasons cited elsewhere, we do not have any cost data to determine if this rule would have a significant impact on small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Metropolitan Statistical Area and has fewer than 100 beds. Because these attachment standards are not mandatory for all health care providers, but rather only for those health care providers who conduct a transaction electronically for which the Secretary has adopted a standard, small rural hospitals can continue to operate as they do today, and we do not anticipate a significant financial and business impact on these covered entities. For a more detailed discussion of small rural hospitals, please refer to the Transactions Rule, 65 FR 50312.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 and Executive Order 12875.

In the Transaction Rule's impact analysis, State Medicaid agencies estimated that they could spend $10 million each to implement the entire set of HIPAA transactions. Since electronic claims attachments are only one component of the entire transaction set, and we believe that some of the programming completed for the current transactions will be useable for processing electronic health care claims attachments, we do not believe that the States, in aggregate, will exceed the $110 million UMRA expenditure threshold for these new attachment transactions.

State Medicaid agencies, which are statutory health plans under HIPAA, currently require and use a variety of attachments to adjudicate claims. In order to validate the fiscal and operational impact of this rule, current data on the number and types of claims attachments for each State would be necessary, particularly whether the attachment types we name affect any significant percentage or number of Medicaid claims. We are aware of an industry wide survey that was conducted in the winter of 2005, which may provide some insight into this information for States, if the Medicaid agencies and Medicaid providers participated in the survey. In addition, during the comment period, we hope that State Medicaid agencies will provide such information.

HHS estimated that the private sector would require expenditures in excess of $110 million to implement *all* of the transaction standards. Since electronic health care claims attachments are only one of the eight transactions, and since there are only six attachment types at this time, our assumption is that expenditures to meet just the electronic health care claims attachment requirements will not exceed the UMRA threshold for the private sector. Even if our assumption is incorrect, and the costs of implementing the electronic health care claims attachments standards exceed the UMRA threshold, we believe that anticipated benefits of the proposed rule justify the added costs.

The anticipated benefits and costs of these proposed standards, and other issues raised in section 202 of the UMRA, are addressed later in this

section. In addition, under section 205 of the UMRA (2 U.S.C. 1535), having considered at least three alternatives for the transaction standard (X12 275 version 4010, IEEE, DICOM) and two options for the code sets (claims status and LOINC®), as outlined in the preamble to this rule and in the following analysis, HHS has concluded that this proposed rule is the most cost-effective alternative for implementing HHS's statutory objective of administrative simplification.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that would, if finalized, impose substantial direct requirement costs on State and local governments, preempt State law, or otherwise have Federalism implications. Executive Order 13132 of August 4, 1999, Federalism, published in the **Federal Register** on August 10, 1999 (64 FR 43255), requires the opportunity for meaningful and timely input by State and local officials in the development of rules that have Federalism implications. The Department consulted with appropriate State and Federal agencies, including tribal authorities and Native American groups, as well as private organizations. These private organizations included WEDI and the DSMO coordinating committee.

The Department has examined the effects of provisions in the proposed rule as well as the opportunities for input by the States to the proposed rule. The Federalism implications of the proposed rule are consistent with the provisions of the Administrative Simplification subtitle of HIPAA by which the Department was required by the Congress to promulgate standards for the interchange of certain health care information via electronic means, which standards, by statute, preempt contrary State law.

The States were invited to participate in the electronic claims attachment standard development process from its beginning in 1994. During the early stages, a concept paper that set forth the transactions, code sets, and key issues being considered for the proposed rule was provided to the States for review and comment. Those comments have been considered in preparation of this proposed rule. The National Medicaid EDI HIPAA work group (NMEH) has a claims attachment subcommittee, which will be active in ensuring that each State is given the opportunity to provide input during the public comment period. The Department concludes that the policy in this proposed rule has been assessed in accordance with the principles, criteria, and requirements in Executive Order 13132; that this proposed rule is not inconsistent with that Order; that this proposed rule would not impose significant additional costs and burdens on the States; and that this proposed rule would not affect the ability of the States to discharge traditional State governmental functions.

1. Affected Entities (Covered Entities)

All health plans, health care clearinghouses, and covered health care providers that transmit any health information in electronic form in connection with a claims attachment which use other electronic format(s), and all health care providers that decide to change from a paper format to an electronic process for claims attachments, would have to begin to use the ASC X12N 277—Health Care Claim Request For Additional Information and ASC X12N 275—Additional Information to Support a Health Care Claim or Encounter and the accompanying HL7 specifications for requesting and submitting electronic health care claims attachments. Currently, there are no standardized electronic claim attachment formats in consistent use across the industry. Since health care providers have the option of continuing to submit paper attachment information, there would be little potential for disruption of claims processes and timely payments during a particular health plan's transition to the ASC X12N 277, ASC X12N 275, HL7 standards and LOINC® code set use. Implementation will simplify processing for attachments and reduce administrative expenses for covered health care providers. Health plans will be able to automate the processing of attachment information, thus reducing their labor costs and improving the accuracy of attachment responses from covered health care providers. The costs of implementing the X12 and HL7 standards with the LOINC® code set are generally one-time costs related to conversion. The systems upgrade costs for small covered health care providers, health plans, and health care clearinghouses will vary depending upon the capabilities of hardware and software systems in use at the time these changes are being made. Administrative costs may increase depending on the data entry and data conversion options selected in order to comply with the standard.

2. Effects of Various Options

After ruling out certain versions of transactions based on limitations identified by early adopters of X12 transactions, we assessed the potential of the later versions of ASC X12N 277—Health Care Claim Request For Additional Information transaction; the ASC X12N 275—Additional Information to Support a Health Care Claim or Encounter transaction; the HL7 CDA message standard; and the six HL7 AIS. These standards were measured against the key principles listed in this proposed rule: achieve the maximum benefit for the least cost; avoid incompatibility; be consistent with the other HIPAA standards; and be technologically independent of computer protocols used in HIPAA transactions. Specifically, the goal of improving the effectiveness and efficiencies of the health care system through electronic means is supported by these standards. We found that these transactions and specifications met all the principles, because once systems and operations are upgraded to send and receive the data in the new format and with predictable content, many other business processes will be improved.

B. Cost and Benefit Analysis

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

1. General Assumptions, Limitations, and Scope

Attachments to health care claims will be requested electronically by using the ASC X12N 277—Health Care Claim Request For Additional Information transaction which includes LOINC® codes to identify the supplemental claim information being requested. Similarly, the attachment response will be conveyed electronically by the ASC X12N 275—Additional Information to Support a Health Care Claim or Encounter transaction, serving as an envelope for the HL7 message and Additional Information Specification. While an attachment can be sent at the same time as the original claim is submitted, based on instructions from the health plan, it will usually be sent in response to a specific request after a claim has been submitted. Accordingly, this analysis considers the request, the response, the HL7 message standard, and the six additional information specifications as an ''attachment package'' that cannot be subdivided for purposes of any financial analysis since they cannot logically be implemented as separate stand-alone transactions.

Limitations

Most health plans, health care clearinghouses, and covered health care

providers were required to comply with the Transaction Rule standards in 2002, or 2003, depending on the entity type and the applicability of the Administrative Simplification Compliance Act (ASCA), which permitted certain covered entities to apply for an extension of the compliance date. Widespread implementation of the HIPAA Transaction Rule was further delayed when covered entities invoked contingency plans under an enforcement discretion strategy guidance document that had been issued by CMS. One of the results of these implementation delays is that industry-wide cost data could not be compiled for HHS to use in assessing the actual financial impact (that is, cost or savings projections) of implementing any of the original transactions.

The lack of data available today regarding any industry wide HIPAA transaction costs or savings; on the current use of claims attachments; the costs of manual processes; or the impact of conducting any transactions electronically, imposes a significant limitation to any quantitative analysis. Therefore, in order to prepare this proposed rule, HHS used older available studies and anecdotal observations from the industry and SDOs. Since the analysis in the Transaction Rule specifically excluded costs and benefits for electronic health care claims attachments, it further highlighted the data limitations we were faced with for this analysis.

HHS used the 1993 WEDI report coupled with conservative assumptions from the Transaction Rule to predict costs and savings at a high level. We solicit information from the industry regarding implementation costs for the current HIPAA transactions, in addition to: the frequency of claims attachments; the types of attachments currently being requested (by service and/or procedure); the workload associated with requesting attachment information and providing the response; the costs that may be incurred implementing new software, practice management systems, and other tools; as well as any other relevant cost data that could supplement this analysis. We also hope to receive information from WEDI, following their efforts to engage the industry in discussing Return on Investment (ROI) from HIPAA—an initiative expected to begin in the fall of 2005.

The impact analysis in the August 2000 Transactions Rule assessed the expected costs and benefits associated with the Administrative Simplification regulations covering a time span of 10 years, beginning in 2002. That analysis did not include electronic attachments to health care claims because no standard was forthcoming at that time. However, electronic attachments are viewed as a minor incremental cost compared to the total cost assessed in the August 2000 Transactions Rule, because covered entities have readied their systems for the other X12 transactions and will have ample experience with X12 by the time the final rule for electronic health care claims attachments is effective. The analysis here can be an adjunct to that which was provided in the Transactions Rule, since the volume of attachments is directly related to the volume of health care claims.

As we note earlier, data and information about claims attachments was gleaned primarily from the 1993 WEDI report entitled: ''The 1993 WEDI Report and Recommendations.'' Some other general data on claim volumes was gathered from a CY2000 publication from Health Data Management and anecdotally, from informal discussions with industry representatives of health plans and vendors. There were no surveys or proprietary data available from the BlueCross BlueShield Association (BCBSA), the American Medical Association (AMA), the American Hospital Association (AHA), America's Health Insurance Plans (AHIP), The Association for Electronic Health Care Transactions (AFEHCT), X12, HL7 or any other professional organization or SDO.

The 1993 study by WEDI suggested that 25 percent of all health care claims required support by an attachment or additional documentation. Though these data on attachments are over 10 years old, they are currently the only set of broad-based information available from the industry. We acknowledge that this 1993 statistic does not take into account changes that have occurred following implementation of the HIPAA Transaction and Privacy Rules, nor more recent health plan business rule changes for how claims are adjudicated and what attachments are now being requested. Nonetheless, these are the most comprehensive data available. If current attachment statistics exist, we hope the industry and/or its representatives will provide those data during the comment period.

We also assume in this impact analysis that electronic health care claims attachments would not be implemented at all, and certainly not with uniform standards, in the absence of this rule. This assumption is based on direct industry comment, and current industry practice to date—very few attachments are being sent electronically today; and vendors, health plans and health care providers say that they will not move forward on this until the HIPAA standards are adopted. The early evidence from the current pilot bears this out, as the hospital providers have said that they will not undertake full scale implementation until the regulation is published.

The following assumptions are based upon anecdotal comments by industry professionals, as well as the Department's general knowledge of present circumstances in the health care industry. Beyond our anecdotal information, and subsequent assumptions, the only available data we have for hospitals and physicians, indicates that their services represent over 50 percent of the claims submitted annually. Furthermore, their services are likely to be those most affected by the six electronic attachments proposed in this rule. One subject matter expert from a national health plan indicated that 50 percent of all claims attachments are likely to be represented by the six attachment types named here. We request comments and any data that will supplement these and all other assumptions in this section:

- Few health care claims attachments are requested or submitted using an electronic format of any kind.
- Preparation and processing of electronic claims attachments (requests and responses) will entail workload effort that is similar in complexity and duration as that associated with the preparation and processing of an electronic claim, for both health care providers and health plans.
- The volume of unsolicited attachments accompanying original health care claims today is relatively small.
- Health care providers will not all be equally impacted by the electronic claims attachment standards. Some health care provider types (for example, ambulance companies, providers of rehabilitation services, and hospitals or other facilities that operate emergency departments) are more likely to elect to conduct attachment transactions electronically because of the frequency of the requests. Other health care providers may decide to implement the transactions later, opting to continue providing requested information via paper-to-paper fax or paper copies in the short term.

The cost and benefit analysis is separated into various sub-sections below. In addition, there is a section that discusses the financial impact of implementation covering a 5-year time span, from 2007 to 2011. We use a five

year time span to match the remainder of the 10-year period that was used in the Transaction Rule; that analysis calculated costs and benefits through 2011.

2. Cost and Benefit Analysis for Health Plans

a. Health plans may incur the following implementation costs:

- Learning about and training staff on the new claims attachment standards, the X12 implementation guides, HL7 AIS booklets, and LOINC codes®.
- Programming systems to accommodate the new transaction types, messaging standards, and codes.
- Installing LOINC® codes.
- Mapping the LOINC® codes to the current attachment request reason codes.
- Acquiring translator capability to process HL7 messages.
- Telecommunication expansion.
- Server expansion to retain electronic records.
- Other potential software upgrades for browsing, translating, and validating, as well as internal controlling or messaging/routing functions.
- Health care clearinghouse fees.
- Acquiring XML expertise.
- Changing business practices and retraining staff to accommodate electronic attachments versus paper attachments and records.

These items should not represent unusual expenditures, as some of the same kinds of tasks will have been accomplished through HIPAA Transaction compliance activities. We also understand that several firms that provide translators already have HL7 capabilities in their HIPAA-capable translators.

b. Health plan savings could accrue from:

- Using standardized attachment requests.
- Receiving consistent response information.
- Eliminating paper documents and the manual efforts to request, receive, process, and handle the documents.
- Reducing postage costs.
- The ability to electronically adjudicate health care claims supported by an electronically submitted attachment.

We solicit industry input as to the anticipated implementation costs for technical, business and operational changes that may be required, as well as anticipated savings.

3. Cost and Benefit Analysis for Covered Health Care Providers

a. Covered health care providers may incur the following implementation costs:

- Learning about and training staff on the new electronic claims attachment standards, the X12 implementation guides, HL7 AIS and LOINC® codes.
- Programming systems to accommodate the new transaction types, messaging standards, and codes.
- Mapping the LOINC® codes to current proprietary codes.
- Installing LOINC® codes.
- Software and/or vendor fees.
- Practice management system vendor fees and charges.
- Health care clearinghouse fees.
- Changing business practices and re-training staff to enter different data, perform different functions, conduct different procedures.
- Purchasing or expanding server space.
- Acquiring XML expertise.
- Purchasing or enhancing translator software.
- Telecommunication expansion.
- Utility conversion programs.

Again, many of these items should not represent unusual expenditures for covered health care providers and/or their business associates, as some of the same kinds of tasks will have been accomplished through HIPAA transactions compliance activities to date. Small practices that have practice management or software maintenance agreements are likely to be provided with appropriate software upgrades at modest costs, in view of the market competition for that business sector. Covered health care providers with their own EDI software may incur some added costs to obtain HL7 capabilities for their translators. The costs for covered health care providers to implement this proposal for electronic attachments to health care claims are not considered to be significant and many implementation costs for transactions were estimated to be one-time expenditures rather than recurring ones.

b. Savings could accrue from the following:

- Use of standardized, predictable attachments, and formats rather than numerous proprietary forms associated with individual health plan requirements.
- Reduction of paper documents and manual efforts to receive, process, and respond to requests.
- Reduction in postage and mailing costs.
- Reduction in labor costs.
- Minimization of ambiguities, which frequently result in multiple communication exchanges before the desired information is correctly identified and provided.
- Application of automation by covered health care providers with electronic record systems to support the rapid retrieval of information, and respond to requests.
- More accurate tracking and receipt of attachment information, resulting in fewer lost documents.
- Receipt of payment more quickly.

We solicit industry input as to the anticipated implementation costs for technical, business and operational changes that may be required, as well as on anticipated savings.

We do not make any assumptions about the fiscal impact to clearinghouses, because there was no baseline data in the 1993 WEDI report, and no current data on their costs for implementing the HIPAA transactions over the past several years. Nonetheless, we believe that costs would be similar to those incurred by both health plans and health care providers, because of the programming, mapping, translating and storage functions for which they may be responsible. We anticipate that AFEHCT, HIMSS and AHIMA, to name a few associations, will compile data on costs and potential savings for their constituents in order to avoid concerns over proprietary and competitive data. Such deidentified data may be useful for comments on this proposal. A vendor forum held in August 2005 may encourage analysis within the industry itself.

4. Cost and Benefit Estimates

a. Costs of Implementation: The transaction standards proposed in this rule are in the same family of X12 standards as the other HIPAA-mandated transactions. Therefore, any new activities necessary to implement the electronic health care claims attachment transactions should be consistent with what has already been done, and may be largely in place. The HL7 message standard is used in many clinical settings already, and laboratories and some other health care organizations use the LOINC® codes.

While the Department had estimated costs in the impact analysis for the other transactions adopted under the Transaction Rule, we believe that covered entities now have data regarding the actual costs for this implementation, and are themselves in the best position to provide current data regarding the implementation costs of this proposal.

The 1993 WEDI report did not provide data specific to claims attachments, and no reports since that time have attempted to quantify volumes or costs. The report was extremely limited in data for health plans on this subject.

In light of existing limitations, we repeat our solicitation for implementation cost information from affected entities. We are providing high-level cost and savings estimates in this proposed rule based on the 1993 data and the final Transactions Rule. Anecdotally, we have heard from industry representatives that implementing the standards for electronic health care claims attachments would likely cost 10 percent of what covered entities expended on their overall HIPAA implementation efforts. We use this figure for our cost estimates below. It is the only current figure available, following extensive research and discussion over the past 18 months. If the industry submits sufficiently robust data to allow for a reasonable analysis of costs and savings, updated estimates may be provided in the final rule on these standards.

The tables below illustrate the estimated costs for health plans and health care providers to implement electronic health care claims attachments.

TABLE 3.—FIVE YEAR COSTS FROM TRANSACTIONS RULE

[In billions]

Costs	2007	2008	2009	2010	2011
Providers	$1.2	$1.2	$1.1	.....	.....
Health plans	1.2	1.2	1.1	.....	.....
10% of costs	120 million	120 million	110 million	.....	.....

We used Table 4 from the Transactions Rule to demonstrate an estimate of implementation costs for electronic health care claims attachments for both health plans and providers. Using the recent informal industry estimate that implementation of the electronic health care claims attachments standards would cost 10 percent of what covered entities spent on overall HIPAA implementation yields an estimate of $120 million in each of the first 2 years for both sectors. The first 3 years are deemed to have the implementation costs, while future expenses are related to operations, and not reflected in implementation estimates.

b. Benefits of Implementation

In order to estimate the benefits of electronic claims attachments, we applied the methodology described below. According to Gartner, Inc., a management research and consulting firm, 5.1 billion health care claims were submitted in the year 2000. Furthermore, of the 5.1 billion health claims submitted, Gartner believes that 486 million claims were from hospitals and 1.9 billion claims were from physicians. This translates to approximately 10 percent and 38 percent of all health claims being submitted by hospitals and physicians respectively.

To predict a trend for total annual physician and hospital claims beyond the year 2000 figures provided by the consulting firm, we used the CMS growth rates of Medicare Parts A & B claims from 2001 through 2005 (listed in the CMS Justification of Estimates for Appropriations Committees Fiscal Year 2005 Report (DHHS)) and applied those as the associated growth rates for our physician and hospital health claims model for 2001 through 2005. Furthermore, for the years 2006 through 2011, we assumed the continued 2005 Parts A and B average growth rate of 4 percent for physician and hospital claims. Table 4 below, Total Health Care Claims (in millions), presents a low-high sensitivity range for the number of physician and hospital claims for years 2007 through 2011. Our model uses 2007 as the first year; since this is the anticipated year covered entities will need to be compliant with the regulation.

As stated earlier, this proposed rule uses a 5-year period for its analysis, in order to synchronize its potential implementation schedule with the date line established in the original Transactions Rule. Since the initial compliance date for the Transactions Rule was 2002, the end date for that analysis was 2011. In this proposed rule, we begin our estimates in 2007, and end in 2011.

The Table below (Table 4) reflects the estimated number of claims for years 2007 through 2011. As part of a sensitivity analysis, the high numbers reflect a 30 percent increase in the claims count for the same years.

TABLE 4.—TOTAL HEALTH CARE CLAIMS—PHYSICIANS AND HOSPITALS

	2007		2008		2009		2010		2011	
	Low	High	Low	High	Low	High	Low	High	Low	High
Physician Claims	2,832	3,682	2,946	3,829	3,064	3,983	3,186	4,142	3,314	4,308
Hospital Claims	708	921	736	957	766	996	797	1,035	828	1,077

The 1993 WEDI Report concluded that 25 percent of all health care claims require some sort of additional documentation, or attachment. Current anecdotal estimates are that 50 percent of all attachments are represented by those included in this proposed rule. As these are the only data available, we assumed 50 percent of the rate of 25 percent for attachments on our estimated physician and hospital health claims for each year from 2007 through 2011; or 12.5 percent of all claims. We know this results in a large number of potential claims attachments; and this number is undoubtedly higher than the number of claims that might actually require one of the six electronic attachment types proposed here. Nonetheless, we do not have any hard industry data on what percent of claims are submitted for the six service and procedure electronic claims attachment types proposed here, nor what volumes these represent of the total number of attachment types required by a significant number of health plans. Again, we solicit data from health care providers and health plans on this topic.

TABLE 5.—TOTAL HEALTH CARE CLAIMS ATTACHMENTS—PHYSICIANS AND HOSPITALS

[In millions]

	2007		2008		2009		2010		2011	
	Low	High	Low	High	Low	High	Low	High	Low	High
Attachments volume: 50 percent of the estimated 25 percent of all Physician Claims	354	460	368	458	383	498	398	518	414	538
Attachments volume: 50 percent of the estimated 25 percent of all Hospital Claims	89	115	92	119	96	124	100	129	104	135

Table 5 shows the number of electronic health care claims attachments that could potentially be required for health care claims (in millions), in spite of the increase in electronic data exchange through the other HIPAA transactions. The data are shown from a low range to a high range to demonstrate that the volumes are large in either case.

According to the 1993 WEDI Report, operational savings per transaction through the use of electronically submitted claims varies between $1.01 to $1.96 for physicians and $0.64 to $1.07 for hospitals, net of transaction costs (assumed to be up to $0.50 per claim). WEDI believed that conversion from a paper-based process to an electronic transaction process would include savings on labor costs as a result of standardized information and procedures, and a decrease in non-personnel expenses such as postage, telephone, and forms. Other savings may accrue to covered health care providers because they will experience a reduction in the days between claims submission and claims payment. Since there was no other quantitative information from the industry outlining the costs and benefits of the transition to EDI, we constructed our estimates by using the WEDI operational savings figures above in our assumptions and calculations. We note here that the WEDI report did not estimate a per transaction cost for electronic attachments or medical records exchange between a health care provider and a health plan. WEDI provided an estimate of a net savings potential of $1.5 billion in labor from copying and shipment of medical records between health care providers, though not for the purpose of claims attachments.

For physicians, we assumed the WEDI operational savings of $1.01 within our low category and $1.96 within our high category for each of the 5-year calculations. For hospitals, we assumed the WEDI operational savings of $0.64 within our low category and $1.07 within our high category for each of the 5-year calculations. We do not provide any savings assumptions for health plans, as no relevant data were available through any reports shared with us. We hope that the health plan industry will submit such data to HHS during the comment period. We also note here that operational savings calculations include costs and savings (costs less savings equal operational savings with this methodology). In this proposed rule, we attempt to reflect cost and savings estimates based on available research as well as current informal and anecdotal input from industry subject matter experts.

TABLE 6.—OPERATIONAL SAVINGS FROM ELECTRONIC HEALTH CARE CLAIMS ATTACHMENTS—PHYSICIANS AND HOSPITALS

[In millions]

	2007		2008		2009		2010		2011	
	Low	High	Low	High	Low	High	Low	High	Low	High
Physicians	358	902	372	938	387	976	402	1,015	418	1,055
Hospitals	57	123	59	98	61	133	64	138	66	144
Operational Savings	415	1,025	431	1,036	448	1,109	466	1,153	485	1,199

Table 6, Operational Savings from Electronic Health Care Claims Attachments (in $ millions), shows the total operational savings that could be achieved. The calculations for number of claims attachments are made using the figures in Table 5 and the WEDI savings assumptions for physicians and hospitals.

Next, we assumed a fairly optimistic rate of adoption for the electronic health care claims attachment transactions, because, based on Medicare's experience, two years past the compliance date for the original set of transactions, 99 percent of the claims being submitted are in HIPAA compliant formats. We believe that most covered entities will choose to implement the human variant option first, which does not have significant technical complexities. Therefore, we use the following conversion factors, or ''adoption rates'' from paper to electronic attachments: 5 percent for 2007, 20 percent for 2008, 50 percent for 2009, 75 percent for 2010, and 90 percent for 2011. For example, using the low end of attachment volumes found in Table 5, 5 percent of the 354 million attachments (total low) for physician claims are expected to be converted from paper to electronic processing by the end of the year 2007. We used lower conversion rates for the first few years of implementation because not all paper attachments can automatically be moved to an electronic process; and only six attachment types have approved HL7 specifications at present. The conversion factors were based on the 1993 WEDI report, which as has been stated, remains the only available data source. However, as mentioned earlier, HIPAA compliance and adoption rates are promising, just 2 years after the compliance date.

TABLE 7.—OPERATIONAL SAVINGS FROM ELECTRONIC HEALTH CARE CLAIMS ATTACHMENTS BASED ON SPECIFIC RATES OF CONVERSION

[In millions]

	2007 (@ 5 percent conversion)		2008 (@ 20 percent conversion)		2009 (@ 50 percent conversion)		2010 (@ 75 percent conversion)		2011 (@ 90 percent conversion)	
	Low	High	Low	High	Low	High	Low	High	Low	High
Total Operational Savings for each conversion factor	21	51	86	213	224	554	349	865	436	1,079

Table 7 represents operational savings from electronic health care claims attachments using the estimated conversion factors. We took the operational savings figures shown in Table 6 and applied the conversion rates for each of the 5 years.

In its A–4 circular, the Office of Management and Budget (OMB) requires all cost-benefit analyses to provide estimates of net benefits using both 3 percent and 7 percent discount rates (Office of Management and Budget, Circular A–4, September 17, 2003). Table 8, 5-Year (2007 through 2011) Total Operational Savings (in $ millions), shows the potential savings that could be attained for physicians and hospitals when using the standard for electronic attachments. These figures take into account both undiscounted and discounted (3 percent and 7 percent) amounts, respectively, as well as annualized savings.

TABLE 8.—FIVE-YEAR (2007 THROUGH 2011) OPERATIONAL SAVINGS ($ MILLIONS)—DISCOUNTED (3 PERCENT AND 7 PERCENT) AND ANNUALIZED PROJECTIONS

[In millions]

	Total savings (discounted at 3 percent)		Total savings (discounted at 7 percent)		Annualized savings (discounted at 3 percent)		Annualized savings (discounted at 7 percent)	
	Low	High	Low	High	Low	High	Low	High
Total Operational Savings Achieved Using Conversion Factor for Paper to Electronic Attachments	1,023	2,532	915	2,264	205	506	183	453

As final explanation of our use of the older formal data, and current informal estimates, in preparing this proposed rule we conducted extensive research to obtain up-to-date information. Data regarding paper versus electronic claims were not available beyond the year 2000, perhaps in preparation for HIPAA and the assumption that data would be available post implementation. We used a variety of other resources, including Medicare claims data, external research organizations such as Gartner, and contractors to estimate the number of electronic health care claims attachments, conversion rates, operational savings for each conversion factor, and total operation savings. The newly established Office of the National Coordinator for Health Information Technology (ONCHIT) also did not have current data that have provided any further insight for the impact analysis. Studies pertaining to the adoption of electronic medical record systems (EMR or EHR) and the integration of those with financial and administrative systems may be able to provide some useful information for the final rule in a few years time, but there is none available today related to electronic health care claims attachments.

OMB requires that all agencies provide estimates using net present values. OMB recommends the use of 3 percent and 7 percent discount rates based on current cost of capital. The discounted totals in Table 8 are based on these rates, and begin in 2007.

5. Conclusions

As shown in Table 3, Costs Associated with Electronic Health Care Claims Attachments, the estimated costs are $120 million dollars for the first 2 years, and slightly less in the third year. With regard to operational savings, the range is from $414 million to $1.1 billion over five years. In calendar year 2007, maximum operational savings, for both physicians and hospitals, is estimated to range between $414 million to $1 billion.

When we use the term ''conversion rate,'' we use it to mean the transition from a paper-based system to an EDI based process. As table 7 shows, using the assumed first year conversion rate of 5 percent yields an estimated total operational savings range of $21 million to $51 million. For 2008, the estimated operational savings, for both physicians and hospitals, ranges between $431 million and $1 billion. Using the assumed second year conversion rate of 20 percent could yield an estimated total operational savings range of $86 million to $213 million. For 2009, the estimated operational savings, for both physicians and hospitals, ranges between $448 million and $1.1 billion. Using the assumed third year conversion rate of 50 percent yields an estimated total operational savings range of $224 million to $554 million. In 2010, the estimated operational savings, for both physicians and hospitals, ranges between $466 million and $1.1 billion. Using the assumed fourth year conversion rate of 75 percent yields an estimated operational savings range of $349 million to $865 million. In 2011, the estimated total maximum operational savings, for both physicians and hospitals, ranges between $485 million and $1 billion. Using the assumed fifth year conversion rate of 90 percent yields an estimated total operational savings range of $436 million to $1 billion.

The 5-year (2007 through 2011) total operational savings presented in Table 8

shows a total operational savings range, for physicians and hospitals, of $1 billion to $2.5 billion, using the 3 percent discounted rate. While using the 7 percent discounted rate translates to a total operational savings range of $915 million to $2.2 billion. In addition, this table shows an annualized operational savings range, for physicians and hospitals, between $205 million and $506 million using the 3 percent discounted rate, and between $183 million and $453 million using the 7 percent discounted rate.

In accordance with the provisions of Executive Order 12866, this proposed rule has been reviewed by the Office of Management and Budget.

C. Guiding Principles for Standard Selection

1. Overview

The implementation teams charged with designating standards under the statute have defined, with significant input from the health care industry, a set of common criteria for evaluating potential standards. These criteria were based on direct specifications in the HIPAA, the purpose of the law, those principles that support the regulatory philosophy set forth in Executive Order 12866 of September 30, 1993, and the PRA of 1995. In order to be designated as a standard, a proposed standard should do the following:

- Improve the efficiency and effectiveness of the health care system by leading to cost reductions for, or improvements in, benefits from electronic HIPAA health care transactions. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.
- Meet the needs of the health data standards user community, particularly covered health care providers, health plans, and health care clearinghouses. This principle supports the regulatory goal of cost-effectiveness.
- Be consistent and uniform with the other HIPAA standards (that is, their data element definitions and codes and their privacy and security requirements) and, secondarily, with other private and public sector health data standards. This principle supports the regulatory goals of consistency and avoidance of incompatibility, and it establishes a performance objective for the standard.
- Have low additional development and implementation costs relative to the benefits of using the standard. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.
- Be supported by an ANSI-Accredited Standards Developing Organization or other private or public organization that would ensure continuity and efficient updating of the standard over time. This principle supports the regulatory goal of predictability.
- Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster. This principle establishes a performance objective for the standard.
- Be technologically independent of the computer platforms and transmission protocols used in HIPAA health transactions, except when they are explicitly part of the standard. This principle establishes a performance objective for the standard and supports the regulatory goal of flexibility.
- Be precise and unambiguous but as simple as possible. This principle supports the regulatory goals of predictability and simplicity.
- Keep data collection and paperwork burdens on users as low as is feasible. This principle supports the regulatory goals of cost-effectiveness and avoidance of duplication and burden.
- Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and provider types) and information technology. This principle supports the regulatory goals of flexibility and encouragement of innovation.

We believe that the standards being proposed in this regulation meet the requirements of these guidelines.

2. General

Converting to any standard would result in one-time conversion costs for covered health care providers, health care clearinghouses, and health plans. Some covered health care providers and health plans would incur those costs directly and others may incur them in the form of a fee from health care clearinghouses or, for covered health care providers, other agents such as practice management and software system vendors. We do not include estimated costs to health care clearinghouses in our analysis, since these costs are incurred on behalf of covered health care providers and health plans, and are ultimately borne by them. Including health care clearinghouse costs in this analysis would therefore count those costs twice.

We also do not include estimated costs for health plans in this analysis, because no relevant data were available. The lack of data overall is discussed in the section called ''limitations.''

The standards named in this proposed rule compare favorably with typical ASC X12 and HL7 standards and code sets in terms of simplicity, ease of use and cost. Covered entities have a variety of ways in which they can choose to send and/or receive an ASC X12 transaction or HL7 message, including internal reprogramming of their own systems, contracting with vendors and purchasing off-the-shelf translator, or interface engine programs.

The selection of the LOINC® code set for conveying meaningful information between trading partners represents another opportunity to control user costs, since this code set is available for use without payment of licensing fees.

List of Subjects in 45 CFR Part 162

Administrative practice and procedure, Electronic transactions, Health facilities, Health insurance, Hospitals, Incorporation by reference, Medicare, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR subtitle A, subchapter C, part 162 to read as follows:

PART 162—ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 162 is revised to read as follows:

Authority: 42 U.S.C. 1320d–1320d–8, as amended, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)).

2. In §162.103, the introductory text to the section is republished, and a definition for ''LOINC®'' is added in alphabetical order to read as follows:

§ 162.103 Definitions.

For purposes of this part, the following definitions apply:

* * * * *

LOINC® stands for Logical Observation Identifiers Names and Codes.

* * * * *

3. In §162.920, the following changes are made:

A. The section heading is revised.
B. The introductory text is revised.
C. New paragraph (a)(10) is added.
D. New paragraph (a)(11) is added.
E. New paragraph (c) is added.
The changes read as follows:

§ 162.920 Availability of implementation specifications and guides.

A person or an organization may directly request copies of the implementation standards described in subparts I through S of this part, from the publishers listed in this section. The Director of the Office of the Federal

Register approves the implementation specifications and guides described in this section for incorporation by reference in subparts I through S of this part in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The implementation specifications and guides described in this paragraph are also available for inspection by the public at the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Copy requests must be accompanied by the name of the standard, number, if applicable, and version number. Implementation specifications and guides are available for the following transactions:

(a) ASC X12N specifications. * * *

(10) The ASC X12N 277—Health Care Claim Request for Additional Information, Version 4050 (004050X150), May 2004, Washington Publishing Company as referenced in §162.1915.

(11) The ASC X12N 275—Additional Information to Support a Health Care Claim or Encounter, Version 4050 (004050X151), May 2004, Washington Publishing Company as referenced in §162.1925.

* * * * *

(c) *HL7 specifications.* (1) The HL7 CDAR1AIS0000R021 Additional Information Specification Implementation Guide, Release 2.1 (based on HL7 CDA Release 1.0), May 2004, Health Level Seven, Inc. The AIS Implementation Guide for the HL7 standard may be obtained from Health Level Seven, Inc., 3300 Washtenaw Avenue, Suite 227, Ann Arbor, MI 48104–4250, or via the Internet at *http://www.hl7.org*; or from the Washington Publishing Company, PMB 161, 5284 Randolph Road, Rockville, MD 20852, or via the Internet at *http://www.wpc-edi.com/*.

(2) The HL7 Additional Information Specifications for each of the six attachments listed in §162.1915 and §162.1925 may be obtained from Health Level Seven, Inc., 3300 Washtenaw Avenue, Suite 227, Ann Arbor, MI 48104–4250, or via the Internet at *http://www.hl7.org*; or from Washington Publishing Company, PMB 161, 5284 Randolph Road, Rockville, MD 20852, or via the Internet at *http://www.wpc-edi.com/*. The six HL7 AIS documents are:

(i) Ambulance services information: The CDAR1AIS0001R021 Additional Information Specification 0001, Ambulance Service Attachment, Release 2.1, based on HL7 CDA Release 1.0, May 2004, as referenced in §162.1915(b)(1) and §162.1925(c)(1).

(ii) Emergency department information: The CDAR1AIS0002R021 Additional Information Specification 0002: Emergency Department Attachment, Release 2.1, based on HL7 CDA Release 1.0, May 2004, as referenced in §162.1915(b)(2) and §162.1925(c)(2).

(iii) Rehabilitation services information: The CDAR1AIS0003R021. Additional Information Specification 0003: Rehabilitation Services Attachment, Release 2.1, based on HL7 CDA Release 1.0, May 2004, as referenced in §162.1915(b)(3) and §162.1925(c)(3).

(iv) Clinical reports information: The CDAR1AIS0004R021 Additional Information Specification 0004: Clinical Reports Attachment, Release 2.1, based on HL7 CDA Release 1.0, May 2004, as referenced in §162.1915(b)(4) and §162.1925(c)(4).

(v) Laboratory results information: The CDAR1AIS0005R021 Additional Information Specification 0005: Laboratory Results Attachment, Release 2.1, based on HL7 CDA Release 1.0, May 2004, as referenced in §162.1915(b)(5) and §162.1925(c)(5).

(vi) Medications information: The CDAR1AIS0006R021 Additional Information Specification 0006: Medications Attachment, Release 2.1, based on HL7 CDA Release 1.0, May 2004, as referenced in §162.1915(b)(6) and §162.1925(c)(6).

(3) The LOINC® Modifier Codes booklet ''for use with ASC X12N 277 Implementation Guides when requesting Additional Information,'' is available from Washington Publishing Company, PMB 161, 5284 Randolph Road, Rockville, MD 20852, or via the Internet at *http://www.wpc-edi.com/*.

4. In §162.1002, paragraph (c) is added to read as follows:

§ 162.1002 Medical data code sets.

* * * * *

(c) For the period beginning [24 months after the effective date of the final rule published in the **Federal Register**]: Logical Observation Identifiers Names and Codes® (LOINC®), as maintained and distributed by the Regenstrief Institute and the LOINC® Committee. The LOINC® database may be obtained from the Regenstrief Institute Web site at the following Internet address: *http://www.regenstrief.org/loinc/loinc.htm*. Users without access to the Internet may obtain the LOINC® database from the Regenstrief Institute, c/o LOINC®, 1050 West Wishard Blvd., Indianapolis, IN 46202.

5. A new subpart S is added to part 162 to read as follows:

Subpart S—Electronic Health Care Claims Attachments

Sec.

Subpart S—Electronic Health Care Claims Attachments

§ 162.1900 Definitions.

Ambulance services means health care services provided by land, water, or air transport and the procedures and supplies used during the trip by the transport personnel to assess, treat or monitor the individual until arrival at the hospital, emergency department, home or other destination. Ambulance documentation may also include non-clinical information such as the destination justification and ordering practitioner.

Attachment information means the supplemental health information needed to support a specific health care claim.

Clinical reports means reports, studies, or notes, including tests, procedures, and other clinical results, used to analyze and/or document an individual's medical condition.

Emergency department means a health care facility or department of a hospital that provides acute medical and surgical care and services on an ambulatory basis to individuals who require immediate care primarily in critical or life-threatening situations.

Laboratory results means the clinical information resulting from tests conducted by entities furnishing biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathology, or other examinations of materials from the human body.

Medications means those drugs and biologics that the individual is already

taking, that are ordered for the individual during the course of treatment, or that are ordered for an individual after treatment has been furnished.

Rehabilitation services means those therapy services provided for the primary purpose of assisting in an individual's rehabilitation program of evaluation and services. These services are: Cardiac rehabilitation, medical social services, occupational therapy, physical therapy, respiratory therapy, skilled nursing, speech therapy, psychiatric rehabilitation, and alcohol and substance abuse rehabilitation.

§ 162.1905 Requirements for covered entities.

When using electronic media to conduct a health care claims attachment request transaction or a health care claims attachment response transaction, a covered entity must comply with the applicable standards of this subpart if:

(a) Information not contained in a health care claim is needed for the adjudication of that health care claim; and

(b) The health care claim is for one or more of the following types of services:

(1) Ambulance services;

(2) Emergency department services;

(3) Rehabilitation services; or

(c) The additional information requested is for one or more of the following types of information:

(1) Clinical reports;

(2) Laboratory results; or

(3) Medications.

§ 162.1910 Electronic health care claims attachment request transaction.

(a) The health care claims attachment request transaction is the transmission, from a health plan to a health care provider, of a request for attachment information to support the adjudication of a specific health care claim. A health plan may make such a request—

(1) Upon receipt of the health care claim;

(2) In advance of submission of the health care claim; or

(3) Through instructions for a specific type of health care claim which permit a health care provider to submit attachment information on an unsolicited basis each time such type of claim is submitted.

(b) If a health plan conducts a health care claims attachment request transaction using electronic media and the attachment information requested is of a type described at §162.1905 , the plan must conduct the transaction in accordance with the appropriate provisions of §162.1915.

(c) A health plan that conducts a health care claims attachment request transaction using electronic media, must submit complete requests and identify in the transaction, all of the attachment information needed to adjudicate the claim, which can be requested by means of the transaction.

(d) The health care claims attachment request transaction sent using electronic media, is comprised of two component parts:

(1) The general request structure that identifies the related claim; and

(2) The LOINC® codes and LOINC® modifiers identifying the attachment information being requested.

§ 162.1915 Standards and implementation specifications for the electronic health care claims attachment request transaction.

The Secretary adopts the following standards and implementation specifications for the electronic health care claims attachment request transaction:

(a) The ASC X12N 277—Health Care Claim Request for Additional Information, Version 4050, May 2004, Washington Publishing Company, 004050X150 (incorporated by reference in §162.920).

(b) The following HL7 AIS documents to convey the LOINC® codes that identify the attachment type and specific information being requested—

(1) Ambulance services information: The CDAR1AIS0001R021 Additional Information Specification 0001, Ambulance Service Attachment, Release 2.1, based on HL7 CDA Release 1.0 (incorporated by reference in §162.920);

(2) Emergency department information: The CDAR1AIS0002R021 Additional Information Specification 0002: Emergency Department Attachment, Release 2.1, based on HL7 CDA Release 1.0 (incorporated by reference in §162.920);

(3) Rehabilitation services information: The CDAR1AIS0003R021. Additional Information Specification 0003: Rehabilitation Services Attachment, Release 2.1, based on HL7 CDA Release 1.0 (incorporated by reference in §162.920);

(4) Clinical reports information: The CDAR1AIS0004R021 Additional Information Specification 0004: Clinical Reports Attachment, Release 2.1, based on HL7 CDA Release 1.0 (incorporated by reference in §162.920);

(5) Laboratory results information: The CDAR1AIS0005R021 Additional Information Specification 0005: Laboratory Results Attachment, Release 2.1, based on HL7 CDA Release 1.0 (incorporated by reference in §162.920).

(6) Medications information: The CDAR1AIS0006R021 Additional Information Specification 0006: Medications Attachment, Release 2.1, based on HL7 CDA Release 1.0 (incorporated by reference in §162.920).

§ 162.1920 Electronic health care claims attachment response transaction.

(a) The health care claims attachment response transaction is the transmission of attachment information, from a health care provider to a health plan, in response to a request from the health plan for the information.

(b) If a health care provider conducts a health care claims attachment transaction using electronic media, and the attachment information is of the type described at §162.1905, the health care provider must conduct the transaction in accordance with the appropriate provisions of §162.1925.

(c) A health care provider that conducts a health care claims attachment response transaction using electronic media must submit a complete response by providing, to the extent available, all of the requested attachment information or other appropriate response in the transaction.

(d) A health care provider that sends scanned images and text documents in the attachment transaction, for the human decision variants, is not required to use the LOINC® codes as the response, other than to repeat the LOINC® codes used in the request. Response information may be free text, scanned documents, or an embedded document within the BIN segment of the response transaction.

(e) A health care provider may submit an unsolicited response transaction only upon advance instructions by a health plan.

§ 162.1925 Standards and implementation specifications for the electronic health care claims attachment response transaction.

The Secretary adopts the following standards and implementation specifications for the electronic health care claims attachment response trans action:

(a) The ASC X12N 275—Additional Information to Support a Health Care Claim or Encounter, Version 4050, May 2004, Washington Publishing Company, 004050X151 (incorporated by reference in §162.920).

(b) The HL7 Additional Information Specification Implementation Guide Release 2.1 (incorporated by reference in §162.920) for implementing the HL7 Additional Information Specifications to convey attachment information within the Binary Data segment of the ASC X12N 275 (004050x151).

(c) The following HL7 AIS documents to convey the LOINC® codes that identify the attachment type and

specific attachment information being sent—

(1) Ambulance Services information: The CDAR1AIS0001R021 Additional Information Specification 0001: Ambulance Service Attachment, Release 2.1, based on HL7 CDA Release 1.0 (incorporated by reference in §162.920);

(2) Emergency Department information: The CDAR1AIS0002R021 Additional Information Specification 0002: Emergency Department Attachment, Release 2.1, based on HL7 CDA Release 1.0 (incorporated by reference in §162.920);

(3) Rehabilitation services information: The CDAR1AIS0003R021 Additional Information Specification 0003: Rehabilitation Services Attachment, Release 2.1, based on HL7 CDA Release 1.0 (incorporated by reference in §162.920);

(4) Clinical reports information: The CDAR1AIS0004R021 Additional Information Specification 0004: Clinical Reports Attachment, Release 2.1, based on HL7 CDA Release 1.0 (incorporated by reference in §162.920);

(5) Laboratory results information: The CDAR1AIS0005R021 Additional Information Specification 0005: Laboratory Results Attachment, Release 2.1, based on HL7 CDA Release 1.0 (incorporated by reference in §162.920); and

(6) Medications information: The CDAR1AIS0006R021 Additional Information Specification 0006: Medications Attachment, Release 2.1, based on HL7 CDA Release 1.0 (incorporated by reference in §162.920).

§ 162.1930 Initial compliance dates for the electronic health care claims attachment response and electronic health care claims attachment request transaction standards.

(a) *Health care providers.* A covered health care provider must comply with the applicable requirements of this subpart S no later than [24 months after the effective date of the final rule published in the **Federal Register**].

(b) Health plans. A health plan must comply with the applicable requirements of this subpart S no later than one of the following dates:

(1) *Health plans other than small health plans*—[24 months after the effective date of the final rule published in the **Federal Register**].

(2) *Small health plans*—[36 months after the effective date of the final rule published in the **Federal Register**].

(c) *Health care clearinghouses.* A health care clearinghouse must comply with the applicable requirements of this subpart S no later than [24 months after the effective date of the final rule published in the **Federal Register**].

Authority: Sections 1173 and 1175 of the Social Security Act (42 U.S.C. 1320d–2 and 1320d–4).

Dated: May 27, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–18927 Filed 9–22–05; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Friday,
September 23, 2005

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT76

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits the taking of designated species during the 2005–06 season.

DATES: This rule is effective on September 24, 2005.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2005

On April 6, 2005, we published in the **Federal Register** (70 FR 17574) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2005–06 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 24, 2005, we published in the **Federal Register** (70 FR 36794) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2005–06 duck hunting season. The June 24 supplement also provided detailed information on the 2005–06 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 22 and 23, 2005, we held open meetings with the Flyway Council Consultants, at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2005–06 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2005–06 regular waterfowl seasons.

On August 1, 2005, we published in the **Federal Register** (70 FR 44200) a third document specifically dealing with the proposed frameworks for early-season regulations. In the August 30, 2004, **Federal Register** (70 FR 51522), we published final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected 2005–06 early-season hunting dates, hours, areas, and limits. Subsequently, on August 31, 2005, we published a final rule in the **Federal Register** (70 FR 51946) amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On July 27–28, 2005, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2005–06 regulations for these species. On August 22, 2005, we published in the **Federal Register** (70 FR 49068) the proposed frameworks for the 2005–06 late-season migratory bird hunting regulations. We published final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 2005–06, in a September XX, 2005, **Federal Register**.

The final rule described here is the final in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations for 2005–06 and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for species subject to late-season regulations and those for early seasons that States previously deferred.

National Environmental Policy Act (NEPA) Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582), and our Record of Decision on August 18, 1988 (53 FR 31341).

In addition, in a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program. Our notice beginning the public scoping process was published in the September 8, 2005, **Federal Register** (70 FR 53376).

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection by contacting one of the people listed under **FOR FURTHER INFORMATION CONTACT.**

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998, and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 to

$1.064 billion, with a midpoint estimate of $899 million. Copies of the cost/benefit analysis are available upon request by contacting one of the people listed under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.migratorybirds.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request by contacting one of the people listed under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.migratorybirds.gov.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations.

A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not ''significantly or uniquely'' affect small governments, and will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department of the Interior, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–712), does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

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

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and

to establish and publicize the necessary regulations and procedures to implement their decisions. We, therefore, find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will take effect immediately upon publication.

Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 14, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

■ For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742a–j, Pub. L. 106–108.

BILLING CODE 4310–55–P

Note - The following annual regulations provided for by §§20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

2. Section 20.104 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations.

Area descriptions were published in the August 30, 2005, (70 FR 51522) and the September 22, 2005, Federal Registers.

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 2005, Federal Register (70 FR 51946).

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16
ATLANTIC FLYWAY				
		* * * * *		
Maine	Sept. 1-Nov. 9	Closed	Oct. 1-Oct. 29 & Oct. 31	Sept. 1-Dec. 16
		* * * * *		
Massachusetts (4)	Sept. 1-Nov. 8	Closed	Oct. 13-Oct. 29 & Oct. 31-Nov. 12	Sept. 1-Dec. 15
		* * * * *		
Vermont	Closed	Closed	Oct. 6-Nov. 4	Oct. 5-Dec. 18
		* * * * *		
MISSISSIPPI FLYWAY				
		* * * * *		

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Louisiana	Sept. 17-Sept. 25 & Nov. 12-Jan. 11	Sept. 17-Sept. 25 & Nov. 12-Jan. 11	Dec. 18-Jan. 31	Nov. 5-Dec. 7 Dec. 17-Feb. 28
		* * * * *		
Tennessee				
Reelfoot Zone	Nov. 12-Nov. 13 & Dec. 3-Jan. 20	Closed	Oct. 29-Dec. 12	Nov. 15-Feb. 28
State Zone	Nov. 26-Nov. 27 & Dec. 3-Jan. 20	Closed	Oct. 29-Dec. 12	Nov. 15-Feb. 28
Wisconsin				
North Zone	Sept. 24-Nov. 22	Closed	Sept. 24-Nov. 7	Sept. 24-Nov. 22
South Zone	Oct. 1-Oct. 9 & Oct. 15-Dec. 4	Closed	Sept. 24-Nov. 7	Oct. 1-Oct. 9 & Oct. 15-Dec. 4
		* * * * *		
PACIFIC FLYWAY				
Arizona (16)				
North Zone	Closed	Closed	Closed	Oct. 7-Jan. 15
South Zone	Closed	Closed	Closed	Oct. 21-Jan. 29
		* * * * *		
Idaho				
Zone 1 & 2	Closed	Closed	Closed	Oct. 8-Jan. 20
Zones 3	Closed	Closed	Closed	Oct. 15-Jan. 27
		* * * * *		
Nevada				
Lincoln and Clark Counties	Closed	Closed	Closed	Oct. 8- Jan. 20
Rest of State	Closed	Closed	Closed	Oct. 8-Jan. 21
		* * * * *		
Oregon				
Zone 1	Closed	Closed	Closed	Oct. 15-Oct. 30 & Nov. 2-Jan. 29

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Oregon (cont.)				
Zone 2	Closed	Closed	Closed	Oct. 8-Dec. 6 & Dec. 9-Jan. 22
		* * * * *		
Washington				
East Zone	Closed	Closed	Closed	Oct. 15-Oct. 19 & Oct. 22-Jan. 29
West Zone	Closed	Closed	Closed	Oct. 15-Oct. 19 & Oct. 22-Jan. 29
		* * * * *		

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, and New Jersey, the limits for clapper and king rails are 10 daily and 20 in possession.

* * * * *

(4) In Massachusetts, the sora daily limits are 5 daily and 5 in possession; the Virginia rail limits are 10 daily and 10 in possession.

* * * * *

(16) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.

3. In Section 20.105, paragraphs (a), (b), and (f) are amended by adding the entries for the following States in alphabetical order and paragraph (e) is revised to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 30, 2005, (70 FR 51522) and the September 22, 2005, Federal Registers.

(a) Common Moorhens and Purple Gallinules
(Atlantic, Mississippi, and Central Flyways)

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 2005, Federal Register (70 FR 51946). The zones named in this paragraph are the same as those used for setting duck seasons.

	Season Dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
	* * * * *		
Georgia	Nov. 19-Nov. 27 &	15	30
	Dec. 10-Jan. 20		
	* * * * *		
Virginia	Oct. 6-Oct. 10 &	15	30
	Nov. 19-Dec. 3 &	15	30
	Dec. 10-Jan. 20	15	30
West Virginia			
Zone 1	Oct. 1-Oct. 15 &	15	30
	Dec. 8-Jan. 21	15	30
Zone 2	Oct. 1-Oct. 15 &	15	30
	Nov. 24-Jan. 7	15	30
	* * * * *		
MISSISSIPPI FLYWAY			
	* * * * *		
Louisiana	Sept. 17-Sept. 25 &	15	30
	Nov. 12-Jan. 11	15	30
Michigan			
North Zone	Oct. 1-Nov. 29	15	30
Middle Zone	Oct. 1-Oct. 9 &	15	30
	Oct. 22-Dec. 11	15	30
South Zone	Oct. 15-Dec. 11 &	15	30
	Dec. 31-Jan. 1	15	30
Minnesota (3)	Oct. 1-Nov. 29	15	30
	* * * * *		

	Season Dates	Limits Bag	Possession
Tennessee			
Reelfoot Zone	Nov. 12-Nov. 13 &	15	30
	Dec. 3-Jan. 22	15	30
State Zone	Nov. 26-Nov. 27 &	15	30
	Dec. 3-Jan. 22	15	30
Wisconsin			
North Zone	Sept. 24-Nov. 22	10	20
South Zone	Oct. 1-Oct. 9 &	10	20
	Oct. 15-Dec. 4		
	* * * * *		
PACIFIC FLYWAY			
All States	Seasons are in aggregate with coots and listed in paragraph (e).		

* * * * *

(3) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots and moorhens in the aggregate.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway)

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 2005, Federal Register (70 FR 51946).

Within the special sea duck areas, the daily bag limit is 7 sea ducks of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Possession
Georgia	Nov. 19-Nov. 27 &	7	14
	Dec. 10-Jan. 29	7	14
	* * * * *		
Maine (3)	Oct. 1-Jan. 31	7	14
Maryland	Oct. 1-Jan. 28	5	10
Massachusetts (4)	Oct. 6-Jan. 21	7	14

	Season Dates	Limits	
		Bag	Possession
	* * * * *		
North Carolina	Oct. 5-Jan. 28	7	14
	* * * * *		
South Carolina	Oct. 15-Jan. 29	7	14
Virginia	Oct. 6-Jan. 28	7	14

Note: Notwithstanding the provisions of this part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia, and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

* * * * *

(3) In Maine, the daily bag limit for eiders is 5, possession 10.
(4) In Massachusetts, the daily bag limit may include no more than 4 eiders (only 1 of which may be a hen) and 4 long-tailed ducks.

* * * * *

(e) Waterfowl, Coots, and Pacific-Flyway Seasons for Common Moorhens and Purple Gallinules

Definitions

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark Geese: Includes Canada geese, white-fronted geese, emperor geese, brant (except in California, Oregon, and Washington, and the entire Atlantic Flyway) and all other geese except light geese.

ATLANTIC FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (2 hen mallards), 2 scaup, 1 black duck, 1 pintail, 1 canvasback, 1 mottled duck, 2 wood ducks, 2 redheads, and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

Harlequin Ducks: All areas of the Flyway are closed to harlequin duck hunting.

Merganser Limits: The daily bag limit is 5 mergansers with 10 in possession and may include no more than 1 hooded merganser daily and 2 in possession. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 1 daily and 2 in possession may be hooded mergansers.

	Season Dates	Limits	
		Bag	Possession
Connecticut			
Ducks and Mergansers:		6	12
North Zone:			
Canvasbacks	Dec. 5-Jan. 7		
Other ducks	Oct. 12-Oct. 22 &		
	Nov. 11-Jan. 7		
South Zone:			
Canvasbacks	Dec. 19-Jan. 21		
Other ducks	Oct. 12-Oct. 19 &		
	Nov. 22-Jan. 21		
Coots	Same as for ducks	15	30
Canada Geese:			
NAP Zone:			
L-Unit	Oct. 1-Oct. 31 &	3	6
	Nov. 25-Jan. 14	3	6
H-Unit			
North Zone	Oct. 1-Oct. 19 &	2	4
	Nov. 25-Jan. 14	2	4
South Zone	Oct. 1-Oct. 19 &	2	4
	Nov. 25-Jan. 14	2	4
(special season)	Jan. 16-Feb. 15	5	10
AP Unit	Oct. 29-Nov. 5 &	3	6
	Nov. 19-Jan. 2	3	6
Light Geese:			
North Zone	Oct. 8-Feb. 4	15	--
South Zone	Oct. 8-Feb. 4	15	--
Brant:			
North Zone	Dec. 5-Jan. 7	2	4
South Zone	Dec. 19-Jan. 21	2	4

	Season Dates	Limits	
		Bag	Possession
Delaware			
Ducks :		6	12
Canvasbacks	Dec. 19-Jan. 21		
Other ducks	Oct. 24-Nov. 5 & Nov. 21-Dec. 3 & Dec. 12-Jan. 21		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese	Nov. 21-Dec. 3 &	2	4
	Dec. 15-Jan. 21	2	4
Light Geese:			
Bombay Hook NWR Zone (1)	Oct. 10-Jan. 20 &	15	--
	Feb. 6-Mar. 8	15	--
Rest of State (2)	Oct. 10-Nov. 8 &	15	--
	Nov. 21-Jan. 21 &	15	--
	Jan. 23-Mar. 10	15	--
Brant	Dec. 28-Jan. 31	2	4
Florida			
Ducks:		6	12
Canvasbacks	Nov. 19-Nov. 27 & Dec. 10-Dec. 30		
Other ducks	Nov. 19-Nov. 27 & Dec. 10-Jan. 29		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese (3)	Nov. 19-Nov. 27 &	5	10
	Dec. 1-Jan. 30	5	10
Light Geese (4)	Nov. 19-Nov. 27 &	15	--
	Dec. 10-Jan. 29	15	--
Georgia			
Ducks:		6	12
Canvasbacks	Dec. 31-Jan. 29		
Other ducks	Nov. 19-Nov. 27 & Dec. 10-Jan. 29		
Mergansers	Same as Other ducks	5	10
Coots	Same as Other ducks	15	30
Canada Geese (special season)	Same as Other ducks	5	10
Light Geese	Same as Other ducks	5	10
Brant	Closed	--	--
Maine			
Ducks (5):		4	8
North Zone:			
Canvasbacks	Oct. 3-Oct. 29		
Other ducks	Oct. 3-Dec. 10		

	Season Dates	Limits	
		Bag	Possession
Maine (cont.)			
South Zone:			
Canvasbacks	Oct. 3-Oct. 29		
Other ducks	Oct. 3-Oct. 29 & Nov. 14-Dec. 24		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	5	10
Canada Geese:			
North Zone	Oct. 3-Dec. 10	2	4
South Zone	Oct. 3-Oct. 29 &	2	4
	Nov. 14-Dec. 24	2	4
Light Geese	Oct. 3-Jan. 31	15	--
Brant	Oct. 3-Oct. 29	2	4
Maryland			
Ducks and Mergansers (6):		5	10
Canvasbacks	Dec. 26-Jan. 28		
Other ducks	Oct. 8-Oct. 15 & Nov. 12-Nov. 25 & Dec. 13-Jan. 28		
Coots	Same as for Other ducks	15	30
Canada Geese:			
RP Zone	Nov. 15-Nov. 25 &	5	10
	Dec. 8-Feb. 15	5	10
AP Zone	Nov. 17-Nov. 25 &	2	4
	Dec. 17-Jan. 28	2	4
Light Geese (7)	Oct. 15-Nov. 25 &	15	--
	Nov. 28-Jan. 31 &	15	--
	Feb. 1-Feb. 25	15	--
Brant	Dec. 26-Jan. 28	2	4
Massachusetts			
Ducks (8):		6	12
Western Zone:			
Canvasbacks	Oct. 11-Nov. 14		
Other ducks	Oct. 11-Nov. 26 & Dec. 3- Dec. 24		
Central Zone:			
Canvasbacks	Oct. 12-Nov. 15		
Other ducks	Oct. 12-Nov. 26 & Dec. 16-Jan. 7		
Coastal Zone:			
Canvasbacks	Dec. 19-Jan. 21		
Other ducks	Oct. 13-Oct. 22 & Nov. 24-Jan. 21		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30

	Season Dates	Limits	
		Bag	Possession
Massachusetts (cont.)			
Canada Geese:			
NAP Zone			
Central Zone:	Oct. 12-Nov. 26 &	2	4
	Dec. 16-Jan. 7	2	4
(special season)	Jan. 16-Feb. 15	2	4
Coastal Zone:	Oct. 13-Oct. 22 &	2	4
	Nov. 24-Jan. 21	2	4
(special season)	Jan. 23-Feb. 15	5	10
AP Zone	Oct. 22-Nov. 26 &	3	6
	Dec. 9-Dec. 24	3	6
Light Geese:			
Western Zone	Same as for Other ducks	15	30
Central Zone	Same as for Other ducks &	15	30
	Jan. 16-Feb. 15	15	30
Coastal Zone	Same as for Other ducks &	15	30
	Jan. 23-Feb. 15	15	30
Brant:			
Western & Central Zone	Closed	--	--
Coastal Zone	Dec. 19-Jan. 21	2	4
New Hampshire			
Ducks :		6	12
Inland Zone:			
Canvasbacks	Nov. 23-Dec. 11		
Other ducks	Oct. 4-Nov. 13 &		
	Nov. 23-Dec. 11		
Coastal Zone:			
Canvasbacks	Nov. 23-Dec. 22		
Other ducks	Oct. 5-Oct. 16 &		
	Nov. 23-Jan. 9		
Mergansers	Same as Other ducks	5	10
Coots	Same as Other ducks	15	30
Canada Geese:			
Inland Zone	Oct. 4-Nov. 13 &	2	4
	Nov. 23-Dec. 11	2	4
Coastal Zone	Oct. 5-Oct. 16 &	2	4
	Nov. 23-Jan. 9	2	4
Light Geese:			
Inland Zone	Oct. 4-Dec. 11	15	--
Coastal Zone	Oct. 5-Jan. 9	15	–
Brant:			
Inland Zone	Oct. 4-Nov. 2	2	4
Coastal Zone	Oct. 5-Oct. 16 &	2	4
	Nov. 23-Dec. 10	2	4

	Season Dates	Limits Bag	Limits Possession
New Jersey			
Ducks:		6	12
North Zone:			
Canvasbacks	Nov. 28-Dec. 31		
Other ducks	Oct. 8-Oct. 29 & Nov. 15-Dec. 31		
South Zone:			
Canvasbacks	Dec. 5-Jan. 7		
Other ducks	Oct. 15-Oct. 29 & Nov. 15-Jan. 7		
Coastal Zone:			
Canvasbacks	Dec. 21-Jan. 24		
Other ducks	Nov. 5-Nov. 12 & Nov. 24-Jan. 24		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada and Whitefronted Geese:			
North Zone	Nov. 12-Nov. 26 &	3	6
	Dec. 16-Jan. 21	3	6
South Zone	Nov. 19-Dec. 3 &	3	6
	Dec. 16-Jan. 21	3	6
Coastal Zone	Nov. 24-Dec. 3 &	3	6
	Dec. 12-Jan. 21	3	6
(special season)	Jan. 23-Feb. 15	5	10
Light Geese:			
North Zone	Nov. 8-Mar. 10	15	--
South Zone	Nov. 7-Mar. 10	15	--
Coastal Zone	Oct. 8-Feb. 9	15	--
Brant:			
North Zone	Oct. 22-Oct. 29 &	2	4
	Nov. 15-Dec. 10	2	4
South Zone	Oct. 22-Oct. 29 &	2	4
	Nov. 15-Dec. 10	2	4
Coastal Zone	Nov. 5-Nov. 12 &	2	4
	Dec. 21-Jan. 16	2	4
New York			
Ducks and Mergansers:		6	12
Long Island Zone:			
Canvasbacks	Dec. 31-Jan. 29		
Other ducks	Nov. 23-Nov. 27 & Dec. 6-Jan. 29		
Lake Champlain Zone:			
Canvasbacks	Nov. 1-Nov. 30		
Other ducks	Oct. 5-Oct. 10 & Oct. 26-Dec. 18		

	Season Dates	Limits	
		Bag	Possession
New York (cont.)			
Northeastern Zone:			
Canvasbacks	Nov. 7-Nov. 10 &		
	Nov. 19-Dec. 14		
Other ducks	Oct. 8-Nov. 10 &		
	Nov. 19-Dec. 14		
Southeastern Zone:			
Canvasbacks	Dec. 3-Jan. 1		
Other ducks	Oct. 8-Oct. 16 &		
	Nov. 12-Jan. 1		
Western Zone:			
Canvasbacks	Nov. 21-Dec. 6 &		
	Dec. 26-Jan. 8		
Other ducks	Oct. 22-Dec. 6 &		
	Dec. 26-Jan. 8		
Coots	Same as for Other ducks	15	30
Canada Geese:			
Western Long Island (NAP)	Nov. 23-Jan. 31	3	6
Eastern Long Island (NAP)	Nov. 23-Nov. 27 &	2	4
	Dec. 6-Jan. 29	2	4
Lake Champlain (AP) Zone (9)	Oct. 22-Dec. 5	3	6
North Central (AP) Zone	Oct. 22-Dec. 5	3	6
Hudson Valley (AP) Zone	Oct. 29-Nov. 18 &	3	6
	Dec. 3-Dec. 26	3	6
West Central (AP) Zone	Oct. 22-Nov. 18 &	3	6
	Dec. 26-Jan. 11	3	6
South (RP)	Oct. 22-Dec. 10 &	5	10
	Dec. 26-Jan. 14	5	10
(Special season)	Feb. 3-Feb. 12	5	10
Light Geese:			
Long Island Zone	Nov. 23-Mar. 9	15	--
Lake Champlain Zone (9)	Oct. 5-Dec. 18 &	15	--
Northeastern Zone	Oct. 8-Jan. 7 &	15	--
	Feb. 24-Mar. 10	15	--
Southeastern Zone	Oct. 8-Jan. 7 &	15	--
	Feb. 24-Mar. 10	15	--
Western Zone	Oct. 22-Jan. 21 &	15	--
	Feb. 24-Mar. 10	15	--
Brant:			
Long Island Zone	Nov. 23-Nov. 27 &	2	4
	Jan. 5-Jan 29	2	4
Lake Champlain Zone	Oct. 5-Oct. 10 &	2	4
	Oct. 26-Nov. 18	2	4
Northeastern Zone	Oct. 8-Nov. 6	2	4
Southeastern Zone	Oct. 8-Nov. 6	2	4
Western Zone	Oct. 15-Nov. 13	2	4

	Season Dates	Limits	
		Bag	Possession
North Carolina			
Ducks (10):		6	12
Canvasbacks	Dec. 26-Jan. 28		
Other ducks	Oct. 5-Oct. 8 &		
	Nov. 12-Dec. 3 &		
	Dec. 17-Jan. 28		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Resident Population Hunt Zone	Oct. 5-Oct. 8 &	5	10
	Nov. 12-Dec. 3 &	5	10
	Dec. 17Jan. 28	5	10
Southern James Bay Hunt Zone	Oct. 5-Oct. 15 &	2	4
	Nov. 12-Dec. 31	2	4
Northeast Hunt Zone	Jan. 14-31	1 per season	
Light Geese	Oct. 19-Oct. 29 &	15	--
	Nov. 12-Mar. 4	15	--
Brant	Dec. 26-Jan. 28	2	4
Pennsylvania			
Ducks:		6	12
North Zone:			
Canvasbacks	Nov. 28-Dec. 31		
Other ducks	Oct. 8-Oct. 22 &		
	Nov. 8-Dec. 31		
South Zone:			
Canvasbacks	Nov. 21-Dec. 24		
Other ducks	Oct. 8-Oct. 15 &		
	Nov. 15-Jan. 14		
Northwest Zone:			
Canvasbacks	Nov. 12-Nov. 26 &		
	Dec 12-Dec. 30		
Other ducks	Oct. 8-Nov. 26 &		
	Dec. 12-Dec. 30		
Lake Erie Zone:			
Canvasbacks	Dec. 7-Jan. 10		
Other ducks	Oct. 31-Nov. 26 &		
	Nov. 30-Jan. 10		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Eastern (AP) Zone	Nov. 15-Nov. 26 &	3	6
	Dec. 14-Jan. 21	3	6
SJBP Zone	Nov. 12-Dec. 31	2	4
(special season)	Jan. 16-Feb. 15	5	10
Pymatuning Zone	Nov. 5-Nov. 26 &	1	2
	Dec. 12-Dec. 29	1	2

	Season Dates	Limits	
		Bag	Possession
Pennsylvania (cont.)			
Resident (RP) Zone	Nov. 15-Nov. 26 &	5	10
	Dec. 9-Feb. 15	5	10
Light Geese	Nov. 7-Mar. 10	15	--
Brant	Oct. 15-Nov. 18	2	4
Rhode Island			
Ducks:		6	12
Canvasbacks	Dec. 24-Jan. 22		
Other ducks	Oct. 7-Oct. 10 &		
	Nov. 23-Nov. 27 &		
	Dec. 3-Jan. 22		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese	Nov. 19-Nov. 27 &	2	4
	Dec. 3-Jan. 22	2	4
(special season)	Jan. 27-Feb. 12	5	10
Light Geese	Oct. 8-Jan. 22	15	--
Brant	Dec. 24-Jan. 22	2	4
South Carolina			
Ducks (11):		6	12
Canvasbacks	Dec. 31-Jan. 29		
Pintails	Dec. 31-Jan. 29		
Other ducks	Nov. 23-Nov. 27 &		
	Dec. 16-Jan. 29		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese (special season) (12)	Nov. 23-Nov. 27 &	5	10
	Dec. 16-Feb. 15	5	10
Light Geese	Same as for Other ducks	15	--
Brant	Same as for Other ducks	2	4
Vermont			
Ducks:		6	12
Lake Champlain Zone:			
Canvasbacks	Nov. 1-Nov. 30		
Other ducks	Oct. 5-Oct 10 &		
	Oct. 26-Dec. 18		
Interior Zone:			
Canvasbacks	Nov. 1-Nov. 30		
Other ducks	Oct. 5-Dec. 3		
Connecticut River Zone:			
Canvasbacks	Nov. 23-Dec. 11		
Other ducks	Oct. 4-Nov. 13 &		
	Nov. 23-Dec. 11		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30

	Season Dates	Limits Bag	Limits Possession
Vermont (cont.)			
Canada Geese			
Lake Champlain Zone (9):	Oct. 22-Dec. 5	3	6
Interior Zone (9):	Oct. 22-Dec. 5	3	6
Connecticut River Zone:	Oct. 4-Nov. 13 &	3	6
	Nov. 23-Dec. 11	3	6
Light Geese			
Lake Champlain Zone (9):	Oct. 5-Dec. 18	15	–
Interior Zone (9):	Oct. 5-Dec. 18	15	–
Connecticut River Zone:	Oct. 4-Dec. 11	15	–
Brant			
Lake Champlain Zone:	Oct. 5-Oct.10 &	2	4
	Oct. 26-Nov. 18	2	4
Interior Zone:	Oct. 5-Nov. 3	2	4
Connecticut River Zone:	Oct. 4-Nov. 2	2	4
Virginia			
Ducks (13):		5	10
Canvasbacks	Dec. 26-Jan. 28		
Other ducks	Oct. 6-Oct. 10 &		
	Nov. 19-Dec. 3 &		
	Dec. 10-Jan. 28		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Back Bay Area	Jan. 12-Jan. 28	1	2
Eastern (AP) Zone	Nov. 19-Dec. 3 &	2	4
	Dec. 23-Jan. 28	2	4
Western (SJBP) Zone	Nov. 19-Dec. 3 &	2	4
	Dec. 15-Jan. 14	2	4
Western (RP) Zone	Nov. 19-Dec. 3 &	2	4
	Dec. 15-Jan. 14 &	2	4
(Special season)	Jan. 16-Feb. 15	5	10
Light Geese	Oct. 26-Dec. 3 &	15	--
	Dec. 10-Jan. 28 &	15	--
	Feb. 4-Mar. 10	15	--
Brant	Dec. 26-Jan. 28	2	4
West Virginia			
Ducks (14):		6	12
Zone 1:			
Canvasbacks	Dec. 23-Jan. 21		
Other ducks	Oct. 1-Oct. 15 &		
	Dec. 8-Jan. 21		
Zone 2:			
Canvasbacks	Dec. 9-Jan. 7		
Other ducks	Oct. 1-Oct. 15 &		
	Nov. 24-Jan. 7		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30

	Season Dates	Limits	
		Bag	Possession
West Virginia (cont.)			
Canada Geese:			
Zone 1	Oct. 1-Oct. 15 &	3	6
	Dec. 8-Jan. 31	3	6
Zone 2	Oct. 1-Oct. 29 &	3	6
	Dec. 22-Jan. 31	3	6
Light Geese:			
Zone 1	Same as for Canada geese	5	10
Zone 2	Same as for Canada geese	5	10
Brant			
Zone 1	Dec. 23-Jan. 21	2	4
Zone 2	Dec. 9-Jan. 7	2	4

(1) In Delaware, the February 6 to March 8 Bombay Hook NWR snow goose season is open Mondays, Wednesdays, and Fridays only.
(2) In Delaware, the January 23 to March 10 Rest of State snow goose season is open Mondays, Wednesdays, Fridays, and Saturdays only.
(3) In Florida, the Canada goose season is only open in the Florida waters of Lake Seminole in Jackson County that are south of SR2, north of the Jim Woodruff Dam, and east of CR271.
(4) In Florida, the light goose season is only open north and west of the Suwannee River.
(5) In Maine, in addition to the daily bag limit, 2 additional teal may be taken. A possession limit of 12 ducks is permitted provided it includes 4 or more teal.
(6) In Maryland, the black duck season is closed October 8 through October 15. In addition to the daily bag limit, 1 additional teal may be taken.
(7) In Maryland, the February 1 to February 25 snow goose season is open Mondays, Wednesdays, Fridays, and Saturdays only.
(8) In Massachusetts, the daily bag limit may include no more than 4 of any single species in addition to the flyway-wide bag restrictions.
(9) In New York and Vermont, shooting hours for all geese ends at noon in October in the Lake Champlain and Interior Vermont Zones.
(10) In North Carolina, the season is closed for black ducks October 1 through November 30 and December 5 through December 17. The daily bag limit for Black and Mottled ducks are combined with no more than 1 allowed in the bag.
(11) In South Carolina, the daily bag limit of 6 may not exceed 1 female mallard and 1 black duck or 1 mottled duck in the aggregate.
(12) In South Carolina, the daily bag limit for Canada geese may include no more than 2 white-fronted geese.
(13) In Virginia, the season is closed for black ducks October 6 through October 10.
(14) In West Virginia, the daily bag limit may include no more than 4 long-tailed ducks and the season is closed for eiders, whistling ducks, and mottled ducks.

MISSISSIPPI FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 1 black duck, 1 pintail, 1 canvasback, 2 redheads, 2 scaup, and 2 wood ducks. The possession limit is twice the daily bag limit.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession. In states that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 1 daily and 2 in possession may be hooded mergansers.

	Season Dates	Limits	
		Bag	Possession
Alabama			
Ducks:		6	12
North Zone:			
Canvasbacks	Dec. 31-Jan. 29		
Other ducks	Nov. 25-Nov. 26 & Dec. 3-Jan. 29		
South Zone:			
Canvasbacks	Same as North Zone		
Other ducks	Same as North Zone		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Dark Geese:			
North Zone:			
SJBP Zone	Dec. 11-Jan. 29	2	4
Rest of North Zone	Oct. 1-Oct. 12 &	2	4
	Dec. 3-Jan. 29	2	4
South Zone	Same as Rest of North Zone	2	4
Light Geese	Same as for Dark Geese	5	5
Arkansas			
Ducks (1):		6	12
Canvasbacks	Dec. 31-Jan. 29		
Other ducks	Nov. 19-Dec. 4 & Dec. 16-Dec. 24 & Dec. 26-Jan. 29		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
Northwest Zone	Oct. 1-Oct. 10 &	2	4
	Jan. 14-Feb. 5	2	4
Remainder of State	Jan. 14-Feb. 5	2	4
White-fronted	Nov. 19-Dec. 4 &	2	4
	Dec. 12-Feb. 5	2	4

	Season Dates	Limits	
		Bag	Possession
Arkansas (cont.)			
Brant	Closed	--	--
Light Geese	Nov. 10-Dec. 9 &	20	--
	Dec. 12-Feb. 5	20	--
Illinois			
Ducks:		6	12
North Zone:			
Canvasbacks	Oct. 29-Nov. 27		
Other ducks	Oct. 15-Dec. 13		
Central Zone:			
Canvasbacks	Nov. 12-Dec. 11		
Other ducks	Oct. 29-Dec. 27		
South Zone:			
Canvasbacks	Nov. 24-Dec. 23		
Other ducks	Nov. 24-Jan. 22		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada (2):			
North Zone:			
Northern Illinois:			
Quota Zone (2)	Oct. 15-Jan. 8	2	10
Rest of North Zone	Oct. 15-Jan. 8	2	10
Central Zone:			
Central Illinois:			
Quota Zone (2)	Oct. 29-Nov. 6 &	2	10
	Nov. 16-Jan. 31	2	10
Rest of Central Zone	Same as for Central IL Quota Zone	2	10
South Zone:			
Southern Illinois:			
Quota Zone (2)(3)	Nov. 24-Nov. 27 &	2	10
	Dec. 10-Jan. 31	2	10
Rest of South Zone	Same as for Southern IL Quota Zone	2	10
White-fronted (4):			
North Zone	Oct. 15-Jan. 8	1	2
Central Zone	Oct. 29-Nov. 6 &	1	2
	Nov. 16-Jan. 31	1	2
South Zone (3)	Nov. 24-Jan. 31	2	4
Brant (3) (4)	Same as for Light Geese	1	2
Light Geese (4):			
North Zone	Oct. 15-Jan. 8	20	--
Central Zone	Oct. 29-Jan. 31	20	--
South Zone (3)	Nov. 24-Jan. 31	20	--

	Season Dates	Limits	
		Bag	Possession
Indiana			
Ducks:		6	12
North Zone:			
Canvasbacks	Oct. 22-Nov. 20		
Other ducks	Oct. 8-Oct. 10 &		
	Oct. 22-Dec. 17		
South Zone:			
Canvasbacks	Nov. 25-Dec. 24		
Other ducks	Oct. 15-Oct. 17 &		
	Nov. 25-Jan. 20		
Ohio River Zone:			
Canvasbacks	Nov. 24-Dec. 23		
Other ducks	Oct. 29-Oct. 30 &		
	Nov. 24-Jan. 20		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
North Zone:			
SJBP Zone	Oct. 8-Oct. 10 &	2	4
	Oct. 22-Dec. 7	2	4
Rest of North Zone	Oct. 8-Oct. 10 &	2	4
	Oct. 22-Dec. 27	2	4
South Zone:	Oct. 15-Oct. 17 &	2	4
	Nov. 25-Jan. 30	2	4
Ohio River Zone:	Oct. 29-Oct. 30 &	2	4
	Nov. 24-Jan. 30	2	4
White-fronted and Brant	Oct. 8-Oct. 10 &	1	2
	Oct. 22-Jan. 12	1	2
Light Geese	Oct. 8-Oct. 10 &	20	--
	Oct. 22-Jan. 29	20	--
Iowa			
Ducks:		6	12
North Duck Zone:			
Canvasbacks	Oct. 22-Nov. 20		
Other ducks	Sept. 17-Sept. 21 &		
	Oct. 15-Dec. 8		
South Duck Zone:			
Canvasbacks	Oct. 29-Nov. 27		
Other ducks	Sept. 24-Sept. 28 &		
	Oct. 22-Dec. 15		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
North Goose Zone	Oct. 1-Oct. 9 &	2	4
	Oct. 15-Dec. 4 &	2	4
	Dec. 24-Jan. 2	2	4

	Season Dates	Limits	
		Bag	Possession
Iowa (cont.)			
South Goose Zone	Oct. 1-Oct. 9 &	2	4
	Oct. 22-Dec. 4 &	2	4
	Dec. 24-Jan. 9	2	4
White-fronted:			
North Goose Zone	Oct. 1-Dec. 11	2	4
South Goose Zone	Oct. 1-Dec. 11	2	4
Brant:			
North Goose Zone	Same as for Canada geese	2	4
South Goose Zone	Same as for Canada geese	2	4
Light Geese	Oct. 1-Jan. 15	20	--
Kentucky			
Ducks:		6	12
West Zone:			
Canvasbacks	Dec. 31-Jan. 29		
Other ducks	Nov. 24-Nov. 27 &		
	Dec. 5-Jan. 29		
East Zone:			
Canvasbacks	Same as for West Zone		
Other ducks	Same as for West Zone		
Mergansers	Same as for Other Ducks	5	10
Coots	Same as for Other Ducks	15	30
Geese:			
Canada (2):			
Western Goose Zone (2):			
Fulton County	Dec. 5-Feb. 15	2	4
Rest of Zone	Dec. 5-Jan. 31	2	4
Pennyroyal/Coalfield Zone	Dec. 13-Jan. 31	2	4
Rest of State	Dec. 13-Jan. 31	2	4
White-fronted	Nov. 24-Jan. 31	2	4
Brant	Nov. 24-Jan. 31	2	4
Light Geese			
Western Goose Zone:			
Fulton County (5)	Nov. 24-Feb. 15	20	–
Rest of Zone:	Nov. 24-Jan. 31	20	–
Rest of State	Nov. 24-Jan. 31	20	–
Louisiana			
Ducks:		6	12
West Zone:			
Canvasbacks	Dec. 17-Jan. 15		
Other ducks	Nov. 12-Dec. 4 &		
	Dec. 17-Jan. 22		
East Zone (including Catahoula Lake):			
Canvasbacks	Dec. 17-Jan. 15		
Other ducks	Nov. 19-Dec. 4 &		
	Dec. 17-Jan. 29		

	Season Dates	Limits	
		Bag	Possession
Louisiana (cont.)			
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada (6)	Jan. 14-Jan. 22	1	2
White-fronted	Nov. 12-Dec. 4 &	2	4
	Dec. 17-Feb. 3	2	4
Brant	Closed	–	--
Light Geese	Same as for White-fronted	20	--
Michigan			
Ducks (1):		6	12
North Zone:			
Canvasbacks	Oct. 1-Oct. 30		
Other ducks	Oct. 1-Nov. 29		
Middle Zone:			
Canvasbacks	Nov. 12-Dec. 11		
Other ducks	Oct. 1-Oct. 9 &		
	Oct. 22-Dec. 11		
South Zone:			
Canvasbacks	Nov. 14-Dec. 11 &		
	Dec. 31-Jan. 1		
Other ducks	Oct. 15-Dec. 11 &		
	Dec. 31-Jan. 1		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada (2):			
Upper Peninsula MVP Zone	Sept. 24-Oct. 21	2	4
Lower Peninsula MVP Zone:			
Muskegon Wastewater Goose			
Management Unit (GMU) (2)	Oct. 25-Nov. 14 &	2	4
	Dec. 1-Dec. 4	2	4
Allegan County GMU (2)	Nov. 24-Nov. 27 &	1	2
	Dec. 24-Dec. 31 &	1	2
	Jan. 1-Jan. 13	2	4
Rest of Zone	Oct. 1-Oct. 16 &	2	4
	Nov. 24-Dec. 5	2	4
SJBP Zone:			
Saginaw County GMU (2)	Oct. 15-Dec. 3	1	2
Tuscola/Huron GMU (2)	Oct. 15-Dec. 3	1	2
Rest of SJBP Zone	Oct. 1-Oct. 16 &	2	4
	Nov. 24-Dec. 5	2	4
Special Season:			
Southern Michigan GMU	Dec. 31-Jan. 29	5	10
Central Michigan GMU	Dec. 31-Jan. 29	5	10
White-fronted and Brant	Sept. 24-Dec. 5	1	2
Light Geese	Sept. 24-Dec. 5	10	30

	Season Dates	Limits	
		Bag	Possession
Minnesota			
Ducks:		4	8
Canvasbacks	Oct. 8-Nov. 6		
Other ducks	Oct. 1-Nov. 29		
Mergansers	Same as for Other ducks	5	10
Coots (7)	Same as for Other ducks	15	30
Geese:			
Canada:			
West Zone:			
West Central Zone	Oct. 20-Nov. 28	1	2
Rest of West Zone	Oct. 1-Nov. 9	1	2
(Special season)	Dec. 10-Dec. 19	5	10
Northwest Zone	Oct. 1-Nov. 9	1	2
(Special season)	Dec. 10-Dec. 19	5	10
Southeast Zone	Oct. 1-Dec. 9	2	4
(Special season)	Dec. 15-Dec. 24	2	4
Rest of State	Oct. 1-Dec. 9	2	4
(Special season)	Dec. 10-Dec. 19	5	10
White-fronted	Oct. 1-Dec. 24	1	2
Brant	Oct. 1-Dec. 24	1	2
Light Geese	Oct. 1-Dec. 24	20	40
Mississippi			
Ducks:		6	12
Canvasbacks	Dec. 31-Jan. 29		
Other ducks	Nov. 25-Nov. 27 & Dec. 3-Dec. 4 & Dec. 6-Jan. 29		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada	Nov. 16-Nov. 27 &	3	6
	Dec. 3-Jan. 29	3	6
White-fronted	Nov. 14-Nov. 27 &	2	4
	Dec. 3-Jan. 29	2	4
Brant	Same as for Canada geese	2	4
Light Geese	Same as for White-fronted	20	--
Missouri			
Ducks and Mergansers:		6	12
North Zone:			
Canvasbacks	Oct. 29-Nov. 27		
Other ducks/mergansers	Oct. 29-Dec. 27		
Middle Zone:			
Canvasbacks	Nov. 5-Dec. 4		
Other ducks/mergansers	Nov. 5-Jan. 3		
South Zone:			
Canvasbacks	Dec. 25-Jan. 23		

	Season Dates	Limits	
		Bag	Possession
Missouri (cont.)			
Other ducks/mergansers	Nov. 25-Jan. 23		
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
North Zone	Oct. 1-Oct. 9 &	3	6
	Oct. 29-Nov. 27 &	2	4
	Dec. 23-Jan. 29	2	4
Middle Zone:			
Southeast Zone	Oct. 1-Oct. 9 &	3	6
	Nov. 25-Jan. 31	2	4
Rest of Middle Zone	Oct. 1-Oct. 11 &	3	6
	Nov. 5-Nov. 30 &	2	4
	Dec. 23-Jan. 31	2	4
South Zone	Oct. 1-Oct. 9 &	3	6
	Nov. 25-Jan. 31	2	4
White-fronted:			
North Zone	Oct. 29-Jan. 22	1	2
Middle Zone:			
Southeast Zone	Nov. 5-Jan. 29	1	2
Rest of Middle Zone	Nov. 5-Jan. 29	1	2
South Zone	Nov. 5-Jan. 29	1	2
Brant	Same as for Canada geese	1	2
Light Geese:			
North Zone	Oct. 29-Jan. 29	20	--
Middle Zone	Nov. 5-Jan. 31	20	--
South Zone	Nov. 5-Jan. 31	20	--
Ohio			
Ducks (1):		6	12
North Zone:			
Canvasbacks	Nov. 14-Dec. 4 &		
	Dec. 24-Jan. 1		
Other ducks	Oct. 15-Dec. 4 &		
	Dec. 24-Jan. 1		
South Zone:			
Canvasbacks	Dec. 24-Jan. 22		
Other ducks	Oct. 22-Nov. 13 &		
	Dec. 17-Jan. 22		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
North Zone:			
Lake Erie SJBP Zone	Oct. 15-Oct. 31 &	2	4
	Dec. 10-Jan. 1	2	4
Rest of North Zone	Oct. 15-Nov. 27 &	2	4
	Dec. 17-Jan. 1	2	4

	Season Dates	Limits	
		Bag	Possession
Ohio (cont.)			
(special season)	Jan. 14-Feb. 4	2	4
South Zone	Oct. 22-Nov. 6 &	2	4
	Dec. 17-Jan. 29	2	4
White-fronted and Brant	Same as for Canada geese	2	4
Light Geese	Same as for Canada geese	10	30
Tennessee			
Ducks (1):		6	12
Reelfoot Zone:			
Canvasbacks	Dec. 31-Jan. 29		
Other ducks	Nov. 12-Nov. 13 &		
	Dec. 3-Jan. 29		
State Zone:			
Canvasbacks	Dec. 31-Jan. 29		
Other ducks	Nov. 26-Nov. 27 &		
	Dec. 3-Jan. 29		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
Northwest Zone	Dec. 3-Feb. 12	2	4
Southwest Zone	Oct. 1-Oct. 9 &	2	4
	Dec. 11-Jan. 29	2	4
Kentucky/Barkley Lakes Zone	Same as for Southwest Zone	2	4
Rest of State	Oct. 1-Oct. 9 &	2	4
	Dec. 1-Jan. 30	2	4
White-fronted	Dec. 3-Feb. 12	2	4
Brant	Nov. 26-Jan. 30	2	4
Light Geese	Nov. 12-Feb. 26	20	--
Wisconsin			
Ducks:		6	12
North Zone:			
Canvasbacks	Oct. 15-Nov. 13		
Other ducks	Sept. 24-Nov. 22		
South Zone:			
Canvasbacks	Oct. 15-Nov. 13		
Other ducks	Oct. 1-Oct. 9 &		
	Oct. 15-Dec. 4		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	10	20
Geese:			
Canada (2):			
Horicon Zone	Sept. 16-Dec. 16	Tag System--See State Regulations	
Collins Zone	Sept. 16-Nov. 18	Tag System--See State Regulations	

	Season Dates	Limits Bag	Limits Possession
Wisconsin (cont.)			
Exterior Zone (2):			
Rock Prairie Subzone	Sept. 17-Oct. 2 &	1	2
	Oct. 3-Dec. 17	2	4
Mississippi River Subzone	Oct. 1-Oct. 2 &	1	2
	Oct. 3-Oct. 9 &	2	4
	Oct. 15-Dec. 14	2	4
Brown County Subzone	Same as Rock Prairie Subzone	--	--
Rest of Exterior Zone:			
North Duck Zone	Same as Rock Prairie Subzone	--	--
South Duck Zone	Same as Rock Prairie Subzone	--	--
White-fronted	Sept. 16-Dec. 10	1	2
Brant	Same as for Canada geese	1	2
Light Geese	Same as for Canada geese	10	30

(1) In Arkansas, Michigan, Ohio, and Tennessee, the daily bag limit may include no more than one hen mallard.
(2) Harvests of Canada geese will be limited by quotas established in the September 2005, Federal Register. When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, and Southern Illinois Quota Zones in Illinois, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective Zone (and associated area, if applicable) will be closed either by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.
(3) In Illinois, shooting hours for geese in the Southern Illinois Quota Zone through January 28 shall close at 3 p.m.
(4) In Illinois, white-fronted goose, light goose, and brant seasons will close with Canada goose seasons if the season closes early due the quota being reached.
(5) In Kentucky, in Fulton County, if the Canada goose season closes after January 31 and before February 15, the season for light geese will close with the Canada goose season.
(6) In Louisiana, during the Canada goose season, a special permit is required by the State.
(7) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots and moorhens in the aggregate.

CENTRAL FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 5 mallards (2 female mallards), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 2 scaup, and 2 wood ducks. The possession limit is twice the daily bag limit.

Merganser Limits: The daily bag limit is 5 mergansers with 10 in possession and may include no more than 1 hooded merganser daily and 2 in possession. In states that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 1 daily and 2 in possession may be hooded mergansers.

	Season Dates	Limits	
		Bag	Possession
Colorado			
Ducks:		6	12
Canvasbacks	Oct. 1-Oct. 23 & Nov. 5-Nov. 20		
Pintails	Same as for Canvasbacks		
Other ducks	Oct. 1-Oct. 23 & Nov. 5-Dec. 4 & Dec. 11-Jan. 22		
Coots	Same as for Other ducks	15	30
Mergansers	Same as for Other ducks	5	10
Dark Geese:			
Northern Front Range Unit	Oct. 1-Oct. 9 &	3	6
	Nov. 19-Feb. 12	3	6
South Park/San Luis Valley Unit	Same as N. Front Range Unit	3	6
North Park Unit	Same as N. Front Range Unit	3	6
Pueblo County	Dec. 3-Feb. 12	3	6
Rest of State in Central Flyway	Nov. 19-Feb. 12	3	6
Light Geese:			
Northern Front Range Unit	Oct. 29-Feb. 12	20	--
South Park/San Luis Valley Unit	Same as N. Front Range Unit	20	--
North Park Unit	Same as N. Front Range Unit	20	--
Pueblo County	Same as N. Front Range Unit	20	--
Rest of State in Central Flyway	Same as N. Front Range Unit	20	--
Kansas			
Ducks (1):		6	12
High Plains:			
Canvasbacks	Oct. 8-Nov. 15		
Pintails	Oct. 8-Nov. 15		
Other ducks	Oct. 8-Jan 3 & Jan. 21-Jan. 29		
Low Plains:			
Early Zone:			
Canvasbacks	Oct. 15-Nov. 22		
Pintails	Oct. 15-Nov. 22		
Other ducks	Oct. 15-Dec. 11 & Dec. 17-Jan. 1		
Late Zone:			
Canvasbacks	Oct. 29-Dec. 6		
Pintails	Oct. 29-Dec. 6		
Other ducks	Oct. 29-Jan. 1 & Jan. 21-Jan. 29		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Dark Geese (2):			
Canada	Oct. 29-Oct. 30 &	3	6
	Nov. 12-Feb. 12	3	6

	Season Dates	Limits	
		Bag	Possession
Kansas (cont.)			
White-fronted	Oct. 29-Oct. 30 &	2	4
	Nov. 12-Jan. 20	2	4
Light Geese	Oct. 29-Feb. 12	20	--
Montana			
Ducks and Mergansers:		6	12
Zone 1:			
Canvasbacks	Oct. 1-Nov. 8		
Pintails	Oct. 1-Nov. 8		
Other ducks	Oct. 1-Jan. 5		
Zone 2	Same as for Zone 1		
Coots	Same as Other ducks	15	30
Dark Geese	Oct. 1-Jan. 13	4	8
Light Geese	Oct. 1-Jan. 13	5	10
Nebraska			
Ducks:		6	12
High Plains:			
Canvasbacks	Oct. 1-Nov. 8		
Pintails	Oct. 1-Nov. 8		
Other ducks	Oct. 1-Dec. 11 &		
	Dec. 17-Jan. 9		
Low Plains:			
Zones 1 and 2:			
Canvasbacks	Oct. 15-Oct. 16 &		
	Oct. 22-Nov. 27		
Pintails	Same as for Canvasbacks		
Other ducks	Oct. 15-Oct. 16 &		
	Oct. 22-Jan. 1		
Zones 3 and 4:			
Canvasbacks	Oct. 1-Nov. 8		
Pintails	Oct. 1-Nov. 8		
Other ducks	Oct. 1-Dec. 11 &		
	Dec. 17-Dec. 18		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
Niobrara Unit	Oct. 29-Jan 31	3	6
East Unit	Oct. 1-Oct. 2 &	3	6
	Oct. 22-Jan. 22	3	6
North Central Unit	Oct. 1-Jan. 3	3	6
Platte River Unit	Oct. 29-Jan. 31	3	6
White-fronted	Oct. 1-Dec. 11	2	4
Light Geese:			
Rainwater Basin Area - East	Oct. 1-Jan. 13	20	--
Rainwater Basin Area - West	Oct. 1-Jan. 13	20	--
Rest of State	Oct. 1-Jan. 13	20	--

	Season Dates	Limits	
		Bag	Possession
New Mexico			
Ducks and Mergansers (3):		6	12
North Zone:			
Canvasbacks	Oct. 8-Nov. 15		
Pintails	Oct. 8-Nov. 15		
Other ducks/mergansers	Oct. 8-Jan. 11		
South Zone:			
Canvasbacks	Dec. 22-Jan. 29		
Pintails	Dec. 22-Jan. 29		
Other ducks/mergansers	Oct. 26-Jan. 29		
Coots	Same as for Other ducks	15	30
Dark Geese (4):			
Middle Rio Grande Valley Unit (4)	Jan. 16-Jan. 22	2	2
Rest of State	Oct. 17-Jan. 31	4	8
Light Geese	Oct. 17-Jan. 31	20	80
North Dakota			
Ducks:		6	12
High Plains:			
Canvasbacks	Sept. 24-Nov. 1		
Pintails	Sept. 24-Nov. 1		
Other ducks	Sept. 24-Dec. 4 & Dec. 10-Jan. 1		
Remainder of State:			
Canvasbacks	Sept. 24-Nov. 1		
Pintails	Sept. 24-Nov. 1		
Other ducks	Sept. 24-Dec. 4		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada Geese (5):			
High Plains Unit	Sept. 24-Dec. 22	3	6
Rest of State	Sept. 24-Dec. 22	3	6
White-fronted (5)	Sept. 24-Dec. 4	2	4
Light Geese (5)	Sept. 24-Dec. 22	20	--
Oklahoma			
Ducks:		6	12
High Plains:			
Canvasbacks	Oct. 8-Nov. 15		
Pintails	Oct. 8-Nov. 15		
Other ducks	Oct. 8-Jan. 11		
Low Plains:			
Zone 1:			
Canvasbacks	Oct. 29-Dec. 4 & Dec. 17-Dec. 18		
Pintails	Same as Canvasbacks		
Other ducks	Oct. 29-Dec. 4 & Dec. 17-Jan. 22		

	Season Dates	Limits: Bag	Limits: Possession
Oklahoma (cont.)			
Zone 2:			
Canvasbacks	Dec. 22-Jan. 29		
Pintails	Dec. 22-Jan. 29		
Other ducks	Nov. 5-Dec. 4 &		
	Dec. 17-Jan. 29		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada	Nov. 5-Dec. 4 &	3	6
	Dec. 10-Feb. 12	3	6
White-fronted	Nov. 5-Dec. 4 &	2	4
	Dec. 10-Feb. 3	1	2
Light Geese	Same as for Canada geese	20	--
South Dakota			
Ducks:		6	12
High Plains:			
Canvasbacks	Sept. 24-Nov. 1		
Pintails	Sept. 24-Nov. 1		
Other ducks	Sept. 24-Dec. 6 &		
	Dec. 10-Jan. 1		
Low Plains:			
North Zone:			
Canvasbacks	Sept. 24-Nov. 1		
Pintails	Sept. 24-Nov. 1		
Other ducks	Sept. 24-Dec. 6		
Middle Zone	Same as for North Zone		
South Zone:			
Canvasbacks	Oct. 8-Nov. 15		
Pintails	Oct. 8-Nov. 15		
Other ducks	Oct. 8-Dec. 20		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
White-fronted	Sept. 24-Dec. 18	1	2
Canada:			
Unit 1	Sept. 24-Dec. 25	3	6
Unit 2	Oct. 22-Jan. 24	3	6
Unit 3:			
Power Plant Area	Sept. 24-Nov. 30 &	3	6
	Dec. 1-Dec. 18	2	4
Rest of Unit	Sept. 24-Dec. 18	3	6
Unit 4	Oct. 22-Dec. 18 &	3	6
	Jan. 14-Jan. 22	3	6
Light Geese	Sept. 24-Dec. 18	20	--

	Season Dates	Limits	
		Bag	Possession
Texas			
Ducks (6):		6	12
High Plains:			
Canvasbacks	Dec. 22-Jan. 29		
Pintails	Dec. 22-Jan. 29		
Other ducks	Oct. 22-Oct. 23 & Oct. 28-Jan. 29		
Low Plains:			
North Zone:			
Canvasbacks	Dec. 22-Jan. 29		
Pintails	Dec. 22-Jan. 29		
Other ducks	Nov. 5-Nov. 27 & Dec. 10-Jan. 29		
South Zone:			
Canvasbacks	Dec. 22-Jan. 29		
Pintails	Dec. 22-Jan. 29		
Other ducks	Nov. 5-Nov. 27 & Dec. 10-Jan. 29		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
East Tier:			
South Zone:			
Canada geese and Brant	Nov. 5-Jan. 29	3	6
White-fronted	Nov. 5-Jan. 15	2	4
Light Geese	Nov. 5-Jan. 29	20	--
North Zone	Same as for South Zone		
West Tier:			
Dark Geese:			
Canada geese and Brant	Nov. 5-Feb. 7	3	6
White-fronted	Same as for Canada geese	1	2
Light Geese	Same as for Canada geese	20	--
Wyoming			
Ducks:		6	12
Zone 1:			
Canvasbacks	Oct. 1-Oct. 16 & Oct. 29-Nov. 20		
Pintails	Same as for Canvasbacks		
Other ducks	Oct. 1-Oct. 16 & Oct. 29-Jan. 17		
Zone 2:			
Canvasbacks	Oct. 1-Oct. 23 & Nov. 5-Nov. 20		
Pintails	Same as for Canvasbacks		
Other ducks	Oct. 1-Oct. 23 & Nov. 5-Jan. 17		
Mergansers	Same as for Other ducks	5	10

	Season Dates	Limits Bag	Limits Possession
Wyoming (cont.)			
Coots	Same as for Other ducks	15	30
Dark Geese:			
Zone 1	Oct. 1-Oct. 16 &	5	10
	Oct. 29-Dec. 11 &	5	10
	Dec. 17-Jan. 31	5	10
Zone 2	Oct. 1-Jan. 14	5	10
Zone 3 (2)	Oct. 1-Oct. 16 &	2	4
	Nov. 12-Feb. 9	5	10
Zone 4	Oct. 1-Oct. 23 &	5	10
	Nov. 5-Dec. 11 &	5	10
	Dec. 17-Jan. 31	5	10
Light Geese	Oct. 1-Dec. 31 &	10	40
	Jan. 27-Feb. 9	10	40

(1) In Kansas, the daily bag limit may include no more than 2 scaup and 1 hen mallard.
(2) See State regulations for additional restrictions.
(3) In New Mexico, the daily bag limit consists of no more than 5 mallards (of which only 2 may be hen mallards), 2 redheads, 2 scaup, 2 wood ducks, 1 hooded merganser, 1 canvasback, and 1 northern pintail (see dates by zone).
(4) In New Mexico, the season for dark geese is closed in Bernalillo and Sandoval Counties. In the Middle Rio Grande Valley Unit, a state permit is required.
(5) In North Dakota, the shooting hours for geese are one-half hour before sunrise to 1 p.m. through October 28 and until 2 p.m. the remainder of the season, except that beginning September 24, shooting hours are one-half hour before sunrise to sunset on Saturdays and Wednesdays for Canada geese (through December 22) and white-fronted geese (through December 4).
(6) In Texas, the daily bag limit may include on 1 mottled duck, black duck, or Mexican-like duck in the aggregate.

PACIFIC FLYWAY

Flyway-wide Restrictions

Duck and Merganser Limits: The daily bag limit of 7 ducks (including mergansers) may include no more than 2 female mallards, 1 pintail, 1 canvasback, 2 redheads, and 3 scaup. The possession limit is twice the daily bag limit.

Coot and Common Moorhen Limits: Daily bag and possession limits are in the aggregate for the two species.

Goose Limits: Daily bag limits for geese may not exceed 2 white-fronted geese and 3 light geese. The possession limit is twice the daily bag limit.

	Season Dates	Limits	
		Bag	Possession
Arizona			
Ducks (1):		7	14
North Zone			
Canvasbacks	Nov. 17-Jan. 15		
Other ducks	Oct. 7-Jan. 15		
South Zone:			
Canvasbacks	Dec. 1-Jan. 29		
Other ducks	Oct. 21-Jan. 29		
Coots and moorhens	Same as Other ducks	25	25
Geese (2):			
North Zone	Oct. 7-Jan. 15	3	3
South Zone	Oct. 21-Jan. 29	3	3
California			
Ducks:		7	14
Northeastern Zone (3):			
Canvasbacks	Oct. 29-Dec. 18 & Jan. 12-Jan. 20		
Other ducks	Oct. 8-Jan. 20		
Colorado River Zone:			
Canvasbacks	Dec. 1-Jan. 29		
Other ducks	Oct. 21-Jan. 29		
Southern Zone (3):			
Canvasbacks	Dec. 1-Jan. 29		
Other ducks	Oct. 22-Jan. 29		
Southern San Joaquin Valley Zone (3):			
Canvasbacks	Dec. 1-Jan. 29		
Other ducks	Oct. 22-Jan. 29		
Balance-of-State Zone (3):			
Canvasbacks	Dec. 1-Jan. 29		
Other ducks	Oct. 22-Jan. 29		
Coots and moorhens:			
Northeastern Zone	Same as for Other ducks	25	25
Colorado River Zone	Same as for Other ducks	25	25
Southern Zone	Same as for Other ducks	25	25
Southern San Joaquin Valley Zone	Same as for Other ducks	25	25
Balance-of-State Zone	Same as for Other ducks	25	25
Geese:			
Northeastern Zone:		4	8
Dark Geese	Oct. 8-Jan. 15	2	4
Small Canada Geese (4)	Oct. 8-Jan. 15	1	2
Light Geese	Oct. 8-Jan. 15	4	8
Colorado River Zone:		6	12
Dark Geese	Oct. 21-Jan. 29	3	6
Light Geese	Oct. 21-Jan. 29	4	8
Southern Zone:		5	10
Dark Geese	Oct. 22-Jan. 29	3	6
Light Geese	Oct. 22-Jan. 29	4	8

	Season Dates	Limits	
		Bag	Possession
California (cont.)			
Balance-of-State Zone:		4	8
Dark Geese:			
Canada:			
Del Norte & Humboldt	Oct. 22-Jan. 29	1	2
Small Canada geese (4)	Oct. 22-Jan. 29	4	8
Rest of Zone:	Oct. 22-Jan. 29	3	6
Small Canada geese (4)	Oct. 22-Jan. 29	4	8
White-fronted:			
Sacramento Valley	Oct. 29-Dec. 14	2	4
Rest of Zone	Oct. 22-Jan. 29	3	6
Light Geese	Oct. 22-Jan. 29	4	8
Brant			
North Zone	Nov. 16-Nov. 30	2	4
South Zone	Dec. 1-Dec. 15	2	4
Colorado			
Ducks:		7	14
Canvasbacks	Oct. 1-Oct. 16 & Nov. 2-Dec. 15		
Other ducks	Oct. 1-Oct. 16 & Nov. 2-Jan. 29		
Coots	Same as for Other ducks	25	25
Geese:	Oct. 1-Oct. 7 &	3	6
	Nov. 2-Jan. 29	3	6
Idaho			
Ducks:		7	14
Zone 1:			
Canvasbacks	Oct. 8-Dec. 6		
Other ducks	Oct. 8-Jan. 20		
Zone 2:			
Canvasbacks	Oct. 8-Dec. 6		
Other ducks	Oct. 8-Jan. 20		
Zone 3:			
Canvasbacks	Oct. 15-Dec. 13		
Other ducks	Oct. 15-Jan. 27		
Coots	Same as for Other ducks	25	25
Geese:			
Zone 1	Oct. 8-Jan. 20	4	8
Zone 2	Oct. 15-Jan. 27	4	8
Zone 3	Same as for Zone 2	3	6
Zone 4 (5)	Same as for Zone 1	4	8
Zone 5	Same as for Zone 1	4	8

	Season Dates	Limits	
		Bag	Possession
Montana			
Ducks:		7	14
Canvasbacks	Oct. 1-Nov. 29		
Other ducks	Oct. 1-Jan. 13		
Coots	Oct. 1-Jan. 13	25	25
Geese (6):			
Dark	Oct. 1-Jan. 13	4	8
Light	Oct. 1-Jan. 13	4	8
Nevada			
Ducks:		7	14
Lincoln & Clark Counties:			
Canvasbacks	Oct. 8-Oct. 9 & Nov. 24-Jan. 20		
Other ducks	Oct. 8-Jan. 20		
Rest of State:			
Canvasbacks	Oct. 8-Dec. 6		
Other ducks	Oct. 8-Jan. 21		
Coots and moorhens	Same as for Other ducks	25	25
Dark Geese:			
Lincoln & Clark Counties	Oct. 22-Jan. 29	2	4
Washoe Valley of Washoe County	Oct. 22-Jan. 8	3	6
Rest of State	Oct. 22-Jan. 29	3	6
Light Geese (7)	Same as Dark Geese	3	6
New Mexico			
Ducks:		7	14
Canvasbacks	Oct. 17-Dec. 15		
Other ducks	Oct. 17-Jan. 29		
Coots and Moorhens	Same as for Other ducks	12	24
Dark Geese:			
North Zone	Sept. 24-Oct. 9 &	3	6
	Oct. 31-Jan. 29	3	6
South Zone	Oct. 15-Jan. 29	2	4
Light Geese:			
North Zone	Same as Dark Geese	1	2
South Zone	Same as Dark Geese	1	2
Oregon			
Ducks:		7	14
Zone 1:			
Columbia Basin Unit:			
Canvasbacks	Oct. 15-Oct. 23 & Dec. 10-Jan. 29		
Other ducks	Oct. 15-Oct. 30 & Nov. 2-Jan. 29		
Rest of Zone 1	Same as for Columbia Basin Unit		

	Season Dates	Limits	
		Bag	Possession
Oregon (cont.)			
Zone 2:			
Canvasbacks	Oct. 8-Dec. 6		
Other ducks	Oct. 8-Dec. 6 &		
	Dec. 9-Jan. 22		
Coots	Same as for Other ducks	25	25
Geese:			
Northwest General Goose Zone:			
Dark Geese	Oct. 15-Oct. 30 &	4	8
	Nov. 11-Jan. 29	4	8
Small Canada Geese (4)		1	2
Light Geese	Same as for Dark Geese	4	8
Northwest Special Permit Zone (8):			
Dark Geese	Oct. 22-Nov. 6 &	4	8
	Nov. 19-Jan. 15 &	4	8
	Feb. 5-Feb. 26	4	8
Dusky Canada geese		1 per season	
Small Canada geese (4)		2	4
Light Geese	Oct. 22-Nov. 6 &	4	8
	Nov. 19-Jan. 15	4	8
Southwest General Zone:			
Dark Geese	Oct. 15-Nov. 29 &	4	8
	Dec. 8-Jan. 29	4	8
Light Geese	Same as for Dark Geese	4	8
Eastern Zone:			
Klamath, Harney, Lake, and Malheur Counties:			
Dark Geese	Oct. 8-Nov. 29 &	4	8
	Dec. 15-Jan. 29	4	8
Small Canada geese		1	2
White-fronted geese:			
Lake County		2	4
Rest of Zone		4	8
Light Geese	Same as Dark Geese	4	8
Remainder of Eastern Zone:			
Dark Geese	Oct. 15-Oct. 23 &	4	8
	Nov. 1-Jan. 29	4	8
Small Canada geese		1	2
White-fronted geese		4	8
Light Geese	Same as Dark Geese	4	8
Brant	Nov. 12-Nov. 27	2	4
Utah (9)			
Ducks:		7	14
Zone 1:			
Canvasbacks	Oct. 1-Nov. 29		
Other ducks	Oct. 1-Jan. 14		
Zone 2	Same as for Zone 1		

	Season Dates	Limits	
		Bag	Possession
Utah (cont.)			
Coots	Same as for Other ducks	25	25
Geese:			
Light	Oct. 1-Dec. 1 &	4	8
	Dec. 17-Jan. 29	4	8
Dark:			
Washington County (10)	Same as Light Geese	3	6
Rest of State	Same as Light Geese	3	6
Washington			
Ducks:		7	14
East Zone:			
Canvasbacks	Dec. 1-Jan. 29		
Other ducks	Oct. 15-Oct 19 &		
	Oct. 22-Jan. 29		
West Zone (11)	Same as for the East Zone		
Coots	Same as for Other ducks	25	25
Geese (12):			
Management Area 1 (14):			
Light Geese	Oct 15-Jan. 8	3	6
Dark Geese	Oct 15-Oct. 27 &	4	8
	Nov. 5-Jan. 29	4	8
Management Area 2A (13)	Nov. 12-Nov. 27 &	4	8
	Dec. 7-Dec. 24 &	4	8
	Dec. 27-Jan. 29	4	8
Dusky Canada geese		1 per season	
Late-Season Canada Geese	Feb. 4-Mar. 8	4	8
Dusky Canada geese		1 per season	
Management Area 2B (13)	Oct. 15-Jan. 15	4	8
Dusky Canada geese		1 per season	
Management Areas 3 (14)	Oct. 15-Oct. 27 &	4	8
	Nov. 5-Jan. 29	4	8
Management Areas 4 & 5 (14)	Oct. 15-Oct. 17 &	4	8
	Oct. 22-Jan. 29	4	8
Brant (15)			
Skagit County	Jan. 21-Jan. 28	2	8
Pacific County	Jan. 7-Jan. 14	2	4
Wyoming			
Ducks:		7	14
Canvasbacks	Sept. 24-Nov. 22		
Other ducks	Sept. 24-Jan. 7		
Coots	Same as for Other ducks	25	25
Dark Geese	Sept. 24-Dec. 30	3	6

(1) In Arizona, the daily limit may include no more than either 2 hen mallards or 2 Mexican-like ducks, or 1 of each; and not more than 4 hen mallards and Mexican-like ducks, in the aggregate, may be in possession.
(2) In Arizona, in Yuma County, La Paz County, Game Management Units 13B, 15, and that portion of Unit 16 lying within Mohave County, the bag and possession limits are 3 and 6 for Canada geese and 3 and 6 for light geese, respectively.

(3) In California, except in the Colorado River Zone, the daily bag limit may include no more than 5 mallards, only 1 of which may be a hen.
(4) In California and Oregon, small Canada geese are cackling and Aleutian Canada geese.
(5) In Idaho, the season on light geese is closed in Fremont and Teton Counties.
(6) In Montana, check State regulations for special seasons/exceptions in Freezeout Lake WMA; Canyon Ferry; Flathead; Deer Lodge County; and Missoula County.
(7) In Nevada, there is no open season on light geese in Ruby Valley within Elko and White Pine Counties.
(8) In Oregon, the Northwest Special Permit Zone is closed to all goose hunting, except for designated areas. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.
(9) In Utah, the shooting hours are 8:00 a.m. to sunset on October 1 in Cache, Salt Lake, Davis, Weber, and Box Elder Counties, and November 5 statewide.
(10) In Utah, the season in Washington County is for Canada geese only.
(11) In Washington, the daily bag limit in the West Zone may include no more than 4 scoters and 4 oldsquaws, with the possession limit twice the daily bag limit. The daily bag and possession limit, and the season limit, for harlequins is 1.
(12) In Washington, daily bag and possession limits may include no more than 3 and 6 light geese, respectively.
(13) In Washington, see State regulations for specific dates and conditions of permit hunts and closures for Canada geese.
(14) In Washington, in State Goose Area 4, hunting is only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Goose Areas 1, 3, and 5, hunting is everyday. See State regulations for details, including shooting hours.
(15) In Washington, brant may be hunted in Skagit and Pacific Counties only; see State regulations for specific dates.

(f) Youth Waterfowl Hunting Day

The following seasons are open only to youth hunters. Youth Hunters must be accompanied into the field by an adult at least 18 years of age. This adult can not duck hunt but may participate in other open seasons.

Definition
Youth Hunters: Includes youths 15 years of age or younger.

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 2005, Federal Register (70 FR 51946). Bag and possession limits will conform to those set for the regular season.

	Season Dates
ATLANTIC FLYWAY	
Connecticut	
Ducks, mergansers, coots, and geese	Oct. 8 & 10

* * * * *

	Season Dates
Florida	
Ducks, mergansers, coots, moorhens, and geese (9)	Feb. 4 & 5
* * * * *	
Maryland	
Ducks, coots, snow geese, Canada geese, and brant	Nov. 5
Massachusetts	
Ducks, mergansers, coots, and geese	Oct. 8 & 10
* * * * *	
New Jersey	
Ducks, mergansers, coots, geese, moorhens and gallinules	
North Zone	Sept. 24
South Zone	Nov. 11 & 12
Coastal Zone	Oct. 29
* * * * *	
North Carolina	
Ducks, mergansers, Canada geese (10), and coots	Feb. 4
* * * * *	
South Carolina	
Ducks, geese, mergansers, and coots	Feb. 4 & 5
* * * * *	
Virginia	
Ducks, mergansers, coots, moorhens, gallinules, and Canada geese (11)	Oct. 22
* * * * *	
MISSISSIPPI FLYWAY	
* * * * *	
Arkansas	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Dec. 10 & 11
Illinois	
Ducks, mergansers, coots, and geese:	
North Zone	Oct. 8 & 9
Central Zone	Oct. 22 & 23
South Zone	Nov. 12 & 13

	Season Dates
Indiana	
Ducks, mergansers, coots, moorhens, gallinules, and geese:	
North Zone	Oct. 1 & 2
South Zone	Nov. 5 & 6
Ohio River Zone	Oct. 15 & 16
* * * * *	
Kentucky	
Ducks, mergansers, coots, moorhens, gallinules, and geese:	
East Zone	Nov. 5 & 6
West Zone	Feb. 4 & 5
Louisiana	
Ducks, mergansers, coots, moorhens, gallinules, and geese:	
West Zone	Nov. 5 & 6
East Zone	Nov. 12 & 13
* * * * *	
Mississippi	
Ducks, mergansers, coots, moorhens, gallinules, and geese	Feb. 4 & 5
Missouri	
Ducks, coots, and geese:	
North Zone	Oct. 22 & 23
Middle Zone	Oct. 29 & 30
South Zone	Nov. 19 & 20
Ohio	
Ducks, mergansers, coots, moorhens, gallinules, and geese	Oct. 8 & 9
Tennessee	
Ducks, mergansers, and coots	Feb. 4 & 5
* * * * *	
CENTRAL FLYWAY	
* * * * *	
Kansas (5)	
Ducks, dark geese, mergansers and coots:	
High Plains	Oct. 1 & 2
Low Plains	
Early Zone	Oct. 8 & 9
Late Zone	Oct. 22 & 23
* * * * *	

	Season Dates
Oklahoma	
Ducks, mergansers, coots, and geese:	
High Plains	Oct. 1 & 2
Low Plains:	
Zone 1	Oct. 22 & 23
Zone 2	Oct. 29 & 30
* * * * *	
Texas	
Ducks, mergansers, and coots:	
High Plains	Oct. 15 & 16
Low Plains:	
North Zone	Oct. 29 & 30
South Zone	Oct. 29 & 30
* * * * *	
PACIFIC FLYWAY	
* * * * *	
California	
Ducks, geese, brant, mergansers, coots, moorhens, and gallinules	
Northeastern Zone	Sept. 24 & 25
Colorado River Zone	Feb. 4
Southern Zone	Feb. 4 & 5
Southern San Joaquin Valley	Feb. 4 & 5
Balance-of-State Zone	Feb. 4 & 5
* * * * *	
Nevada	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
Lincoln and Clark Counties	Feb. 4 and 5
Rest of State	Sept. 24
* * * * *	

* * * * *

(5) In Kansas, the adult accompanying the youth and nonresident youth, must be licensed and possess state and federal duck stamps as required by state or federal regulation to hunt waterfowl.

* * * * *

(9) In Florida, the Canada goose season is only open in the Florida waters of Lake Seminole in Jackson County that are south of SR 2, north of Jim Woodruff Dam, and east of CR271. The light goose season is only open north and west of the Suwannee River.

(10) In North Carolina, the daily bag limit in the Northeast Hunt Zone may not include Canada geese except by permit.
(11) In Virginia, the daily bag limit for Canada geese is 2.

4. Section 20.106 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 30, 2005, (70 FR 51522) Federal Register.

Note: The following seasons are in addition to the seasons published previously in the August 31, 2005, Federal Register (70 FR 51946).

	Season Dates	Limits	
		Bag	Possession
CENTRAL FLYWAY			
* * * * *			
Kansas (2)(6)	Nov. 9-Jan. 5	3	6
* * * * *			
Oklahoma (1)	Oct. 29-Jan. 29	3	6
* * * * *			
Texas (1):			
Zone A	Nov. 5-Feb. 5	3	6
Zone B	Nov. 26-Feb. 5	3	6
Zone C	Dec. 24-Jan. 29	2	4
* * * * *			

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

(2) In Kansas and North Dakota, each hunter participating in a regular sandhill crane hunting season must obtain and carry in his or her possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit issued and validated by the State. The permit must be displayed to any authorized law enforcement official upon request.

* * * * *

(6) See State regulations for additional restrictions.

5. Section 20.107 is revised to read as follows:

§20.107 Seasons, limits, and shooting hours for swans.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Hunting is by State permit only.

NOTE: Successful permittees must immediately validate their harvest by that method required in State regulations.

	Season Dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
North Carolina	Nov. 5-Jan. 31	1 tundra swan per season	
Virginia	Dec. 1-Jan 31	1 tundra swan per season	
CENTRAL FLYWAY (1)			
Montana	Oct. 1-Jan. 5	1 tundra swan per season	
North Dakota	Oct. 1-Dec. 11	1 tundra swan per season	
South Dakota	Oct. 1-Dec. 18	1 tundra swan per permit	
PACIFIC FLYWAY (1)(2)			
Montana (3)	Oct. 15-Dec. 1	1 swan per season	
Nevada (4)(5)	Oct. 22-Jan. 8	1 swan per season	
Utah (3)(5)	Oct. 1-Dec. 11	1 swan per season	

(1) See State regulations for description of area open to swan hunting.
(2) Any species of swan may be taken.
(3) All harvested swans and tags must be checked or registered within 3 days of harvest.

(4) All harvested swans and tags must be checked or registered within 5 days of harvest.
(5) Harvests of trumpeter swans are limited to 5 in Nevada and 10 in Utah. When it has been determined that the quota of trumpeter swans allotted to Nevada and Utah will have been filled, the season for taking of any swan species in the respective State will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

6. Section 20.109 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.
Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations. Area descriptions were published in the August 30, 2005, (70 FR 51522) and the September 22, 2005, Federal Registers.

Limits: The daily bag limit may include no more than 3 migratory game birds, singly or in the aggregate. The possession limit is twice the daily bag limit. These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Although many States permit falconry during the gun seasons, only extended falconry seasons are shown below. Please consult State regulations for details.

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 2005, Federal Register (70 FR 51946).

	Extended Falconry Dates
ATLANTIC FLYWAY	
Delaware	
* * * * *	
Ducks, mergansers, and coots	Jan. 23-Mar. 6
Brant	Feb. 1-Mar. 10
Florida	
* * * * *	
Ducks, mergansers, light geese, and coots (1)	Oct. 30-Nov. 12 & Feb. 6-Mar. 3

	Extended Falconry Dates
Georgia	
* * * * *	
Ducks, mergansers, gallinules, coots, and sea ducks	Nov. 12-Nov. 18 & Nov. 28-Dec. 9 & Jan. 30-Feb. 3
Maine	
Ducks, mergansers, and coots (4):	
North Zone	Dec. 9-Jan. 31
South Zone	Jan. 6-Feb. 28
Maryland	
* * * * *	
Ducks	Oct. 1-Oct. 7 & Feb. 3-Mar. 10
Brant	Jan. 29-Mar. 10
Massachusetts	
Ducks, mergansers, sea ducks, and coots	Oct. 6-Oct. 7 & Nov. 28-Dec. 2 Jan. 23-Feb. 7
New Hampshire	
Ducks, mergansers, and coots:	
Inland Zone	Nov. 14-Nov. 22 & Dec. 12-Jan. 16
Coastal Zone	Jan. 25-Mar. 10
New Jersey	
Woodcock:	
North Zone	Oct. 1-Oct. 19 & Nov. 13-Jan. 15
South Zone	Oct. 1-Nov. 11 & Nov. 27-Dec. 22 & Jan. 1-Jan. 15
Ducks, mergansers, coots, and brant:	
North Zone	Jan. 1-Feb. 7
South Zone	Jan. 8-Feb. 14
Coastal Zone	Jan. 25-Feb. 28

	Extended Falconry Dates
New York	
Ducks, mergansers and coots:	
Long Island Zone	Nov. 1-Nov. 22 & Nov. 28-Dec. 5 & Jan. 30-Feb. 13
Northeastern Zone	Oct. 1-Oct. 7 & Nov. 11-Nov. 18 & Dec. 15-Jan. 13
Southeastern Zone	Oct. 1-Oct. 7 & Oct. 17-Nov. 11 & Jan. 2-Jan. 13
Western Zone	Oct. 1-Oct. 21 & Dec. 7-Dec. 25 & Jan. 9-Jan. 13
Pennsylvania	
* * * * *	
Ducks, mergansers, and coots:	
North Zone	Oct. 24-Nov. 7 & Jan. 2-Jan. 14 & Feb. 14-Mar. 9
South Zone	Oct. 17-Nov. 14 & Feb. 15-Mar. 10
Northwest Zone	Nov. 28-Dec. 10 & Jan. 2-Jan. 14 & Feb. 14-Mar. 10
Lake Erie Zone	Jan. 17-Mar. 10
Canada Geese:	
SJBP Zone	Feb. 25-Mar. 10
Pymatuning Zone	Jan. 16-Mar. 10
AP Zone	Jan. 27-Mar. 10
RP Zone	Feb. 25-Mar. 10
South Carolina	
Ducks, mergansers, and coots	Oct. 26-Nov. 22 & Nov. 28-Dec. 15
Virginia	
* * * * *	
Moorhens and gallinules	Dec. 5-Dec. 9 & Jan. 21-Feb. 28

	Extended Falconry Dates
Virginia (cont.)	
Ducks, mergansers, and coots	Dec. 5-Dec. 9 & Jan. 30-Feb. 28
Canada Geese:	
Eastern (AP) Zone	Dec. 5-Dec. 22 & Jan. 30-Feb. 18
Western Zone	Dec. 5-Dec. 14 & Jan. 30-Feb. 18
Brant	Oct. 26-Dec. 3 & Dec. 10-Dec.24 & Feb. 4-Mar. 10
MISSISSIPPI FLYWAY	
Arkansas	
Ducks, mergansers, and coots	Dec. 5-Dec. 15 & Dec. 25 & Jan. 30-Feb. 19
* * * * *	
Illinois	
* * * * *	
Ducks, mergansers, and coots	Feb. 3-Mar. 10
Indiana	
* * * * *	
Ducks, mergansers, and coots:	
North Zone	Sept. 27-Sept. 30 & Feb. 6-Mar. 9
South Zone	Oct. 4-Oct. 11 & Feb. 10-Mar. 9
Ohio River Zone	Oct. 4-Oct. 11 & Feb. 10-Mar. 9
Iowa	
Ducks, mergansers, and coots	
North Zone	Dec. 15-Jan. 28
South Zone	Dec. 16-Jan. 29

	Extended Falconry Dates
Iowa (cont.)	
Canada Geese:	
North Goose Zone	Dec. 5-Dec. 23 & Jan. 3-Jan. 5
South Goose Zone	Dec. 5-Dec. 23 & Jan. 10-Jan. 12
White-fronted Geese:	
North Goose Zone	Dec. 12-Jan. 15
South Goose Zone	Dec. 12-Jan. 15
Kentucky	
Ducks, mergansers, and coots	Nov. 5-Nov. 23 & Nov. 28-Dec. 4 & Jan. 29-Feb. 1
Canada Geese:	
Western Goose Zone:	
Fulton County	Nov. 10-Dec. 4
Rest of Zone	Nov. 5-Dec. 4
Pennyroyal/Coalfield Zone	Nov. 5-Dec. 12
Rest of State	Nov. 5-Dec. 12
White-fronted geese, brant, and light geese	Nov. 5-Nov. 23
Louisiana	
Rails and moorhens	Nov. 5-Nov. 11 & Jan. 12-Feb. 10
Ducks	
West Zone	Nov. 5-Nov. 11 & Dec. 5-Dec. 16 & Jan. 23-Feb. 10
East Zone	Nov. 5-Nov. 11 & Dec. 5-Dec. 16 & Jan. 30-Feb. 10
Michigan	
Ducks, mergansers, coots, and moorhens	Jan. 25-Mar. 10
Minnesota	
* * * * *	
Ducks, mergansers, coots, moorhens, and gallinules	Nov. 30-Jan. 14

	Extended Falconry Dates
Mississippi	
Mourning Doves	Dec. 10-Dec. 23 & Jan. 21-Feb. 22
Ducks, mergansers and coots	Feb. 1-Feb. 3 & Feb. 6-Mar. 10
Missouri	
* * * * *	
Ducks, mergansers, and coots:	
North Zone	Sept. 10-Sept. 18 & Sept. 24-Oct. 28
Middle Zone	Sept. 10-Sept. 18 & Sept. 28-Nov. 4
South Zone	Sept. 10-Sept. 18 & Oct. 18-Nov. 24
Ohio	
Ducks, mergansers, and coots	
North Zone	Sept. 1-Sept. 15 & Oct. 8-Oct. 9 & Jan. 14-Feb. 12
South Zone	Sept. 1-Sept. 15 & Oct. 8-Oct. 9 & Jan. 23-Feb. 12
Tennessee	
* * * * *	
Ducks, mergansers, and coots	Sept. 15-Oct. 24
Wisconsin	
Rails, snipe, moorhens, and gallinules	
North Duck Zone	Sept. 1-Sept. 23 & Nov. 23-Dec. 16
South Duck Zone	Sept. 1-Sept. 30 & Oct. 10-Oct. 14 & Dec. 5-Dec. 16
Woodcock	Sept. 1-Sept. 23 & Nov. 8-Dec. 16
Ducks, mergansers, and coots	Sept. 17-Sept. 18 & Jan. 14-Feb. 27

	Extended Falconry Dates
CENTRAL FLYWAY	
Kansas	
Ducks, mergansers, and coots:	
Low Plains:	
Early Zone and Late Zone	Feb. 17-Mar. 10
Montana (2)	
Ducks, mergansers, and coots:	
Zones 1 and 2	Sept. 21-Sept. 30
* * * * *	
Oklahoma	
Ducks, mergansers, and coots:	
Low Plains:	
Zones 1 and 2	Feb. 11-Mar. 4
South Dakota	
Ducks, mergansers, and coots (1)	
High Plains	Sept. 4-Sept. 11
Low Plains	
North Zone	Sept. 4-Sept. 16 & Sept. 19-Sept. 23 & Dec. 7-Dec. 19
Middle Zone	Sept. 4-Sept. 16 & Sept. 19-Sept. 23 & Dec. 7-Dec. 19
South Zone	Sept. 4-Sept. 16 & Sept. 19-Oct. 6
Texas	
* * * * *	
Ducks, mergansers, and coots:	
Low Plains:	
North Zone and South Zone	Jan. 30-Feb. 20
* * * * *	

	Extended Falconry Dates
PACIFIC FLYWAY	
Arizona	
* * * * *	
Ducks and mergansers:	
North Zone	Oct. 2-Oct. 6
South Zone	Jan. 30-Feb. 3
California	
Ducks, mergansers, and coots:	
Colorado River Zone	Jan. 30-Feb. 3
Southern Zone	Jan. 30-Feb. 5
Balance-of-State Zone	Jan. 30-Feb. 5
Southern San Joaquin Zone	Jan. 30-Feb. 5
Canada Geese and White-fronted Geese:	
Northeastern Zone	Jan. 16-Jan. 20
Southern Zone	Same as for Ducks
Balance-of-State Zone (5)	Same as for Ducks
Southern San Joaquin Zone	Same as for Ducks
Brant	
Northern Zone	Oct. 22-Nov. 15 & Dec. 1-Feb. 3
Southern Zone	Oct. 22-Nov. 30 & Dec. 16-Feb. 3
Light Geese:	
Northeastern Zone	Jan. 16-Jan. 20
Southern Zone	Same as for Ducks
Balance-of-State Zone	Same as for Ducks
* * * * *	
New Mexico	
* * * * *	
Rails	Nov. 26-Jan. 1
* * * * *	

	Extended Falconry Dates
Utah	
Ducks, mergansers, coots, geese, snipe	Sept. 24

* * * * *

(1) In Florida, light geese may only be taken north and west of the Suwannee River.
(2) In Montana, the bag limit is 2 and the possession limit is 6.

* * * * *

(4) In Maine, the daily bag and possession limits for black ducks are 1 and 2, respectively.
(5) In California, the falconry season for Canada geese is closed in the Del Norte and Humbolt Area, the Sacramento Valley Area, and in the San Joaquin Valley Area.

[FR Doc. 05–18971 Filed 9–22–05; 8:45 am]
BILLING CODE 4310–55–C

Federal Register

Friday,

September 23, 2005

Part V

Department of Transportation

Pipeline Hazardous Materials Safety Administration

49 CFR Parts 105, 106, 107, et al.

Hazardous Materials Regulations: Minor Editorial Corrections and Clarifications; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 105, 106, 107, 110, 171, 172, 173, 176, 177, 178, 179 and 180

[Docket No. PHMSA–2005–22071 (HM–189Y)]

RIN 2137–AE08

Hazardous Materials Regulations: Minor Editorial Corrections and Clarifications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors, makes minor regulatory changes and, in response to requests for clarification, improves the clarity of certain provisions in the Hazardous Materials Regulations (HMR). In addition, this final rule revises references to the former Research and Special Programs Administration to reflect the creation of Pipeline and Hazardous Materials Safety Administration. The intended effect of this rule is to enhance the accuracy, and reduce misunderstandings of the regulations. The amendments contained in this rule are minor changes and do not impose new requirements.

DATES: *Effective date:* September 28, 2005.

FOR FURTHER INFORMATION CONTACT: Kurt Eichenlaub, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

I. Background

The Norman Y. Mineta Research and Special Programs Improvement Act of 2004 reorganized the Department of Transportation's pipeline and hazardous materials safety programs that were formerly a part of the Research and Special Programs Administration (RSPA). The Act created the Pipeline and Hazardous Materials Safety Administration (PHMSA, we), a separate operating administration. PHMSA annually reviews the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to identify errors that may confuse readers. In this final rule, we revise all references to RSPA to reflect the creation of PHMSA. This final rule also corrects the following inaccuracies: typographical and printing errors; incorrect references to regulations in the CFR; inaccurate office names, routing symbols, and e-mail addresses; inconsistent use of terminology; and misstatements of certain regulatory requirements.

Because these amendments do not impose new requirements, notice and public procedure are unnecessary. By making these amendments effective without the customary 30-day delay following publication, the changes will appear in the next revision of 49 CFR.

The following is a summary by section of the changes made in this final rule. It does not discuss all minor editorial corrections (*e.g.,* punctuation errors), and certain other minor adjustments to enhance the clarity of the HMR (*e.g.,* corrections to office names, routing symbols and e-mail addresses).

II. Section-by-Section Review

Part 107

Appendix A to Subpart D of Part 107: In Appendix A to Subpart D of Part 107, in section IV, paragraph C, we are revising the reference to ''49 U.S.C. 5213(a)'' to read ''49 U.S.C. 5123(a)''.

Part 171

Section 171.6. In paragraph (b)(2), the table of OMB control numbers is revised to reflect current control numbers, report titles, and affected sections for collections of information.

Section 171.8. In the definition for ''Maximum Allowable Working Pressure or MAWP,'' we are correcting the reference ''178.320(c)'' to read ''§ 178.320(a)''.

Section 171.11. In paragraph (d)(6)(iv), we are amending the text by removing ''radioactive material'' and adding ''limited quantities of radioactive material'' in its place.

Part 172

Section 172.101. The Hazardous Materials Table (HMT). We are correcting entries in the HMT as follows:

- The entry ''Adhesives, containing a flammable liquid,'' UN1133, PG I, II and III is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read ''Adhesives, *containing a flammable liquid*.'' In addition, for the Packing Group II entry, in the Column (10A) Vessel stowage ''location,'' the entry ''A'' is revised to read ''B''. The correction appears as a ''Remove/Add'' in this rulemaking.
- The entry ''Aerosols, corrosive, Packing Group II or III, (each not exceeding 1 L capacity),'' UN1950 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read ''Aerosols, *corrosive, Packing Group II or III, (each not exceeding 1 L capacity).*'' The correction appears as a ''Remove/Add'' in this rulemaking.
- The entry ''Aerosols, flammable, (each not exceeding 1 L capacity),'' UN1950 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read ''Aerosols, *flammable, (each not exceeding 1 L capacity*).'' The correction appears as a ''Remove/Add'' in this rulemaking.
- The entry ''Aerosols, flammable, n.o.s. (*engine starting fluid) (each not exceeding 1 L capacity),*'' UN1950 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read ''Aerosols, flammable, n.o.s. *(engine starting fluid) (each not exceeding 1 L capacity).*'' The correction appears as a ''Remove/Add'' in this rulemaking.
- The entry ''Aerosols, non-flammable, *(each not exceeding 1 L capacity),*'' UN1950 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read ''Aerosols, non-flammable, *(each not exceeding 1 L capacity*).'' The correction appears as a ''Remove/Add'' in this rulemaking.
- The entry ''Aerosols, poison, each not exceeding 1 L capacity,'' UN1950 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read ''Aerosols, poison, each not exceeding 1 L capacity.'' The correction appears as a ''Remove/Add'' in this rulemaking.
- The entry ''Alkaloids, solid, n.o.s. *or* Alkaloid salts, solid, n.o.s. poisonous,'' UN1544 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read ''Alkaloids, solid, n.o.s. *or* Alkaloid salts, solid, n.o.s. *poisonous*.'' In addition, for the Packing Group II entry, the Column (7) Special provision entry ''1P4'' is revised to read ''IP4.'' The correction appears as a ''Remove/Add'' in this rulemaking.
- The entry ''Aluminum alkyl halides, solid,'' UN3461 is revised by correcting the Column (6) Label Codes entry ''4.23'' to read ''4.3''.
- The entry ''Ammonium nitrate emulsion *or* Ammonium nitrate suspension or Ammonium nitrate gel, *intermediate for blasting explosives*,'' UN3375 is revised by correcting the Column (10B) Vessel stowage ''Other'' entry ''60, 66, 124'' to read ''48, 59, 60, 66, 124''.
- The entry ''*Cartridges, safety, see* Cartridges for weapons, *other than blank or* Cartridges, power device *(UN 0323)*'' is revised by correcting the

Column (2) Hazardous materials description and proper shipping name to read ''*Cartridges, safety, see* Cartridges for weapons, inert projectile, or Cartridges, small arms *or* Cartridges, power device *(UN 0323).*'' The correction appears as a ''Remove/Add'' in this rulemaking.

• The entry ''*Cartridges, sporting, see* Cartridges for weapons, *other than blank*'' is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read ''*Cartridges, sporting, see* Cartridges for weapons, inert projectile, or Cartridges, small arms.'' The correction appears as a ''Remove/Add'' in this rulemaking.

• The entry ''Chlorate and magnesium chloride mixture, solid,'' UN1459, Packing Group III is removed. This entry was inadvertently printed twice in the HMT.

• The entry ''*Chlorate of potash, see* Potassium chlorate,'' is removed and added back. The correction appears as a ''Remove/Add'' in this rulemaking. This was done to assist the **Federal Register** in locating the correct ''Chlorate and magnesium chloride mixture, solid,'' UN1459, Packing Group III entry for removal. (see above)

• The entry ''Chloroacetophenone, CN, liquid,'' UN3416 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read ''Chloroacetophenone, liquid, *(CN).*'' In addition, the Column (7) Special provisions entry is corrected to read ''A3, IB2, N12, N32, N33, T7, TP2, TP13.'' The correction appears as a ''Remove/Add'' in this rulemaking.

• The entry ''Chloroacetophenone, CN, solid,'' UN1697 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read ''Chloroacetophenone, solid, *(CN).*'' In addition, the Column (7) Special provisions entry is corrected to read ''A3, IB8, IP2, IP4, N12, N32, N33, N34, T3, TP2, TP13, TP33.'' The correction appears a ''Remove/Add'' in this rulemaking.

• The entry ''Cyclotrimethylenenitramine and octogen, mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized etc.'' is added to the HMT. This entry was inadvertently removed under Docket HM–215G (70 FR 34381).

• The entry ''Denatured Alcohol,'' NA1987 is revised by correcting Column (7) to remove obsolete special provisions ''T 31'' and ''T 30.''

• The entry ''*Etching acid, liquid, n.o.s., see* Hydrofluoric acid, *solution etc.*'' is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read ''*Etching acid, liquid, n.o.s., see* Hydrofluoric acid, *etc.*'' The correction appears as a ''Remove/Add'' in this rulemaking.

• The entry ''*Fissile radioactive materials, see* Radioactive material, fissile, n.o.s.'' is removed.

• The entry ''Gasoline,'' UN1203 is revised by correcting Column (7) Special provisions entries ''144, B33, T8'' to read ''144, B1, B33, T8.''

• The entry ''*Hydrogen iodid solution, see* Hydriodic acid,'' is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read ''*Hydrogen iodide solution, see* Hydriodic acid.'' The correction appears as a ''Remove/Add'' in this rulemaking.

• The entry ''Nitrocresols, solid,'' UN2446 is revised by correcting the Column (7) Special provision entry ''TP3'' to read ''IP3.''

• The entry ''Organometallic substance, liquid, water-reactive, flammable,'' UN3399 is revised by correcting the Column (1) Symbols to add a ''G'' symbol.

• The entry ''Radioactive material, Type A package *non-special form, non fissile, or fissile excepted*,'' UN2915 is revised by correcting Columns (8B) and (8C) to read ''415, 418'' and ''415, 419'' respectively.

• The entry ''Receptacles, small, containing gas (gas cartridges) *non-flammable, without release device, not refillable and not exceeding 1 L capacity*'' is added. This entry was inadvertently removed under Docket HM–215G (70 FR 34381).

• The entry ''Samples, explosive, other than initiating explosives,'' UN1090 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read ''Samples, explosive, *other than initiating explosives.*'' In addition, the Column (4) entry ''UN1090'' is revised to read ''UN0190'' and the Column 10B entry ''12E'' is removed. The correction appears as a ''Remove/Add'' in this rulemaking.

• The entry ''Selenium compound, liquid, n.o.s.,'' is revised by correcting the Column (7) Special provision entry ''TP14'' to read ''T14.''

• The entry ''Sulfuric acid, fuming *with 30 percent or more free sulfur trioxide*,'' UN1831 is revised by correcting the Column (1) Symbols to add a ''+'' symbol.

• The entry ''Trinitrochlorobenzene (picry1 chloride), wetted, *with not less than 10% water by mass*,'' UN3365 is revised by correcting the Column (2) Hazardous materials description and proper shipping name to read ''Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass.*'' The correction appears as a ''Remove/Add'' in this rulemaking.

Section 172.102. In paragraph (c)(1), in Special provision 144, we are correcting the reference ''40 CFR 180.12'' to read ''40 CFR 280.12''. In paragraph (c)(1), we are editorially revising Special provision 132 for clarity. In paragraph (c)(4), in the Table 1.—IB CODES (IBC CODES), in the IB2 entry, a typographical error is corrected.

Section 172.203. We are removing a requirement in paragraph (m) to include the word ''Poison'' or ''Toxic'' on a shipping paper if the fact that it is a poison is not disclosed in the shipping name or class entry. The requirement is no longer necessary because § 172.202(a)(2) requires the subsidiary hazard class(es) to be entered following the primary hazard class or division number.

Section 172.322. We are adding a new paragraph (f) to reference the exception for marine pollutants in § 171.4(c).

Part 173

Section 173.3. In § 173.3, paragraph (c) introductory text is amended to include the proper tense of the word ''place.'' In addition, grammatical errors were corrected for clarity.

Section 173.4. In paragraph (a) (10), we are revising the text to remove an obsolete package marking statement.

Section 173.134. In paragraph (c)(1)(ii), we are correcting the reference ''29 CFR 1910.103'' to read ''29 CFR 1910.1030''.

Section 173.222. In paragraph (c)(2), we are correcting the conversion ''0.5 L (0.3 gallons)'' to read ''0.5 L (0.1 gallon)''.

Section 173.227. In § 173.227, in the section heading, a typographical error is corrected.

Section 173.315. Section 173.315(a) is revised to clarify that UN portable tanks used to transport liquefied gas must be loaded and offered in accordance with Special Provision T50 in § 172.102 and must otherwise comply with the requirements of § 173.315.

Section 173.403. In the definition for ''Radioactive instrument or article,'' we are correcting the wording ''such as an instrument such as an instrument'' to read ''such as an instrument''.

Section 173.418. We are revising paragraph (e) to remove the reference to Column (8) of the HMT for authorized Type B packagings for pyrophoric Class 7 (radioactive) materials, because the entries for pyrophoric Class 7

(radioactive) materials no longer appear in the HMT.

Section 173.421. We are correcting paragraph (a)(5) to state that a package may not contain fissile material unless excepted by § 173.453. Under § 173.421(a)(5) a package is limited to contain 15 grams or less of uranium-235. This package exception limit is actually in § 173.453 not § 173.426, and only applies to packages containing fissile material.

Section 173.427. In paragraph (b)(5)(i), we are correcting the reference ''(§§ 179.200, 179.201, 179.202 of this subchapter)'' to read ''(§§ 173.31, and 179.201–1 to 179.201–11 of this subchapter)''.

Section 173.465. In paragraph (c)(1), we are correcting the reference to ''Table 12'' to read ''Table 10''. Additionally, in column one of Table 10, we are correcting the wording ''Packaging mass'' to read ''Package mass''.

Part 176

Section 176.144. In § 176.144, in paragraph (a), in the ''TABLE 176.144(a)—AUTHORIZED MIXED STOWAGE FOR EXPLOSIVES,'' for compatibility groups ''E'' and ''F'' a typographical error which occurred during the printing process is corrected.

Section 176.905. In paragraph (i)(3), we are correcting the reference ''46 CFR 70.10–44'' to read ''46 CFR 70.10–1''.

Part 177

Section 177.848. We are reinstating a prohibition for storing, loading and transporting cyanides and cyanide mixtures or solutions with acids if a mixture of the materials would generate hydrogen cyanide. In a final rule published January 24, 2005, under Docket No. PHMSA 03–16370 (HM–233; 70 FR 3304), we revised paragraph (c) by adding a cross-reference to the § 173.12(e) exceptions from segregation requirements for storage, loading and transportation of cyanides, cyanide mixture or solutions with acids. We inadvertently removed the prohibition for loading, storage and transportation of cyanides, cyanide mixtures or solutions with acids when, if mixed the materials would generate hydrogen cyanide. In this final rule, we are reinstating the prohibition.

Part 178

Section 178.245–1. In paragraph (e), we are correcting the reference ''§ 173.300'' to read ''§ 173.115''.

Section 178.345–1. In paragraph (c), in the definition for ''MAWP,'' we are correcting the reference ''§ 178.345–1(k)'' to read ''§ 178.320(a)''.

Section 178.350. We are revising this section to clarify that the term ''Packaging manufacturer'' used in § 178.3, for purposes of this section, means the person certifying that the package meets all requirements of § 173.412.

Part 180

Section 180.352. On December 20, 2004, we published a final rule under Docket Number RSPA–04–17036 (HM–215G). In that final rule, we added a new paragraph (d)(i)(iv) authorizing retests and inspections performed under paragraphs (d)(1)(i) and (d)(1)(ii) of this section to be used to satisfy the tests and inspections required of paragraph (b) of this section (69 FR 76186). However, an editorial error occurred during the printing process that caused the text in revised paragraphs (e) and (f) and the text in new paragraph (g) to be inadvertently omitted. The original intent of this change was to keep the ''repair'' and ''routine maintenance'' requirements in this section separate. Therefore, we are revising § 180.352 to correct this editorial error.

III. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because this rule has no economic impact, it is not necessary to prepare a regulatory impact analysis.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. PHMSA is not aware of any State, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

F. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

G. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

H. Environmental Impact Analysis

There are no environmental impacts associated with this final rule.

I. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified

Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 110

Disaster assistance, Education, Grant programs-environmental protection, Grant programs-Indians, Hazardous materials transportation, Hazardous substances, Indians, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

■ 1. The authority citation for part 105 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

PART 105—[NOMENCLATURE CHANGE]

■ 2. In part 105, the acronym ''RSPA'' is removed and ''PHMSA'' is added each place it appears in the following places:

a. Section 105.26 section heading;
b. Section 105.26 in two places;
c. Section 105.30 introductory text;
d. Section 105.30(b) in two places;
e. Section 105.35 section heading;
f. Section 105.35(a); introductory text;
g. Section 105.45(a) in two places;
h. Section 105.45(b)(2) in three places;
i. Section 105.45(b)(3);
j. Section 105.50(a);
k. Section 105.50(d);
l. Section 105.55(a) introductory text in two places; and
m. Section 105.55(b) in two places.

■ 3. Amend § 105.5, by revising paragraph (a), and the definitions of ''Associate Administrator'' and ''File or Filed'' in paragraph (b), to read as follows:

§ 105.5 Definitions.

(a) This part contains the definitions for certain words and phrases used throughout this subchapter (49 CFR parts 105 through 110). At the beginning of each subpart, the Pipeline and Hazardous Materials Safety Administration (''PHMSA'' or ''we'') will identify the defined terms that are used within the subpart—by listing them—and refer the reader to the definitions in this part. This way, readers will know that PHMSA has given a term a precise meaning and will know where to look for it.

* * * * *

(b) * * *

Associate Administrator means Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

* * * * *

File or *Filed* means received by the appropriate PHMSA or other designated office within the time specified in a regulation or rulemaking document.

* * * * *

■ 4. Section 105.20 is revised to read as follows:

§ 105.20 Guidance and interpretations.

(a) *Hazardous materials regulations.* You can obtain information and answers to your questions on compliance with the hazardous materials regulations (49 CFR parts 171 through 180) and interpretations of those regulations by contacting PHMSA's Office of Hazardous Materials Safety as follows:

(1) Call the Hazardous Materials Information Center at 1–800–467–4922 (in Washington, DC, call (202) 366–4488). The Center is staffed from 9 a.m. through 5 p.m. Eastern time, Monday through Friday except Federal holidays. After hours, you can leave a recorded message and your call will be returned by the next business day.

(2) E-mail the Hazardous Materials Information Center at *infocntr@dot.gov*.

(3) Obtain hazardous materials safety information via the Internet at *http://www.phmsa.dot.gov*.

(4) Send a letter, with your return address and a daytime telephone number, to: Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, Attn: PHH–10, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590–0001.

(b) *Federal hazardous materials transportation law and preemption.* You can obtain information and answers to your questions on Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.*, and Federal preemption of State, local, and Indian tribe hazardous material transportation requirements, by contacting PHMSA's Office of the Chief Counsel as follows:

(1) Call the office of the Chief Counsel at (202) 366–4400 from 9 a.m. to 5 p.m. Eastern time, Monday through Friday except Federal holidays.

(2) Access information from the Office of the Chief Counsel via the Internet at *http://www.phmsa.dot.gov.*

(3) Send a letter, with your return address and a daytime telephone number, to: Office of the Chief Counsel, Pipeline and Hazardous Materials Safety Administration, Attn: PHC–10, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001.

(4) Contact the Office of the Chief Counsel for a copy of applications for preemption determinations, waiver of preemption determinations, and inconsistency rulings received by PHMSA before February 1, 1997.

■ 5. Section 105.25 is revised to read as follows:

§ 105.25 Reviewing public documents.

PHMSA is required by statute to make certain documents and information available to the public. You can review and copy publicly available documents and information at the locations described in this section.

(a) *DOT Docket Management System.* Unless a particular document says otherwise, the following documents are available for public review and copying at the Department of Transportation's Docket Management System, Room PL 401, 400 7th Street, SW., Washington, DC 20590–0001, or for review and downloading through the Internet at *http://dms.dot.gov.*

(1) Rulemaking documents in proceedings started after February 1, 1997, including notices of proposed rulemaking, advance notices of proposed rulemaking, public comments, related **Federal Register** notices, final rules, appeals, and PHMSA's decisions in response to appeals.

(2) Applications for exemption numbered DOT–E 11832 and above. Also available are supporting data, memoranda of any informal meetings with applicants, related **Federal Register** notices, public comments, and decisions granting or denying exemptions applications.

(3) Applications for preemption determinations and waiver of preemption determinations received by PHMSA after February 1, 1997. Also available are public comments, **Federal Register** notices, and PHMSA's rulings, determinations, decisions on reconsideration, and orders issued in response to those applications.

(b) *Office of Pipeline and Hazardous Materials Safety Administration's Office of Hazardous Materials Safety.*

(1) You may obtain documents (*e.g.*, proposed and final rules, notices, letters of clarification, safety notices, DOT forms and other documents) by contacting the Hazardous Materials Information Center at 1–800–467–4922 or through the Internet at *http://www.phmsa.dot.gov.*

(2) Upon your written request, we will make the following documents and information available to you:

(i) Appeals under 49 CFR part 107 and PHMSA's decisions issued in response to those appeals.

(ii) Records of compliance order proceedings and PHMSA compliance orders.

(iii) Applications for approvals, including supporting data, memoranda of any informal meetings with applicants, and decisions granting or denying approvals applications.

(iv) Applications for exemptions numbered below DOT–E 11832 and related background information are available for public review and copying at the Office of Hazardous Materials Safety, Office of Hazardous Materials Exemptions and Approvals, U.S. Department of Transportation, Room 8100, 400 7th Street, SW., Washington, DC 20590–0001.

(v) Other information about PHMSA's hazardous materials program required by statute to be made available to the public for review and copying and any other information PHMSA decides should be available to the public.

(3) Your written request to review documents should include the following:

(i) A detailed description of the documents you wish to review.

(ii) Your name, address, and telephone number.

(4) Send your written request to: Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, Attn: PHH–1, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001.

■ 6. In § 105.40, paragraph (d) is revised to read as follows:

§ 105.40 Designated agents for non residents.

* * * * *

(d) *Address.* Send your designation to: Office of Hazardous Materials Exemptions and Approvals, Pipeline and Hazardous Materials Safety Administration, Attn: PHH–30, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001.

* * * * *

PART 106—RULEMAKING PROCEDURES

■ 7. The authority citation for part 106 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

PART 106—[NOMENCLATURE CHANGE]

■ 8. In part 106, the acronym ''RSPA'' is removed and ''PHMSA'' is added in each place it appears in the following places:

a. Subpart A, Title;
b. Section 106.15;
c. Section 106.25 introductory text;
d. Section 106.35 in three places;
e. Section 106.40 introductory text;
f. Section 106.60;
g. Section 106.75 introductory text in three places;
h. Section 106.80;
i. Section 106.85(a);
j. Section 106.85(b);
k. Section 106.90 introductory text;
l. Section 106.90(c);
m. Section 106.105 section heading;
n. Section 106.110 section heading and introductory text;
o. Section 106.110(b);
p. Section 106.115(a)(4);
q. Section 106.130 section heading and introductory text;
r. Section 106.130(a)(4) in two places;
s. Section 106.130(b)(1); and
t. Section 106.130(b)(2) in two places.

PART 106—[NOMENCLATURE CHANGE]

■ 9. In part 106, the acronym ''RSPA's'' is removed and ''PHMSA's'' is added each place it appears in the following places:

a. Section 106.20;
b. Section 106.40(e);
c. Section 106.55 introductory text;
d. Section 106.110(a) in three places;
e. Section 106.115(a) introductory text in two places; and
f. Section 106.115(b) introductory text.

■ 10. In § 106.10 paragraph (a) introductory text, and (b)(2) are revised to read as follows:

§ 106.10 Process for issuing rules.

(a) PHMSA (''we'') uses informal rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553) to add, amend, or delete regulations. To propose or adopt changes to a regulation, PHMSA may issue one or more of the following documents. We publish the following rulemaking documents in the **Federal Register** unless we name and personally serve a copy of a rule on every person subject to it:

* * * * *

(b) * * *

(2) PHMSA's legal authority for issuing the rulemaking document.

* * * * *

■ 11. Section 106.45 is revised to read as follows:

§ 106.45 Tracking rulemaking actions.

The following identifying numbers allow you to track PHMSA's rulemaking activities:

(a) *Docket number.* We assign an identifying number, called a docket

number, to each rulemaking proceeding. Each rulemaking document that PHMSA issues in a particular rulemaking proceeding will display the same docket number. This number allows you to do the following:

(1) Associate related documents that appear in the **Federal Register**.

(2) Search the DOT Docket Management System (''DMS'') for information on particular rulemaking proceedings—including notices of proposed rulemaking, public comments, petitions for rulemaking, appeals, records of additional rulemaking proceedings and final rules. There are two ways you can search the DMS:

(i) Visit the public docket room and review and copy any docketed materials during regular business hours. The DOT Docket Management System is located at the U.S. Department of Transportation, Plaza Level 401, 400 7th Street, SW., Washington, DC 20590–0001.

(ii) View and download docketed materials through the Internet at *http://dms.dot.gov.*

(b) *Regulation identifier number.* The Department of Transportation publishes a semiannual agenda of all current and projected Department of Transportation rulemakings, reviews of existing regulations, and completed actions. This semiannual agenda appears in the Unified Agenda of Federal Regulations that is published in the **Federal Register** in April and October of each year. The semiannual agenda tells the public about the Department's—including PHMSA's—regulatory activities. The Department assigns a regulation identifier number (RIN) to each individual rulemaking proceeding in the semiannual agenda. This number appears on all rulemaking documents published in the **Federal Register** and makes it easy for you to track those rulemaking proceedings in both the **Federal Register** and the semiannual regulatory agenda itself, as well as to locate all documents in the Docket Management System pertaining to a particular rulemaking.

■ 12. Section 106.95 is revised to read as follows:

§ 106.95 Requesting a change to the regulations.

You may ask PHMSA to add, amend, or delete a regulation by filing a petition for rulemaking as follows:

(a) For regulations in 49 CFR parts 110, 130, 171 through 180, submit the petition to: Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, Attn: PHH–10, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001.

(b) For regulations in 49 CFR parts 105, 106, or 107, submit the petition to: Office of the Chief Counsel, Pipeline and Hazardous Materials Safety Administration, Attn: PHC–10, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001.

■ 13. Section 106.120 is revised to read as follows:

§ 106.120 Appeal deadline.

(a) *Appeal of a final rule or withdrawal of a notice of proposed rulemaking.* If you appeal PHMSA's issuance of a final rule or PHMSA's withdrawal of a proposed rulemaking, your appeal document must reach us no later than 30 days after the date PHMSA published the regulation or the withdrawal notice in the **Federal Register**. After that time, PHMSA will consider your appeal to be a petition for rulemaking under § 106.100.

(b) *Appeal of a decision.* If you appeal PHMSA's decision on a petition for rulemaking, your appeal document must reach us no later than 30 days from the date PHMSA served you with written notice of PHMSA's decision.

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 14. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

PART 107—[NOMENCLATURE CHANGE]

■ 15. In part 107, the acronym ''RSPA'' is removed and ''PHMSA'' is added in each place it appears in the following places:

a. Section 107.1 definitions of ''*Approval Agency*,'' ''*Filed*,'' and ''*Respondent*'';
b. Section 107.111;
c. Section 107.310(e);
d. Section 107.327(a)(1)(iii);
e. Section 107.337;
f. Section 107.339;
g. Appendix A to Subpart D, Part IV(A.)(1);
h. Section 107.402(b)(2);
i. Section 107.403(c);
j. Section 107.503(c);
k. Section 107.608(c);
l. Section 107.616(d)(1);
m. Section 107.616(d)(3);
n. Section 107.620(a)(1);
o. Section 107.620(a)(2);
p. Section 107.620(b);
q. Section 107.711; and
r. Section 107.803(a).

PART 107—[NOMENCLATURE CHANGE]

■ 16. In part 107, the acronym ''RSPA's'' is removed and ''PHMSA's'' is added in each place it appears in the following places:

a. Section 107.310(b)(2); and
b. Appendix A to Subpart D, Part IV(A.)(1).

PART 107—[NOMENCLATURE CHANGE]

■ 17. In part 107, ''Research and Special Programs Administration'' is removed and ''Pipeline and Hazardous Materials Safety Administration'' is added in each place it appears in the following places:

a. Section 107.1 definitions of ''*Administrator* and *Associate Administrator*'';
b. Section 107.127(a);
c. Section 107.203(b)(1)(i);
d. Section 107.215(b)(1)(i);
e. Section 107.301;
f. Section 107.305(b)(4);
g. Section 107.335; and
h. Section 107.705(a)(1).

PART 107—[NOMENCLATURE CHANGE]

■ 18. In part 107, ''*aahmspreemption@rspa.dot.gov*'' is removed and ''*aahspreemption@dot.gov*'' is added in each of the following places:

a. Section 107.203(b)(1)(iii); and
b. Section 107.215(b)(1)(iii).

PART 107—[NOMENCLATURE CHANGE]

■ 19. In part 107, ''*Approvals@rspa.dot.gov*'' is removed and ''*approvals@dot.gov*'' is added in each place it appears in the following places:

a. Section 107.402(a); and
b. Section 107.705(a)(1).

■ 20. In § 107.105, paragraph (a)(1) is revised to read as follows:

§ 107.105 Application for exemption.

(a) * * *

(1) Be submitted for timely consideration, at least 120 days before the requested effective date, in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Exemptions, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. Alternatively, you may send the

application with any attached supporting documentation submitted in an appropriate format by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (e-mail) to: *Exemptions@dot.gov;*

* * * * *

■ 21. In § 107.107, paragraph (b)(1) is revised to read as follows:

§ 107.107 Application for party status.

(b) * * *

(1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Exemptions, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. Alternatively, you may send the application with any attached supporting documentation in an appropriate format by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (e-mail) to: *Exemptions@dot.gov;*

* * * * *

■ 22. In § 107.109, paragraph (a)(1) is revised to read as follows

§ 107.109 Application for renewal.

(a) * * *

(1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Exemptions, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. Alternatively, you may send the application, with any attached supporting documentation submitted in an appropriate format by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (e-mail) to: *Exemptions@dot.gov;*

* * * * *

■ 22a. In § 107.117 paragraph (d)(5) is revised to read as follows:

§ 107.117 Emergency Processing.

* * * * *

(d) * * *

(5) *Water Transportation:* Chief, Hazardous Materials Standards Division, Office of Operating and Environmental Standards, U.S. Coast Guard, U.S. Department of Homeland Security, Washington, DC 20593–0001; (202) 267–1217 (day); 1–800–424–8802 (night).

* * * * *

■ 23. Section 107.325 is revised to read as follows:

§ 107.325 Appeals.

(a) *Hearing proceedings.* A party aggrieved by an ALJ's decision and order issued under § 107.323, may file a written appeal in accordance with paragraph (c) of this section with the Administrator, Office of the Administrator, Pipeline and Hazardous Materials Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001.

(b) *Non-Hearing proceedings.* A respondent aggrieved by an order issued under § 107.317, may file a written appeal in accordance with paragraph (c) of this section with the Administrator, Office of the Administrator, Pipeline and Hazardous Materials Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001.

(c) An appeal of an order issued under this subpart must:

(1) Be filed within 20 days of receipt of the order by the appealing party; and

(2) State with particularity the findings in the order that the appealing party challenges, and include all information and arguments pertinent thereto.

(d) If the Administrator, PHMSA, affirms the order in whole or in part, the respondent must comply with the terms of the decision within 20 days of the respondent's receipt thereof, or within the time prescribed in the order. If the respondent does not comply with the terms of the decision within 20 days of receipt, or within the time prescribed in the order, the case may be referred to the Attorney General for action to enforce the terms of the decision.

(e) The filing of an appeal stays the effectiveness of an order issued under § 107.317 or § 107.323. However, if the Administrator, PHMSA, determines that it is in the public interest, he may keep an order directing compliance in force pending appeal.

§ 107.402 [Amended]

■ 24. In § 107.402, in paragraph (a), ''DHM–32'' is removed and ''PHH–32'' is added in its place.

§ 107.608 [Amended]

■ 25. In § 107.608, in paragraph (d), ''DHM–60'' is removed and ''PHH–60'' is added in its place.

§ 107.705 [Amended]

■ 26. In § 107.705, in paragraph (a)(1), ''DHM–32'' is removed and ''PHH–32'' is added in its place.

§ 107.805 [Amended]

■ 27. In § 107.805, in paragraph (g), ''DHM–32'' is removed and ''PHH–32'' is added in its place.

Appendix A to Subpart D [Amended]

■ 28. In part 107, Appendix A to Subpart D, Part IV, paragraph C., in the first sentence the reference to ''49 U.S.C. 5213(a)'' is revised to read ''49 U.S.C. 5123(a)''.

PART 110—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS

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

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

PART 110—[NOMENCLATURE CHANGE]

■ 30. In part 110, ''Research and Special Programs Administration'' is removed and ''Pipeline and Hazardous Materials Safety Administration'' is added in each place it appears in the following places:

a. Section 110.5(c);

b. Section 110.20 definition of ''Associate Administrator'';

c. Section 110.30(a) introductory text; and

d. Section 110.120.

§ 110.130 [Amended]

■ 31. In § 110.130 remove ''RSPA'' and add ''PHMSA'' in its place.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 32. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

PART 171—[NOMENCLATURE CHANGE]

■ 33. In part 171, the acronym ''RSPA'' is removed and ''PHMSA'' is added in each place it appears in the following places:

a. Section 171.20(a); and

b. Section 171.20(c).

PART 171—[NOMENCLATURE CHANGE]

■ 34. In part 171, ''Research and Special Programs Administration'' is removed and ''Pipeline and Hazardous Materials Safety Administration'' is added in each place it appears in the following places:

a. Section 171.8 definitions of ''*Associate Administrator*'';

b. Section 171.16(b)(1); and

c. Section 171.20(b).

■ 35. In § 171.6, in paragraph (b)(2) table, the following changes are made:

■ a. In the entries for Current OMB Control Nos. ''2137–0018,'' ''2137–0039,'' ''2137–0051,'' ''2137–0542,'' and ''2137–0559,'' the text in column 2 is revised, and

■ b. An entry for OMB Control No. ''2137–0591'' is added, in numerical order.

The revisions and addition read as follows:

§ 171.6 Control numbers under the Paperwork Reduction Act.

* * * * *

(b) * * *

(2) Table.

* * * * *

Current OMB control No.	Title	Title 49 CFR part or section where identified and described
*	*	*
2137–0018	Inspection and Testing of Portable Tanks and Intermediate Bulk Containers	* * *
*	*	*
2137–0039	Hazardous Materials Incidents Reports	* * *
2137–0051	Rulemaking, Exemption, and Preemption Requirements	* * *
*	*	*
2137–0542	Flammable Cryogenic Liquids	* * *
*	*	*
2137–0559	(Rail Carriers and Tank Car Tank Requirements) Requirements for Rail Tank Car Tanks—Transportation of Hazardous Materials by Rail.	* * *
*	*	*
2137–0591	Response Plans for Shipments of Oil	Part 130.
*	*	*

* * * * *

■ 36. In § 171.8 the following changes are made:

■ a. In the definition for ''Maximum Allowable Working Pressure or MAWP,'' the reference to ''§ 178.320(c)'' is removed and ''§ 178.320(a)'' is added in its place.

■ b. The definition of ''RSPA'' is removed.

■ c. The definition of ''PHMSA'' is added in the appropriate alphabetical sequence to read as follows:

§ 171.8 Definitions.

* * * * *

PHMSA means the Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

* * * * *

§ 171.11 [Amended]

■ 37. In § 171.11, in paragraph (d)(6)(iv), the wording ''radioactive material'' is removed and the wording ''limited quantities of radioactive material'' is added in its place.

§ 171.16 [Amended]

■ 38. In § 171.16, in paragraph (b)(1), ''DHM–63'' is removed and ''PHH–63'' is added in each place that it appears.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 39. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

PART 172—[NOMENCLATURE CHANGE]

■ 40. In Part 172, the acronym ''RSPA'' is removed and ''PHMSA'' is added in each of the following places:

a. Section 172.101, Appendix A, Table 1, Footnote @; and

b. Section 172.101, Appendix A, Table 2, Footnote * * *.

■ 41. In § 172.101, the Hazardous Materials Table is amended by removing, adding and revising, in the appropriate alphabetical sequence, the following entries to read as follows:

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*	*		*	*	*		*	*			
	Adhesives, containing a flammable liquid.	3	UN1133	I	3	B42, T11, TP1, TP8, TP27.	150	201	243	1 L	30 L	B	
				II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	A	
				III	3	B1, B52, IB3, T2, TP1.	150	173	242	60 L	220 L	A	
		*	*		*	*	*		*	*			
	Aerosols, corrosive, Packing Group II or III (each not exceeding 1 L capacity).	2.2	UN1950		2.2, 8	A34	306	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, flammable, (each not exceeding 1 L capacity).	2.1	UN1950		2.1	N82	306	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, flammable, n.o.s. (engine starting fluid) each not exceeding 1 L capacity).	2.1	UN1950		2.1	N82	306	304	None	Forbidden	150 kg	A	48, 87, 126
	Aerosols, non-flammable, (each not exceeding 1 L capacity).	2.2	UN1950		2.2		306	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, poison, (each not exceeding 1 L capacity).	2.2	UN1950		2.2, 6.1		306	None	None	Forbidden	Forbidden	A	48, 87, 126
		*	*		*	*	*		*	*			
G	Alkaloids, solid, n.o.s. *or* Alkaloid salts, solid, n.o.s. poisonous.	6.1	UN1544	I	6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	A	
				II	6.1	IB8, IP2, 1P4, T3, TP33.	153	212	242	25 kg	100 kg	A	
				III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A	
		*	*		*	*	*		*	*			
	Cartridges, safety, see Cartridges for weapons, *other than blank or* Cartridges, power device *(UN 0323).*												

		*		*		*	*	*		*	*				
	Cartridges, sporting, see Cartridges for weapons, *other than blank*.														
		*		*		*	*	*		*	*				
	Chlorate and magnesium chloride mixture, solid.	5.1	UN1459	III	5.1		A9, IB8, IP3, N34, T1, TP33.	152	213	240	25 kg	100 kg	A		56, 58
	Chlorate of potash, see Potassium chlorate.														
		*		*		*	*	*		*	*				
	Chloroacetophenone, CN, liquid.	6.1	UN3416	II	6.1		A3, IB2, N12, N32, N33, N34, T3, TP2, TP13.	None	202	243	Forbidden	60 L	D		12, 40
	Chloroacetophenone, CN, solid.	6.1	UN1697	II	6.1		A3, IB8, IP2, IP4, N12, N32, N33, N34, T3, TP13, TP33.	None	212	None	Forbidden	100 kg	D		12, 40
		*		*		*	*	*		*	*				
	Etching acid, liquid, n.o.s., see Hydrofluoric acid, solution *etc.*														
		*		*		*	*	*		*	*				
	Fissile radioactive materials, see Radioactive material, fissile, n.o.s.														
		*		*		*	*	*		*	*				
	Hydrogen iodid solution, see Hydriodic acid.														
		*		*		*	*	*		*	*				
G	Samples, explosive, other than initiating explosives.		UN1090	II			113	None	62	None	Forbidden	Forbidden	14		12E
		*		*		*	*	*		*	*				
	Trinitrochlorobenzene (picry 1 chloride), wetted, *with not less than 10% water by mass*.	4.1	UN3365	I	4.1		162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E		36
		*		*		*	*	*		*	*				

[ADD]

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*	*		*	*	*		*	*			
	Adhesives, *containing a flammable liquid.*	3	UN1133	I	3	B42, T11, TP1, TP8, TP27.	150	201	243	1 L	30 L	B	
				II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B	
				III	3	B1, B52, IB3, T2, TP1.	150	173	242	60 L	220 L	A	
		*	*		*	*	*		*	*			
	Aerosols, *corrosive, Packing Group II or III, (each not exceeding 1 L capacity).*	2.2	UN1950		2.2, 8	A34	306	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, *flammable, (each not exceeding 1 L capacity).*	2.1	UN1950		2.1	N82	306	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, flammable, n.o.s. *(engine starting fluid) (each not exceeding 1 L capacity).*	2.1	UN1950		2.1	N82	306	304	None	Forbidden	150 kg	A	48, 87, 126
	Aerosols, *non-flammable, (each not exceeding 1 L capacity).*	2.2	UN1950		2.2		306	None	None	75 kg	150 kg		48, 87, 126
	Aerosols, poison, *(each not exceeding 1 L capacity).*	2.2	UN1950		2.2, 6.1		306	None	None	Forbidden	Forbidden	A	48, 87, 126
		*	*		*	*	*		*	*			
G	Alkaloids, solid, n.o.s. *or* Alkaloid salts, solid, n.o.s. *poisonous.*	6.1	UN1544	I	6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	A	
				II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	A	
				III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A	
		*	*		*	*	*		*	*			
	Cartridges, safety, see Cartriges for weapons, inert projectile, *or* Cartridges, small arms *or* Cartridges, power device (*UN 0323*).												

	*		*		*	*	*		*	*				
	Cartridges, sporting, see Cartridges for weapons, inert porjectile, *or* Cartridges, small arms.													
	*		*		*	*	*		*	*				
	Chlorate of potash, see Potassium chlorate.													
	*		*		*	*	*		*	*				
	Chloroacetophenone, liquid, (*CN*).	6.1	UN3416	II	6.1	A3, IB2, N12, N32, N33, T7, TP2, TP13.	None	202	243	Forbidden	60 L	D		12, 40
	Chloroacetophenone, solid, (*CN*).	6.1	UN1697	II	6.1	A3, IB8, IP2, IP4, N12, N32, N33, N34, T3, TP2, TP13, TP33.	None	212	None	Forbidden	100 kg	D		12, 40
	Cyclotrimethylenenitramine and octogen, mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized, etc.													
	*		*		*	*	*		*	*				
	Etching acid, liquid, n.o.s., see Hydrofluoric acid, etc.													
	*		*		*	*	*		*	*				
	Hydrogen iodide solution, see Hydriodic acid.													
	*		*		*	*	*		*	*				
	Receptacles, small, containing agas (gas cartridges) *non-flammable, without release device, not refillable and not exceeding 1 L capacity.*	2.2	UN2037		2.2, 5.1	A14	306	304	None	1 kg	15 kg	B		40
	*		*		*	*	*		*	*				
G	Samples, explosive, *other than initiating explosives.*		UN0190	II		113	None	62	None	Forbidden	Forbidden	14		

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*	*	*	*	*	*	*	*	*	*			
	Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass.*	4.1	UN3365	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
	*	*	*	*	*	*	*	*	*	*			
	[REVISE]												
	*	*	*	*	*	*	*	*	*	*			
	Aluminum alkyl halides, solid.	4.2	UN3461	I	4.2, 4.3	173, T21, TP7, TP33.	None	181	244	Forbidden	Forbidden	D	134
	*	*	*	*	*	*	*	*	*	*			
	Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, *intermediate for blasting explosives.*	5.1	UN3375	II	5.1	147, 163	None	214	214	Forbidden	Forbidden	D	48, 59, 60, 66, 124
	*	*	*	*	*	*	*	*	*	*			
D	Denatured alcohol	3	NA1987	II	3	172, T8	150	202	242	5 L	60 L	B	
				III	3	172, B1, T7	150	203	242	60 L	220 L	A	
	*	*	*	*	*	*	*	*	*	*			
	Gasoline	3	UN1203	II	3	144, B1, B33, T8.	150	202	242	5 L	60 L	E	
	*	*	*	*	*	*	*	*	*	*			
	Nitrocresols, solid	6.1	UN2446	III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A	
	*	*	*	*	*	*	*	*	*	*			
G	Organometallic substance, liquid, water-reactive, flammable.	4.3	UN3399	I	4.3, 3	T13, TP2, TP7.	None	201	244	Forbidden	1 L	E	40, 52
	*	*	*	*	*	*	*	*	*	*			
	Radioactive material, Type A package *non-special form, non fissile or fissile-excepted.*	7	UN2915		7	A56, W7, W8.		415, 418	415, 419			A	95, 130
	*	*	*	*	*	*	*	*	*	*			
+	Selenium compound, liquid, n.o.s.	6.1	UN3440	I	6.1	T14, TP2, TP27.	None	201	243	1L	30L	B	

		*	*	*	*	*	*	*				
+	Sulfuric acid, fuming *with 30 percent or more free sulfur trioxide.*	8	UN1831	I	8, 6.1	2, B9, B14, B32, B74, B77, B84, N34, T20, TP2, TP12, TP13.	None	227	244	Forbidden	Forbidden	C
												14, 40
		*	*	*	*	*	*	*				

* * * * *

■ 42. In § 172.102(c)(1), the following changes are made:

■ a. Special provision 132 is revised to read as follows; and

■ b. In Special provision 144, the reference ''40 CFR 180.12'' is removed and ''40 CFR 280.12'' is added in its place.

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

* * * * *

132. This entry may only be used for uniform, ammonium nitrate based fertilizer mixtures, containing nitrogen, phosphate or potash, meeting the following criteria: (1) Contains not more than 70% ammonium nitrate and not more than 0.4% total combustible, organic material calculated as carbon or (2) Contains not more than 45% ammonium nitrate and unrestricted combustible material.

* * * * *

■ 43. In § 172.102, in paragraph (c)(4), in Table 1.–IB CODES (IBC CODES), in the IB2 entry, under *Additional Requirement*, the wording ''130kPaat'' is removed and ''130 kPa at'' is added in its place.

■ 44. In § 172.203, paragraph (m) is revised to read as follows:

§ 172.203 Additional Description Requirements.

* * * * *

(m) *Poisonous Materials.* Notwithstanding the hazard class to which a material is assigned, for materials that are poisonous by inhalation (see § 171.8 of this subchapter), the words ''Poison-Inhalation Hazard'' or ''Toxic-Inhalation Hazard'' and the words ''Zone A'', ''Zone B'', ''Zone C'', or ''Zone D'' for gases or ''Zone A'' or ''Zone B'' for liquids, as appropriate, shall be entered on the shipping paper immediately following the shipping description. The word ''Poison'' or ''Toxic'' need not be repeated if it otherwise appears in the shipping description.

* * * * *

■ 45. In § 172.322, a new paragraph (f) is added to read as follows:

§ 172.322 Marine pollutants.

* * * * *

(f) *Exceptions.* See § 171.4(c).

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 46. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

PART 173—[NOMENCLATURE CHANGE]

■ 47. In part 173, the acronym ''RSPA'' is removed and ''PHMSA'' is added in each of the following places:

a. Section 173.22(c)(2); and

b. Section 173.136(b).

PART 173—[NOMENCLATURE CHANGE]

■ 48. In part 173, ''*ramcert@rspa.dot.gov*'' is removed and ''*ramcert@dot.gov*'' is added in each of the following places:

a. Section 173.471(d);

b. Section 173.471(e);

c. Section 173.472(f);

d. Section 173.473(a)(1);

e. Section 173.473(a)(2);

f. Section 173.476(c) introductory text; and

g. Section 173.477(c) introductory text.

■ 49. In § 173.3, paragraph (c), the introductory text is revised to read as follows:

§ 173.3 Packaging and exceptions.

* * * * *

(c) *Salvage drums.* Packages of hazardous materials that are damaged, defective, or leaking; packages found to be not conforming to the requirements of this subchapter after having been placed in transportation; and, hazardous materials that have spilled or leaked may be placed in a metal or plastic removable head salvage drum that is compatible with the lading and shipped for repackaging or disposal under the following conditions:

* * * * *

■ 50. In § 173.4, paragraph (a)(10) is revised to read as follows:

§ 173.4 Small quantity exceptions.

(a) * * *

(10) The shipper certifies conformance with this section by marking the outside of the package with the statement ''This package conforms to 49 CFR 173.4.''

* * * * *

§ 173.134 [Amended]

■ 51. In § 173.134, in paragraph (c)(1)(ii), the reference to ''29 CFR 1910.103'' is removed and ''29 CFR 1910.1030'' is added in its place.

§ 173.222 [Amended]

■ 52. In § 173.222, in paragraph (c)(2), ''0.5 L (0.3 gallons)'' is removed and ''0.5 L (0.1 gallons)'' is added in its place.

§ 173.227 [Amended]

■ 53. In § 173.227, in the section heading, ''Division 6.2'' is removed and ''Division 6.1'' is added in its place.

■ 54. In § 173.315, the text of paragraph (a) before the table is revised to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

(a) Liquefied compressed gases that are transported in UN portable tanks, DOT specification portable tanks, or cargo tanks must be prepared in accordance with this section, § 173.32, § 173.33 and subpart E or subpart G of part 180 of this subchapter, as applicable. For cryogenic liquid in cargo tanks, see § 173.318. For marking requirements for portable tanks and cargo tanks, see § 172.326 and § 172.328 of this subchapter, as applicable.

(1) *UN portable tanks:* UN portable tanks must be loaded and offered for transportation in accordance with portable tank provision T50 in § 172.102 of this subchapter.

(2) *Cargo tanks and DOT specification portable tanks:* Cargo tanks and DOT specification portable tanks must be loaded and offered for transportation in accordance with the following table:

* * * * *

§ 173.403 [Amended]

■ 55. In § 173.403, in the definition for ''*Radioactive instrument or article,*'' the wording ''such as an instrument such as an instrument'' is removed and ''such as an instrument'' is added in its place.

■ 56. In § 173.418, paragraph (e) is revised to read as follows:

§ 173.418 Authorized packages—oxidizing Class 7 (radioactive) materials.

* * * * *

(e) Pyrophoric Class 7 (radioactive) materials transported by aircraft must be packaged in Type B packages.

■ 57. In § 173.421, paragraph (a)(5) is revised to read as follows:

§ 173.421 Excepted packages for limited quantities of Class 7 (radioactive materials).

(a) * * *

(5) The package does not contain fissile material unless excepted by § 173.453.

* * * * *

§ 173.427 [Amended]

■ 58. In § 173.427, in paragraph (b)(5)(i), ''(§§ 179.200, 179.201, 179.202 of this subchapter)'' is removed and ''(§§ 173.31, and 179.201–1 to 179.201–11 of this subchapter)'' is added in its place.

§ 173.465 [Amended]

■ 59. In § 173.465, the following changes are made:

■ a. In paragraph (c)(1), the wording ''Table 12'' is removed and ''Table 10'' is added in its place.

■ b. In paragraph (c)(1), Table 10, in column one, the heading ''Packaging mass'' is removed and ''Package mass'' is added in its place.

§ 173.471 [Amended]

■ 60. In § 173.471, in paragraphs (d) and (e), ''DHM–23'' is removed and ''PHH–23'' is added in its place.

PART 176—CARRIAGE BY VESSEL

■ 61. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

PART 176—[AMENDED]

■ 62. In § 176.144, the text of paragraph (a) before the table and entries E and F of the table are revised to read as follows:

§ 176.144 Segregation of Class 1 (explosive) materials.

(a) Except as provided in § 176.145 of this subchapter, stowage of Class 1 (explosive) materials within the same compartment, magazine, or cargo transport unit is subject to provisions contained in table 176.144(a).

TABLE 176.144(A).—AUTHORIZED MIXED STOWAGE FOR EXPLOSIVES

[An ''X'' indicates that explosives in the two different compatibility groups reflected by the location of the ''X'' may not be stowed in the same compartment, magazine, or cargo transport unit]

Compatibility groups	A	B	C	D	E	F	G	H	J	K	L	N	S
* * *			*			*			*			*	
E	X	X	6	6	.....	X	1	X	X	X	X	4	.....
F	X	X	X	X	X	.....	X	X	X	X	X	X	.....
* * *			*			*			*			*	

* * * * *

§ 176.905 [Amended]

■ 63. In § 176.905, in paragraph (i)(3), the reference ''46 CFR 70.10–44'' is removed and ''46 CFR 70.10–1'' is added in its place.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 64. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 65. In § 177.848, paragraph (c) is revised to read as follows:

§ 177.848 Segregation of Hazardous Materials.

* * * * *

(c) In addition to the provisions of paragraph (d) of this section and except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions may not be stored, loaded and transported with acids if a mixture of the materials would generate hydrogen cyanide, and Division 4.2 materials may not be stored, loaded and transported with Class 8 liquids.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 66. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.245–1 [Amended]

■ 67. In § 178.245–1, in paragraph (e), the section reference ''§ 173.300'' is removed and ''§ 173.115'' is added in its place.

§ 178.345–1 [Amended]

■ 68. In § 178.345–1, in paragraph (c), in the definition for ''MAWP,'' the reference ''§ 178.345–1(k)'' is removed and ''§ 178.320(a)'' is added in its place.

■ 69. In § 178.350, paragraph (c) is revised to read as follows:

§ 178.350 Specification 7A; general packaging, Type A.

* * * * *

(c) Each Specification 7A packaging must comply with the marking requirements of § 178.3. In paragraph 178.3(a)(2), the term ''packaging manufacturer'' means the person certifying that the package meets all requirements of this section.

PART 179—SPECIFICATIONS FOR TANK CARS

■ 70. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 179.18 [Amended]

■ 71. In § 179.18, in paragraph (c), the acronym ''RSPA'' is removed and ''PHMSA'' is added in its place, and the phrase ''Research and Special Programs Administration'' is removed and ''Pipeline and Hazardous Materials Safety Administration'' is added in its place.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 73. In § 180.352, paragraphs (e) and (f) are revised and a new paragraph (g) is added to read as follows:

§ 180.352 Requirements for retest and inspection of IBCs.

* * * * *

(e) *Requirements applicable to routine maintenance of IBCs.* Except for routine maintenance of metal, rigid plastics and composite IBCs performed by the owner of the IBC, whose State and name or authorized symbol is durably marked on the IBC, the party performing the routine maintenance shall durably mark the IBC near the manufacturer's UN design type marking to show the following:

(1) The country in which the routine maintenance was carried out; and

(2) The name or authorized symbol of the party performing the routine maintenance.

(f) *Retest date.* The date of the most recent periodic retest must be marked as provided in § 178.703(b) of this subchapter.

(g) *Record retention.* The owner or lessee of the IBC must keep records of

periodic retests, initial and periodic inspections, and test performed on the IBC if it has been repaired. Records must include design types and packaging specifications, test and inspection dates, name and address of test and inspection facilities, names or name of any persons conducting tests or inspections, and test or inspection specifics and results. Records must be kept for each packaging at each location where periodic tests are conducted, until such tests are successfully performed again or at least 2.5 years from the date of the last test. The owner or lessee must make these records available for inspection by a representative of the Department on request.

§ 180.409 [Amended]

■ 75. In § 180.409, in paragraph (d)(2), the following changes are made:

■ a. ''Research and Special Programs Administration'' is removed and ''Pipeline and Hazardous Materials Safety Administration'' is added in its place.

■ b. ''DHM–32'' is removed and ''PHH–32'' is added in its place.

Issued in Washington, DC, on September 19, 2005, under authority delegated in 49 CFR part 1.

Brigham A. McCown,

Acting Administrator.

[FR Doc. 05–18983 Filed 9–22–05; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Friday,

September 23, 2005

Part VI

Agency for International Development

22 CFR Part 231

Arab Republic of Egypt Loan Guarantees Issued Under the Emergency Wartime Supplemental Appropriations Act of 2003—Standard Terms and Conditions; Final Rule

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 231

Arab Republic of Egypt Loan Guarantees Issued Under the Emergency Wartime Supplemental Appropriations Act of 2003—Standard Terms and Conditions

AGENCY: Agency for International Development (USAID).

ACTION: Final rule.

SUMMARY: This regulation prescribes the procedures and standard terms and conditions applicable to loan guarantees issued for the benefit of the Arab Republic of Egypt pursuant to the Emergency Wartime Supplemental Appropriations Act of 2003.

EFFECTIVE DATE: September 23, 2005.

FOR FURTHER INFORMATION CONTACT: Christopher F.D. Ryder, Office of the General Counsel, U.S. Agency for International Development, 1300 Pennsylvania Ave., Washington, DC 20523–6601; tel. 202–712–4775, fax 202–216–3055.

SUPPLEMENTARY INFORMATION: Pursuant to the Emergency Wartime Supplemental Appropriations Act of 2003 (Pub. L. 108–11), the United States of America, acting through the U.S. Agency for International Development, may issue loan guarantees applicable to sums borrowed by the Arab Republic of Egypt (the ''Borrower'') from time to time between September 23, 2005 and September 30, 2005, not exceeding an aggregate total of $2 billion in principal amount. The loan guarantees shall insure the Borrower's repayment of 100% of principal and interest due under such loans. The full faith and credit of the United States of America is pledged for the full payment and performance of such guarantee obligations.

This rulemaking document is not subject to rulemaking under 5 U.S.C. 553 or to regulatory review under Executive Order 12866 because it involves a foreign affairs function of the United States. The provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply.

List of Subjects in 22 CFR Part 231

Foreign aid, Foreign relations, Loan programs-foreign relations.

Authority and Issuance

Accordingly, a new part 231 is added to Title 22, Chapter II, of the Code of Federal Regulations, as follows:

PART 231—ARAB REPUBLIC OF EGYPT LOAN GUARANTEES ISSUED UNDER THE EMERGENCY WARTIME SUPPLEMENTAL APPROPRIATIONS ACT OF 2003, PUBLIC LAW 108–11—STANDARD TERMS AND CONDITIONS

Sec.

Authority: Emergency Wartime Supplemental Appropriations Act, 2003, Pub. L. 108–11, chapter 5, title I, ''Economic Support Fund'', para. (2).

§ 231.01 Purpose.

The purpose of the regulations in this part is to prescribe the procedures and standard terms and conditions applicable to loan guarantees issued for the benefit of the Arab Republic of Egypt (''Borrower''), pursuant to the Emergency Wartime Supplemental Appropriations Act of 2003, Public Law 108–11. The loan guarantees will apply to sums borrowed from time to time between September 23, 2005 and September 30, 2005, not exceeding an aggregate total of two billion United States Dollars ($2,000,000,000) in principal amount. The loan guarantees shall insure the Borrower's repayment of 100% of principal and interest due under such loans. The full faith and credit of the United States of America is pledged for the full payment and performance of such guarantee obligations. The loan guarantees will be issued pursuant to a Loan Guarantee Commitment Agreement between the Borrower and the United States dated September 12, 2005.

§ 231.02 Definitions.

Wherever used in the standard terms and conditions set out in this part:

(a) *USAID* means the United States Agency for International Development or its successor.

(b) *Eligible Note(s)* means [a] Note[s] meeting the eligibility criteria set out in § 231.04.

(c) *Noteholder* means the owner of an Eligible Note who is registered as such on the Note Register of Eligible Notes required to be maintained by the Fiscal Agent.

(d) *Borrower* means the Arab Republic of Egypt.

(e) *Defaulted Payment* means, as of any date and in respect of any Eligible Note, any Interest Amount and/or Principal Amount not paid when due.

(f) *Further Guaranteed Payments* means the amount of any loss suffered by a Noteholder by reason of the Borrower's failure to comply on a timely basis with any obligation it may have under an Eligible Note to indemnify and hold harmless a Noteholder from taxes or governmental charges or any expense arising out of taxes or any other governmental charges relating to the Eligible Note in the country of the Borrower.

(g) *Interest Amount* means for any Eligible Note the amount of interest accrued on the Principal Amount of such Eligible Note at the applicable Interest Rate.

(h) *Principal Amount* means the principal amount of any Eligible Notes issued by the Borrower. For purposes of determining the principal amount of any Eligible Notes issued by the Borrower, the principal amount of each Eligible Note shall be the stated principal amount thereof.

(i) *Interest Rate* means the interest rate borne by an Eligible Note.

(j) *Loss of Investment respecting any Eligible Note* means an amount in Dollars equal to the total of the:

(1) Defaulted Payment unpaid as of the Date of Application,

(2) Further Guaranteed Payments unpaid as of the Date of Application, and

(3) Interest accrued and unpaid at the Interest Rate(s) specified in the Eligible Note(s) on the Defaulted Payment and Further Guaranteed Payments, in each case from the date of default with respect to such payment to and including the date on which full payment thereof is made to the Noteholder.

(k) *Application for Compensation* means an executed application in the form of Appendix A to this part which a Noteholder, or the Fiscal Agent on behalf of a Noteholder, files with USAID pursuant to § 231.08.

(l) *Applicant* means a Noteholder who files an Application for Compensation with USAID, either directly or through the Fiscal Agent acting on behalf of a Noteholder.

(m) *Date of Application* means the date on which an Application for Compensation is actually received by USAID pursuant to § 231.15.

(n) *Business Day* means any day other than a day on which banks in New York, NY are closed or authorized to be closed or a day which is observed as a federal holiday in Washington, DC, by the United States Government.

(o) *Guarantee* means the guarantee of USAID pursuant to this part 231 and the Emergency Wartime Supplemental Appropriations Act of 2003, Public Law 108–11.

(p) *Guarantee Payment Date* means a Business Day not more than three (3) Business Days after the related Date of Application.

(q) *Person* means any legal person, including any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

(r) *Note[s]* means any debt securities issued by the Borrower.

(s) *Fiscal Agency Agreement* means the agreement among USAID, the Borrower and the Fiscal Agent pursuant to which the Fiscal Agent agrees to provide fiscal agency services in respect of the Note[s], a copy of which Fiscal Agency Agreement shall be made available to Noteholders upon request to the Fiscal Agent.

(t) *Fiscal Agent* means the bank or trust company or its duly appointed successor under the Fiscal Agency Agreement which has been appointed by the Borrower with the consent of USAID to perform certain fiscal agency services for specified Eligible Note[s] pursuant to the terms of the Fiscal Agency Agreement.

§ 231.03 The Guarantee.

Subject to the terms and conditions set out in this part, the United States of America, acting through USAID, guarantees to Noteholders the Borrower's repayment of 100 percent of principal and interest due on Eligible Notes. Under this Guarantee, USAID agrees to pay to any Noteholder compensation in Dollars equal to such Noteholder's Loss of Investment under its Eligible Note; provided, however, that no such payment shall be made to any Noteholder for any such loss arising out of fraud or misrepresentation for which such Noteholder is responsible or of which it had knowledge at the time it became such Noteholder. This Guarantee shall apply to each Eligible Note registered on the Note Register required to be maintained by the Fiscal Agent.

§ 231.04 Guarantee Eligibility.

(a) Eligible Notes only are guaranteed hereunder. Notes in order to achieve Eligible Note status:

(1) Must be signed on behalf of the Borrower, manually or in facsimile, by a duly authorized representative of the Borrower;

(2) Must contain a certificate of authentication manually executed by a Fiscal Agent whose appointment by the Borrower is consented to by USAID in the Fiscal Agency Agreement; and

(3) Shall be approved and authenticated by USAID by either:

(i) The affixing by USAID on the Notes of a guarantee legend incorporating these Standard Terms and Conditions signed on behalf of USAID by either a manual signature or a facsimile signature of an authorized representative of USAID or

(ii) The delivery by USAID to the Fiscal Agent of a guarantee certificate incorporating these Standard Terms and Conditions signed on behalf of USAID by either a manual signature or a facsimile signature of an authorized representative of USAID.

(b) The authorized USAID representatives for purposes of the regulations in this part whose signature(s) shall be binding on USAID shall include the USAID Chief and Deputy Chief Financial Officer, Assistant Administrator and Deputy, Bureau for Economic Growth, Agriculture and Trade, Director and Deputy Director, Office of Development Credit, and such other individual(s) designated in a certificate executed by an authorized USAID Representative and delivered to the Fiscal Agent. The certificate of authentication of the Fiscal Agent issued pursuant to the Fiscal Agency Agreement shall, when manually executed by the Fiscal Agent, be conclusive evidence binding on USAID that an Eligible Note has been duly executed on behalf of the Borrower and delivered.

§ 231.05 Non-impairment of the Guarantee.

The full faith and credit of the United States of America is pledged to the performance of this Guarantee. The Guarantee shall be unconditional, and shall not be affected or impaired by:

(a) Any defect in the authorization, execution, delivery or enforceability of any agreement or other document executed by a Noteholder, USAID, the Fiscal Agent or the Borrower in connection with the transactions contemplated by this Guarantee or

(b) The suspension or termination of the program pursuant to which USAID is authorized to guarantee the Eligible Notes. This non-impairment of the guarantee provision shall not, however, be operative with respect to any loss arising out of fraud or misrepresentation for which the claiming Noteholder is responsible or of which it had knowledge at the time it became a Noteholder.

§ 231.06 Transferability of Guarantee; Note Register.

A Noteholder may assign, transfer or pledge an Eligible Note to any Person. Any such assignment, transfer or pledge shall be effective on the date that the name of the new Noteholder is entered on the Note Register required to be maintained by the Fiscal Agent pursuant to the Fiscal Agency Agreement. USAID shall be entitled to treat the Persons in whose names the Eligible Notes are registered as the owners thereof for all purposes of this Guarantee and USAID shall not be affected by notice to the contrary.

§ 231.07 Fiscal Agent Obligations.

Failure of the Fiscal Agent to perform any of its obligations pursuant to the Fiscal Agency Agreement shall not impair any Noteholder's rights under this Guarantee, but may be the subject of action for damages against the Fiscal Agent by USAID as a result of such failure or neglect. A Noteholder may appoint the Fiscal Agent to make demand for payment on its behalf under this Guarantee.

§ 231.08 Event of Default; Application for Compensation; Payment.

At any time after an Event of Default, as this term is defined in an Eligible Note, any Noteholder hereunder, or the Fiscal Agent on behalf of a Noteholder hereunder, may file with USAID an Application for Compensation in the form provided in Appendix A to this part. USAID shall pay or cause to be paid to any such Applicant any compensation specified in such Application for Compensation that is due to the Applicant pursuant to the Guarantee as a Loss of Investment not later than three (3) Business Days after the Date of Application. In the event that USAID receives any other notice of an Event of Default, USAID may pay any compensation that is due to any Noteholder pursuant to a Guarantee, whether or not such Noteholder has filed with USAID an Application for Compensation in respect of such amount.

§ 231.09 No acceleration of Eligible Notes.

Eligible Notes shall not be subject to acceleration, in whole or in part, by USAID, the Noteholder or any other party. USAID shall not have the right to pay any amounts in respect of the

Eligible Notes other than in accordance with the original payment terms of such Eligible Notes.

§ 231.10 Payment to USAID of excess amounts received by a Noteholder.

If a Noteholder shall, as a result of USAID paying compensation under this Guarantee, receive an excess payment, it shall refund the excess to USAID.

§ 231.11 Subrogation of USAID.

In the event of payment by USAID to a Noteholder under this Guarantee, USAID shall be subrogated to the extent of such payment to all of the rights of such Noteholder against the Borrower under the related Note.

§ 231.12 Prosecution of claims.

After payment by USAID to an Applicant hereunder, USAID shall have exclusive power to prosecute all claims related to rights to receive payments under the Eligible Notes to which it is thereby subrogated. If a Noteholder continues to have an interest in the outstanding Eligible Notes, such a Noteholder and USAID shall consult with each other with respect to their respective interests in such Eligible Notes and the manner of and responsibility for prosecuting claims.

§ 231.13 Change in agreements.

No Noteholder will consent to any change or waiver of any provision of any document contemplated by this Guarantee without the prior written consent of USAID.

§ 231.14 Arbitration.

Any controversy or claim between USAID and any noteholder arising out of this Guarantee shall be settled by arbitration to be held in Washington, DC in accordance with the then prevailing rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court of competent jurisdiction.

§ 231.15 Notice.

Any communication to USAID pursuant to this Guarantee shall be in writing in the English language, shall refer to the Arab Republic of Egypt Loan Guarantee Number inscribed on the Eligible Note and shall be complete on the day it shall be actually received by USAID at the Office of Development Credit, Bureau for Economic Growth, Agriculture and Trade, United States Agency for International Development, Washington, DC 20523–0030. Other addresses may be substituted for the above upon the giving of notice of such substitution to each Noteholder by first class mail at the address set forth in the Note Register.

§ 231.16 Governing law.

This Guarantee shall be governed by and construed in accordance with the laws of the United States of America governing contracts and commercial transactions of the United States Government.

Appendix A To Part 231—Application for Compensation

United States Agency for International Development
Washington, DC 20523
Ref: Guarantee dated as of _____, 20____:
Gentlemen:

You are hereby advised that payment of $_____ (consisting of $_____ of principal, $_____ of interest and $_____ in Further Guaranteed Payments, as defined in § 231.02(f) of the Standard Terms and Conditions of the above-mentioned Guarantee) was due on _____, 20____, on $_____ principal amount of Notes issued by the Arab Republic of Egypt (the ''Borrower'') held by the undersigned. Of such amount $_____ was not received on such date and has not been received by the undersigned at the date hereof. In accordance with the terms and provisions of the above-mentioned Guarantee, the undersigned hereby applies, under § 231.08 of said Guarantee, for payment of $_____, representing $_____, the Principal Amount of the presently outstanding Note(s) of the Borrower held by the undersigned that was due and payable on _____ and that remains unpaid, and $_____, the Interest Amount on such Note(s) that was due and payable by the Borrower on _____ and that remains unpaid, and $_____ in Further Guaranteed Payments,[1] plus accrued and unpaid interest thereon from the date of default with respect to such payments to and including the date payment in full is made by you pursuant to said Guarantee, at the rate of ____% per annum, being the rate for such interest accrual specified in such Note. Such payment is to be made at [state payment instructions of Noteholder].

All capitalized terms herein that are not otherwise defined shall have the meanings assigned to such terms in the Standard Terms and Conditions of the above-mentioned Guarantee.

[Name of Applicant]

By: _____

Name:
Title:
Dated:

Dated: September 21, 2005.

Christopher F.D. Ryder,

Attorney Advisor.

[FR Doc. 05–19122 Filed 9–22–05; 8:45 am]

BILLING CODE 6116–01–P

[1] In the event the Application for Compensation relates to Further Guaranteed Payments, such Application must also contain a statement of the nature and circumstances of the related loss.

Reader Aids

Federal Register

Vol. 70, No. 184

Friday, September 23, 2005

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

51999–52282 1
52283–52892 2
52893–53042 6
53043–53294 7
53295–53536 8
53537–53722 9
53723–53900 12
53901–54234 13
54235–54468 14
54469–54608 15
54609–54832 16
54833–55020 19
55021–55224 20
55225–55512 21
55513–55704 22
55705–56104 23

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7463 (See Notice of September 8, 2005) 54229
7921 52281
7922 53719
7923 53721
7924 54227
7925 54233
7926 54461
7927 54463
7928 54465
7929 54467
7930 55021
7931 55505
7932 55507
7933 55509
7934 55511

Executive Order:
13223 (See Notice of September 8, 2005) 54229
13224 (See Notice of September 21, 2005) 55703
13235 (See Notice of September 8, 2005) 54229
13253 (See Notice of September 8, 2005) 54229
13286 (See Notice of September 8, 2005) 54229

Administrative Orders:
Memorandum:
Memorandum of September 9. 2005 55015
Presidential Determinations:
No. 2005–33 of August 29, 2005 55013
No. 2005–34 of September 9, 2005 55011
No. 2004–45 of September 10, 2004 (See Presidential Determination No. 2005–35 of September 12, 2005) 54607
No. 2005–35 of September 12, 2005 54607
Notices:
Notice of September 21, 2005 55703

5 CFR

Proposed Rules:
250 54658

7 CFR

2 55705
97 54609
371 55705
500 55706
905 54235
922 54833
946 53723
948 55711
966 53537
985 55713
993 54469
1216 55225
1405 52283

Proposed Rules:
205 54660
271 55776
273 55776
275 55776
277 55776
319 55036
987 53737
1005 55458
1007 55458
1435 53103

8 CFR

Proposed Rules:
Ch. I 52037

9 CFR

310 53043
318 53043

Proposed Rules:
3 55308
94 ..... 52158, 55513
381 53582

10 CFR

50 52893
72 ..... 55023, 55513
300 54835

Proposed Rules:
1 52942
2 52942
10 52942
19 52942
20 52942
21 52942
25 52942
26 52942
50 52942
51 52942
52 52942
54 ..... 52942, 54310
55 52942
63 53313
72 ..... 52942, 55036

73.....52942
75.....52942
95.....52942
140.....52942
170.....52942

12 CFR

607.....54471
611.....53901
612.....53901
614.....53901, 54471
615.....53901, 54471
620.....53901, 54471
627.....55513
703.....55516
712.....55227
790.....55516
791.....55516

Proposed Rules:

XVII.....53105
225.....53320
741.....55308

14 CFR

3.....54822
39 .....51999, 52001, 52004, 52005, 52009, 52285, 52899, 52902, 53051, 53053, 53056, 53058, 53295, 53540, 53543, 53547, 53550, 53554, 53556, 53558, 53725, 53910, 53912, 53915, 54242, 54244, 54247, 54249, 54251, 54253, 54472, 54474, 54612, 54616, 54618, 54622, 54835, 55228, 55230, 55233, 55234, 55236, 55239, 55242, 55245, 55248, 55517, 55519, 55524, 55529
61.....53560, 54810
63.....54810
65.....54810
71 .....52012, 52288, 52903, 52905, 53562, 53917, 53918, 53919, 53920, 53921, 54837, 55250, 55531, 55533
73.....54837
95.....52013
97.....52288, 54624
121.....54810
135.....54810

Proposed Rules:

39 .....52040, 52041, 52043, 52046, 52943, 52945, 52947, 53106, 53586, 53739, 53743, 54311, 54314, 54316, 54318, 54321, 54484, 54486, 54668, 54671, 54674, 54677, 54852, 54854, 54856, 55310, 55315, 55321, 55323, 55598, 55602, 55604
71 .....53594, 53595, 53597, 53598, 55325
121.....54454, 55492
125.....54454
135.....54454
382.....53108

15 CFR

736.....54626
738.....54626
742.....54626
744.....54626
748.....54626
995.....52906

16 CFR

4.....53296

17 CFR

242.....52014
275.....54629

Proposed Rules:

36.....54323
37.....54323
38.....54323
39.....54323
40.....54323

18 CFR

45.....55717
385.....55723

Proposed Rules:

Ch I.....55796
38.....53117
153.....52328
157.....52328
365.....55805
366.....55805
375.....52328

19 CFR

7.....53060
10.....53060
11.....53060
12.....53060
18.....53060
19.....53060
24.....53060
54.....53060
101.....53060
102.....53060
111.....53060
114.....53060
123.....53060
128.....53060
132.....53060
134.....53060
141.....53060
145.....53060
146.....53060
148.....53060
151.....53060
152.....53060
177.....53060
181.....53060
191.....53060

Proposed Rules:

101.....52336

20 CFR

Proposed Rules:

404.....53323
416.....52949, 53323

21 CFR

1.....53728
189.....53063
510.....52291
558.....52291
700.....53063
866.....53069
872.....55026

Proposed Rules:

210.....55038
211.....55038
212.....55038
310.....52050
880.....53326

22 CFR

41.....52292
51.....53922
231.....56102

Proposed Rules:

Ch. I.....52037

23 CFR

1327.....52296

24 CFR

891.....54200
990.....54984

Proposed Rules:

291.....53480
320.....54450

26 CFR

1.....52299, 54631
54.....55500

Proposed Rules:

1 .....52051, 52952, 53599, 53973, 54324, 54859
31.....54680
53.....53599
301 .....54324, 54681, 54687

27 CFR

9.....53297, 53300

Proposed Rules:

4.....53328
24.....53328
27.....53328

28 CFR

Proposed Rules:

16.....53133

29 CFR

1910.....53925
2560.....55500
2590.....55500
4022.....54477
4044.....54477

Proposed Rules:

1404.....53134

30 CFR

57.....55019
938.....52916

Proposed Rules:

57.....53280, 55018
250.....52953
906.....54490

31 CFR

575.....54258

Proposed Rules:

103.....55217

32 CFR

199.....55251
272.....55725
706.....52302

Proposed Rules:

310.....53135

33 CFR

100 .....52303, 52305, 54478
117 .....52307, 52917, 53070, 54637, 55727
165 .....52308, 53070, 53562, 54447, 54479, 54838, 55252, 55534, 55536, 55539
168.....55728

Proposed Rules:

100 .....52052, 52054, 52338
117 .....52340, 52343, 53328, 53604
165.....55607

36 CFR

1228.....55730

37 CFR

1.....54259
3.....54259

Proposed Rules:

Ch. III.....53973

38 CFR

14.....52015
41.....52248
49.....52248

39 CFR

265.....52016

Proposed Rules:

20.....54493, 54510

40 CFR

49.....54638
51.....53930, 55212
52 .....52919, 52926, 53275, 53304, 53564, 53930, 53935, 53936, 53939, 53941, 54267, 54639, 54840, 54842, 55212, 55541, 55545, 55550, 55559, 55663
60.....55568
62.....53567
81 .....52926, 55541, 55545, 55550, 55559
124.....53420
174.....55254
180 .....53944, 54275, 54281, 54640, 55260, 55263, 55269, 55272, 55277, 55282, 55286, 55293, 55731, 55733, 55740, 55748, 55752, 55761
228.....53729, 55770
260.....53420
261.....53420
267.....53420
270.....53420
300 .....52018, 54286, 55296, 55774, 55775

Proposed Rules:

26.....53838
52 .....52956, 52960, 53329, 53605, 53746, 53974, 53975, 54324, 55062, 55610, 55611, 55613
62.....53615
81 .....52960, 53605, 53746, 55610, 55611, 55613
82.....55480
136.....52485
180.....55326
197.....54325
300.....54327, 55329
372.....53752

41 CFR

301–10.....54481

42 CFR

403.....52019
414.....52930
422.....52023

Proposed Rules:

405.....52056
410.....52056

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 23, 2005

AGENCY FOR INTERNATIONAL DEVELOPMENT

Emergency Wartime Supplemental Appropriations Act of 2003:

Arab Republic of Egypt loan guarantees; standard terms and conditions; published 9-23-05

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Organization, functions, and authority delegations:

Under Secretary for Marketing and Regulatory Programs; Noxious Weed Control and Eradication Act; published 9-23-05

DEFENSE DEPARTMENT

Components' basic research programs:

General policy guidance and principles; published 9-23-05

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Practice and procedure:

Regulations regarding filing; revisions; published 9-23-05

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Indiana; published 7-25-05

Pennsylvania; published 8-24-05

Pesticides; tolerances in food, animal feed and raw agricultural products:

Fenpropathrin; published 9-23-05

Pyriproxyten; published 9-23-05

Pesticides; tolerances in food, animal feed, and raw agricultural products

Kasugamycin; published 9-23-05

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Amicarbazone; published 9-23-05

Pyridaben; published 9-23-05

Superfund program:

National oil and hazardous substances contingency plan priorities list; published 9-23-05

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Humboldt Bay Bar and Entrance Channels, CA; published 8-24-05

Regattas and marine parades:

Elizabeth City Jaycee Offshore Grand Prix; published 9-2-05

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Insurer reporting requirements:

Insurers required to file reports; list; published 7-25-05

RULES GOING INTO EFFECT SEPTEMBER 24, 2005

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

M/V WILLIAM G. MATHER; transfer from municipal pier to Cleveland City Docks, OH; published 9-22-05

Regattas and marine parades:

Wilmington YMCA Triathlon, NC; published 9-15-05

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Late seasons and bag and possession limits for certain migratory game birds; published 9-23-05

RULES GOING INTO EFFECT SEPTEMBER 25, 2005

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Eggs, poultry, and rabbit grading:

Fees and charges increase; published 7-22-05

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

Illinois; published 8-25-05

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT

Assistance awards to U.S. non-Governmental organizations; marking requirements; Open for comments until further notice; published 8-26-05 [FR 05-16698]

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Fresh fruit and vegetable terminal market inspection services; fees increase; comments due by 9-26-05; published 8-25-05 [FR 05-16863]

Grapes grown in—

California; comments due by 9-25-05; published 7-25-05 [FR 05-14673]

Milk marketing orders:

Mideast; comments due by 9-26-05; published 7-27-05 [FR 05-14769]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

Child and Adult Care Food Program—

For-profit center participation; comments due by 9-26-05; published 7-27-05 [FR 05-14811]

AGRICULTURE DEPARTMENT

Farm Service Agency

Agency appeal procedures; comments due by 9-26-05; published 7-27-05 [FR 05-14767]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Reports and guidance documents; availability, etc.:

National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Reef fish, spiny lobster, queen conch and coral; comments due by 9-28-05; published 9-13-05 [FR 05-17945]

West Coast States and Western Pacific fisheries—

Pacific whiting; comments due by 9-26-05; published 8-31-05 [FR 05-17342]

COMMODITY FUTURES TRADING COMMISSION

Commodity Futures Modernization of 2000; implementation:

Trading facilities; exempt markets, derivatives transaction execution facilities and designated contract markets, etc.; technical and clarifying amendments; comments due by 9-26-05; published 9-14-05 [FR 05-18174]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:

Business restructuring costs-delegation of authority to make determinations relating to payment; comments due by 9-26-05; published 7-26-05 [FR 05-14625]

Critical safety items; notification requirements; comments due by 9-30-05; published 8-1-05 [FR 05-15156]

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

Sole source 8 (a) awards to small business concerns owned by Native Hawaiian organizations; comments due by 9-26-05; published 7-26-05 [FR 05-14624]

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/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.

H.R. 3169/P.L. 109–66

Pell Grant Hurricane and Disaster Relief Act (Sept. 21, 2005; 119 Stat. 1999)

H.R. 3668/P.L. 109–67

Student Grant Hurricane and Disaster Relief Act (Sept. 21, 2005; 119 Stat. 2001)

H.R. 3672/P.L. 109–68

TANF Emergency Response and Recovery Act of 2005 (Sept. 21, 2005; 119 Stat. 2003)

S. 252/P.L. 109–69

Dandini Research Park Conveyance Act (Sept. 21, 2005; 119 Stat. 2007)

S. 264/P.L. 109–70

Hawaii Water Resources Act of 2005 (Sept. 21, 2005; 119 Stat. 2009)

S. 276/P.L. 109–71

Wind Cave National Park Boundary Revision Act of

2005 (Sept. 21, 2005; 119 Stat. 2011)

Last List September 21, 2005

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.