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

WHEN: Wednesday, January 11, 2006
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 170

[Docket No. TM–04–09]

RIN 0581–AC39

USDA Farmers Market Operating Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is publishing procedures to administer the U.S. Department of Agriculture (USDA) Farmers Market at 12th Street & Independence Avenue, SW., Washington, DC. These procedures allow AMS the means to demonstrate and experiment with direct marketing techniques (operate a farmers market), while at the same time educating consumers on the significance of small farms, the nutritional benefits of fresh fruits and vegetables, and the merits of food recovery. This final rule includes guidelines for the establishment of vendor criteria, selection procedures, and guidelines for governing the operation of the USDA Farmers Market. Also established is a one-time yearly submission information collection in a required application form.

DATES: Effective December 23, 2005.

FOR FURTHER INFORMATION CONTACT: Errol R. Bragg, Associate Deputy Administrator, Marketing Services Branch, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), USDA, Room 2646-South, 1400 Independence Avenue, SW., Washington, DC, 20250; 202/720–8317, fax 202/690–0031; or e-mail at *USDAFMComments@usda.gov.*

SUPPLEMENTARY INFORMATION: Prior published document in this proceeding: Proposed Rule and invitation for comments on proposed USDA Farmers Market guidelines and information collection, Published February 17, 2005 [70 FR 8040].

Executive Order 12866

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

Executive Order 13132

AMS has analyzed this rule under Executive Order 13132, Federalism, and have determined that it does not have Federalism implications to warrant the preparation of a Federalism assessment under that order.

Background

The Agricultural Marketing Act of 1946 authorizes this final rule. The Act directs and authorizes the Secretary of Agriculture to conduct, assist, and foster research, investigation, and experimentation to determine the best methods of processing, preparation for market packaging, handling, transporting, distributing, and marketing agricultural products, 7 U.S.C. 1622(a). Moreover, 7 U.S.C. 1622(f) directs and authorizes the Secretary to conduct and cooperate in consumer education for more effective utilization and greater consumption of agricultural products. In addition, 7 U.S.C. 1622(n) authorizes the Secretary to conduct services and to perform activities that will facilitate the marketing and utilization of agricultural products through commercial channels. Pursuant to 7 CFR 2.79, the Under Secretary for Marketing and Regulatory Programs has re-delegated these authorities to the Administrator of AMS.

On February 17, 2005, AMS published a proposed rule in the **Federal Register** [70 FR 8040] inviting comments on a proposal of guidelines to establish (a) Procedures to administer the USDA Farmers Market at 12th Street & Independence Avenue, SW., Washington, DC; (b) rules for the establishment of vendor criteria, selection procedures, and guidelines for governing the operation of the USDA Farmers Market; and (c) a one-time yearly submission information collection in the form of a required application form.

Interested parties were provided 60 days to comment on the proposed guidelines that applied only to the USDA Farmers Market at headquarters on the corner of 12th Street and Independence Avenue, SW., Washington, DC.

Summary of Comments

Six (6) comments were received from the public; two by mail, the remaining by e-mail. Of the six comments received, three (3) were from students from Tufts University, one (1) was from an individual, and the remaining two (2) provided no comments on the proposed rule.

Three of the four significant comments were supportive of AMS's efforts and the proposed guidelines and procedures. The commenters also indicated that the information collection was necessary and ensured the Agency's performance of its responsibility to properly maintain a functioning market.

The comments received fall largely into a broad category that involves administrative and procedural issues. One issue addresses the USDA Farmers Market hours of operation, the second involves the data collection estimated time requirement, and the third addresses where products sold at the market come or are produced from.

USDA Farmers Market Hours of Operation

Two commenters thought that the hours of operation, 10 a.m.–2 p.m., were too short or inconvenient for those in the immediate vicinity of the market.

This rule applies only to the USDA Farmers Market at USDA headquarters just outside of the USDA complex buildings in Washington, DC. There are four USDA complex buildings: the USDA Whitten and South buildings, located on either side of the Independence Avenue, SW., between 14th and 12th Streets; the third, USDA Cotton Annex, located at the corner of 12th and C Streets; and the fourth, the USDA Forestry building, is located on the corner of 14th and Independence. The USDA Farmers Market, operating June-October annually, is located in a parking area at the corner of 12th Street and Independence Avenue, SW., Washington, DC.

There is a ''mall'' area on the other side of the USDA Whitten building, which is a large grassy area which extends between the Washington Monument and the U.S. Capital building. Buildings on the opposite side

of this mall area are Smithsonian museums.

The remaining closest buildings in the vicinity of the USDA Farmers Market and USDA complex are office buildings and museums: The Holocaust Museum, a Smithsonian museum, the Department of Energy, and two U.S. Treasury buildings.

The majority of shopping customers at the USDA Farmers Market are Federal employees working in this immediate vicinity and tourists visiting various museums in the area.

Beginning with the first market in 1996, the USDA Farmers Market operation hours of 10 a.m.–2 p.m. were mutually agreed upon by participating farmers and AMS. Federal employees generally ventured from work to the market just before, during, and after lunch hours from 11 a.m.–1:30 p.m. This shopping pattern remains unchanged.

Farmers participating in the market drive in from Virginia, Maryland, and Pennsylvania. Generally speaking, traffic into and out of Washington, DC is much lighter just after 9 a.m. and before 3 p.m. The one hour window, from 2–3 p.m. in the afternoon, allows participating farmers and other vendors an opportunity to break-down their tents, pack-up or glean any remaining food items, clean-up their assigned selling market spaces, and leave before traffic begins to increase.

With this information in mind, the 10 a.m.–2 p.m. hours of operation was and is the logical choice for farmers and visiting employee customers in the vicinity. AMS plans no changes to the market's hours of operation from 10 a.m.–2 p.m.

Estimated Time Required for Data Collection

One commenter was concerned that the new information collection, the required USDA Farmers Market Application form, would take longer than an average of 0.08 hours or 4.8 minutes to complete.

Specifically, the information requested on the application form includes contact information including the farmer and farm names, other farm employees, and the farm mailing address, phone, and e-mail. This information is critical for AMS to provide timely information to each farmer about the market's operating guidelines. Additionally, an unexpected condition such as weather related storms or other security issues could require AMS to close the market. Should this ever happen in the future, AMS will be able to contact each farmer prior to the date of the closure.

Although not required for participation, AMS also requests the number of farm acreage (numeric response), whether the farm is certified organic (yes/no response), and whether liability insurance coverage (name of company) is maintained on the product and farm (yes/no responses).

The farm acreage information is gathered to ensure that vendors can and are producing the products provided on the application. AMS also visits farm locations to verify compliance with market criteria and guidelines. Information regarding certified organic farms is gathered to assist market managers in determining a diverse mix of products offered. The insurance liability coverage information, which includes off-farm liability insurance and product liability insurance, is asked to protect USDA from lawsuits and customers from financial harm caused by accidents. This information is gathered only for AMS's records.

Lastly a list of over 45 fruits, vegetables, and other products has been provided on each form. Farmers are asked to provide the month the corresponding products will be available for sale at the market. This information provides AMS with information about the type, variety, and availability of products during the months of June–October.

AMS began the voluntary use of this form in 1998 and rarely does the information requested require farmers and vendors to look-up their responses. AMS plans to make no changes to the estimated time burden for participants to complete the application form. The questions are general in nature and each farmer should already know his or her responses.

Products Sold at the USDA Farmers Market

One commenter expressed concern regarding whether the products produced from China would make their way into this market.

AMS recruits farmers and vendors through local farm organizations in the Washington DC metropolitan area and State Departments of Agriculture in the mid-Atlantic region including, Virginia, West Virginia, Maryland, Delaware, and Pennsylvania. Upon receiving a list of potential farmers and vendors from the organizations and the State Departments of Agriculture, an information packet, which includes an application and this rule, is mailed to each potential participant identified by the contacts.

AMS utilizes selection criteria designed to ensure a consistently high level of quality and diverse products are available at the market, while operating in the constraints of space available at the market site as defined in section 170.12. The criteria include:

(a) The participant must be a producer-only farmer or producer, seller of value-added products, or specialized non-produce vendor, as defined in section 170.4.

(b) AMS selects participants to ensure that a balanced mix of wide range of fresh farm fresh fruits and vegetables will be maintained throughout the season.

(c) Participants should commit to supporting the USDA food gleaning/food recovery initiative. This commitment requires farmers and vendors to donate surplus food and food products at the end of each market day to a local nonprofit organization identified by USDA.

(d) Participants must commit to the entire market season and be willing to participate on a regular basis.

(e) AMS reserves the right to select several farmers or vendors based on previous participation in the program (grandfather provision), consistency in providing quality products, and compliance with operating guidelines.

AMS also provides the USDA Farmers Market operating guidelines (section 170.13) to each participant, and visits farms/businesses as necessary.

Because AMS is involved in the farmer/vendor selection and visits these local farm operations, we do not agree that products brought to the market will be produced from China.

Paperwork Reduction Act

In accordance with Office of Management and Budget (OMB) regulations [5 CFR 1320], which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by this rule were submitted and approved by OMB under 0581–0229. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Form TM–28, USDA Farmers Market Application, was described in the proposed rule as requiring a one-time yearly submission of the information on the application with information on contacts, farm location, type of farming operation, types of products grown, and business practices, including insurance coverage. This signed application also provides a list of over 45 fruits, vegetables, and other products produced by farmers and the months the corresponding products, as requested

for AMS to know when products will be available for sale at the market.

As a result of the comments received, the USDA Farmers Market Application has been revised to clarify two existing requests for information.

First, the application will be revised to request the names of other farmers or employees that will be participating at the market with the farm contact person, instead of a list of other farmers and/or employees who work at the applicant farm. This information is required for USDA security personnel to assist in providing security about who will have access to the USDA property.

Second, the application will be revised to request the estimated months the corresponding products will be available for sale at the market. This information will provide AMS with an estimate not only as to when, but how long each of the products may be available for sale at the market.

These revisions and clarifications have no effect on the burden or description of the form. The information collection will be used only by AMS staff to (a) communicate efficiently and effectively with, and (b) provide operating guidelines and procedures to farmers and vendors participating in the USDA Farmers Market.

Government Paperwork Elimination Act Compliance

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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 regulatory actions not specifically required by law on state, local and tribal governments. This rule contains no Federal mandates that would result in the expenditure of $100 million or more for these groups or for the private section. Therefore, no written statement or cost-benefit analysis is required under this act.

Regulatory Flexibility Act

AMS reviewed the proposed rule under the Regulatory Flexibility Act, 5 U.S.C. 601–612, and determined that it will not have a significant economic impact on a substantial number of small entities. This program does not impose requirements on small entities that are not eligible to participate in the program, and imposes on small entities applying for and participating in the program only minimum requirements necessary for proper administration and oversight of this program. Therefore, a regulatory flexibility analysis is not required and was not performed.

List of Subjects in 7 CFR Part 170

Agricultural commodities, Farmers.

■ For the reasons set forth in the preamble, Title 7, chapter 1 of the Code of Federal Regulations is amended as follows:

■ 1. Add a new subchapter G, consisting of part 170 to read as follows:

Subchapter G—Miscellaneous Marketing Practices Under the Agricultural Marketing Act of 1946

PART 170—USDA FARMERS MARKET

Sec.

170.1 To which farmers market does this rule apply?
170.2 Is the USDA Farmers Market a producer-only market?
170.3 What products may be sold at the USDA Farmers Market?
170.4 Who may participate in the USDA Farmers Market?
170.5 Is there a fee to participate in the USDA Farmers Market?
170.6 How are potential market participants identified for the USDA Farmers Market?
170.7 Can I apply if I am not recruited?
170.8 What are the application procedures?
170.9 What type of information does the application require?
170.10 Must a participant in the market have insurance?
170.11 How are farmers and vendors selected for participation in the USDA Farmers Market?
170.12 What are the selection criteria for participation in the USDA Farmers Market?
170.13 What are the operating guidelines for the USDA Farmers Market?
170.14 What circumstances will prevent participation in the USDA Farmers Market?

Authority: 5 U.S.C. 301; 7 U.S.C. 1621–1627.

§ 170.1 To which farmers markets does this rule apply?

This rule applies only to the USDA Farmers Market at headquarters on the corner of 12th Street & Independence Avenue, SW., Washington, DC.

§ 170.2 Is the USDA Farmers Market a producer-only market?

Yes. A producer-only market is one that does not offer agricultural products that are commercially made, created, or produced, and only allows agricultural products that are grown by a principal farmer. A producer-only market offers raw agricultural products such as fruits, vegetables, flowers, bedding plants, and potted plants. The USDA Farmers Market is a producer-only market since only farmers who may sell products that they grow or produce will be selected for participation. It also allows the sale of value-added products and other specialized non-produce items.

§ 170.3 What products may be sold at the USDA Farmers Market?

Products that may be sold at the market include, but are not limited to, fresh, high-quality fruits, vegetables, herbs, honey, jams and jellies, cheese, vinegars, cider, maple syrup, fish, flowers, bedding plants, and potted plants. USDA inspected meats and poultry items also may be sold.

§ 170.4 Who may participate in the USDA Farmers Market?

Members of three groups may participate in the USDA Farmers Markets:

(a) *Principal farmers or producers who sell their own agricultural products.* The principal farmer must be in full control and supervision of the individual steps of production of crops including tilling, planting, cultivating, fertilizer and pesticide applications (if applicable), harvesting and post-harvest handling on its own farm with its own machinery and labor.

(b) *Principal farmer or producers who sell their own value-added agricultural products.* Value-added products may include agricultural products that have been enhanced through a modification of the product, such as braiding, weaving, hulling, extracting, handcrafting, and the like. It also may result from growing the product in a way that is acknowledged as safer. Farmers and vendors selling these types of products must prepare them predominately with material they have grown or gathered.

(c) *Nonproduce vendors.* A limited number of non-produce vendors may be selected by market management to sell specialized products that enhance the market atmosphere and historically attract customers to a farmers market. These specialized vendors, such as bakers, may be exempted from the reselling restrictions that apply to the farmers and vendors described in paragraphs (a) and (b) of this section.

§ 170.5 Is there a fee to participate in the USDA Farmers Market?

No, there are no fees charged to participate in the market.

§ 170.6 How are potential market participants identified for the USDA Farmers Market?

Potential market participants are recruited by AMS market management through local farm organizations in the

Washington DC metropolitan area State Departments of Agriculture from the mid-Atlantic region including, Virginia, West Virginia, Maryland, Delaware, and Pennsylvania. Upon receiving a list of potential farmers and vendors from the organizations and the State Departments of Agriculture, an information packet, which includes an application and this rule, will be mailed to each potential participant identified by the contacts.

§ 170.7 Can I apply if I am not recruited?

Yes. Interested persons may call or write USDA to request an information packet even if they are not recruited. Those interested may write USDA/AMS/TM/MSB, Room 2646–South Building, 1400 Independence Avenue, SW., Washington, DC, 20250, or call (202) 720–8317. They may also call the USDA Farmers Market Hotline at 1–800–384–8704 to leave a message to have a packet mailed or faxed. They may also visit the web site at *http://www.ams.usda.gov/farmersmarkets/* to review the selection criteria, the operating rules, and to receive an application electronically.

§ 170.8 What are the application procedures?

In January of each year, prospective and returning participants must submit to USDA a completed application for participation in the upcoming market season. Each application will include a copy of this rule, which includes the selection criteria and operating guidelines. Each applicant also will certify that each is the owner or representative of the farm or business submitting the application.

§ 170.9 What type of information does the application require?

The application for participation in the USDA Farmers Market will provide market management with information on contacts, farm location, type of farming operation, types of products grown, and business practices, including insurance coverage.

§ 170.10 Must a participant in the market have insurance?

There is no requirement for a participant to have insurance; however, USDA asks that participants with insurance provide insurance information for our records.

§ 170.11 How are farmers and vendors selected for participation in the USDA Farmers Market?

USDA reviews all applications and selects participants based primarily on the type of farmer or vendor (i.e., fruit, vegetable, herb, baker) and secondly, on the specific types of products to be sold. The selection of the participants is conducted by the market management to ensure a balanced product mix of fruits, vegetables, herbs, value-added products, and baked goods.

§ 170.12 What are the selection criteria for participation in the USDA Farmers Market?

The selection criteria are designed to ensure a consistently high level of quality and diverse products are available at the market, while operating in the constraints of space available at the market site. The criteria are:

(a) *Member of one of the three participant groups specified in § 170.4 of this part.* The participant must be a producer-only farmer or producer, seller of value-added products, or specialized non-produce vendor.

(b) *Participant offers a product that adds to a product mix.* Market management will ensure that a balanced mix of fresh fruits and vegetables will be maintained throughout the season. Final selection of fruit and vegetable producers will be made based on their ability to ensure a wide range of fresh farm products throughout the season.

(c) *Willingness to Glean.* Participants should commit to supporting the USDA food gleaning/food recovery initiative. This commitment requires farmers and vendors to donate surplus food and food products at the end of each market day to a local nonprofit organization identified by USDA. Questions about tax deductions for gleaning should be referred to the Internal Revenue Service or a tax advisor. Receipts for donated foods may be obtained from the receiving nonprofit organization.

(d) *Commitment to market.* Participants must commit to the entire market season and be willing to participate on a regular basis.

(e) *Grandfather provision.* Market management reserves the right to select several farmers or vendors based on previous participation in the program, consistency in providing quality products, and compliance with operating guidelines.

§ 170.13 What are the operating guidelines for the USDA Farmers Market?

(a) *Market Operation.* The Market will be held in parking court #9 of the USDA Headquarters Complex located on the corner of 12th Street and Independence Avenue, SW., Washington, DC. Selling will not begin before 10 a.m. and will end promptly at 2 p.m. each market day. All participants must be in place, setup and ready to sell by 10 a.m. Due to space restrictions at the site, late arrivals will be located at market management's discretion. All vehicles must vacate the market site no later than 3 p.m.

(b) *Notification of Attendance.* Each participant must call USDA within 48 hours of a market day if they cannot attend. Failure to provide proper and timely notification may result in termination of participation in the market.

(c) *Participant Space.* One vehicle is permitted per space; all other vehicles must be removed from the immediate market premises. One space is 16w x 17d feet, and all trucks must fit within that area. There is only room for 15 spaces.

(d) *Signage.* Participants must clearly display the name of their farm/business and post prices for all items being sold.

(e) *Clean-up.* Participants are responsible for cleaning all trash and waste within and around their allotted space. Garbage bins are provided on the market site for this purpose.

(f) *Cooperative Marketing.* Participants are permitted to share space with another participant or sell another's products if the arrangement is deemed by market management as beneficial to the market. A co-op must be pre-approved by market management and will not be accepted if similar products are already sold by existing farmers or vendors.

(g) *Farm/Business Visits.* Market management may visit farm/business locations to verify compliance with market criteria and guidelines. Participants should submit a map and directions to their farm/businesses with their market applications.

(h) *Conduct on Federal Property:* Participants must comply with Subpart 20.3 of the Federal Property Management Regulations, ''Conduct on Federal Property,'' 41 CFR 20.3.

§ 170.14 What circumstances will prevent participation in the USDA Farmers Market?

(a) Efforts will be made to accommodate all who apply to participate in the market. However, market management may deny participation in the market because of insufficient space or excess supply of the products to sell, failure to meet the stated criteria, or the participant's noncompliance with the operating guidelines or regulations.

(b) Participants who sell before the 10 a.m. opening time will be restricted from participating in the market following their second violation. A written warning will be given to the participant for the first violation of this guideline. After the second violation occurs, a letter of reprimand will be given to the participant restricting their participation for the next immediate market day.

(c) Participants who arrive after the 10 a.m. opening time may be restricted from participating in the market following their second violation. A written warning may be given to the participant for the first violation of this guideline. After the second violation occurs, a letter of reprimand may be given to the participant restricting their participation for the next immediate market day.

Dated: December 19, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–24427 Filed 12–22–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–049–2]

Importation of Fragrant Pears From China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of fragrant pears from China under certain conditions. As a condition of entry, fragrant pears from China must be grown in the Korla region of Xinjiang Province in a production site that is registered with the national plant protection organization of China. The fragrant pears will be subject to inspection. In addition, the pears must be packed in cartons that are labeled in accordance with the regulations, shipped in insect-proof containers, and safeguarded from pest infestation during transport to the United States. This action will allow fragrant pears to be imported from China while continuing to provide protection against the introduction of plant pests into the United States.

DATES: *Effective Date:* January 23, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Belano, Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The regulations have not previously included provisions authorizing the importation of fragrant pears from China. However, the national plant protection organization of China requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fragrant pears from the Korla region of Xinjiang Province in China to be imported into the United States.

Under section 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. The Secretary has determined that it is not necessary to prohibit the importation of fragrant pears from the Korla region of Xinjiang Province in China in order to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.[1]

Accordingly, on May 23, 2003, we published in the **Federal Register** (68 FR 28161–28166, Docket No. 02–049–1) a proposal to amend the fruits and vegetables regulations to allow the importation of fragrant pears from China under certain conditions. Among other things, we proposed that the fragrant pears be packed in insect-proof containers that are labeled in accordance with § 319.56–2(g). However, upon further consideration, we are amending the packing and shipping requirements in this final rule to make clear that the fragrant pears must be packed in cartons that are labeled in accordance with § 319.56–2(g), shipped in insect-proof containers, and safeguarded during transport to the United States in a manner that will prevent pest infestation. These changes will clarify the packing and shipping requirements and be more consistent with current packing and shipping practices for pears.

[1] This determination is based on the finding that the application of the remedial measures contained in this rule will provide the protection necessary to prevent the introduction and dissemination of plant pests into the United States. The factors considered in arriving at this determination include the conclusions of a pest risk assessment, program analysis, and site visits.

We solicited comments concerning our proposal for 60 days ending on July 22, 2003. We received seven comments by that date. They were from private citizens, a professional organization, and representatives of State and foreign governments. The comments are discussed by subject below.

General

One commenter requested that we provide the scientific name for fragrant pear. In the January 1997 pest risk assessment, we indicated that the scientific name for fragrant pear from China was *Pyrus ussuriensis* Maxim. However, in 2005, the national plant protection organization of China informed APHIS that the scientific name for fragrant pear is *Pyrus* sp. nr. *communis.* Accordingly, we will use *Pyrus* sp. nr. *communis,* rather than *Pyrus ussuriensis* Maxim, as the scientific name for fragrant pear.

Another commenter requested that APHIS identify the specific government organization that serves as the ''national plant protection organization for China.'' Currently, the national plant protection organization for China is known as the Administration for Quality Supervision, Inspection and Quarantine (AQSIQ). We used the generic term ''national plant protection organization of China'' in the proposed rule and continue to do so in this final rule because the name of the national plant protection organization of China has changed several times in recent years. Our use of this more generic term is consistent with international standards.

One commenter recommended that APHIS fully disclose all information collected and used in generating the proposed rule. This commenter also recommended that APHIS delay action on the proposed rule until it has developed and circulated for peer review the following documents: A detailed plan documenting the incidence of specific quarantine pests in the Korla region, survey information for those pests for which free area status is proposed, in-orchard monitoring plans for those pests known to occur in the region, and greater detail of the post-harvest inspection protocols which will be implemented.

We do not believe it is necessary to delay action on the proposed rule pending development and peer review of the documents listed by the commenter. The Secretary has determined that it is not necessary to prohibit the importation from the Korla region of Xinjiang Province in China in order to prevent the introduction into the United States or the dissemination

within the United States of a plant pest or noxious weed. This determination is based on the finding that the remedial measures contained in this final rule will provide the protection necessary to prevent the introduction and dissemination of plant pests into the United States. In making this determination, the Secretary considered the conclusions of a pest risk assessment, program analysis, survey information, and site visits. Our analysis is documented in a September 2005 information memorandum, which is available on the Internet at *http://www.regulations.gov.*[2] This memorandum updates a June 2003 information memorandum on the same subject. We do not believe that additional documents need to be developed and circulated for peer review.

With respect to the disclosure of all information collected and used in generating the proposed rule, we note that the proposed rule stated that the pest risk assessment and supporting documents could be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**, and we provided several individuals with the information they requested. The information and data provided by China are summarized in the September 2005 information memorandum and the documents on which the information memorandum is based are on file with APHIS. Due to the large volume of material provided by China, we would ask that persons wishing to view those documents make arrangements with the person listed under **FOR FURTHER INFORMATION CONTACT** for viewing the file or obtaining copies of specific documents.

One commenter indicated that fragrant pears should not be imported from China because the risk of fruit flies is too great, especially since ''APHIS is already not doing its job with imports.''

We do not agree that the risk of fruit flies is too great to allow the importation of fragrant pears from China. As documented in the September 2005 information memorandum, the Korla region of Xinjiang Province has been determined to be free of fruit flies. China conducted trapping for fruit flies for 3 years in the Korla region with negative results. Furthermore, in the unlikely event a fruit fly is introduced into the region, climatic conditions and production practices there would significantly reduce the likelihood of establishment. The commenter provided no scientific documentation to support his suggestion that we continue to prohibit the importation of fragrant pears from the Korla region of Xinjiang Province in China.

Another commenter stated that ''as a matter of equity, USDA should continue to postpone the implementation of this proposed rule until such time as the Chinese Government allows U.S. pear growers access to its market for U.S. pears since we believe that we have provided ample scientific justification for such access.''

Other countries make decisions as to whether to allow the importation of U.S. products only when formally requested. APHIS has already formally requested that China allow the importation of U.S. pears, and we are working with the U.S. pear industry to address concerns raised by the national plant protection organization of China. Moreover, under the Plant Protection Act, our decisionmaking related to allowing or denying the importation of commodities must be based on phytosanitary considerations rather than the goal of reciprocal market access.

Pest Risk Assessment

Several commenters stated that APHIS' pest risk assessment did not consider all pests of quarantine concern. One commenter noted that the pest risk assessment did not include the following pests: *Carposina sasakii* Matsimura, *Coleophora hemerobiella* Scopoli, *Leucoptera malifoliella* (Costa), *Synanthedon hector* (Butler), and *Cydia inopinata* Heinrich. Another commenter identified 29 insect species of quarantine concern that were not identified in APHIS' pest risk assessment. However, the commenter noted that some of these pests may be synonymous with APHIS-listed species. This commenter also noted that a January 2003 proposed import risk assessment for Shandong pears published by the Australian Government identified a number of species that are not addressed by APHIS' pest risk assessment.

We have reviewed the scientific literature for each pest identified by the commenters. For various reasons (e.g., post-harvest handling practices, the pest does not attach to fruit, the pest is a surface pest and easily detected), we believe that none of these pests will follow the pathway into the United States. *Carposina sasakii* and *Cydia inopinata* (syn. *Grapholita inopinata*) are absent from the fragrant pear production areas and the province of Xinjiang as a whole. *Leucoptera malifoliella* has been found not likely to follow the pathway. *Coleophora hemerobiella* may follow the pathway as hitchhikers but, since they are external, can be easily detected during inspection. *Synanthedon hector* does occur in China but does not attack pears since it is a pest of apples.

One commenter stated that one of the mites of concern, *Tetranychus viennensis*, occurs in Heshuo in Xinjiang Province. This commenter also stated that Canada has intercepted mites on fragrant pear shipments from China.

The Hawthorn spider mite, *Tetranychus viennensis*, was found in Heshuo Farm in Xinjiang Province in 1996. Heshuo Farm is located approximately 50 miles from the production sites in the Korla region and is difficult to reach due to poor road conditions. There is no commercial production of pears or apples in Heshuo, and there is very little commercial activity between Heshuo and Korla. To date, the Hawthorn spider mite has not been found in the Korla region. According to the September 2005 information memorandum, this mite was not found in the Korla region during general surveys in the 1970s, 1980s, and 1990s or during several intensive surveys for mites in 1996–1997. Moreover, based on information provided by Canada, the Hawthorn spider mite has been intercepted on Ya pear shipments from China, not fragrant pears. Ya pears are grown in the Hebei Province of China, which is separated from the Korla region by the Gobi Desert.

One commenter stated the proposed rule is overly strict and not scientifically justified. This commenter went on to note that the listed pests include non-quarantine saprophytes (organisms that obtain food from dead organic matter). The commenter suggested that APHIS delete these saprophytes from the quarantine pest table or determine which species will be recognized as quarantine pests.

We disagree with the commenter's claim that the proposed rule is overly strict and not scientifically justified. The provisions in the proposed rule and in this final rule are based on the conclusions of a pest risk assessment, program analysis, survey information, and site visits, and will provide the protection necessary to prevent the introduction and dissemination of plant pests into the United States. The commenter did not provide the names of those saprophytes he considered to be non-quarantine pests, and we continue

[2] This final rule and the September 2005 information memorandum are available on the Regulations.gov Web site. Go to *http://www.regulations.gov,* click on the ''Advanced Search'' tab and select ''Docket Search.'' In the Docket ID field, enter APHIS–2005–0108 then click on ''Submit.'' The final rule and information memorandum will appear in the resulting list of documents. The information memorandum may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

to believe that the saprophytes listed in the pest risk assessment are properly characterized as quarantine pests.

One commenter requested that APHIS provide scientific documentation showing that *Hoplocampa pyricola* is not an internal feeder. This commenter also asked if the Hawthorn spider mite lays eggs in calices of fruit like the *Tetranychus urticae*.

Although little is known about the biology of the sawfly, *Hoplocampa pyricola*, the available scientific information indicates that sawfly eggs are deposited in the ovary of the flower. The larvae then feed on the ovary and the fruit. Once the larvae reach maturity, the infested fruit prematurely drops from the tree and the larvae enter the soil to pupate. Given the external damage and premature dropping of the fruit, we believe that inspections in China and the United States will mitigate the risk of this pest.

The Hawthorn spider mite primarily feeds on the underside of a leaf, preferably the underside of a cherry leaf. Female mites overwinter in the cracks and under the bark of stems and branches. When mite populations are high, the female mite may overwinter in the calyx crevices or in the depression on the stem-end of mature fruit, like the *Tetranychus urticae*.

Several commenters asked why APHIS had denied so many permits for pears from China in the past. These commenters wondered how these permit requests differed from the current request that APHIS allow fragrant pears from the Korla region of Xinjiang Province in China to be imported into the United States.

As previously discussed, the regulations prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States. Prior to this final rule, the regulations did not authorize the importation of fragrant pears from China. Each year APHIS receives many requests for permits to import fruits and vegetables into the United States. Some of these requests are for nonadmissible items. Prior to 1995, when the importation of Ya pears from Hebei and Shandong Provinces was authorized, we had only allowed the importation of sand pears from China. Therefore, all requests for permits to export pears, other than sand pears, into the United States from China were denied prior to 1995, and since 1995, permits have been issued only for sand pears and Ya pears from China. This final rule amends the regulations to allow the importation of fragrant pears from China under certain conditions, thus making the issuance of permits for fragrant pears possible.

Another commenter noted that the pest risk assessment states that there were no pest interceptions on pear imports from China between 1985 and 1995. To better evaluate this statement, the commenter requested that APHIS provide the total number of shipments imported into the United States during that time and the number of shipments that were sampled. The commenter also asked for the sample rate used by APHIS on other imported pear species from China.

The inspectors routinely sample 2 percent of fruit presented for inspection. There were 10 shipments of sand pears from China in 1994 and 15 shipments of sand pears in 1995, all of which were inspected. Our records show there were no interceptions of quarantine significance from commercial shipments or passenger baggage from 1984 through 1995.

One commenter noted that the pest risk assessment indicates that sweep nets and blacklight traps were used to survey for mites in the area. The commenter indicated that these are inappropriate survey tools to detect mites and expressed concern that inspection upon entry may not provide sufficient protection from the introduction of Hawthorn spider mite into the United States and more stringent measures may be needed.

Sweep nets and blacklight traps were reported as having been used by general survey teams working in the region between 1971 and 1975; those teams were engaged in surveys for a variety of pests, i.e., not just for mites. Subsequent intensive surveys for mites were conducted after Chinese officials provided advanced identification training to their extension agents in the Korla region. None of the species of mites collected are considered to be of quarantine significance by the United States.

As previously discussed, the Hawthorn spider mite has been found in Heshuo in Xinjiang Province, but not in the Korla region. According to the September 2005 information memorandum, the Hawthorn spider mite was not found in the Korla region during general surveys in the 1970s, 1980s, and 1990s. Moreover, the Hawthorne spider mite was not identified during several intensive surveys for mites in 1996–1997. Indeed, no mites of quarantine significance were identified during these intensive surveys. We believe that current production practices in China and the mitigation measures in this final rule will provide the protection necessary to prevent the introduction and dissemination of the Hawthorn spider mite into the United States. Therefore, we are making no changes based on this comment.

Registration

Several commenters noted there is very little information about what it takes for a site to become registered (e.g., grower practices or surveys of pest populations). These commenters indicated there is insufficient information about the registration process to evaluate the effectiveness of that proposed requirement and whether the national plant protection organization of China has the authority and resources to maintain and evaluate such registrations.

The proposed rule and this final rule do not provide specific information about how a site becomes registered by the national plant protection organization of China because the national plant protection organization of China determines the requirements for registration, not APHIS. In general, a production site seeking to register would be subject to control practices and pest surveys mandated by the local and national plant protection organizations of China. This registration system is already being used by China to export fragrant pears to Canada and other countries. We are confident that the registration system, in addition to the other mitigation measures set forth in this rule, will be sufficient to protect against the introduction of plant pests into the United States. Accordingly, we are making no changes based on these comments.

One commenter requested proof that the growing area is free of fruit flies. As previously discussed, all available data indicates that the Korla region of Xinjiang Province is free of fruit flies. The Chinese Government conducted trapping for *Bactrocera dorsalis* for 3 years in the Korla region with negative results. Furthermore, our trading partners have not reported any interceptions of fruit fly larvae in fragrant pears from Xinjiang Province. In the unlikely event a fruit fly is introduced into the region, climatic conditions and production practices there would significantly reduce the likelihood of establishment.

Another commenter asked if the Korla region is currently free of the pests identified in the proposed rule and pest risk assessment. If so, the commenter requested that the supporting data be made available for review by independent experts.

As noted in our response to a comment earlier in this document, the proposed rule announced the availability of the pest risk assessment and supporting documents, and the information and data provided by China are summarized in the September 2005 information memorandum. The September 2005 information memorandum identifies 17 pests of concern; of these, 1 pest (*Tetranychus kanzawai* Kishida) is not considered a quarantine pest, 1 pest (pear rusty skin viroid, also known as apple scar skin viroid) is not expected to follow the pathway, and there is no evidence of the remaining 15 quarantine pests in Korla. We believe that the information memorandum fully identifies, summarizes, and analyzes the available scientific data, but, as stated previously, persons wishing to review the large volume of material provided by China may do so by making arrangements with the person listed under **FOR FURTHER INFORMATION CONTACT**.

Trapping and Monitoring

One commenter requested information about the sampling protocols used to detect pests. As discussed in the proposed rule, fragrant pears would be subject to both pre-harvest and post-harvest inspections by the national plant protection organization of China or officials authorized by the national plant protection organization of China. The national plant protection organization of China would establish the sampling protocols used to detect pests. However, the national plant protection organization of China would have to provide APHIS with information on pest detections and pest detection practices, and APHIS would have to approve the pest detection practices.

One commenter stated that the proposed rule did not mention any interceptions of quarantine diseases on Ya pears in 2001 and 2002, nor did it discuss interceptions of quarantine pests by Canada on both Ya and fragrant pears. The commenter recommended that APHIS conduct and publish a survey of other Chinese pome fruit importing countries to determine their experience with pest interception on Chinese pears and apples.

As part of APHIS' pest risk analysis, we reviewed information about interceptions of quarantine pests and diseases on all species of pears. Information obtained from Canada indicates that two pests of quarantine concern to APHIS were intercepted on pears from China during the 2002–2003 season—the *Aphanostigma* sp. poss. *jackusiensis* (phylloxeran) and the Hawthorn spider mite. The phylloxeran was intercepted on both Ya pears and fragrant pears from China while the Hawthorn spider mite was intercepted only on Ya pears. Nevertheless, we believe that the origin requirements and remedial measures contained in this final rule will provide the protection necessary to prevent the introduction and dissemination of these pests into the United States. Phylloxeran causes damage on the surface of the fruit that is easily detected by inspection and, as previously discussed, the Hawthorn spider mite does not occur in the Korla region and it is unlikely to become established in that region due to climatic conditions and production practices. In response to the Canadian interceptions of phylloxeran on fragrant pears, we have added that pest to the list in § 319.56–2nn(a)(4)(ii) of pests that, if detected, could lead to APHIS' rejection of the lot or consignment and a prohibition on the importation into the United States of fragrant pears from the production site for the season.

In December 2003, after the close of the comment period for the proposed rule, APHIS suspended imports of Ya pears from China due to detections of Chocolate spot (*Alternaria yaliinficiens*). In March 2005, APHIS negotiated revisions to the Ya pear work plan with China, strengthening the mitigation measures applied to prevent further introductions of quarantine significant *Alternaria* spp. in Ya pears. Upon signing the new agreement, the Ya pear market was reopened. We note that this final rule requires that if any listed quarantine pest, including *Alternaria* spp., is found during the pre-harvest inspection or at any other time, the national plant protection organization of China must notify APHIS immediately. APHIS may then reject the lot or consignment and prohibit the importation into the United States of fragrant pears from the production site for the season, and imports may not resume until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken.

One commenter asked what would happen if different pests were found in different sites, and if that would be regarded in the same manner as if a single type of pest was found at more than one production site. Another commenter recommended that APHIS prohibit the importation of fragrant pears into the United States if any pests or more than one species of different pests are detected in more than one registered production site.

APHIS' response to a pest detection would depend upon the pest. Upon detection of Oriental fruit fly (*Bactrocera dorsalis*) during the pre-harvest inspection or at any other time, APHIS could prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken. In addition, APHIS could prohibit the importation into the United States of fragrant pears from a production site for the season if any of the following pests are detected on that production site during the pre-harvest inspection or at any other time: Peach fruit borer (*Carposina sasaki*), yellow peach moth (*Conogethes punctiferalis*), apple fruit moth (*Cydia inopinata*), Hawthorn spider mite (*Tetranychus viennensis*), red plum maggot (*Cydia funebrana*), brown rot (*Monilinia fructigena*), Asian pear scab (*Venturia nashicola*), pear trellis rust (*Gymnosporangium fuscum*), Asian pear black spot (*Alternaria spp.*), and phylloxeran (*Aphanostigma* sp. poss. *jackusiensis*). Thus, if peach fruit borer is detected in one production site and yellow peach moth is detected in another, APHIS could prohibit the importation into the United States of fragrant pears from each production site for the season. However, if any of the pests listed above is detected in more than one registered production site, APHIS could prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken.

One commenter indicated that it would be difficult to make sure that fragrant pears absolutely do not carry Asian pear black spot or Hawthorn spider mite. Thus, the commenter stated, it would be better if APHIS prohibited the importation of fragrant pears from the production sites where those pests are detected, instead of prohibiting the importation of all fragrant pears from China.

We do not agree that it would be too difficult to ensure that fragrant pears do not carry Asian pear black spot or Hawthorn spider mite. We believe that the mitigation measures in this rule will provide the protection necessary to prevent the introduction into and dissemination within the United States of plant pests. However, if Asian pear black spot or Hawthorn spider mite is detected on a production site during the pre-harvest inspection or at any other time, APHIS could prohibit the

importation into the United States of fragrant pears from that production site for the season. Moreover, if Asian pear black spot or Hawthorn spider mite is detected in more than one registered production site during the pre-harvest inspection or at any other time, APHIS could prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken. We are making no changes based on this comment.

One commenter noted that pest-specific remedial measures are not described in the proposed rule. The commenter contacted several experts in temperate orchard pest management to review the risk assessment and the proposed remedial measures. These experts indicated that they needed more information about the proposed remedial measures to determine if these measures would be adequate.

In the proposed rule, we proposed to allow the importation of fragrant pears from China under certain conditions. Specifically, we proposed to require that the fragrant pears be grown in the Korla region of Xinjiang Province in a production site that is registered with the national plant protection organization of China and that these production sites be free of certain pests. Furthermore, we provided that detection of certain pests could result in a prohibition on the importation into the United States of fragrant pears from a particular production site for the season or from all of the production sites in the Korla region of Xinjiang Province until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken. Accordingly, the burden is on the national plant protection organization of China to provide remedial measures that are appropriate for the pest and agreeable to APHIS.

Safeguarding Pears From Pest Infestation

One commenter stated that the labeling and transport of fragrant pears must preclude the pears from being commingled with fruit from non-approved areas of China. Several commenters requested clarification about how the fragrant pears would be isolated from other fruits (e.g., would the pears need to be stacked on different pallets or different stacks on a pallet, in different cold rooms, or stored in facilities separated by distance or physical barrier?).

We agree that the labeling and transport of fragrant pears must preclude the commingling of fruit from non-approved areas of China. In the proposed rule, we proposed to require that the fragrant pears be safeguarded at the cold storage facility while awaiting export. Specifically, we proposed that the fragrant pears be isolated from fruit from unregistered production sites. To allow for greater flexibility in meeting this requirement, we did not specify the manner in which the fragrant pears are to be isolated. The fragrant pears could be isolated from fruit from unregistered production sites by stacking them on different pallets at the cold storage facility, by holding the pears and other fruits in separate rooms, or by holding the pears and other fruits in separate cold storage facilities. Any of these options would satisfy the requirement to isolate pears held in a cold storage facility from fruit from unregistered production sites.

Economic Analysis

One commenter stated that the cost/benefit assessment in the proposed rule may not be accurate because it is based on Ya pear imports, and fragrant pears are a different species with different sensory characteristics. The commenter also pointed out that an assessment of the short-term impacts is not appropriate for long-lived perennial crops such as pears.

The analysis in the proposed rule recognized that Ya pears and fragrant pears are different species with different sensory characteristics. Because fragrant pears have not been imported into the United States from China, the analysis used Ya pear data to estimate the potential economic effects of importing fragrant pears from China. In order to estimate the economic effects of importing fragrant pears, the analysis assumed that demand for Ya pears and fragrant pears will be similar, but it is not necessary to assume that the physical characteristics are the same.

Short-term and long-term impacts depend on consumer acceptance of, and demand for, fragrant pears, not on the length of the production cycle or the expected life of the tree. The short-run analysis is based on data from a similar good, Ya pears. There are no comparable data available for a long-run analysis. Accordingly, the analysis in the proposed rule focused on the short term impacts of importing fragrant pears from China into the United States.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the fruits and vegetables regulations to allow the importation of fragrant pears from China under certain conditions. This action will allow fragrant pears to be imported from China while continuing to provide protection against the introduction of plant pests into the United States.

The following economic analysis examines whether this rule might have a significant economic impact on a substantial number of small entities, as required by the Regulatory Flexibility Act. There are three reasons why we believe this will not be the case. First, the risk of quarantine pests being introduced into the United States via this pathway is extremely low. Second, fragrant pears are not produced in the United States and fragrant pear import levels are expected to be low relative to domestic pear availability. In addition, our analysis suggests that fragrant pears from China will not be a close substitute for domestically produced pears; therefore, profit losses, if any, for domestic pear producers are expected to be extremely low, at least over the next several years. Third, allowing the importation of a pear variety that is not produced domestically will lead to gains for small importers and pear consumers in the United States.

Pear Production and Pest Risks

Fragrant pears are grown in an area surrounding Korla, a city in Xinjiang Province, which makes up the northwest corner of China, and are not grown anywhere else in the world. The production area, which is west of the Gobi Desert and just north of the Taklamakan Desert, experiences extremely hot summers, cold winters, and very little rainfall, and is geographically, as well as culturally, isolated. In addition, while agricultural commodities are exported from the region, there is little if any incoming trade. As a result, the potential for pests of quarantine significance being introduced into the area is extremely low. Furthermore, in the unlikely event a pest was introduced into the region, climatic conditions and production practices there would significantly reduce the likelihood of establishment.

Approximately 15,000 hectares are devoted to fragrant pear production in Xinjiang Province, yielding roughly

90,718 metric tons per year, of which 10 percent is exported. We expect that exports to the United States would come mainly from the farm units known as Regiments 28, 29, 30, 33, and Shayi Dong Farms, although additional quantities could come from Regiments 31 and 32. The land belongs to the government, and the proper maintenance of every orchard is under the direct supervision of China's national plant protection organization, AQSIQ, which stations one supervisor to each regiment in the export area. The AQSIQ supervisor is in contact with the growers on a weekly basis and directs the work of several survey teams.[3] The survey teams are in the orchards every day and are responsible for maintaining traps, extension work, fruit cutting and inspection, checking to see that orchards are maintained properly, participating in annual pest surveys, and checking on other crops. If it is determined that an orchard is not being managed properly, AQSIQ assigns it to another grower.

Benefits and Costs

Because pest risks associated with this pathway are extremely low, we expect regulatory costs associated with quarantine pest introductions to be negligible. In addition, because fragrant pears are not produced in the United States and because quantities designated for export are expected to be low, at least during the next several years, we do not expect fragrant pears to compete with domestically produced pears over the short run. However, imports of fragrant pears from China may increase over time, as has been the case for U.S. Ya pear imports and Canadian Ya and fragrant pear imports from China (table 1).

TABLE 1.—YA PEARS FROM CHINA AND DOMESTICALLY PRODUCED FRESH PEARS, QUANTITIES, AND PRICES

Year	U.S. Ya pear imports [1] (1,000 kg)	Import prices [1] ($/kg)	Domestic production fresh pears [2] (1,000 kg)	Domestic prices [2] ($/kg)	Chinese pear exports to Canada [3] (1,000 kg)
1996	NA	NA	416,897	$0.62	321
1997	NA	NA	519,191	0.41	182
1998	329	$1.48	466,107	0.44	909
1999	2,058	1.26	486,410	0.43	1,899
2000	5,264	0.73	496,348	0.36	4,663
2001	6,654	0.54	494,588	0.43	6,548
2002	5,788	0.57	475,769	0.40	10,933
2003	7,129	0.62	507,983	0.39	11,093
2004	109	0.63	477,429	0.48	2,826

NA = not available.
[1] Data for 1998–2004 are from FAS (2005).
[2] The nominal price data during 1996–2004 are from NASS (2005), and data for 1999–2004 are from NASS (2005).
[3] China currently exports fragrant pears (and possibly Ya pears) to Canada. These data are from FAS (2005).

As indicated in Table 1, after the initial rapid expansion in Ya pear imports from 1998 to 2000, growth continued at a slower rate. Over the 4-year period 2000–2003, U.S. imports of Ya pears from China increased an average of about 8 percent per year. During this 4-year period, the quantity of Ya pears imported from China was equivalent to about 1.3 percent of domestic pear production, and the average price of Ya pears was about one-and-a half times the average price of domestically produced pears.

Import restrictions on Ya and fragrant pear imports from China imposed by the Canadian Food Inspection Agency are somewhat similar to those in this rule and, as a result, Canadian imports of Chinese Ya and fragrant pears provide additional information regarding potential future U.S. imports of these commodities. During the same 4-year period, 2000–2003, Canadian imports of pears from China increased an average of about 24 percent per year.

We used time-series data on U.S. Ya pear imports from China, domestic fresh pear production and prices, and total domestic expenditures on fruit to estimate the rate of substitution between Ya pears and domestically produced pears in order to glean information about the potential rate of substitution between fragrant pear imports and domestic pears. In particular, we estimated a linear relationship between fresh domestic pear prices and a constant, fresh domestic production, and Ya pear imports from China. The coefficient estimate on Ya pear imports was found to be negative but not statistically different from zero, indicating that Ya pears do not substitute for domestically produced pears. If the relationship between imported fragrant pears and domestically grown pears is found to be similar to the modeled relationship between imported Ya pears and domestically grown pears, then the results of the regression analysis indicate that U.S. imports of fragrant pears from China will not compete with domestically produced pears during the next several years.

Notwithstanding the expected insignificant effects of the rule on domestic pear production, allowing the importation of fragrant pears from China will provide benefits to U.S. importers and merchants of Chinese fragrant pears. The U.S. Small Business Administration defines a small pear importer (North American Industry Classification System [NAICS] category 424480, Fresh Fruit and Vegetable Merchant Wholesalers) as one that employs not more than 100 persons. In 1997,[4] more than 96 percent (5,456 of 5,657) of fresh fruit and vegetable wholesalers would be considered small by SBA standards.[5] There are no data to indicate directly the level of benefits that may accrue to small pear importers and merchants in the United States, but any new trade of a commodity (in this case, fragrant pears from China) can be

[3] There are approximately 5,166 hectares of agricultural production, 3,000 growers, and 66 survey teams in Regiments 28, 29, 30, 33, and Shayi Dong Farms, for an average 1.72 hectares per grower and 79 hectares per survey team. Most of Regiment 30, however, is devoted to wheat and rice production. Each fragrant pear grower manages about 1 hectare.

[4] Establishment and firm size is not yet available for the 2002 Economic Census.

[5] 1997 Economic Census. Department of Commerce, U.S. Bureau of the Census. NAICS Category 424480: Fresh Fruit and Vegetable Merchant Wholesalers.

expected to benefit entities dealing in that commodity.

Conclusion

We expect that allowing the importation of fragrant pears from China will not have a significant economic impact on a substantial number of small entities. Fragrant pears from China will not directly compete with domestically produced pears, assuming the demand for imported fragrant pears will be similar to that for imported Ya pears. If imports of fragrant pears increase over time, as has been the case for U.S. Ya pear imports and Canadian Ya and fragrant pear imports, it is possible that fragrant pears could compete with some varieties of domestically produced pears in the future, but only marginally given the small quantity of fragrant pears expected to be imported compared to domestic pear production. Fragrant pear importers and merchants, most of which are likely to be small entities, will benefit from the importation of fragrant pears from China.

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

Executive Order 12988

This final rule allows fragrant pears to be imported into the United States from the Korla region of Xinjiang Province in China. State and local laws and regulations regarding fragrant pears imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0227.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56–2nn is added to read as follows:

§ 319.56–2nn Administrative instructions: Conditions governing the entry of fragrant pears from China.

Fragrant pears may be imported into the United States from China only under the following conditions:

(a) *Origin, growing, and harvest conditions.* (1) The pears must have been grown in the Korla region of Xinjiang Province in a production site that is registered with the national plant protection organization of China.

(2) All propagative material introduced into a registered production site must be certified free of the pests listed in this section by the national plant protection organization of China.

(3) Within 30 days prior to harvest, the national plant protection organization of China or officials authorized by the national plant protection organization of China must inspect the registered production site for signs of pest infestation and allow APHIS to monitor the inspections. The national plant protection organization of China must provide APHIS with information on pest detections and pest detection practices, and APHIS must approve the pest detection practices.

(4) If any of the quarantine pests listed in this section are found during the pre-harvest inspection or at any other time, the national plant protection organization of China must notify APHIS immediately.

(i) Upon detection of Oriental fruit fly (*Bactrocera dorsalis*), APHIS may reject the lot or consignment and may prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken.

(ii) Upon detection of peach fruit borer (*Carposina sasaki*), yellow peach moth (*Conogethes punctiferalis*), apple fruit moth (*Cydia inopinata*), Hawthorn spider mite (*Tetranychus viennensis*), red plum maggot (*Cydia funebrana*), brown rot (*Monilinia fructigena*), Asian pear scab (*Venturia nashicola*), pear trellis rust (*Gymnosporangium fuscum*), Asian pear black spot (*Alternaria spp.)*, or phylloxeran (*Aphanostigma* sp. poss. *jackusiensis*), APHIS may reject the lot or consignment and may prohibit the importation into the United States of fragrant pears from the production site for the season. The exportation to the United States of fragrant pears from the production site may resume in the next growing season if an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken. If any of these pests is detected in more than one registered production site, APHIS may prohibit the importation into the United States of fragrant pears from China until an investigation is conducted and APHIS and the national plant protection organization of China agree that appropriate remedial action has been taken.

(5) After harvest, the national plant protection organization of China or officials authorized by the national plant protection organization of China must inspect the pears for signs of pest infestation and allow APHIS to monitor the inspections.

(6) Upon detection of large pear borer (*Numonia pivivorella*), pear curculio (*Rhynchites fovepessin*), or Japanese apple curculio (*R. heros*), APHIS may reject the lot or consignment.

(b) *Packing requirements.* (1) The fragrant pears must be packed in cartons that are labeled in accordance with § 319.56–2(g).

(2) The fragrant pears must be held in a cold storage facility while awaiting export. If fruit from unregistered production sites are stored in the same facility, the fragrant pears must be isolated from that other fruit.

(c) *Shipping requirements.* (1) The fragrant pears must be shipped in insect-proof containers and all pears must be safeguarded during transport to

the United States in a manner that will prevent pest infestation.

(2) The fragrant pears may be imported only under a permit issued by APHIS in accordance with § 319.56–4.

(3) Each shipment of pears must be accompanied by a phytosanitary certificate issued by the national plant protection organization of China stating that the conditions of this section have been met and that the shipment has been inspected and found free of the pests listed in this section.

(Approved by the Office of Management and Budget under control number 0579–0227)

Done in Washington, DC, this 19th day of December 2005.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–24423 Filed 12–22–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21381; Airspace Docket No. 05–ASW–2]

RIN 2120–AA66

Establishment of Area Navigation Routes; Southwestern and South Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the legal description of an Area Navigation (RNAV) route listed in a final rule published in the **Federal Register** on December 15, 2005 (70 FR 74197), Airspace Docket No. 05–ASW–2.

EFFECTIVE DATE: 0901 UTC, February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On December 15, 2005, a final rule for Airspace Docket No. 05–ASW–2 was published in the **Federal Register** (70 FR 74197). This rule established three RNAV routes (Q–20, Q–22, and Q–24) over the Southwestern and South Central United States. In the description for Q–20, the latitude for the HONDS fix was inadvertently listed as lat. 33°33′60″ N. rather than lat. 33°34′00″ N. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for Q–20 as published in the **Federal Register** on December 15, 2005 (70 FR 74197), and incorporated by reference in 14 CFR 71.1, are corrected as follows:

PART 71—[AMENDED]

§ 71.1 [Amended]

* * * * *

Q–20 CNX TO JCT [CORRECTED]

CNX	VORTAC	(lat. 34°22′01″ N., long. 105°40′41″ W.)
HONDS	FIX	(lat. 33°34′00″ N., long. 104°51′12″ W.)
UNNOS	WP	(lat. 32°57′00″ N., long. 103°56′00″ W.)
FUSCO	WP	(lat. 31°11′02″ N., long. 101°19′30″ W.)
JCT	VORTAC	(lat. 30°35′53″ N., long. 099°49′03″ W.)

* * * * *

Issued in Washington, DC, on December 19, 2005.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 05–24432 Filed 12–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20700; Airspace Docket No. 04–AWA–8]

RIN 2120–AA66

Establishment of Class C Airspace and Revocation of Class D Airspace, Orlando Sanford International Airport, FL; and Modification of the Orlando International Airport Class B Airspace Area, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class C airspace at the Orlando Sanford International Airport (SFB), FL; revokes the existing Sanford, FL, Class D airspace area and its associated Class E airspace extension; and modifies the existing Orlando International Airport (MCO), FL, Class B airspace area. The FAA is taking this action to improve the flow of air traffic, enhance safety, and reduce the potential for midair collision in the Orlando, FL, terminal area.

EFFECTIVE DATE: 0901 UTC, February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify the Orlando International Airport, FL, Class B airspace area, establish the Orlando Sanford International Airport Class C airspace, and revoke the existing Sanford Airport Class D airspace (70 FR 45599). The FAA proposed to realign the MCO Class B airspace area (within the existing lateral boundaries) due to the commissioning of runway 17L/35R; to ensure that MCO arrivals and departures are retained within Class B airspace; and adjust the configuration of the Class B airspace area to accommodate the Orlando Sanford International Airport Class C airspace area. The FAA proposed to establish the SFB Class C airspace area to enhance safety and improve the management of air traffic in the terminal area.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. In response to the NPRM, the FAA received 20 written comments. Many of the commenters identified themselves as pilots who operate

within, or through, the local area. All comments received were considered before making a determination on the final rule. An analysis of the comments received and the FAA's responses are contained in the ''Discussion of Comments'' section, below.

Discussion of Comments

Three commenters (a commercial carrier, a flight instructor, and a local flying club) wrote in support of the proposed action. The remaining commenters objected to various aspects of the proposal, with most opposition directed at the proposed establishment of Class C airspace at SFB.

One commenter felt that changes to the MCO Class B to accommodate the proposed SFB Class C airspace might be unsafe. Concern was expressed that modification of the east-west visual flight rules (VFR) flyway between SFB and Orlando Executive Airport would compress traffic due to the locations of VFR practice areas and the Bithlo television towers.

FAA Response: The FAA does not agree. The modification of the MCO Class B airspace area to accommodate the SFB Class C airspace will not adversely impact operations to or from MCO. In addition, raising the floor of Class B airspace from 1,600 feet MSL to 2,000 feet MSL around Orlando Executive Airport will provide additional airspace for VFR aircraft to utilize while remaining below the floor of the MCO Class B airspace. The east-west flyway will be moved only one or two miles south of its current location and will remain north of the Bithlo towers and north of the Lake Apopka practice area. The modifications will provide additional flyway and transition airspace for VFR aircraft as compared to the present airspace configuration.

A number of commenters, including the Aircraft Owners and Pilots Association (AOPA) cited the excellent safety record at SFB as evidence that Class C airspace is not needed at that location.

FAA Response: The FAA agrees that SFB has had an excellent safety record. However, during calendar year 2004, SFB experienced an increase in runway incursions. During calendar year 2005, SFB undertook proactive measures that successfully reduced the number of runway incursions. Based on growing passenger enplanements, traffic mix, and complexity, the FAA believes that the designation of Class C airspace at SFB is a necessary step toward maintaining that record by further improving safety and enhancing the management of air traffic operations in the area. Receiving Class C radar services will improve safety for aircraft operating at SFB and for VFR aircraft transitioning the area.

One commenter said the FAA should pursue nonregulatory alternatives to Class C airspace at SFB such as: Adjust staffing to address safety and controller workload concerns; modify the MCO Class B airspace area or the existing SFB Class D airspace area to contain aircraft beyond the four-mile final; and delegate the sequencing of SFB arrivals to MCO approach control by letter of agreement rather than by establishing additional regulatory airspace.

FAA Response: FAA policy requires that, prior to considering designation of Class C airspace at a given location, nonregulatory alternatives that would provide an acceptable level of safety must be utilized such as: Improved radar services, pilot/controller education programs, and safety seminars. As discussed in the NPRM, a number of nonrulemaking actions were taken to address safety in the SFB area, including: (1) The installation of Digital Bright Radar Tower Equipment at SFB ATCT; (2) annual Operation Rain Check pilot-controller forums; (3) periodic user group meetings and safety meetings; (4) procedural initiatives to keep larger arriving aircraft at higher altitudes away from slower traffic and rerouting of arrivals to avoid a flight training area; (5) set up of standard VFR arrival areas; and (6) development of various procedures for more efficient handling of flight school operations in the Orlando area. These nonregulatory efforts have, indeed, contributed to enhanced safety at SFB. However, traffic conflicts in the SFB area remain a concern and the FAA believes that, considering rising passenger enplanements, and the traffic mix and volume in the Central Florida terminal area, additional action is needed in the form of Class C airspace to maintain the excellent safety record. The commenter's suggestion to adjust staffing as a means to reduce SFB tower controller workload would not be feasible to resolve the problem. A concern at SFB is the mix of small and large aircraft that use runway 9L/27R and operate in the airspace along the SFB final approach and departure areas. One controller works runway 9L/27R traffic, and splitting the position responsibilities is not possible. Therefore, additional staffing would not alleviate the workload concerns. Another suggested alternative for reducing SFB Tower workload was to delegate the sequencing of SFB arrivals to MCO approach control by a letter of agreement rather than establishing Class C airspace. However, such a procedure would not eliminate initial call-ups to the Tower by VFR aircraft operating in the area. It was also suggested that, instead of establishing Class C airspace at SFB, the FAA should expand the MCO Class B or the SFB Class D airspace areas to address the issue of SFB air carrier arrivals exiting Class B or D airspace prior to the four-mile point on final approach. Expanding the MCO Class B airspace area to cover this airspace would not be appropriate because Class B airspace is not needed in that area to support MCO operations. Additionally, expanding Class B airspace to encompass SFB final approach operations would hamper VFR operations at SFB by placing additional regulatory requirements on VFR pilots operating at SFB. Class D airspace design criteria do not allow for the length of extensions that would be required to contain the SFB ILS final approach course. The FAA believes that enhanced traffic flow and increased safety will be achieved through the designation of the SFB Class C airspace area.

Several commenters questioned the adequacy of air traffic controller staffing levels to handle the workload resulting from the modification of the MCO Class B and designation of the SFB Class C airspace.

FAA Response: Staffing and equipment resources are already in place to support the MCO Class B modifications and the establishment of the SFB Class C airspace. Procedures have been developed to operate SFB with Class C airspace. Further, MCO TRACON has added an additional sector and radio frequency, and requested an additional VFR code block, in preparation for the expected additional volume to be generated by the airspace changes. Class C airspace will generate an increased workload for the SFB Clearance Delivery position, but that position is prepared to handle the increase. Staffing and equipment levels are adequate to provide all Class C services without impacting safety or efficiency and the FAA does not expect staffing to be an issue for MCO or SFB. However, should circumstances arise that indicate a need for additional resources, action will be taken to obtain them.

One commenter questioned the justification for Class C airspace at SFB based on the passenger enplanement count, stating the enplanement data alone do not tell the full story, and two commenters questioned the validity of Class C airspace at SFB because the SFB operations count has declined below the criteria threshold.

FAA Response: The FAA agrees that enplanements are not the sole factor in determining a need for Class C airspace. Instrument operations and passenger enplanement data are used to identify an airport as a possible candidate for Class C airspace. For an airport to be identified as a candidate for Class C airspace, the airport must be serviced by an operational airport traffic control tower and a radar approach control. In addition, the airport must meet at least ONE of the following: (1) An annual instrument operations count of 75,000 at the primary airport; (2) an annual instrument operations count of 100,000 at the primary and secondary airports in the terminal area hub; or (3) an annual count of 250,000 enplaned passengers at the primary airport. These criteria only identify an airport as a candidate for possible Class C airspace designation. Since the enplaned passenger count for SFB exceeds 600,000, it is a legitimate candidate for Class C airspace. A range of other factors must also be considered when determining if a need for Class C airspace exists. However, a need to enhance safety is the main consideration in evaluating these factors. SFB ranks as the 24th busiest tower in the United States. SFB serves a combination of large aircraft with high passenger counts mixed with general aviation operations, and a high level of flight training activities. The FAA believes that the SFB Class C airspace area is justified to provide a safer environment for this mix of operations.

The Greater Orlando Airports Authority (GOAA) expressed concerns about the impact on safety for pilots flying to Orlando Executive Airport. The GOAA noted that Orlando Executive Airport, with Class D airspace, will be located between two more restrictive types of airspace; that is, Class B at MCO and Class C at SFB. The GOAA believes that the FAA did not use a regional approach in studying the terminal area airspace, and requested that the FAA implement Class C airspace at Orlando Executive concurrent with the designation of Class C airspace at SFB.

FAA Response: The FAA does not agree with GOAA's concerns regarding the extent or validity of the airspace study. FAA directives list the factors to be examined in the airspace staff study when considering Class B and Class C airspace proposals. These include an examination of VFR and IFR traffic flows into, out of, and through the terminal area; air traffic at each satellite airport in the area; and a description of overall air traffic operations in the overall area. Considering the close proximity of Orlando Executive Airport, MCO, and SFB, operations at each airport must be taken into account when examining the terminal area. Due to the size of the area encompassed by the MCO Class B airspace, a study of air traffic operations and airspace in that area must necessarily include a regional perspective. In 2003, the FAA completed a preliminary staff study to examine the need for Class C airspace at Orlando Executive Airport. However, the instrument operations count for the airport dropped below the 75,000 criteria, so further action was not pursued. The FAA believes that implementation of Class C airspace at Orlando Executive Airport at this time would be overly restrictive to VFR operations at Orlando Executive Airport. It should be noted that FAA policy directives call for terminal airspace designations to be reviewed every two years; therefore, airspace requirements at Orlando Executive Airport will be subject to further review. The FAA does not believe that this rulemaking action will adversely affect safety for pilots operating to or from Orlando Executive Airport, nor should pilots experience delays as a result. A similar situation exists in southern Florida and safety has not been compromised.

One pilot wrote that the proposed SFB Class C airspace configuration might be unsafe, citing the amount of restricted or otherwise controlled airspace already in the area (R–2910, MCO Class B, Daytona Beach Class C, etc.). The commenter objected to placing Class C airspace around SFB that would extend farther north than the current MCO Class B airspace boundary. This would crowd VFR aircraft into less space, particularly to the northwest of the proposed outer ring where two towers extend to over 1,700 feet MSL.

FAA Response: The commenter is incorrect regarding the extent of the SFB 10-NM ring. The original configuration of the proposed SFB Class C airspace did include a full 10-NM ring north of the airport. However, based on feedback from the ad hoc committee meetings, and as described in the NPRM, the proposed SFB Class C airspace design was changed so that the 10-NM ring was eliminated north of the current northern boundary of the MCO Class B airspace area along latitude 28°53′00″ N. Therefore, Class C airspace will not extend into the airspace in question near the towers nor will the SFB Class C airspace result in additional crowding of VFR aircraft between the Daytona Beach Class C airspace area and the current northern edge of the MCO Class B airspace area. Similarly, to the south of SFB, the Class C 10-NM ring was cutoff along latitude 28°41′36″ N. This modification provides additional airspace in the east-west VFR flyway located between Orlando Executive and SFB.

A majority of the commenters stated that the SFB Class C airspace would adversely impact, and place undue burdens on, VFR operations to, from, and transiting the terminal area. Several writers commented that they currently are able to operate to and from SFB without problems or delays. Several commenters felt that the existing MCO Class B airspace dominates the region and currently restricts VFR flying and that adding the SFB Class C airspace would make flying in the area more confusing. Commenters were also concerned that the implementation of Class C airspace might cause congestion and bottlenecks on approach control frequencies and otherwise result in limitations on general aviation access to the airspace.

FAA Response: The FAA does not agree. Current traffic routings and proposed Class C routings were compared and it was found that the new Class C airspace would have minimal negative impact on users. Procedures for the Class C airspace operation will allow SFB users to continue flying much as they do today. The FAA believes that this rule will provide an additional level of safety for VFR aircraft operating at SFB and in the Orlando terminal area. A minimal increase in flying miles (five miles further west or east of SFB) may be required for pilots desiring to transit outside the SFB Class C and MCO Class B airspace areas. With Class C airspace, all VFR aircraft flying to SFB will receive radar service. ATC will utilize three arrival sectors for handling inbound aircraft. This will result in less difficulty arriving at SFB and may reduce flying time to enter the traffic pattern. The modifications to the MCO Class B airspace will also provide additional airspace for VFR aircraft in the area to the north of Orlando Executive Airport and south of the SFB Class C airspace area. A new north-south VFR flyway is being added to the east of the SFB Class C airspace area. The FAA is also establishing two new VFR waypoints (VPAPO southwest of SFB at lat. 28°40′15″ N., long. 81°31′31″ W.; and VPBIT southeast of SFB at lat. 28°39′54″ N., long. 81°01′18″ W.). The new waypoints will assist VFR navigation through the expanded east-west VFR flyway that lies between Orlando Executive Airport and SFB, and the north-south flyways to the east and west of the SFB Class C airspace area. The FAA will allow SFB VFR

departures, on pilot request, to remain on SFB ATCT frequency and terminate service at the 5-mile Class C airspace ring. The FAA also will continue the procedure whereby departing VFR aircraft at Orlando Executive Airport may request a transponder code on the ground. Currently, most Orlando Executive VFR northbound departures fly around the SFB Class D airspace. The addition of the SFB Class C airspace will only slightly increase flying miles as noted above. Since the changes implemented by this rulemaking action lie totally within the existing MCO mode C veil, no additional aircraft equipment requirements are imposed in order to operate in the area. As discussed under the comments regarding staffing, above, the FAA has taken steps to ensure that MCO approach control is prepared to handle the workload generated by the implementation of the SFB Class C airspace area.

A suggestion was made that the floor of the SFB Class C airspace in the 5–10 mile ring be raised from 1,300 feet MSL to 1,600 feet MSL to allow transiting VFR aircraft to fly beneath the area at 1,500 feet MSL.

FAA Response: The FAA does not agree with the suggestion. The crossing altitudes at the final approach fixes are 1,500 feet MSL and 1,600 feet MSL. Raising the floor as suggested would result in conflicts that the Class C airspace is designed to eliminate.

One commenter suggested that a north-south VFR flyway be established directly over SFB.

FAA Response: The FAA does not agree. Currently, aircraft transitioning over SFB at 1,500 feet MSL, as approved by SFB Tower, total only about five per day. With the implementation of the SFB Class C airspace area, a transition over SFB at 2,500 feet MSL would be possible for aircraft in contact with MCO approach control. A VFR flyway directly over SFB would not be feasible. VFR flyways provide general flight paths for pilots planning flights into, out of, through, or near complex terminal airspace so as to avoid Class B airspace. Flyway altitudes must avoid airspace that requires prior authorization or clearance to enter. A flyway over SFB would result in departures being restricted below the flyway altitude until clear of the flyway. The airspace between 2,000 feet MSL and 3,000 feet MSL over SFB is used to transition arrivals and departures to/from Orlando Executive Airport. Due to the complexity of the airspace in the SFB area, the suggested flyway is not feasible because it would impact SFB operations, and/or require pilots to obtain a Class B clearance or establish communications in order to enter Class C airspace.

Several commenters, including AOPA, argued that the FAA did not follow the ad hoc committee process, ignored public input, and/or did not obtain sufficient user involvement in developing this airspace proposal.

FAA Response: Substantial user input was obtained in developing the MCO/SFB airspace proposal. Ad hoc user meetings were held on January 14, February 25, and March 17, 2003. The FAA did encounter a delay in mailing of the announcement of the two Informal Airspace Meetings held in November 2003. As a result, supplemental notifications were made to various organizations via e-mail and the information was displayed on the MCO Tower web site. The NPRM also provided a 60-day comment period, which resulted in 20 written comments being submitted to the FAA. Additionally, discussions on the project have been included at regular local airport user meetings since early 2003. The comment that the FAA ignored public input is without basis. In fact, the NPRM specifically addressed at least seven specific issues that were raised in a letter submitted to the FAA by an aviation organization as a result of public meetings. The NPRM also discussed a number of recommendations that resulted from the ad hoc committee meetings and included issues discussed at the November 2003 Informal Airspace Meetings.

The following is a summary of the ad hoc committee recommendations:

1. Reduce the Class C 10-mile ring north of SFB to align with the current Class B boundary.
2. Include a cutout from the Class C airspace area to accommodate the Cedar Knoll Flying Ranch Airport.
3. Provide a procedure allowing SFB VFR departures to remain with the Tower and terminate services at the five-mile ring, below the Class C airspace outer area.
4. Permit Orlando Executive Airport VFR departures to obtain a transponder code on the ground.
5. Establish an uncontrolled VFR flyway over SFB at 2,500 feet MSL and a new flyway east of the proposed SFB Class C airspace.
6. Realign the eastern edge of the proposed Class C airspace to follow the shore of Lake Harney.
7. Raise the floor of the proposed SFB Class C from 1,300 feet MSL to 1,600 feet MSL within the 5–10 mile ring to enable VFR aircraft to fly beneath it at 1,500 feet MSL.
8. Establish Class C airspace at Orlando Executive Airport concurrent with the SFB Class C airspace implementation.

With the exception of the VFR flyway over SFB, the alignment of the Class C boundary along Lake Harney, the requested 1,600 feet MSL floor in the 5–10 mile ring, and the designation of Class C airspace at Orlando Executive Airport, the above recommendations were adopted.

The Rule

This action amends Title 14 Code of Federal Aviation Regulations (14 CFR) part 71 to modify the MCO Class B airspace area, establish the SFB Class C airspace area, and revoke the SFB Class D airspace area. The specifics of this action (depicted on the attached chart) are summarized in the following paragraphs. In addition, this rule revokes the Class E airspace extension to the SFB Class D airspace area.

Orlando Sanford International Airport Class C Airspace

The Sanford Class C airspace area is described as follows:

That airspace extending upward from the surface to but not including 3,000 feet MSL within a 5-mile radius of the Sanford International Airport (SFB), excluding that airspace from the surface to but not including 700 feet MSL in the vicinity of Cedar Knoll Flying Ranch Airport within the area beginning at lat. 28°50′00″ N., long. 81°10′00″ W., thence clockwise along the SFB 5-mile radius arc to lat. 28°43′20″ N., long. 81°10′00″ W., thence north to the point of beginning; and that airspace extending upward from 1,300 feet MSL to but not including 3,000 feet MSL within the area beginning northeast of the primary airport at the intersection of the SFB 10-mile radius arc and lat. 28°53′00″ N., thence clockwise along the SFB 10-mile radius arc to lat. 28°41′36″ N., then west along lat. 28°41′36″ N. to the intersection of the SFB 10-mile radius arc, then clockwise along the SFB 10-mile radius arc to lat. 28°53′00″ N., then east along lat. 28°53′00″ N., to the point of beginning.

The SFB Class C airspace area will be effective during times when the Orlando Sanford International ATCT is in operation. These times will be published in the appropriate volume of the Airport/Facility Directory.

The Sanford Class C airspace will replace the existing Sanford Class D airspace area, which will be revoked through this rule. In addition, although not addressed in the NPRM, this action also revokes the existing Class E airspace extension to the SFB Class D

airspace area. Since the Class D airspace area is being revoked, the Class E extension is no longer required.

Orlando International Airport Class B Airspace

This action modifies several areas within the Orlando Class B airspace to accommodate the new Sanford Class C airspace area; reflect the adjustment of the Orlando International Airport ARP as a result of the commissioning of the fourth runway at Orlando International Airport; and provide additional Class B airspace to ensure that Orlando International Airport arrivals and departures are contained within Class B airspace. The existing outer-most boundaries of the Orlando Class B airspace area remain unchanged by these modifications.

The following describes the revisions to the Orlando Class B airspace area:

Area A. Area A is recentered on lat. 28°25′46″ N., long. 81°18′32″ W. This represents a shift of Area A slightly to the east to recenter the area on the revised Orlando International Airport ARP, which was adjusted due to the addition of the fourth runway at Orlando International.

Area B. The eastern boundary of Area B is shifted approximately 1 NM east to long. 81°10′00″ W. to accommodate the new Orlando International Airport runway.

Area C. The section of Area C in the vicinity of Sanford International Airport is removed and replaced by the Sanford Class C airspace area up to but not including 3,000 feet MSL, and by Area E from 3,000 feet MSL up to and including 10,000 feet MSL. Area C in the vicinity of Orlando Executive Airport is reduced in size. The airspace removed from Area C to the west, north, and northeast of Orlando Executive Airport is incorporated into Area D with its higher Class B airspace floor of 2,000 feet MSL. This change increases the amount of airspace available to VFR aircraft allowing them to utilize that area below 2,000 feet and remain outside of Class B airspace. Also, the eastern boundary of the Area C segments located to the north and south of Orlando International Airport is modified by moving the eastern boundary one degree east to long. 81°10′00″ W. to accommodate the new runway.

Area D. Area D is expanded in size in the vicinity of Orlando Executive Airport by incorporating the airspace removed from Area C, as described above. This change also raises the floor of Class B airspace in the affected area from 1,600 feet MSL to 2,000 feet MSL, providing additional VFR flyway airspace between Sanford International Airport and Orlando Executive Airport while still protecting Orlando International Airport arrivals. Also, the eastern boundary of Area D is moved eastward to long. 81°10′00″ W. to accommodate the new runway at Orlando International Airport.

Area E. The boundary of Area E to the east of Orlando International, currently defined by long. 81°11′00″ W., is moved eastward one degree to long. 81°10′00″ W. This modification accommodates the new Orlando International Airport runway. Additionally, Area E is expanded in the vicinity of Sanford so that Area E overlies the Sanford Class C airspace area and incorporates the airspace from 3,000 feet MSL up to and including 10,000 feet MSL over Sanford, that was formerly in Area C. Also, the southern boundary of Area E, located to the south of Sanford, is moved further south by approximately 2.5 NM to align it with the southern boundary of the Sanford Class C airspace area, along lat. 28°41′36″ N.

Area F. That airspace described as Area F in the existing Orlando Class B airspace area is renamed ''Area G.'' A new Area F is inserted to the west of Orlando International, adjacent to, and west of, Area D and Area E. This new Area F consists of that airspace located between long, 81°27′30″ W. and long. 81°32′00″ W., and bounded by the ORL VORTAC 30-mile radius on the south, and by lat. 28°53′00″ N., on the north. The floor of the new Area F is set at 4,000 feet MSL instead of the 6,000 feet MSL floor in the existing Area F. The lower floor provided by the new Area F ensures that departures climbing westbound off MCO and arrivals on downwind leg for landing at Orlando International remain within Class B airspace.

Area G. The remaining sections of the existing Area F are renamed Area G as a result of the addition of a new Area F, described above.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this final rule: (1) Will generate benefits that justify its minimal costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

The FAA proposed to change the Orlando Class B and the Orlando Sanford Airport Class D airspace areas. The Orlando Class B airspace area modification will maintain the 10,000 feet MSL airspace ceiling and redefine the lateral limits of several of the existing subareas to improve the management of air traffic operations in the Orlando terminal area. The Orlando Sanford Airport Class D airspace area upgrade to a Class C airspace area will lower the airspace area from 3,000 to 1,600 feet MSL and will include a radius of 4.4 NM from the Orlando Sanford Airport up to but not including 1,600 feet MSL.

The FAA has determined that the changes to the Orlando Class B and the Orlando Sanford Airport Class D airspace areas will improve the operational efficiency while maintaining aviation safety in the terminal airspace area. Also, clearer boundary definition and changes to lateral and vertical limits of some subareas will provide additional airspace for use by VFR aircraft transitioning to and from satellite airports. This proposal will impose only negligible costs on some airspace users but could potentially reduce circumnavigation costs to other airspace users.

The final rule will result in negligible additional administrative costs to the FAA and no additional operational costs for personnel or equipment to the agency. Printing of aeronautical charts which reflect the changes to the Class B area and the upgrade to Class C airspace area will be accomplished during a scheduled chart printing, and will result in no additional costs for plate modification and updating of charts. Furthermore, no staffing changes will be required to maintain the modified Class B airspace area and the upgraded Class D airspace area. Potential increase in FAA operations workload could be absorbed by current personnel and equipment.

In view of the negligible cost of compliance, enhanced aviation safety, and improved operational efficiency, the FAA has determined that the final rule will be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that the final rule will have a de minimus impact on small entities. All commercial and general aviation operators who presently use the Orlando International Airport are equipped to operate within the modified Class B airspace area. As for aircraft that regularly fly through the Orlando Sanford International Airport Class D airspace area, since the airport is situated within the established Orlando Mode C Veil, all aircraft should already have the necessary equipment to transition the modified Class B airspace area. Therefore, there will be no additional equipment cost to these entities.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), as the Administrator of the Federal Aviation Administration, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this (proposed/final) rule and determined that it will have only a domestic impact and therefore no affect on any trade-sensitive activity.

Unfunded Mandates Assementment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 3000 Class B Airspace

* * * * *

ASO FL B Orlando, FL [Revised]

Orlando International Airport (MCO)
(Primary Airport)
(Lat. 28°25′46″ N., long. 81°18′32″ W.)
Orlando VORTAC (ORL)
(Lat. 28°32′34″ N., long. 81°20′06″ W.)

Boundaries

Area A—That airspace extending upward from the surface to and including 10,000 feet MSL within a 5–NM radius from the Orlando International Airport.

Area B—That airspace extending upward from 900 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of State Road (S.R.) 423 (John Young Parkway SW of ORL VORTAC) and Interstate 4, thence northeast along Interstate 4 to the intersection of Interstate 4 and S.R. 441 (Orange Blossom Trail), thence direct to the intersection of Lake Underhill Road and Palmer Street, thence east along Lake Underhill Road to the intersection of Lake Underhill Road and the Central Florida Greenway (S.R. 417), thence direct to lat. 28°29′22″ N., long. 81°10′00″ W. (the Stanton Power Plant), thence south to the intersection of the ORL VORTAC 14-mile radius arc, thence clockwise along the ORL VORTAC 14-mile radius arc to the intersection of S.R. 423, thence north along S.R. 423 to the point of beginning.

Area C—That airspace extending upward from 1,600 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of Interstate 4 and the Orlando Executive Airport Class D airspace 4.2-mile radius arc (lat. 28°30′33″ N., long. 81°24′03″ W.), thence clockwise on the Orlando Executive Airport 4.2-mile radius to University Blvd., thence east on University Blvd. to the intersection of S.R. 434, thence east on lat. 28°35′50″ N. to long. 81°10′00″ W., thence south to lat. 28°29′22″ N., thence northwest direct to the intersection of Lake Underhill Road and Central Florida Greenway (S.R. 417), thence west along Lake Underhill Road to the intersection of Palmer Street, thence southwest to the point of beginning. Also, that airspace south of the primary airport extending upward from 1,600 feet MSL to and including 10,000 feet MSL beginning at the point of intersection of long. 81°24′06″ W., and the ORL VORTAC 14-mile radius arc, thence counterclockwise along the ORL VORTAC 14-mile radius arc to the intersection of long. 81°10′00″ W., thence south to the intersection of the ORL VORTAC 20-mile radius arc, thence clockwise along the ORL VORTAC 20-mile radius arc to long.

81°24′06″ W., thence north to the point of beginning.

Area D—That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of Interstate 4 and long. 81°27′30″ W., thence north to lat. 28°41′36″ N., thence east to long. 81°10′00″ W., thence south to lat. 28°35′50″ N., thence west to the intersection of S.R. 434 and University Blvd., thence west on University Blvd. to the Orlando Executive Airport 4.2-mile radius arc, thence counterclockwise on the Orlando Executive Airport 4.2-mile radius arc to the intersection of Interstate 4, southwest of the ORL VORTAC, thence west on Interstate 4 to the intersection of S.R. 423, thence south along S.R. 423 to the intersection of the ORL VORTAC 14-mile radius arc, thence counterclockwise along the ORL VORTAC 14-mile radius arc to long. 81°24′06″ W., thence south to the intersection of the ORL VORTAC 20-mile radius arc, thence clockwise along the ORL VORTAC 20-mile radius arc to the intersection of long. 81°27′30″ W., thence north to the point of beginning.

Area E—That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of lat. 28°41′36″ N., long. 81°27′30″ W., thence north to the intersection of lat. 28°53′00″ N., thence east to the intersection of the MCO Mode C Veil 30–NM radius arc, thence southeast along the MCO Mode C Veil 30–NM radius arc to the intersection of the power lines at lat. 28°50′20″ N., thence southeast along these power lines to lat. 28°41′36″ N., thence west to long. 81°05′09″ W., thence south along the Florida Power transmission lines to the intersection of Highway 50 at lat. 28°32′10″ N., long. 81°03′35″ W., thence south to the Bee Line Expressway at lat. 28°27′05″ N., long. 81°03′45″ W., thence west along the Bee Line Expressway to the intersection of lat. 28°27′00″ N., long. 81°04′40″ W., thence south to the intersection of the ORL VORTAC 30-mile radius arc, thence clockwise along the ORL VORTAC 30-mile radius arc to long. 81°27′30″ W., thence north on long. 81°27′30″ W., to the intersection of the ORL VORTAC 20-mile radius arc, thence counterclockwise along the ORL VORTAC 20-mile radius arc to the intersection of long. 81°10′00″ W., thence north to the intersection of lat. 28°41′36″ N., thence west to the point of beginning.

Area F—That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL beginning south of the primary airport at the intersection of the ORL VORTAC 30-mile radius arc and long. 81°27′30″ W., thence clockwise along the ORL VORTAC 30-mile radius arc to long. 81°32′00″ W., thence north to lat. 28°53′00″ N., thence east to long. 81°27′30″ W., thence south to the point of beginning.

Area G—That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning south of the primary airport at the intersection of the ORL VORTAC 30-mile radius arc and long. 81°32′00″ W., thence clockwise on the ORL VORTAC 30-mile radius arc to the intersection of Highway 27, thence north along Highway 27 to the intersection of Highway 27 and long. 81°45′00″ W., thence north along long. 81°45′00″ W., to the intersection of the ORL VORTAC 24-mile radius arc, thence clockwise along the ORL VORTAC 24-mile radius arc to the intersection of lat. 28°53′00″ N., thence east to the intersection of long. 81°32′00″ W., thence south to the point of beginning. Also that airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at the Florida Power transmission lines at lat. 28°41′36″ N., long. 81°05′09″ W., thence east along lat. 28°41′36″ N. to the Florida Power transmission lines at lat. 28°41′36″ N., long. 80°54′26″ W., thence southeast and south along these power lines to the intersection of Highway 50, thence south to the power lines at lat. 28°22′14″ N., long. 80°52′30″ W., thence southwest along these power lines to the intersection of long. 81°04′40″ W., thence north along long. 81°04′40″ W., to the intersection of the Bee Line Expressway at lat. 28°27′00″ N., long. 81°04′40″ W., thence east along the Bee Line Expressway to lat. 28°27′05″ N., long. 81°03′45″ W., thence north to the intersection of Highway 50 and the Florida Power transmission lines at lat. 28°32′10″ N., long. 81°03′45″ W., thence north along these power lines to the point of beginning.

* * * * *

Paragraph 4000 Class C Airspace

* * * * *

ASO FL C Sanford, FL [New]

Orlando Sanford International Airport (SFB) (Primary Airport)

(Lat. 28°46′40″ N., long. 81°14′15″ W.)

Cedar Knoll Flying Ranch Airport (Private Airport)

(Lat. 28°46′55″ N., long. 81°09′33″ W.)

That airspace extending upward from the surface to but not including 3,000 feet MSL within a 5-mile radius of the Orlando Sanford International Airport, excluding that airspace, from the surface to but not including 700 feet MSL in the vicinity of Cedar Knoll Flying Ranch Airport, within the area beginning at lat. 28°50′00″ N., long. 81°10′00″ W., thence clockwise along the SFB 5-mile radius arc to lat. 28°43′20″ N., long. 81°10′00″ W., thence north to the point of beginning; and that airspace extending upward from 1,300 feet MSL to but not including 3,000 feet MSL within the area beginning northeast of the primary airport at the intersection of the SFB 10-mile radius arc and lat. 28°53′00″ N., thence clockwise along the SFB 10-mile radius arc to lat 28°41′36″ N., thence westbound to the intersection of the SFB 10-mile radius arc, thence clockwise on the SFB 10-mile radius arc to lat. 28°53′00″ N., thence east to the point of beginning. This Class C airspace area is effective during the specific days and hours of operation of the Orlando Sanford International Airport Tower as established in advance by Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Sanford, FL [Remove]

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area

* * * * *

ASO FL E4 Sanford, FL [Remove]

* * * * *

Issued in Washington, DC, on December 20, 2005.

Edith V. Parish,

Manager, Airspace and Rules.

BILLING CODE 4910–13–U

Docket No. 04-AWA-8

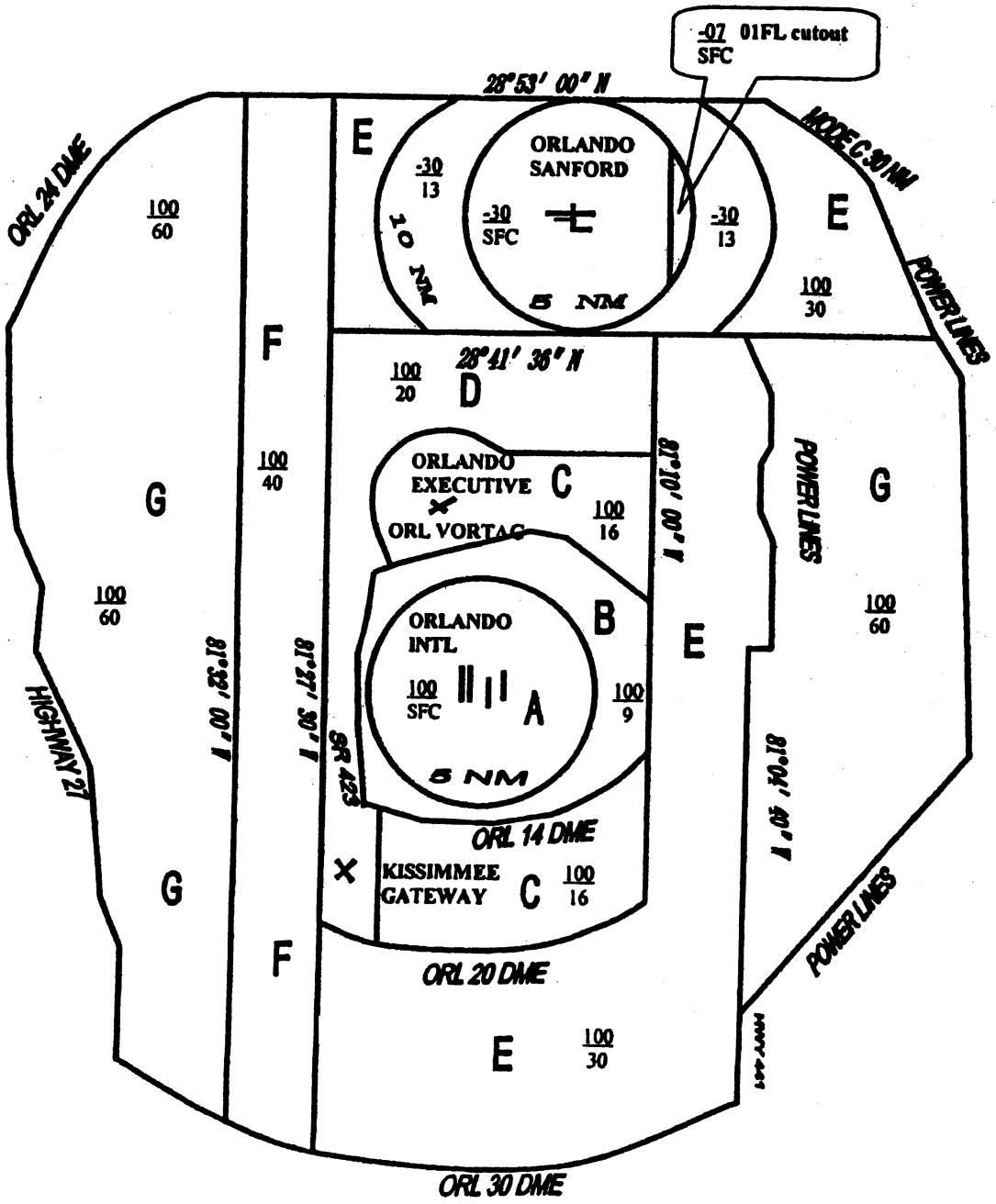
ORLANDO, FLORIDA

ESTABLISHMENT OF ORLANDO SANFORD INTERNATIONAL AIRPORT CLASS C AIRSPACE

and

MODIFICATION OF ORLANDO INTERNATIONAL AIRPORT CLASS B AIRSPACE

(Not to be Used for Navigation)



[FR Doc. 05–24433 Filed 12–22–05; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2003–15976; Airspace Docket No. 03–AWA–5]

RIN 2120–AA66

Establishment of Prohibited Area P–50; Kings Bay, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Prohibited Area P–50 over the U.S. Naval Submarine Base, Kings Bay, GA. The prohibited area replaces a Temporary Flight Restriction (TFR) that is currently in effect at that location. The FAA is taking this action in response to a request from the U.S. Navy as part of its efforts to enhance the security of the Naval Submarine Base, Kings Bay, GA.

EFFECTIVE DATE: 0901 UTC, February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On February 26, 2004, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish a prohibited area over the U.S. Naval Submarine Base, Kings Bay, GA (69 FR 8884). The FAA proposed this action, at the request of the U.S. Navy, to enhance the security of the Kings Bay facility. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. The comment period ended April 12, 2004. A total of 124 comments were received in response to the notice. All comments received were considered in this rulemaking action, including six comments received by the Document Management System after the closing date.

Discussion of Comments

One commenter wrote in support of the proposed action. All other commenters opposed the establishment of the prohibited area. The following is a discussion of the substantive comments received.

Many commenters contended that there is no credible terrorist threat and adequate justification has not been provided for establishing a prohibited area at Kings Bay, GA.

FAA Response: The purpose of establishing Prohibited Area P–50 is to be proactive in preventing terrorism rather than reactive. The September 11, 2001, attacks identified some weaknesses in the defense of certain critical U.S. assets, and some analysts still claim that necessary steps to prevent future terrorist attacks have not been taken. P–50 is just one part of the U.S. Navy's integrated, layered defense plan for the Kings Bay facility. The submarines berthed at Kings Bay are vital assets that require continual protection, not just during periods of heightened security.

A number of commenters stated that a prohibited area would do nothing to enhance actual security at Kings Bay. It would provide no deterrence to terrorists because they do not follow the rules anyway. Commenters expressed doubt that a prohibited area would provide adequate time for the Navy to react to a threat. Further, the area would only serve to limit the freedom of law-abiding pilots and possibly put an aircraft at risk of a shoot down in the event of an inadvertent penetration of the prohibited area caused by an aircraft emergency or malfunction, lost pilot, or some other innocent circumstance.

FAA Response: The FAA agrees that a prohibited area designation, in itself, presents no physical impediment to stop an attack. However, the Navy is aggressively pursuing a multitude of defensive measures at Kings Bay to prevent an airborne attack. Each of these measures includes the identification of hostile aircraft. P–50 will enhance the protection of U.S. assets by reducing low altitude aircraft overflights of the facility and provide a better means for identifying potentially hostile aircraft. The purpose of P–50, then, is not to provide a sterile environment for airborne assets to engage a hostile aircraft. An aircraft intruding into the prohibited area will draw the attention of ground security forces and may provide the ''heads up'' notice required to take proper action to prevent or lessen the severity of an attack. An incursion into P–50 would not automatically equate to hostile intent or trigger a defensive response.

Several commenters stated that general aviation (GA) aircraft are too small to be a viable threat to the submarines at the Kings Bay facility. One commenter cited the January 2002 intentional crash by a suicidal pilot of a small aircraft into a Tampa, FL, office building as evidence that GA aircraft are not capable of causing significant damage to buildings or equipment.

FAA Response: The FAA does not agree. Submarine characteristics and design information is classified and, therefore, cannot be discussed here. However, the potential for serious damage to the vessels does exist whether it is the result of a direct impact or collateral damage.

Numerous commenters, including the Aircraft Owners and Pilots Association (AOPA) and the General Aviation Manufacturers Association (GAMA), said that the FAA should consider alternatives to a permanent prohibited airspace designation. They cited a number of actions taken by the Federal government since September 11, 2001, to enhance aviation security, including: advanced screening of pilot data bases, flight training restrictions and background checks for foreign nationals seeking flight training, and various requirements pertaining to flight school operations. In addition, AOPA's nationwide Airport Watch program was initiated to improve the security of airports and aircraft. AOPA called for the FAA to issue an advisory for pilots, similar to that contained in the current Notice to Airmen (NOTAM) that advises pilots to avoid flight near nuclear power plants, instead of implementing the prohibited area.

FAA Response: The FAA agrees that the initiatives described above have contributed to aviation system security. However, these general initiatives do not negate the need for specific measures at the Kings Bay Naval Base. Regarding the suggestion that the FAA issue an advisory avoidance NOTAM instead of establishing a prohibited area, it should be noted that the ''power plant'' NOTAM discussed above is a voluntary measure and does not prohibit aircraft overflight of a facility. By prohibiting flight in the airspace above the base, the Navy's defense force can more easily focus on the identification of a potential threat and react accordingly.

The majority of the commenters, including AOPA, GAMA, and the St. Marys Airport Authority, opposed the prohibited area because it would severely impact the operation of the nearby St. Marys Airport (4J6), St. Marys, GA. The airport has been continuously impacted by various TFR over the Kings Bay Naval Base since September 13, 2001. The commenters cited numerous adverse impacts on the airport and community, including: cancellation of the only instrument

approach procedure serving the airport, thereby reducing the airport to Visual Flight Rules only operations; adverse impact on the safety and usefulness of the airport due to the proximity of the TFR/prohibited area to the main airport runway 4/22 (which is the only runway with lighting for night operations); reluctance of user to conduct flight training at the airport due to the risk of unintentional penetration of the TFR/prohibited area; the airport has become less attractive to commercial operators; and, loss of jobs and lessened economic growth in the local area. Some commenters added that, because of the restrictions, the government should pay to install runway lighting and establish instrument approach procedures for the remaining runway 13/31. Other commenters said the government should pay to relocate St. Marys Airport to a site unaffected by the Kings Bay restrictions.

FAA Response: The FAA agrees that the restrictions imposed by the current TFR adversely affect St. Marys Airport operations. These restrictions will continue to exist under the proposed prohibited area. The airport's close proximity to the Kings Bay base limits the options available to offset the restrictions imposed by the TFR and the proposed prohibited area. Until recently, the only instrument approach serving the St. Marys Airport was the surveillance radar approach to runway 4 (ASR RWY 4). The close proximity of the TFR rendered the missed approach portion of that procedure unusable, therefore the approach was suspended. On September 30, 2004, a revised ASR RWY 4 approach was authorized with a relocated missed approach point that provides additional space for aircraft to execute a left climbing turn away from the current TFR. On November 25, 2004, two area navigation (RNAV) Global Positioning System (GPS) approaches were published serving runways 13 and 31. However, because these runways are not lighted, the RNAV GPS approaches are not authorized for use at night.

Currently, a St. Marys Airport relocation feasibility and site selection effort is in progress involving the City of St. Marys, the State of Georgia, and the FAA. A line item for a proposed replacement of the airport was included in the FAA's National Plan of Integrated Airport Systems (2005–2009). Environmental analysis of various alternatives is being conducted. No decisions about relocating the airport have been made at this time.

One commenter wrote that numerous U.S. military facilities such as Fort Campbell, KY; Fort Benning, GA; McConnell Air Force Base (AFB), KS; and Eglin AFB, FL, are located in close proximity to civilian airports without a similar airspace restriction.

FAA Response: The commenter is correct; however, other military installations do not have the same operational requirements or mission as that of the Naval Submarine Base, Kings Bay, GA.

Statutory Authority

The FAA Administrator has broad authority under Title 49 of the United States Code (49 U.S.C.) to regulate the use of the navigable airspace. In exercising that authority, the Administrator is required to give consideration to the requirements of national defense and commercial and general aviation, and the public right of freedom of transit through the navigable airspace (49 U.S.C. 40101). The Administrator is also empowered to develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace (49 U.S.C. 40103(b)). Additionally, the Administrator shall, in consultation with the Secretary of Defense, establish areas in the airspace the Administrator decides are necessary in the interest of national defense (49 U.S.C. 40103(b)(3)(A)).

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by designating Prohibited Area P–50 at Kings Bay, GA. Prohibited Area P–50 consists of that airspace, from the surface to, but not including 3,000 feet MSL, within a 2–NM radius of Lat. 30°48′00″ N., long. 81°31′00″ W. In accordance with 14 CFR § 73.83 and § 91.133, no person may operate an aircraft within a prohibited area unless authorization has been granted by the using agency. The dimensions of P–50 are identical to those contained in the TFR now in effect over the Kings Bay facility via NOTAM number 5/9063. NOTAM number 5/9063 will be cancelled on the effective date of Prohibited Area P–50.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation, (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for a categorical exclusion from further environmental analysis under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraphs 303d and 312d.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.92 [New]

■ 2. § 73.92 is added as follows:

* * * * *

P–50 Kings Bay, GA [New]

Boundaries. That airspace within a 2–NM radius of Lat. 30°48′00″ N., long. 81°31′00″ W.

Designated altitudes. Surface to but not including 3,000 feet MSL.

Time of designation. Continuous.

Using agency. Administrator, FAA, Washington, DC.

* * * * *

Issued in Washington, DC on December 19, 2005.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 05–24431 Filed 12–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2004P–0512]

Food Labeling: Health Claims; Soluble Dietary Fiber From Certain Foods and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation authorizing a health claim on the relationship between oat beta-glucan soluble fiber and reduced risk of coronary heart disease (CHD). The amendment adds barley as an additional eligible source of beta-glucan soluble fiber. We (FDA) are taking this action in response to a petition that the National Barley Foods Council submitted. We have concluded, based on the totality of publicly available scientific evidence that, in addition to certain oat products, whole grain barley and certain dry milled barley grain products are appropriate sources of beta-glucan soluble fiber for the health claim.

DATES: This interim final rule is effective December 23, 2005. Submit written or electronic comments by March 8, 2006. The Director of the Office of the **Federal Register** approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 101.81(c)(2)(ii)(A)(5) as of December 23, 2005.

ADDRESSES: You may submit comments, identified by the Docket Number 2004P–0512 , by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: James E. Hoadley, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD, 20740–3835, telephone 301–436–1450.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Nutrition Labeling and Education Act of 1990

The Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Public Law 101–535) amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One aspect of the 1990 amendments was that they clarified FDA's authority to regulate health claims on food labels and in food labeling. We issued several new regulations in 1993 that implemented the health claim provisions of the 1990 amendments. Among these were § 101.14 (21 CFR 101.14), Health Claims: General Requirements (58 FR 2478, January 6, 1993), which sets out the rules for the authorization and use of health claims, and § 101.70 (21 CFR 101.70), Petitions for Health Claims (58 FR 2478, January 6, 1993), which sets out a process for petitioning the agency to authorize health claims about substance-disease relationships, and sets out the types of information that any such petition must include. Each of these regulations became effective on May 8, 1993.

When implementing the 1990 amendments, we also conducted a review of evidence for a relationship between dietary fiber and cardiovascular disease (CVD). Based on this review, we concluded that the available scientific evidence did not justify authorization of a health claim relating dietary fiber to reduced risk of CVD (58 FR 2552, January 6, 1993). However, we did conclude there was significant scientific agreement that the totality of publicly available scientific evidence supported an association between types of foods that are low in saturated fat and cholesterol and that naturally are good sources of soluble dietary fiber (i.e., fruits, vegetables, and grain products) and reduced risk of CHD[1]. We therefore authorized a health claim about the relationship between diets low in saturated fat and cholesterol and high in vegetables, fruit, and grain products that contain soluble fiber and a reduced risk of CHD (21 CFR 101.77; 58 FR 2552 at 2572). In the preamble to the 1993 dietary fiber and CVD final rule, FDA commented that if a manufacturer could document with appropriate evidence that consumption of the type of soluble fiber in a particular food has the effect of lowering blood low density lipoprotein (LDL) cholesterol, and has no adverse effects on other heart disease risk factors (e.g., high density lipoprotein (HDL) cholesterol), it should petition for authorization of a health claim specific for that particular dietary fiber-containing food (58 FR 2552 at 2567).

B. Soluble Fiber From Certain Foods and Coronary Heart Disease Health Claim (§ 101.81 (21 CFR 101.81))

In 1995, FDA received a petition for a health claim on the relationship between oat bran and rolled oats and reduced risk of CHD. FDA concluded there was significant scientific agreement that the totality of publicly available scientific evidence supported the relationship between consumption of whole oat products and reduced risk of CHD. FDA further concluded that the type of soluble fiber found in whole oats, i.e., beta-glucan soluble fiber, is the component primarily responsible for the hypocholesterolemic effects associated with consumption of whole oat foods as part of a diet that is low in saturated fat

[1] CVD means diseases of the heart and circulatory system. Coronary heart disease, one form of cardiovascular disease, refers to diseases of the heart muscle and supporting blood vessels.

and cholesterol (62 FR 3584 at 3597–3598, January 23, 1997). As such, the final rule authorized a health claim relating the consumption of beta-glucan soluble fiber in whole oat foods, as part of a diet low in saturated fat and cholesterol, and reduced risk of CHD (the oat beta-glucan health claim). The source of beta-glucan soluble fiber in foods bearing this health claim had to be one of three eligible whole oat products; i.e., oat bran, rolled oats, or whole oat flour (see § 101.81(c)(2)(ii)(A)). In 2002, FDA amended this health claim regulation to add oatrim as a fourth eligible source of beta-glucan soluble fiber (67 FR 61733, October 2, 2002). Oatrim is the soluble fraction of alpha-amylase hydrolyzed oat bran or whole oat flour.

In the 1997 oat beta-glucan health claim final rule, we anticipated the likelihood that other sources and types of soluble fibers will also affect blood lipid levels, and thus, may reduce heart disease risk (62 FR 3584 at 3587). At that time, FDA considered structuring the final rule as an umbrella regulation authorizing the use of a claim for ''soluble fiber from certain foods'' and risk of CHD. Such action would have allowed flexibility in expanding the claim to other specific food sources of soluble fiber when consumption of those foods has been demonstrated to help reduce the risk of heart disease. However, the agency concluded that it was premature to do so inasmuch as FDA had not reviewed the totality of publicly available evidence on other, non-whole oat sources of soluble fiber (62 FR 3584 at 3588). In 1998, in response to a health claim petition, FDA concluded that soluble fiber of psyllium seed husk, similar to beta-glucan soluble fiber from whole oats, may reduce the risk of CHD by lowering blood cholesterol levels (63 FR 8103, February 18, 1998). In that final rule, FDA broadened § 101.81 to include soluble fiber from psyllium seed husk, and also modified the heading in § 101.81 from, ''* * * Soluble fiber from whole oats and risk of coronary heart disease'' to ''* * *Soluble fiber from certain foods and risk of coronary heart disease (CHD).''

II. Petition and Grounds

A. The Petition

The National Barley Foods Council (petitioner), submitted a health claim petition to FDA on August 3, 2004, under section 403(r)(4) of the act (21 U.S.C. 343(r)(4)). The petition requested that the agency amend the ''Soluble fiber from certain foods and coronary heart disease health claim'' at § 101.81 to include barley and barley products as an additional source of beta-glucan soluble fiber eligible for the health claim (Ref. 1). On November 10, 2004, we notified the petitioner that we had completed our initial review of the petition and that the petition had been filed for further action in accordance with section 403(r)(4) of the act. If the agency does not act, by either denying the petition or issuing a proposed regulation to authorize the health claim, within 90 days of the date of filing for further action, the petition is deemed to be denied unless an extension is mutually agreed upon by the agency and the petitioner (section 403(r)(4)(A)(i) of the act and § 101.70(j)(3)(iii)). On February 4, 2005, FDA and the petitioner mutually agreed to extend the deadline to publish the agency's decision on the petition until August 9, 2005. On August 3, 2005, FDA and the petitioner agreed to further extend the deadline to December 31, 2005. The petitioner requested that FDA issue an interim final rule by which labeling of barley-containing foods could bear the health claim prior to publication of a final rule.

B. Nature of the Substance

The petitioner requests that § 101.81 be amended to include barley in addition to oats as a source of beta-glucan soluble fiber associated with reducing the risk of CHD. The petitioner further requests that whole grain barley (dehulled or hulless), and certain dry milled barley products, i.e., pearl, flakes, grits, meal, flour, beta-glucan enriched meal fractions, and bran, be determined as eligible barley sources of beta-glucan soluble fiber.

The substance which is the subject of the existing oat beta-glucan health claim is beta-glucan soluble fiber from oat sources listed in § 101.81(c)(2)(ii)(A). The requested amendment will expand the substance of the claim to include both oat and barley sources of beta-glucan soluble fiber. From an analytical perspective, beta-glucan soluble fiber from barley is the same substance as beta-glucan soluble fiber from oat sources. The method now specified in § 101.81(c)(2)(ii)(A) for the measurement of beta-glucan soluble fiber from oat sources, AOAC Official Method 992.28, is a method designated by AOAC INTERNATIONAL to be used for both oat and barley fractions and it is the same analytical method identified by the petition for measurement of beta-glucan soluble fiber from barley sources.

The petition characterizes the barley sources of beta-glucan soluble fiber as dehulled or hulless whole grain barley and barley products produced from dehulled or hulless clean, sound barley grain by standard dry milling processes, which may include steaming or tempering, and that provide at least 4 percent (dry weight basis (dwb)) of beta-glucan soluble fiber and total dietary fiber content of at least 8 percent (dwb) (flour, grits, flakes, and meal), or at least 5.5 percent (dwb) of beta-glucan soluble fiber and at least 15 percent (dwb) total dietary fiber (bran and beta-glucan enriched barley fractions). For whole grain (dehulled and hulless) barley, the petition specified the minimum beta-glucan soluble fiber content as 4 percent (dwb) and the minimum total dietary fiber content as 10 percent (dwb).

Most barley varieties have a tough fibrous adherent hull covering the grain which must be removed for the grain to be edible. There are also hulless barley varieties in which, similar to wheat, the hull falls away during harvesting and the grain can be processed directly into food products without dehulling. The petition thus has specified the eligible sources of the barley beta-glucan soluble fiber to include both dehulled and hulless whole barley grain.

In addition to dehulled or hulless whole barley grain, the petition has specified that dry milled barley products that are eligible sources of the beta-glucan soluble fiber be produced from dehulled or hulless barley grain by standard dry milling processes. The petition includes dry milled barley products only and does not include beta-glucan extracts produced through ''wet milling'' processes. Wet milling processes used to extract or concentrate the beta-glucan soluble fiber component of barley are likely to alter physiochemical properties of fiber and other components of the grain. All but two of the dry milled barley products specified in the petition have been formally defined by the American Association of Cereal Chemists (AACC) in a ''Barley Glossary'' which is published in *AACC Approved Methods* (Ref. 2). Two additional dry milled barley products, which are not defined in the AACC Barley Glossary, i.e., barley meal and beta-glucan enriched barley fractions, are included in the petition as beta-glucan soluble fiber sources. The petition characterizes barley meal as differing from barley flour only in that it is unsifted and thus has a higher portion of bran and germ present than sifted barley flour. The petition has defined ''beta-glucan enriched barley fractions'' as fractions of dry milled barley that are enriched in endosperm cell walls by either mechanical sifting or air classification and that provide at least 5.5 percent (dwb) of beta-glucan soluble fiber and a total dietary fiber content of at least 15 percent (dwb). The

beta-glucan content of barley endosperm cell walls is greater than that of barley endosperm cell contents. During milling, endosperm cell walls break up into larger particles than do endosperm cell contents. Sieving or air classification milling steps can be used to separate milled barley flour or meal by particle size to produce endosperm cell wall-enriched fractions. Since barley endosperm cells walls have a greater beta-glucan content than do barley endosperm cell contents, these endosperm cell wall-enriched barley fractions have a greater beta-glucan content than of the starting flour or meal. For simplicity, in this document we will be referring to endosperm cell wall-enriched barley fractions as ''sieved barley meal.''

The petition specifies that the dry milled barley products which are the subject of this petition, with the exception of barley bran and sieved barley meal, have a minimum beta-glucan soluble fiber content of at least 4 percent (dwb), and a minimum total dietary fiber content of at least 8 percent (dwb). The petition specifies that eligible barley bran and sieved barley meal have a minimum beta glucan soluble fiber and total dietary fiber content of 5.5 percent (dwb) and 15 percent (dwb) respectively. The petition specifies that eligible whole grain barley (dehulled and hulless) have a minimum beta glucan soluble fiber and total dietary fiber content of 4 percent dwb and 10 percent dwb respectively. The petitioner selected the minimum beta-glucan soluble fiber and total dietary fiber content specifications for the whole grain barley and dry milled barley products that are eligible sources of beta-glucan soluble fiber to be inclusive of most all commercially available dry milled barley products, while excluding barley products such as barley brewers grain in which the soluble fiber has been depleted.

C. Review of Preliminary Requirements for a Health Claim

1. The Substance Is Associated With a Disease for Which the U.S. Population Is at Risk

CHD continues to be a disease that has a large impact on mortality and morbidity in the general adult U.S. population. As explained in the existing oat beta-glucan health claim (§ 101.81(b)), FDA recognizes the CHD risk reduction benefit of certain foods that are sources of soluble dietary fiber resulting from effects on lowering blood total and LDL-cholesterol. Although age-adjusted CHD mortality rates in the United States had been steadily decreasing since approximately 1960, recent evidence has suggested that the decline in CHD mortality has slowed (Ref. 3). Heart disease has been recognized as the leading cause of death in the United States for at least the last 50 years (Ref. 3). Based on these facts, FDA concludes that, as required in § 101.14(b)(1), CHD is a disease for which the U.S. population is at risk.

2. The Substance Is a Food

The substance which is the subject of the existing oat beta-glucan health claim is beta-glucan soluble fiber from specified oat sources, i.e., oat bran, rolled oats, whole oat flour, and oatrim (§ 101.81(c)(2)(ii)(A)). The petitioner requests an amendment to extend the eligible sources of beta-glucan soluble fiber to include those from whole grain barley and certain dry milled barley products. Barley grain is a commonly consumed human food and beta-glucan soluble fiber is a nutrient component of this food, thus the beta-glucan soluble fiber from whole grain barley and dry milled barley products that include bran, flakes, grits, pearl, flour, meal, and sieved barley meal is a ''substance'' as defined by § 101.14(a)(2). Health claim general requirements provide that where a substance is to be consumed at ''other than decreased dietary levels'' the substance must contribute taste, aroma, nutritive value, or any other technical effect as listed in 21 CFR 170.3(o), and must retain that attribute when consumed at levels necessary to justify the claim (§ 101.14(b)(3)(i)). Whole grain barley and dry milled barley products are consumed by humans for their nutritive value, and retain that attribute when consumed at levels necessary to justify the claim. Thus the agency concludes that the requirement of § 101.14(b)(3)(i) is satisfied.

3. The Substance Is Safe and Lawful

Section 101.14(b)(3)(ii) requires that the substance be a food or a food ingredient or a component of a food ingredient whose use at the levels necessary to justify a claim has been demonstrated by the proponent of the claim, to FDA's satisfaction, to be safe and lawful under the applicable food safety provisions of the act. The petition states that dry milled barley grain is a human food of natural biological origin that has been widely consumed in the United States for its nutrient properties prior to January 1, 1958, without known detrimental effects, which is subject only to conventional processing as practiced prior to January 1, 1958, and for which no known safety hazard exists. The petitioner's description of the use of dry milled barley grain as a food ingredient and the use of whole grain barley, as sources of barley beta-glucan soluble fiber, are consistent with FDA's definition of food ingredients ordinarily regarded as ''generally recognized as safe'' (GRAS) (21 CFR 170.30(d)). FDA is satisfied that the petitioner has demonstrated the use of barley beta-glucan soluble fiber, from whole grain barley and dry milled barley grain product sources that are included in this rule, is safe and lawful under the applicable food safety provision of the act.

III. Review of Scientific Evidence of the Substance-Disease Relationship

A. Basis for Evaluating the Relationship Between Barley and CHD

FDA has identified the following endpoints to use in identifying CHD risk reduction for purposes of a health claim evaluation: Coronary events (myocardial infarction, ischemia), cardiovascular death, atherosclerosis, high blood pressure, elevated serum total cholesterol, and elevated serum LDL-cholesterol. FDA considers high blood pressure, elevated serum total cholesterol, and elevated serum LDL-cholesterol levels as surrogate endpoints for CHD (Ref. 4). FDA considers low HDL-cholesterol levels a risk factor for CHD (National Institutes of Health Consensus Conference, 1993). Elevated levels of serum total and LDL cholesterol, a prerequisite for atherosclerotic disease, is a major cause of CHD (Ref. 4). To evaluate the potential effects of beta-glucan soluble fiber from whole grain barley and dry milled barley products on CHD risk, FDA focused on serum total and LDL cholesterol levels to evaluate the relationship between barley beta-glucan and CHD risk. This focus is consistent with existing § 101.81, in which FDA concluded that there was significant scientific agreement that the relationship between consumption of whole grain oats and CHD risk is mediated primarily by the effect of dietary beta-glucan soluble fiber on serum lipids.

FDA previously concluded that there is significant scientific agreement regarding the relationship between consumption of soluble fiber-containing whole oat foods and reduced risk of CHD (62 FR 3584 at 3598). FDA concluded that the type of soluble fiber found in whole oat foods, i.e., beta-glucan soluble fiber, is primarily responsible for the observed association between consumption of whole oat foods and the lowering of blood cholesterol. As such, to evaluate the evidence supporting the petitioned

request to extend the beta-glucan soluble fiber from whole oat health claim to include beta-glucan soluble fiber from whole grain barley and dry milled barley products, FDA focused on evidence from human clinical studies of the effects of consuming beta-glucan soluble fiber from whole grain barley and dry milled barley products on blood lipids.

B. Review of Scientific Evidence of the Substance-Disease Relationship

A health claim characterizes the relationship between a substance and a disease or health-related condition (21 CFR 101.14(a)(1)). The substance must be associated with a disease or health-related condition for which the general U.S. population, or an identified U.S. population subgroup, is at risk (§ 101.14(b)(1)). Health claims characterize the relationship between the substance and a reduction in risk of contracting a particular disease.[2]

FDA's review of the evidence to support the petitioned amendment of the oat beta-glucan health claim was conducted consistent with FDA published guidance on significant scientific agreement in the review of health claims (Ref. 5) and focused on evidence from intervention studies.

1. Assessment of Intervention Studies

This petition identified reports of 11 human clinical studies with data on barley consumption and serum lipids (Refs. 6 to 16). We excluded six of these reports from our review because no scientific conclusions relative to effects of barley beta-glucan soluble fiber on CHD risk could be drawn from them. One of these excluded reports (Ref. 6) was available only as an abstract and therefore did not provide sufficient information about the study for FDA to determine critical elements, such as the study population characteristics and the composition of the products used. In addition, the lack of a detailed study description prevents FDA from determining whether the study is flawed in critical elements such as design, conduct, and data analysis. FDA must be able to review the critical elements of a study to determine whether any scientific conclusions relevant to the health claim can be drawn from it. These problems are not limited to abstracts, but include other similar publications, such as meta-analyses[3] and review articles,[4] book chapters, letters to the editor, and committee reports.

A second excluded report, Lupton et al., 1994 (Ref. 7), tested potential cholesterol-lowering effects of spent brewer's grain barley and of barley oil, neither of which contains beta-glucan soluble fiber. Because this report did not provide information about the substance that is the subject of the health claim, it was excluded from further review. Another excluded report, Keogh et al., 2003 (Ref. 8), tested potential cholesterol-lowering effects of a beta-glucan concentrate product extracted from barley bran. The whole grain barley and dry milled barley products which are the sources of beta-glucan soluble fiber in the petition do not include wet milled barley products such as the beta-glucan concentrate used in Keogh et al., 2003. Beta-glucan extraction processes (e.g., hot water or alcohol washes, and extreme pH conditions), unlike dry milling processes, are likely to alter physiochemical properties of soluble fiber and other components of grain and will alter the relative proportions of beta-glucan soluble fiber and other components of the grain. The composition of wet milled barley beta-glucan products may be substantially different from that of dry milled barley products and thus the results of Keogh et al., 2003 do not assist our evaluation of evidence supporting a health claim for dry milled barley products. The three other excluded reports (Refs. 9, 10, and 11) did not contain enough information to estimate the barley beta-glucan soluble fiber in the test diets. Without knowing the amount of barley beta-glucan soluble fiber added to these studies' diets, FDA was unable to draw any conclusions as to the effect of barley beta-glucan soluble fiber on CHD risk from this evidence. The remaining 5 of the 11 reports of human clinical studies (Refs. 12 to 16) were of a sufficient quality for us to consider in our review of the evidence supporting the relationship between reduced risk of CHD and consumption of beta-glucan soluble fiber from whole grain barley and dry milled barley products included as sources of beta-glucan soluble fiber in this petition.

The study reported in Behall et al., 2004a (Ref. 12) investigated the effects of dry milled barley products (barley flour, barley flakes, and pearled barley) incorporated into a controlled whole-grain diet on blood lipids of mildly hypercholesterolemic men. The study included 18 mildly hypercholesterolemic adult males (mean age 46 years; mean baseline total cholesterol 238 milligrams/deciliter (mg/dL); mean baseline LDL-cholesterol 155 mg/dL). The test diet was a Step I diet (total fat 31 percent of energy, saturated fat 7.6 percent of energy, total dietary fiber 27 grams (g)/day) that included whole grain test foods (pancakes, spice cake, no-bake cookies, hot cereal, toasted flakes, steamed pilaf, and muffins). The test personnel prepared three versions of the whole grain test diet differing in levels of dry milled barley products. One version of the test diet, made with whole wheat flour, wheat flakes, and brown rice, but no barley, contained only trace amounts of beta-glucan soluble fiber. Another version of the test diet made with barley flour, barley flakes, and pearled barley replacing the wheat and rice in test foods, provided 6 g barley soluble fiber per day. The third version of the test diet was made with half whole wheat/brown rice and half barley to provide 3 g barley soluble fiber per day. The three whole grain test diets were designed to provide approximately the same amount of total dietary fiber per day, and vary only in the amount of barley beta-glucan soluble fiber. Following a 2-week run-in period consuming the test diet without barley to allow subjects to adjust to the dietary fiber level, the study administered each the three test diets (0, 3, or 6 g per day barley soluble fiber) to each participant in random order over three consecutive 5-week periods. In comparison to the 0 g per day barley soluble fiber diet period, there was a statistically significant ($p < 0.05$) 7.5 percent reduction of serum total cholesterol following the 6 g per day barley soluble fiber diet. Similarly, there was a statistically significant 8.5 percent reduction in serum LDL-cholesterol level following the 6 g per day barley soluble fiber period compared to the 0 g per day period. Reductions in serum total and LDL-cholesterol following the 3 g per day soluble barley fiber period were not statistically significant. Serum HDL cholesterol levels were not significantly different among the three diet periods.

Another study by Behall et al., (Ref. 13) investigated the effects of dry milled barley products (barley flour, barley flakes, and pearled barley) in a controlled whole-grain diet on blood lipids of mildly hypercholesterolemic adults. The study included 25 mildly hypercholesterolemic adult men and women (average baseline total cholesterol 223 mg/dL; average baseline LDL-cholesterol 145 mg/dL). The test

[2] See *Whitaker* v. *Thompson*, 353 F.3d 947, 950-51 (D.C. Cir.) (upholding FDA's interpretation of what constitutes a health claim), *cert. denied*, 125 S.Ct. 310 (2004).

[3] A meta-analysis is the process of systematically combining and evaluating the results of clinical trials that have been completed or terminated.

[4] Review articles summarize the findings of individual studies.

diet was the same as in the previous Behall et al. study (Ref. 12), i.e., a STEP I diet including whole grain test foods and with barley ingredients substituted for whole wheat/brown rice ingredients to produce three versions of test diet providing 0 g, 3 g, or 6 g per day of barley beta-glucan, but each with approximately the same amount of total dietary fiber. As in the previous study, the 17-week experimental period consisted of a 2-week run-in period followed by three consecutive 5-week periods during which each participant was administered each of the three versions of test diet in random order. In comparison to the 0 g per day barley beta-glucan diet period, there were statistically significant ($p < 0.05$) reductions of serum total cholesterol following both the 3 g and 6 g per day barley beta-glucan diets (5 percent and 6 percent reductions, respectively). Similarly, there were statistically significant reductions of serum LDL-cholesterol following both the 3 g and 6 g per day barley beta-glucan diets compared to the 0 g per day diet (10 percent and 13 percent reductions, respectively). Serum HDL cholesterol levels were not different among the three diet periods.

The study reported in McIntosh et al., 1991 (Ref. 14) investigated the effects of dry milled barley products (barley bran and barley flakes), as compared to wheat, on blood lipids of mildly hypercholesterolemic men. The study included 21 mildly hypercholesterolemic adult males (mean age 43 years; mean baseline total cholesterol 240 mg/dL; mean baseline LDL-cholesterol 177 mg/dL). Throughout the study, participants consumed their customary diets but replaced their customary grain-based foods with similar test foods (bread, muesli, pasta, and biscuits) provided by study personnel. The test foods were made with either whole wheat flour, or with barley bran and barley flakes replacing portions of the whole wheat flour. The grain-based test foods provided about 50 percent of total caloric intake and about 65 percent of total dietary fiber intake. The whole wheat test foods and the barley test foods were equivalent in content of energy, total fat, saturated fat, total dietary fiber, and soluble dietary fiber content. The diet with whole wheat test foods provided 1.5 g beta-glucan per day, whereas the diet with barley test foods provided 8 g beta-glucan per day. Following a 3-week run-in period with the usual diets, the participants consumed the diets supplemented with either whole wheat test foods or barley test foods in random order during two consecutive 4-week periods. In comparison to the whole wheat test food period, there were statistically significant ($p < 0.05$) reductions of serum total cholesterol (6 percent reduction) and of serum LDL-cholesterol (7 percent reduction) following the barley test food period. Serum HDL cholesterol levels were not different between the two diet periods.

The study reported in Newman et al., 1989 (Ref. 15) investigated the effects of dry milled barley (barley flour), in comparison to wheat, on blood lipids of adult men. The study included 14 adult males (age greater than 35 years; total cholesterol range 140-247 mg/dL; LDL-cholesterol range 71-187 mg/dL). During the study, the participants consumed their customary diets but with three servings per day of test foods (muffins, applesauce bars, breads, muffins, cookies, and cereal) made with either whole wheat flour and wheat bran or with barley flour replacing similar foods of the customary diet. Both the wheat and barley grain-based test foods provided about 42 g total dietary fiber per day. The barley test foods provided approximately 3 g soluble beta-glucan per day. The 4-week study was a randomized, blinded study with one half of the participants consuming the wheat flour/bran test foods for 4 weeks, and the other half receiving the barley test foods for 4 weeks. At the end of the test period, mean serum total and LDL-cholesterol levels were significantly ($p < 0.05$) lower in the barley group than in the wheat group.

The study reported in Li et al., 2003 (Ref. 16) investigated the effects of whole grain barley on blood lipids of young healthy female Japanese. The study included 10 healthy Japanese medical students (average age 20 years; average baseline total cholesterol 140 mg/dL; average baseline LDL-cholesterol 53 mg/dL). During the study, participants consumed a typical Japanese diet (approximately 2,000 kcal/day, 35 percent fat) that the investigators provided. During the barley diet period, barley replaced 30 percent of the daily rice intake. The barley provided approximately 5 g per day of soluble dietary fiber. Each participant consumed the control diet (rice only) and barley diet (70 percent rice, 30 percent barley) in random order during two 4-week periods separated by a 4-week interval. In comparison to the control diet period, there were statistically significant ($p < 0.05$) reductions of blood total cholesterol (14.5 percent reduction) and of blood LDL-cholesterol (21 percent reduction) following the barley diet period. Blood HDL cholesterol levels were not different between the two diet periods.

In summary, the five clinical trials included in our review which tested the impact of consuming whole grain barley and dry milled barley products (bran, flakes, flour and pearled barley) on serum lipids (Refs. 12 through 16), consistently reported statistically significant lower serum total and LDL-cholesterol levels following 4 to 5 weeks of consuming diets in which whole grain barley or dry milled barley product ingredients replaced wheat and rice ingredients. Serum HDL cholesterol levels were not affected by consuming the barley foods. The lowest daily dietary intake of barley beta-glucan fiber effective in significantly lowering serum total and LDL-cholesterol reported in these studies was 3 g per day.

2. Eligible Barley Sources of Beta-Glucan Soluble Fiber

The oat beta-glucan health claim, at § 101.81(c)(2)(ii)(A), lists four eligible oat sources of beta-glucan soluble fiber; i.e., oat bran, rolled oats, whole oat flour, and oatrim. FDA is amending § 101.81(c)(2)(ii)(A) to add dehulled and hulless whole grain barley and certain dry milled barley products to this list of eligible sources of beta-glucan soluble fiber.

Below, the agency describes the eligible sources of barley beta-glucan soluble fiber from dry milled barley products and the specifications for all eligible sources.

The five clinical trials with barley cited previously used the following barley sources in their test foods: Whole grain barley, barley bran, barley flour, barley flakes, and pearled barley. Each dry milled product used in the clinical studies is processed only to the extent that milling has altered the particle size of the intact grain, and in some cases the product is also subjected to a particle size separation process (e.g., sifting). The barley sources of beta-glucan soluble fiber in this rule, i.e., dehulled or hulless whole grain barley, barley bran, flakes, grits, pearl, flour, meal, and sieved barley meal, are produced from dry milling processes only. Wet milling, as opposed to dry milling, involves slurrying the grain under pH, temperature, chemical, or enzyme conditions that cause changes other than just particle size. The one barley clinical trial that was excluded from our review because the product tested was a wet milled barley beta-glucan extract (Ref. 8) reported finding no effect of the barley beta-glucan extract on serum lipids.

There are many variations in dry milling processes for barley, most of the

resulting dry milled barley products are defined in the AACC ''Barley Glossary'' (Ref. 2), including barley bran, flakes, grits, pearl, and flour. The petition describes two additional dry milled barley products: Barley meal and sieved barley meal. Barley meal is unsifted, ground, whole grain barley. The petition described sieved barley meal as endosperm cell wall-enriched fractions of barley meal or barley flour resulting from including a particle size separation step (either sieving or air classification) in the dry milling process. Although the petitioner's term for this barley product was ''beta-glucan enriched barley fractions,'' we are using the term ''sieved barley meal'' in this rulemaking as that is descriptive of the how this dry milled barley product is produced and to clarify that a barley ''beta-glucan enriched'' product produced by any other process is not included as an eligible source of barley beta-glucan soluble fiber.

The petition requests that the eligible barley sources of beta-glucan soluble fiber added to § 101.81 include, in addition to the whole grain barley and dry milled barley products used in the clinical studies FDA included in its review (i.e., barley bran, flakes, flour, and pearl barley), three dry milled barley products that were not used in the reviewed clinical studies (i.e., barley grits, meal, and sieved barley meal). FDA agrees with the petitioner that the additional barley products represent variations of the extent of dry milling and as such involve more textural difference and not compositional differences that would result in an outcome that is different from that in clinical trials. FDA is amending § 101.81(c)(2)(ii)(A) to add as eligible barley sources of beta-glucan soluble fiber, whole grain barley, barley bran, barley flakes, barley grits, barley flour, barley meal, sieved barley meal, and pearl barley. The petition has specified the minimum beta-glucan soluble fiber content of eligible dry milled barley products, with the exception of sieved barley meal and barley bran, to be at least 4 percent (dwb), and the minimum total dietary fiber content to be at least 8 percent (dwb). The minimum beta-glucan soluble fiber and total fiber content specified in the petition for eligible barley bran and sieved barley meal is at least 5.5 percent (dwb) and 15 percent (dwb), respectively. The minimum beta-glucan soluble fiber and total fiber content specified in the petition for eligible whole grain barley is at least 4 percent (dwb) and 10 percent (dwb), respectively. The petition states that these dietary fiber content specifications were selected based on typical analyses of commercially available dry milled barley products in the United States. FDA is adopting the dietary fiber content specifications recommended by the petitioner that must be met in order for the listed sources of beta-glucan soluble fiber to be considered eligible sources.

IV. Decision to Amend the Health Claim

Evidence from five clinical trials (Refs. 12 through 16) consistently demonstrate that consuming whole grain barley and dry milled barley products, such as barley bran, flakes, flour and pearled barley that provide at least 3 g beta-glucan fiber per day, is effective in lowering serum total and LDL-cholesterol levels, which in turn may reduce the risk of CHD. The cholesterol-lowering effects of beta-glucan soluble fiber in dry milled barley products is comparable to that of the oat sources of beta-glucan now listed in § 101.81(c)(2)(ii)(A). When issuing the oat beta-glucan health claim the agency concluded that the beta-glucan soluble fiber component of oat products plays a significant role in the relationship between whole grain oats and the risk of CHD based, in part, on evidence that there is a dose response between the level of beta-glucan soluble fiber from whole oats and the level of reduction in serum LDL cholesterol, and evidence that intakes at or above 3 g per day were more effective in lowering serum lipids than lower intake levels (62 FR 3584 at 3585). The petition notes that a comparison of the serum cholesterol lowering evidence for barley beta-glucan soluble fiber, which has been submitted with the petition, and the oat beta-glucan soluble fiber/cholesterol-lowering dose-response evidence, which was cited in the oat beta-glucan health claim rulemaking, shows that the cholesterol lowering efficacy of the oat and the barley sources of beta-glucan soluble fiber are very similar. FDA agrees that the effect, on serum cholesterol, of consuming whole grain oat and dry milled barley sources of beta-glucan soluble fiber appears equivalent. FDA also agrees that the scientific evidence supports a minimum daily effective intake of beta-glucan soluble fiber from dry milled barley products the same as that which was previously found for beta-glucan soluble fiber from whole oat sources, i.e., 3 g per day. Therefore, FDA is amending § 101.81(c)(2)(i)(G)(1) to include 3 g or more per day of barley sources of beta-glucan soluble fiber, alone or in combination with whole oat sources of such fiber.

Barley beta-glucan can be measured by the same quantitative analytical method as is currently specified in § 101.81 for the determination of oat beta-glucan. Based on the totality of the publicly available scientific evidence, FDA concludes there is significant scientific agreement, among experts qualified by scientific training and experience, for a claim about the relationship between certain beta-glucan soluble fiber sources and reduced risk of CHD. Thus, we are amending § 101.81(c)(2)(ii)(A) to include dehulled or hulless whole grain barley and certain dry milled barley products as additional sources of beta-glucan soluble fiber. We also find that the serum cholesterol-lowering efficacy of barley beta-glucan soluble fiber and of oat beta-glucan are comparable and, like oat beta-glucan, 3 g per day of barley beta-glucan is a sufficient daily dietary intake to achieve a reduction in serum total and LDL cholesterol.

The barley products that are to be included in this amendment as eligible sources of beta-glucan soluble fiber include dehulled and hulless whole grain barley, and certain dry milled barley products including barley bran, barley flakes, barley flour, barley grits, and pearl barley as they are defined in the AACC Barley Glossary (Ref. 2), barley meal which is an unsifted ground barley grain, and sieved barley meal which is an endosperm cell-wall enriched fraction resulting from sieving or air classification of barley flour or barley meal to separate fractions based on particle size. The sieved barley meal fraction retains the coarser particles that originate from endosperm cell wall. Minimum dietary fiber content specifications for these barley products, recommended in the petition as representative of commercially available barley products in the United States are a minimum of 4 percent beta-glucan soluble fiber and 10 percent total dietary fiber for dehulled and hulless whole grain barley; a minimum of 5.5 percent beta-glucan soluble fiber and 15 percent total dietary fiber for barley bran and sieved barley meal; and a minimum of 4 percent beta-glucan soluble fiber and 8 percent total dietary fiber for all other dry milled barley products. All dietary fiber values are on a dwb.

The oat beta-glucan health claim requires that a food bearing the claim on its label include one of the whole grain ingredients listed within § 101.81(c)(2)(ii)(A), and that the whole oat ingredient provide at least 0.75 gram of beta-glucan soluble fiber per reference amount customarily consumed of the food product (§ 101.81(c)(2)(iii)(A)). FDA arrived at

this value based on a standard assumption that the daily dietary intake is divided over four eating occasions (three meals and a snack). FDA concluded that in adding whole oat flour to the eligible whole oat sources of beta-glucan soluble fiber that were included in the final rule there would be sufficient numbers and types of whole oat-containing food products available to increase the likelihood that whole oat food products will be consumed at four eating occasions per day (62 FR 3584 at 3592). Adding whole grain barley and dry milled barley products as additional eligible sources of beta-glucan soluble fiber will further increase the type and number of qualifying food products and make it easier for consumers to select whole grain barley, dry milled barley or whole oat containing food products at four eating occasions per day. Thus, FDA is retaining under the ''Nature of the food eligible to bear the claim'' section of this regulation the criterion that foods eligible to bear the claim contain at least 0.75 gram of soluble fiber (§ 101.81(c)(2)(iii)(A)(*1*)).

FDA authorized use of the oat beta-glucan health claim in 1997, in part, on the basis of clinical evidence demonstrating that consumption of whole oat foods such as oat bran, oatmeal, and whole oat flour lowers serum cholesterol. FDA also considered scientific evidence for a dose-response between the amount of beta-glucan consumed and the cholesterol-lowering effect (Ref. 17), and evidence that at least 3 grams of soluble fiber consumed per day in whole oat foods is sufficient for effective cholesterol lowering (Ref. 18). Information provided in the oat beta-glucan health claim petition indicated that the soluble fiber content of whole oats is predominantly beta-glucan. Therefore, FDA concluded that the total soluble fiber content of whole oats significantly reflects the beta-glucan present in whole oats (62 FR 3584 at 3588).

Although FDA had concluded that oat beta-glucan soluble fiber plays a significant role in the relationship between whole grain oats and reduced risk of CHD (62 FR 3584 at 3585), FDA had considered the term ''beta-glucan'' a technical term that presumably would not be widely understood, and that the term ''soluble fiber'' is more familiar to consumers because soluble fiber can be used on the nutrition label under 21 CFR 101.9(c)(6)(i)(A). As such, this health claim statement must identify the substance using the term ''soluble fiber'' (62 FR 3584 at 3588).

The standard method for measurement of beta-glucan in oat and barley (AOAC Official Method 992.28) measures total beta-glucan content of the grain product without differentiating soluble and insoluble fractions. There is no standard method, nor a single definition for, soluble beta-glucan. Typically a grain product is analyzed for either soluble fiber or for total beta-glucan. Information in the original oat beta-glucan health claim petition convinced FDA that the total soluble fiber content of whole oats significantly reflects the beta-glucan content (62 FR 3584 at 3588). Information and data provided in the current petition demonstrate that the solubility of beta-glucan in oats and barley are similar and that the test for total beta-glucan is an adequate marker for the cholesterol-lowering functionality of whole oat, whole grain barley, and dry milled barley in foods. Therefore, FDA is requiring that the barley beta-glucan health claim identify the substance with the term ''soluble fiber,'' although the substance is to be measured as total beta-glucan.

There is strong and consistent scientific evidence that diets high in saturated fat and cholesterol are associated with elevated serum total and LDL cholesterol, and that elevated serum cholesterol levels are a major modifiable risk factor for CHD. Expert groups recommend lowering dietary saturated fat and cholesterol as a primary lifestyle change for reducing heart disease risk (Ref. 4). Comments to the 1997 oat beta-glucan health claim final rule expressed concern that a CHD risk claim that does not include a reference to a low saturated fat, low cholesterol diet may mislead consumers into thinking that the single food, e.g., oat products, would appear to be a ''magic bullet'' (62 FR 3584 at 3594). Further, based on the scientific evidence, the role of soluble fiber from whole oats in the diet is generally recognized as being of smaller magnitude in reducing CHD risk compared to consumption of a low saturated fat, low cholesterol diet. When authorizing the oat beta-glucan health claim FDA concluded that although selection of foods with soluble fiber from whole oats is a useful adjunct to selection of diets low in saturated fat and cholesterol in reducing CHD risk, it would not be in the best interest of public health nor consistent with the scientific evidence to imply that selecting diets with soluble fiber from whole oats is a substitute for consuming diets low in saturated fat and cholesterol (id.). Therefore, FDA required that the oat beta-glucan health claim statement include the phrase ''diets that are low in saturated fat and cholesterol and that include soluble fiber from * * *'' (§ 101.81(c)(2)(i)(A)).

Barley beta-glucan soluble fiber functions comparably to oat beta-glucan soluble fiber in its effect on reducing LDL and total cholesterol. Barley beta-glucan soluble fiber sources are a useful adjunct to selection of diets low in saturated fat and cholesterol to reduce CHD risk. Thus, the agency is requiring the barley beta-glucan health claim to include the information that selection of barley foods containing beta-glucan soluble fiber should ''be part of a diet low in saturated fat and cholesterol,'' consistent with § 101.81(c)(2)(i)(A). Including a reference to a low saturated fat, low cholesterol diet in the health claim will enable the public to understand the relative significance of the information in the context of a total daily diet (21 U.S.C. 343(r)(3)(A)(iii)).

V. Description of Modifications to § 101.81

A. Requirements of the Health Claim

Specific requirements of the ''nature of the claim'' paragraph in § 101.81(c)(2)(i) of the soluble fiber from certain foods and risk of CHD health claim include, in part, that the claim specify the daily dietary intake of the soluble fiber source associated with coronary heart disease risk reduction. FDA is amending § 101.81(c)(2)(i)(G)(*1*) to indicate that the source of the 3 g or more per day of beta-glucan soluble fiber may be from whole oats or barley or a combination of oats and barley. FDA is amending § 101.81(c)(2)(ii)(A) to add barley sources of beta-glucan soluble fiber in addition to whole oat sources. In addition, FDA is amending § 101.81(c)(2)(ii)(A) by adding § 101.81(c)(2)(ii)(A)(*5*) to list dehulled and hulless whole grain barley and specific dry milled barley products as eligible sources of beta-glucan soluble fiber. The specific dry milled barley products include, barley bran, barley flakes, barley grits, pearl barley, barley flour, barley meal, and sieved barley meal produced from clean, sound dehulled or hulless barley grain using standard dry milling techniques, which may include steaming or tempering. Eligible dehulled and hulless whole grain barley has a beta-glucan soluble fiber content of at least 4 percent (dwb) and a total dietary fiber content of at least 10 percent (dwb). Eligible barley flakes, barley grits, pearl barley, barley flour, and barley meal have a beta-glucan soluble fiber content of at least 4 percent (dwb) and total dietary fiber content of at least 8 percent (dwb). Eligible barley bran and sieved barley

meal have a beta-glucan soluble fiber content of at least 5.5 percent (dwb) and total dietary fiber content of at least 15 percent (dwb). FDA is incorporating by reference in new § 101.81(c)(2)(ii)(A)(*5*) the Barley Glossary (AACC Method 55–99), published in Approved Methods of the American Association of Cereal Chemists, that contains definitions for barley bran, barley flakes, barley flour, barley grits, pearl barley, dehulled barley, and hulless barley. FDA is amending the ''nature of the food eligible to bear the claim'' paragraph at § 101.81(c)(2)(iii)(A)(*1*) to indicate that the eligible sources of beta-glucan fiber will include both whole oat and barley foods.

B. Optional Information

FDA is amending the ''optional information'' paragraph of this section (at § 101.81(d)(5)) to indicate that the eligible sources of beta-glucan fiber will include both whole oat and barley foods.

VII. Issuance of an Interim Final Rule and Immediate Effective Date

We are issuing this rule as an interim final rule, effective immediately, with an opportunity for public comment. Section 403(r)(7) of the act authorizes us to make proposed regulations issued under section 403(r) of the act effective upon publication pending consideration of public comment and publication of a final regulation, if the agency determines that such action is necessary for public health reasons. This authority enables us to act promptly on petitions that provide for information that will help: (1) Enable consumers to develop and maintain healthy dietary practices, (2) enable consumers to be informed promptly and effectively of important new knowledge regarding nutritional and health benefits of food, or (3) ensure that scientifically sound nutritional and health information is provided to consumers as soon as possible. Proposed regulations made effective upon publication under this authority are deemed to be final agency action for purposes of judicial review. The legislative history indicates that such regulations should be issued as interim final rules (H. Conf. Rept. No. 105–399, at 98 (1997)).

We are satisfied that each of the three criteria in section 403(r)(7)(A) of the act have been met in the petition submitted by the National Barley Foods Council. This health claim will enable consumers to develop and maintain healthy dietary practices, such as increasing consumption of foods containing types of soluble dietary fiber shown to help reduce CHD risk. The health claim also will provide consumers with important new knowledge regarding the effects of consuming whole grain barley and dry milled barley products on blood cholesterol, and will provide consumers with scientifically sound information about an additional dietary choice which may help reduce the risk of CHD. Therefore, we are using the authority given to us in section 403(r)(7)(A) of the act to issue an interim final rule authorizing a health claim relating consumption of barley beta-glucan soluble fiber and CHD risk, effectively immediately.

FDA invites public comment on this interim final rule. The agency will consider modifications to this interim final rule based on comments made during the comment period. Interested persons may submit to Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this interim final rule. This regulation is effective upon publication in the **Federal Register**. The agency will address comments and confirm or amend the interim final rule in a final rule.

VIII. Analysis of Impacts

FDA has examined the impacts of the interim final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

A. Regulatory Impact Analysis

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this interim final rule is not a significant regulatory action as defined by Executive Order 12866.

1. Need for Regulation

Current labeling regulations do not permit foods containing threshold amounts of beta-glucan soluble fiber from the whole grain barley or dry milled barley to claim health benefits that link their intake with a reduction in the risk of CHD. Such claims are authorized for foods containing threshold amounts of beta-glucan soluble fiber-containing whole oat foods, and scientific evidence links consumption of foods with the same amount of beta-glucan soluble fiber from barley with the same health benefits. Allowing foods containing beta-glucan soluble fiber from barley to claim the same health benefits as those containing beta-glucan soluble fiber from whole oats will improve diet-related information available on food labels. Making this information available to consumers may facilitate disease risk-reducing dietary choices.

2. Regulatory Options

The regulatory options include: (1) No regulatory action and (2) the interim final rule.

3. Benefits and Costs From No Regulatory Action

The absence of any regulatory action is considered the baseline option for comparison with the regulatory option. There would be no compliance costs and no benefits in the absence of regulatory action.

4. Benefits and Costs From the Interim Final Rule

a. *Benefits from the interim final rule*—The benefit from the interim final rule is the reduced CHD risk that may result from consumers' substituting barley foods containing beta-glucan soluble fiber for currently consumed, less healthful alternatives. Heart disease is the leading cause of death and permanent disability in the United States (Ref. 19). The National Center for Health Statistics in the Centers for Disease Control and Prevention (CDC) reports that in 2002 there were approximately 23 million non-institutionalized adults diagnosed with heart disease, resulting in approximately 700,000 deaths. According to the same source, heart disease patients made approximately 20.8 million office-based physician visits and approximately 1.1 million hospital outpatient visits in that year. In addition, there were approximately 4.4 million hospital discharges of heart disease patients, with average lengths of stay of approximately 4.4 days. As an indication of the extent to which this disease is disabling, the CDC reports that approximately 66 percent of heart patients fail to fully recover (Ref. 20).

Overview of Benefits Analysis

This interim final rule may result in a reduction in the risk of heart disease by enabling at-risk consumers to make healthier food choices. We first describe

the theoretical framework for estimating the increase in the market shares and healthful consumption as a result of this interim final rule. We use results from FDA's 2001 Food Label and Packaging Survey (FLAPS) to compute the total sales of products with health claims from soluble fiber from whole oats to estimate a potential market share of foods containing beta-glucan soluble fiber from barley (Ref. 21). We describe the FLAPS data set, and use the estimated market share of foods claiming health benefits from beta-glucan soluble fiber from barley as the upper bound for the increase in healthful consumption from this interim final rule. We account for existing consumption of foods that are equally as healthful as the new foods containing beta-glucan soluble fiber from barley to adjust the upper bound in order to estimate the increase in healthful food consumption. We then suggest a link between any estimated increase in healthful food consumption and a reduction in the incidence of CHD. Finally, we suggest further adjustments to any estimated reductions in health risks from more healthful food consumption based on an assumed uneven distribution of diet-related health risks across the population.

Theoretical Framework

We assume that prices, taste, and health attributes determine consumer demand for food products within a food group, and that an increase in the consumer demand for an item within a food group results in an offsetting decrease in demand for other items within that group. In addition, we assume that an increase in the consumption of healthful products in the aggregate may result if there is a decrease in the relative price of healthful products compared with products in general. However, a decrease in the relative price of one healthful product may also result in a decrease in the demand for other healthful products.

We assume that the total sales of products within a general product group remain constant, so any increase in consumption of healthful products as a result of this interim final rule would be offset by a decrease in consumption of other products within the same product group; these other products may be more, less, or equally healthful. To the extent that aggregate consumption of products from an entire product group increases, aggregate consumption of products from other groups will decrease. In this analysis, however, we do not consider the effects of changes in aggregate consumption of product groups that do not contain products with health claims.

Using FLAPS to Estimate the Market Share of Foods Claiming Health Benefits From Soluble Fiber From Whole Oats

We use results from FDA's 2001 FLAPS to estimate the increase in market shares of foods containing beta-glucan soluble fiber from barley (Ref. 21). The 2001 FLAPS survey contains label information on 1,281 products selected from 238 food types from 57 food groups. The information includes detailed descriptions of the labels including any health claims, structure-and-function claims, and nutrient content claims. We combine the label information with total sales information obtained from the Information Resources Incorporated (IRI) data used to design the sampling methodology for the FLAPS survey to estimate that products with health claims that link fiber from whole oats to reduced risk from CHD account for approximately 0.6 percent of all product sales. Moreover, products with these health claims are concentrated in the hot and cold cereals product groups: 5.1 percent of sales of cold cereals and 75.5 percent of sales of hot cereals claim these health benefits.

We acknowledge the potential sampling bias in the FLAPS survey, which selects brand name products with the largest sales within a product group. This sampling method likely overestimates the prevalence of health claims on labels (because large brand names may be more likely to make claims than their smaller, less-known competitors). However, FLAPS sampled these products because they represent an overwhelming share of total sales within their product groups. Consequently, the effect of the overestimation bias on the estimated consumption (and resulting health benefits) of healthier products may be small.

We characterize the uncertainty in the FLAPS estimates by assuming that the true percentages of sales of cold and hot and cereal products that currently make fiber from oats health claims are distributed lognormally with means of 75.5 percent and 5.1 percent (i.e., the estimates reported from the FLAPS data), both with variances of 10 percent relative to their means. The lognormal distribution is appropriate to use since it incorporates the idea that the true market shares of cold and hot cereal products that currently make health claims about fiber from oats is not too different from the mean estimate computed using FLAPS as would be implied by the use of a normal distribution. The parameters that describe the lognormal distribution are the natural logarithms of the mean and variance of a normal distribution.

The Potential Market Shares of Foods Claiming Health Benefits From Soluble Fiber From Barley

Manufacturers may formulate new products to use barley as a principal ingredient if the ability to claim health benefits makes this option profitable. In addition, we assume current products with threshold amounts of beta-glucan soluble fiber from barley would be able to make the health claim if they incur the cost of changing labels. We do not know how many current products would use the health claim, and we do not know how many new products would be formulated to use the claim. We assume that the current market shares of products that claim health benefits from soluble fiber from oats can be used to estimate of the potential market share for products likely to claim health benefits from soluble fiber from barley.

We first assume that the potential market share from newly formulated cold cereals and hot cereals that claim health benefits from soluble fiber from barley would result from sales that would have otherwise been for less-healthful alternatives. We also assume that the potential market shares of newly formulated hot cereals and cold cereals claiming health benefits from soluble fiber from barley would be no larger than those for hot cereals and cold cereals currently claiming health benefits from soluble fiber from oats. Consequently, we estimate that the potential market share of hot cereals that claim health benefits from soluble fiber from barley would be 24.5 percent of the market for all hot cereals, and that the potential market share of cold cereals that claim benefits from soluble fiber from barley would be 5.1 percent of the market for all cold cereals.

The Increase in Healthful Consumption

The increases in market shares of more healthful food products may be less than that reflected in the potential market shares estimated previously if consumers of newly formulated and labeled hot and cold cereals claiming health benefits from soluble fiber from barley would have otherwise selected hot and cold cereals currently claiming health benefits from soluble fiber from oats. Increases in market shares of healthful food products may also be less than those reflected by the potential market shares estimated previously if consumers of newly formulated and labeled hot and cold cereals claiming health benefits from soluble fiber from barley would have otherwise selected existing hot and cold cereals that contain the threshold level of beta-

glucan soluble fiber from barley but are currently not allowed to make a health claim. We assume that half of the estimated potential market shares of newly formulated and labeled hot and cold cereals claiming health benefits from soluble fiber from barley would reflect purchases by consumers who otherwise would have selected hot and cold cereals currently claiming health benefits from soluble fiber from oats. We further assume that half of the remaining sales of newly formulated and labeled barley products would reflect purchases of existing products that contain the threshold level of beta-glucan soluble fiber from barley but are not currently allowed to make a health claim. Consequently, we estimate that one-quarter (i.e., one-half times one-half) of the potential market shares of newly formulated barley products would reflect purchases by consumers who otherwise would have selected less-healthful hot and cold cereal alternatives, or 1.3 percent of the cold cereal market (i.e., 0.25 times 5.1 percent), and 6.1 percent of the hot cereal market (i.e., 0.25 times 24.5 percent) would reflect increases in healthful food purchases as a result of this interim final rule.

To characterize the uncertainty in our methods, we assume that the estimates of the percent increases in market shares of healthful hot and cold cereal products due to this interim final rule are uniformly distributed with minimums equal to one-half of the previously estimated increases in healthful sales, and maximums of one and one-half times the previously estimated increases in healthful sales. Consequently, we estimate a range of between 0.5 to 2 percent with a mean of 1 percent (rounded to the nearest half-percent) increase in market share of more healthful cold cereal products, and between 3 and 9 percent with a mean of 6 percent (rounded to the nearest half-percent) increase in the market share of more healthful hot cereal products as a result of this interim final rule. We assume that increases in market shares of more healthful food products containing threshold levels of beta-glucan soluble fiber from barley would reflect more healthful food consumption which may decrease the risk of diet-related disease, including CHD.

The increase in healthful consumption by those consumers not at risk for diet-related diseases, including CHD, may mitigate the health benefits from the estimated increase in healthful consumption. As suggested earlier, healthful characteristics are just one of several considerations, including taste and price, consumers use when making food purchases. Consumers who choose newly formulated barley products over less healthful alternatives may include both those at risk of these diseases as well as those who are not at risk. We assume that those who are at risk of CHD will contribute to half of the increase in the healthful consumption of hot and cold cereal products. Consequently, we estimate an increase in healthful consumption of cold cereals by consumers who are at risk for CHD to be between 0.25 and 1 percent, with a mean of 0.5 percent of that market, and an increase in healthful consumption of hot cereals by consumers who are at risk for CHD to be between 1.5 and 4.5 percent with a mean of 3 percent of that market due to this interim final rule.

Finally, the incremental expansion of the health claim for foods that contain psyllium seed husk and beta-glucan soluble fiber from oats to include beta-glucan soluble fiber from barley raises the possibility that soluble fiber from other grains may also result in the same health benefits. In this analysis we have assumed that hot and cold cereal products that currently do not claim health benefits from soluble fiber from oats are less healthful than those that do make that claim. To the extent that hot and cold cereals contain threshold quantities of soluble fiber from other grains that reduce the risk for CHD, in addition to barley, yet are not permitted to make health claims, the changes in healthful consumption estimated for this interim final rule may be overstated. In the extreme case, if all current hot and cold cereal products were manufactured with grains having identical health benefits as those from beta-glucan soluble fiber from oats and barley, then the health benefits from allowing soluble fiber from barley to claim health benefits estimated for the interim final rule would be zero, because consumers would switch among equally healthful alternatives.

b. *Costs*—The costs incurred by manufacturers of foods that are newly developed or relabeled to claim health benefits from soluble fiber from barley would be voluntarily incurred. No manufacturer would incur these costs if it were not profitable to do so and, consequently they are not considered mandatory compliance costs. Nevertheless, we do anticipate a voluntarily incurred allocation of resources devoted to re-labeling and new product development as a result of this interim final rule, and that the magnitude of this resource allocation is important for characterizing the broader economic impact on society. We refer to these voluntarily incurred costs as change-over costs.

Although the mandatory compliance costs of this interim final rule are zero, the voluntarily incurred change-over costs that would result include costs of re-labeling products that contain threshold levels of beta-glucan soluble fiber from barley but are currently not allowed to claim health benefits, as well as the costs for developing products specifically to make the soluble fiber from barley health claim. The new product development change-over costs include the costs of idea generation, laboratory testing of new recipes that meet the threshold levels of beta-glucan soluble fiber from barley, process testing, shelf life studies, production related market research, production testing in increasingly large batch sizes, and consumer testing and marketing evaluations. At any stage in the development process a product may be dropped from consideration. Products that undergo a portion of the process but that are eventually dropped from consideration also constitute a new product development cost. Re-labeling change-over costs for products that contain threshold amounts of beta-glucan soluble fiber from barley but are currently not allowed to claim health benefits, include the costs of testing food products to verify that the levels of beta-glucan soluble fiber are consistent with that required for the health claim, the fixed and variable printing costs for the new label, and the storage costs associated with disposing old labels.

We use the FDA Reformulation Cost Model (Ref. 22) and the FDA Labeling Cost Model (Ref. 23) to estimate the new product development and labeling change-over costs from making health claims for beta-glucan soluble fiber from barley. Data on industry categories that are available to use in these models include from the North American Industry Classification System (NAICS) code 311230, Breakfast Cereals Manufacturing which includes both hot and cold cereals. Based on the earlier results, we estimate that the potential market shares for breakfast cereals that claim health benefits from soluble fiber from barley would be 24.5 percent of the market for all hot cereals, and 5.1 percent of the market for all cold cereals.

In order to separate the broad NAICS category into hot and cold cereals, we use estimates obtained from the FLAPS and IRI data sets indicating cold cereal sales of approximately $6.5 billion, and hot cereals sales of approximately $0.6 billion (Ref. 21). Consequently, the hot cereal market is approximately 8 percent (i.e., 100 x $0.6 billion / $7.1

billion) of the size of the breakfast cereals market, and the cold cereal market is approximately 92 percent (i.e., 100 x $6.5 billion / $7.1 billion) of the breakfast cereals market. In addition, we estimate that approximately 5 percent (i.e., 5.1 percent x 92 percent rounded to the nearest percent) of the sales from NAICS 311230 reflects the market share of cold cereals that would claim health benefits from barley, and that 2 percent (i.e., 24.5 percent x 8 percent rounded to the nearest percent) of the sales from NAICS 311230 reflects that market share of hot cereals that would claim health benefits from barley. Consequently, we estimate that 7 percent of NAICS 311230 (i.e., 5 percent plus 2 percent) would either develop new products or re-label existing products in order to claim health benefits from beta-glucan soluble fiber from barley.

Based on the earlier discussion, we expect that one-half of all hot and cold cereals that would claim health benefits from soluble fiber from barley would be newly developed products (i.e., 3.5 percent of NAICS 311230), while one-half would be re-labeled existing products (i.e., 3.5 percent of NAICS 311230) that currently meet the soluble fiber from barley content requirements for making a health claim. To incorporate uncertainty surrounding our methodology, we estimate a uniform distribution between 2 and 5 percent of NAICS 311230 would re-label and between 2 and 5 percent of NAICS 311230 would be from new products developed in order to claim health benefits from soluble fiber from barley.

We ran the Reformulation Cost Model for the case when major production process changes are necessary to approximate the change-over costs for new product development. These costs were estimated assuming a 12-month voluntary compliance period. We assume that product lines would become discontinued as a result of this interim final rule due to insufficient consumer demand, reflecting the assumption that growth in total breakfast cereal consumption will not change. However, we do not estimate the costs of discontinued product lines. High, low and medium estimates are generated from the model based on experts opinions, and are reported in table 1 for assumed market shares of 2 percent 3.5 percent, and 5 percent of the sales of breakfast cereals from new products developed to claim health benefits from soluble fiber from barley.

TABLE 1.

Assumed Market Share	Voluntarily Incurred New Product Development Change-Over Costs		
	Low	Medium	high
Low market share	$8,128,000	$16,768,000	$33,813,000
3.5 percent market share	$14,224,000	$29,343,000	$59,172,000
High market share	$20,320,000	$41,919,000	$84,532,000

We ran the Labeling Cost Model assuming a 12-month voluntary compliance period to estimate the change-over costs for re-labeling existing products that meet the soluble fiber from barley requirements but are currently unable to claim health benefits. High, low and medium estimates of the change-over costs are generated from the model based on experts opinions, and are reported in table 2 for assumed market shares of 2 percent 3.5 percent, and 5 percent of the sales of breakfast cereals from re-labeled products.

TABLE 2.

Assumed Market Share	Voluntarily Incurred Re-labeling Changeover Costs		
	Low	Medium	High
Low market share	$200,000	$287,000	$479,000
3.5 percent market share	$353,000	$502,000	$837,000
High market share	$504,000	$717,000	$1,198,000

In table 3 we report the annualized voluntarily incurred change-over costs for the interim final rule computed assuming discount rates of 3 percent and 7 percent over a 10-year horizon. All costs are assumed to be incurred in the beginning of the second year following promulgation of the interim final rule and there would be no recurring annual change-over costs after the second year. The low, medium, and high estimates for the voluntarily incurred re-labeling and new product development change-over costs were added together, and the appropriate discount rate applied. This total cost was then divided by 10 to get the annualized costs. Because producers choose the time period for the development and re-labeling of new products, the actual time periods for the changes can be different from the assumed 12 months assumed in the models and reported in the tables. We expect that the time periods chosen would be shorter and the voluntarily incurred costs higher, the greater the perceived consumer response to the health claims from soluble fiber from barley.

TABLE 3.

Discount Rate	Annualized Voluntarily Incurred Change-Over Costs for Interim Final Rule		
	Low	Medium	High
7 percent	$1,932,000	$3,965,000	$7,979,000
3 percent	$2,007,000	$4,119,000	$8,288,000

B. Regulatory Flexibility Analysis

FDA has examined the economic implications of this interim final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. Small businesses will incur costs only if they choose to take advantage of the marketing opportunity presented by this rule. No small entity, however, will choose to bear the cost of adding the health claim to its product labels unless it believes that the health claim will lead to increased sales of its product sufficient to justify the costs. No small business would be required to incur costs. FDA certifies that this interim final rule would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rule making if the rule would include a ''Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current inflation-adjusted statutory threshold is about $115 million. FDA has determined that this interim final rule would not constitute a significant rule under the Unfunded Mandates Reform Act.

IX. Environmental Impact

FDA has determined under 21 CFR 25.32(p) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Paperwork Reduction Act

FDA concludes that the labeling provisions of this interim final rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the food labeling health claim on the association between consumption of barley beta-glucan soluble fiber and CHD risk is a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public.'' (see 5 CFR 1320.3(c)(2)).

XI. Federalism

FDA has analyzed this interim final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the states or on the relationship between the National Government and the States, or on the distribution of power and responsibility among the various levels of government. Accordingly, we have concluded that the interim final rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

XII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9:00 a.m. and 4:00 p.m., Monday through Friday.

XIII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. National Barley Foods Council, ''Petition for Health Claim—Barley Beta-Glucan Soluble Fiber and Barley Foods Containing Beta-Glucan Soluble Fiber and Coronary Heart Disease,'' (Docket 2004P–0512, CP1), August 2, 2004.

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List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

■ 1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

■ 2. Section 101.81 is amended by revising paragraphs (c)(2)(i)(G)(*1*), (c)(2)(ii)(A) introductory text, (c)(2)(iii)(A)(*1*) and (d)(5), and by adding new paragraph (c)(2)(ii)(A)(*5*) to read as follows:

§ 101.81 Health claims: Soluble fiber from certain foods and risk of coronary heart disease (CHD).

* * * * *

(c) * * *

(2) * * *

(i) * * *

(G) * * *

(*1*) 3 g or more per day of β-glucan soluble fiber from either whole oats or barley, or a combination of whole oats and barley.

* * * * *

(ii) * * *

(A) Beta (β) glucan soluble fiber from the whole oat and barley sources listed below. β-glucan soluble fiber will be determined by method No. 992.28 from the ''Official Methods of Analysis of the AOAC INTERNATIONAL,'' 16th ed. (1995), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the AOAC INTERNATIONAL, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740, 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*;

* * * * *

(*5*) *Whole grain barley and dry milled barley*. Dehulled and hull-less whole grain barley with a β-glucan soluble fiber content of at least 4 percent (dwb) and a total dietary fiber content of at least 10 percent (dwb). Dry milled barley grain products include barley bran, barley flakes, barley grits, pearl barley, barley flour, barley meal, and sieved barley meal that are produced from clean, sound dehulled or hull-less barley grain using standard dry milling techniques, which may include steaming or tempering, and that contain at least 4 percent (dwb) of β-glucan soluble fiber and at least 8 percent (dwb) of total dietary fiber, except barley bran and sieved barley meal for which the minimum β-glucan soluble fiber content is 5.5 percent (dwb) and minimum total dietary fiber content is 15 percent (dwb). Dehulled barley, hull-less barley, barley bran, barley flakes, barley grits, pearl barley, and barley flour are as defined in the Barley Glossary (AACC Method 55–99), published in Approved Methods of the American Association of Cereal Chemists, 10th ed. (2000), pp. 1 and 2, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Association of Cereal Chemists, Inc., 3340 Pilot Knob Rd., St. Paul, Minnesota, 55121, or may be examined at the Center for Food Safety and Applied Nutrition Library, 5100 Paint Branch Pkwy., College Park, MD 20740, 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*. Barley meal is unsifted, ground barley grain not subjected to any processing to separate the bran, germ, and endosperm. Sieved barley meal is an endosperm cell wall-enriched fraction of ground barley separated from meal by sieving or by air classification.

* * * * *

(iii) * * *

(A) * * *

(*1*) One or more of the whole oat or barley foods from paragraphs (c)(2)(ii)(A)(*1*), (*2*), (*3*), and (*5*) of this section, and the whole oat or barley foods shall contain at least 0.75 gram (g) of soluble fiber per reference amount customarily consumed of the food product; or

* * * * *

(d) * * *

(5) The claim may state that a diet low in saturated fat and cholesterol that includes soluble fiber from whole oats or barley is consistent with ''Nutrition and Your Health: Dietary Guidelines for Americans,'' U.S. Department of Agriculture (USDA) and Department of Health and Human Services (DHHS), Government Printing Office (GPO);

* * * * *

Dated: December 12, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–24387 Filed 12–22–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 556

New Animal Drugs; Moxidectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Fort Dodge Animal Health, Division of Wyeth. The NADA provides for oral use of moxidectin solution in sheep for the treatment and control of a variety of internal parasites.

DATES: This rule is effective December 23, 2005.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.gov.*

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of Wyeth, 800 Fifth St. NW., Fort Dodge, IA 50501, filed NADA 141–247 for CYDECTIN (moxidectin) Oral Drench for Sheep, used for the treatment and control of various internal parasites in sheep. The NADA is approved as of November 30, 2005, and the regulations are amended in part 520 (21 CFR part 520) by adding § 520.1454 and in part 556 (21 CFR part 556) by revising § 556.426 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 573(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ccc–2), this approval qualifies for 7 years of exclusive marketing rights beginning November 30, 2005, because the new animal drug has been declared a designated new animal drug by FDA under section 573(a) of the act.

FDA has determined under 21 CFR 25.33(d)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1451 [Amended]

■ 2. Section 520.1451 is amended by revising the section heading to read ''Moxidectin tablets.''

■ 3. Add § 520.1454 to read as follows:

§ 520.1454 Moxidectin solution.

(a) *Specifications.* Each milliliter (mL) of solution contains 1 milligram (mg) moxidectin.

(b) *Sponsor.* See No. 000856 in § 510.600 of this chapter.

(c) *Related tolerances.* See § 556.426 of this chapter.

(d) *Special considerations.* See § 500.25 of this section.

(e) *Conditions of use in sheep*—(1) *Amount.* Administer 1 mL per 11 pounds body weight (1 mL per 5 kilograms) by mouth.

(2) *Indications for use.* For the treatment and control of the adult and L4 larval stages of *Haemonchus contortus*, *Teladorsagia circumcincta*, *T. trifurcata*, *Trichostrongylus axei*, *T. colubriformis*, *T. vitrinus*, *Cooperia curticei*, *C. oncophora*, *Oesophagostomum columbianum*, *O. venulosum*, *Nematodirus battus*, *N. filicollis*, and *N. spathiger*.

(3) *Limitations.* Sheep must not be slaughtered for human consumption within 7 days of treatment. Because a withholding time in milk has not been established for this product, do not use in female sheep providing milk for human consumption.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 4. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 5. Section 556.426 is amended by adding paragraph (b)(2) and revising paragraph (c) to read as follows:

§ 556.426 Moxidectin.

* * * * *

(b) * * *

(2) *Sheep*—(i) *Fat (the target tissue).* The tolerance for parent moxidectin (the marker residue) is 900 parts per billion (ppb).

(ii) *Liver.* The tolerance for parent moxidectin (the marker residue) is 200 ppb.

(iii) *Muscle.* The tolerance for parent moxidectin (the marker residue) is 50 ppb.

(c) *Related conditions of use.* See §§ 520.1454 and 522.1450 of this chapter.

Dated: December 12, 2005.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 05–24386 Filed 12–22–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Docket No. OAG 114; AG Order No. 2791–2005]

Professional Responsibility Advisory Office

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule will amend part 0 of title 28 of the Code of Federal Regulations to reflect the establishment of the Professional Responsibility Advisory Office at the Department of Justice. The Professional Responsibility Advisory Office (PRAO) was created by the Attorney General to provide advice and guidance to Justice Department attorneys on matters involving professional responsibility. The PRAO offers training, provides informational memoranda, and issues opinions in response to individual attorney inquiries. This rule, which sets forth the PRAO's organization, mission and functions, amends the Code of Federal

Regulations in order to reflect accurately the Department's internal management structure.

EFFECTIVE DATE: December 23, 2005.

FOR FURTHER INFORMATION CONTACT: Barbara Kammerman, Acting Director, Professional Responsibility Advisory Office, U.S. Department of Justice, Washington, DC Telephone (202) 514–0458.

SUPPLEMENTARY INFORMATION:

Background

In 1994, the Attorney General established a Professional Responsibility Office (PRO) Program and the Professional Responsibility Advisory Board to assist Department attorneys in resolving professional responsibility issues. Over time, experience and a number of developments have emphasized the importance of creating a centralized resource for Department attorneys and PROs. Thus, on March 30, 1999, the Attorney General created the Professional Responsibility Advisory Office (PRAO) to coordinate the Department's position regarding various professional responsibility issues and to ensure that the advice and guidance provided to Department attorneys and the PROs are correct and consistent throughout the United States.

The PRAO serves several functions. It provides definitive advice to Department attorneys on issues relating to professional responsibility. It is responsible for assembling and maintaining reference materials, including the codes of ethics and relevant interpretative decisions and bar opinions of the District of Columbia and every state and territory, and for serving as a central repository for briefs and pleadings as cases arise. The PRAO provides coordination with the litigating components of the Department to defend attorneys in any disciplinary or other hearing in which it is alleged that they failed to meet their obligations under applicable rules of professional conduct. It coordinates with other Department components to conduct training for Department attorneys and client agencies to provide them with the tools to make informed judgments about matters which implicate professional responsibility issues. The PRAO serves as liaison with the state and federal bar associations in matters related to the implementation of Section 530B of title 28 of the United States Code pertaining to ethical standards for attorneys for the government, and amendments and revisions to the various rules of professional conduct. The PRAO also serves as advisory counsel on professional responsibility to the Attorney General, the Deputy Attorney General, the Associate Attorney General, the Solicitor General, and their designees, and to the Attorney General's Advisory Committee. Nothing in the final rule shall be construed as affecting the functions or overriding the authority of the Office of Legal Counsel as established by 28 CFR 0.25.

Administrative Procedure Act 5 U.S.C. 553

This rule is a rule of agency organization and is therefore exempt from the notice requirement of 5 U.S.C. 553(b), and is made effective upon issuance.

Regulatory Flexibility Act

The Attorney General in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. A Regulatory Flexibility Analysis was not required to be prepared for this final rule since the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866

This action has been drafted and reviewed in accordance with Executive Order 12866 Regulatory Planning and Review, § 1(b), Principles of Regulation. This rule is limited to agency organization, management and personnel as described by Executive Order 12866 § 3(d)(3) and, therefore, is not a ''regulation'' or ''rule'' as defined by its Executive Order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant a certification.

Executive Order 12988—Civil Justice Reform

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

Unfunded Mandates Reform Act of 1995

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

Congressional Review Act

This action pertains to agency management, personnel and organizations and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 0

Government employees, Lawyers, Ethical conduct.

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509, 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

■ 2. Part 0 is amended by adding a new subpart, V–2, to read as follows:

Subpart V–2—Professional Responsibility Advisory Office

§ 0.129 Professional Responsibility Advisory Office.

(a) The Professional Responsibility Advisory Office is headed by a Director appointed by the Deputy Attorney General. The Director shall be responsible to, and report directly to, the Deputy Attorney General and shall be a member of the Senior Executive Service.

(b) The Professional Responsibility Advisory Office shall:

(1) Advise Department of Justice attorneys on specific questions involving professional responsibility, including compliance with 28 U.S.C. 530b (''Section 530B''), which requires certain federal attorneys to comply with state rules of ethics.

(2) Assist or support training and informational programs for Department attorneys and client agencies concerning Section 530B and other professional responsibility requirements, including disseminating relevant and timely information.

(3) Assemble, centralize and maintain ethics reference materials, including the codes of ethics of the District of Columbia and every state and territory, and any relevant interpretations thereof.

(4) Coordinate with the relevant litigating components of the Department to defend attorneys in any disciplinary or other proceeding where it is alleged that they failed to meet their ethical obligations, provided that the attorney made a good-faith effort to ascertain the ethics requirements and made a good-faith effort to comply with those requirements.

(5) Serve as a liaison with the state and federal bar associations in matters relating to the implementation and interpretation of Section 530B, and amendments and revisions to the various state ethics codes.

(6) Perform such other duties and assignments as deemed necessary from time to time by the Attorney General or the Deputy Attorney General.

(c) Nothing in this subpart shall be construed as affecting the functions or overriding the authority of the Office of Legal Counsel as established by 28 CFR 0.25.

Dated: December 15, 2005.

Alberto R. Gonzales,

Attorney General.

[FR Doc. 05–24329 Filed 12–22–05; 8:45 am]

BILLING CODE 4410–19–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2005–VA–0007; FRL–8012–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Redesignation of the City of Fredericksburg, Spotsylvania County, and Stafford County Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a redesignation request and a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The Virginia Department of Environmental Quality (VADEQ) is requesting that the City of Fredericksburg, Spotsylvania County, and Stafford County (the Fredericksburg area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). In conjunction with its redesignation request, the Commonwealth submitted a SIP revision consisting of a maintenance plan for the Fredericksburg area that provides for continued attainment of the 8-hour ozone NAAQS for the next 10 years. EPA is also approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the 8-hour maintenance plan for the Fredericksburg area for purposes of transportation conformity, and is approving those MVEBs. EPA is approving the redesignation request and the maintenance plan revision to the Virginia SIP in accordance with the requirements of the CAA.

DATES: *Effective Date:* This final rule is effective on January 23, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2005–VA–0007. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at *caprio.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 12, 2005 (70 FR 53746), EPA proposed approval of a redesignation request and maintenance plan submitted by the Commonwealth of Virginia for the Fredericksburg area. On September 30, 2005 (70 FR 57238), EPA withdrew the September 12, 2005 proposed rule.

On November 2, 2005 (70 FR 66316), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of both Virginia's redesignation request and a SIP revision that establishes a maintenance plan for the Fredericksburg area that sets forth how the Fredericksburg area will maintain attainment of the 8-hour ozone NAAQS for the next 10 years. The formal SIP revision was submitted by the VADEQ on May 2, 2005 and May 4, 2005. Other specific requirements of Virginia's redesignation request SIP revision for the maintenance plan, and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,''

including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *.'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

III. Final Action

EPA is approving the Commonwealth of Virginia's May 2, 2005 redesignation request and May 4, 2005 maintenance plan because the requirements for approval have been satisfied. EPA has evaluated Virginia's redesignation request, submitted on May 2, 2005, and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the Fredericksburg area has attained the 8-hour ozone standard. The final approval of this redesignation request will change the designation of the Fredericksburg area from nonattainment to attainment for the 8-hour ozone standard. EPA is approving the associated maintenance plan for this area, submitted on May 4, 2005, as a revision to the Virginia SIP. EPA is approving the maintenance plan for the Fredericksburg area because it meets the requirements of section 175A. EPA is also approving the MVEBs submitted by Virginia for this area in conjunction with its redesignation request. The Fredericksburg area is subject to the CAA's requirements for moderate ozone nonattainment areas until and unless it is redesignated to attainment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 (64 FR 43255, August 10, 1999), because it merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

B. Submission to Congress and the Comptroller General

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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, to approve the redesignation request, maintenance plan and adequacy determination for MVEBs for the Fredericksburg area, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 13, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (e) is amended by adding an entry for the 8–Hour Ozone Maintenance Plan, Fredericksburg, VA Area at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
8–Hour Ozone Maintenance Plan for the Fredericksburg VA Area.	City of Fredericksburg, Spotsylvania County, and Stafford County.	5/4/05	12/23/05 [Insert page number where the document begins].	

PART 81—[AMENDED]

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

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

■ 2. Section 81.347 is amended by revising the ozone table entry for the Fredericksburg, VA Area to read as follows:

§ 81.347 Virginia.

* * * * *

VIRGINIA—OZONE (8–HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
*	*	*	*	*
Fredericksburg, VA Area:				
City of Fredericksburg	12/23/05	Attainment.		
Spotsylvania County	12/23/05	Attainment.		
Stafford County	12/23/05	Attainment.		
*	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

[FR Doc. 05–24363 Filed 12–22–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–8012–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by Saturn Corporation in Spring Hill, Tennessee (Saturn) to exclude (or ''delist'') a certain hazardous waste from the lists of hazardous wastes. Saturn generates the petitioned waste, the wastewater treatment plant (WWTP) sludge, by treating wastewater from Saturn's chemical conversion coating of aluminum. The waste so generated is a wastewater treatment sludge that meets the definition of F019. Saturn petitioned EPA to grant a ''generator-specific'' delisting because Saturn believes that its F019 waste does not meet the criteria for which this type of waste was listed. EPA reviewed all of the waste-specific information provided by Saturn, performed calculations, and determined that the waste could be disposed in a landfill without harming human health and the environment. This action responds to Saturn's petition to delist this waste on a generator-specific basis from the hazardous waste lists, and to public comments on the proposed rule. EPA took into account the public comments on the proposed rule before setting the final delisting levels. Final delisting levels in the waste leachate are based on the EPA, Region 6's Delisting Risk Assessment Software. In accordance with the conditions specified in this final rule, Saturn's petitioned waste is excluded from the requirements of hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

DATES: Effective December 23, 2005.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from this regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this final rule, please contact Kris Lippert, RCRA Enforcement and Compliance Branch (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8605, or call, toll free (800) 241–1754. Questions may also be e-mailed to Ms. Lippert at *Lippert.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
  A. What Is a Delisting Petition?
  B. What Laws and Regulations Give EPA the Authority to Delist Wastes?
  C. What is the History of this Rulemaking?
II. Summary of Delisting Petition Submitted by Saturn Corporation, Spring Hill, Tennessee (Saturn)
  A. What Waste Did Saturn Petition EPA to Delist?
  B. What Information Did Saturn Submit to Support This Petition?
III. EPA's Evaluation and Final Rule
  A. What Decision Is EPA Finalizing and Why?
  B. What Are the Terms of This Exclusion?
  C. When Is the Delisting Effective?
  D. How Does This Action Affect the States?
IV. Public Comments Received on the Proposed Exclusion
  A. Who Submitted Comments on the Proposed Rule?
  B. Comments and Responses From EPA
V. Regulatory Impact
VI. Congressional Review Act
VII. Executive Order 12875

I. Background

A. What Is a Delisting Petition?

A delisting petition is a request made by a hazardous waste generator to exclude one or more of his/her wastes from the lists of RCRA-regulated hazardous wastes in §§ 261.31, 261.32, and 261.33 of Title 40 of the Code of Federal Regulations (40 CFR 261.31, 261.32, and 261.33). The regulatory requirements for a delisting petition are in 40 CFR 260.20 and 260.22. EPA, Region 6 has prepared a guidance manual, Region 6 Guidance Manual for the Petitioner, which is recommended by EPA Headquarters in Washington, DC and all EPA Regions, and can be down-loaded from Region 6's Web Site at the following URL address: *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdf.htm.*

B. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11(a)(2) or (a)(3). Discarded commercial chemical product wastes which meet the listing criteria are listed in § 261.33(e) and (f).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (i.e., characteristics which may be promulgated subsequent to a delisting decision.).

In addition, residues from the treatment, storage, or disposal of listed

hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively.

Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived-from'' rules and remanded them to the EPA on procedural grounds. Shell Oil Co. v. EPA, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. The mixture and derived-from rules are codified in 40 CFR 261.3 (b)(2) and (c)(2)(i). EPA plans to address waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated. On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with §§ 260.20 and 260.22 by generators within their Regions (National Delegation of Authority 8–19) in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

C. What Is the History of This Rulemaking?

Saturn manufactures Saturn automobiles, and is seeking a delisting for the WWTP sludge generated from conversion coating on aluminum. The WWTP sludge does not meet a hazardous waste listing definition when steel-only automobile bodies are manufactured. However, the wastewater treatment sludge generated at automobile manufacturing plants where aluminum is used as a component of automobile bodies, meets the listing definition F019 in § 261.31.

Saturn petitioned EPA, Region 4, on December 13, 2004, to exclude this F019 waste on a generator-specific basis from the lists of hazardous wastes in 40 CFR part 261, subpart D.

The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). Saturn petitioned the EPA to exclude its F019 waste because Saturn does not use either of these constituents in the manufacturing process. Therefore, Saturn does not believe that the waste meets the criteria of the listing. Saturn claims that its F019 waste will not be hazardous because the constituents of concern for which F019 is listed will be present only at low concentrations and will not leach out of the waste at significant concentrations. Saturn also believes that this waste will not be hazardous for any other reason (i.e., there will be no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). As a result of the EPA's evaluation of Saturn's petition, the Agency is granting a delisting to Saturn with conditions described below, on December 23, 2005. Today's rulemaking addresses public comments received on the proposed rule and finalizes the proposed decision to grant Saturn's petition for delisting.

II. Summary of Delisting Petition Submitted by Saturn Corporation, Spring Hill, Tennessee (Saturn)

A. What Waste Did Saturn Petition EPA to Delist?

Saturn petitioned EPA, Region 4, on December 13, 2004, to exclude a maximum annual weight of 3,000 cubic yards of its F019 waste, on a generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D. Saturn manufactures Saturn automobiles, and is seeking a delisting for the WWTP sludge that will be generated by treating wastewater from Saturn's chemical conversion coating of aluminum.

B. What Information Did Saturn Submit To Support This Petition?

In support of its petition, also described in the proposed rule on August 31, 2005 (see 70 FR 51696–51705, August 31, 2005), Saturn has submitted laboratory analysis of its WWTP sludge. The laboratory analysis submitted includes the following: (1) Analysis performed on samples of its dewatered WWTP sludge taken and analyzed by EPA (2) analysis of the dewatered WWTP sludge performed by Saturn on split samples provided to the facility by EPA and (3) analysis of the dewatered WWTP sludge performed by Saturn on samples taken by the facility.

The analysis performed by Saturn on the split samples of the WWTP sludge provided to the facility by EPA was submitted for laboratory testing for the entire 40 CFR part 264 Appendix IX constituent list (including volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), metals, and PCBs) and hexavalent chromium, TCLP metals, cyanide, and total solids. Based on the laboratory data, data validation results, and Saturn's communications with the EPA, Saturn prepared a Sampling and Analysis Plan which was submitted to the EPA and approved.

In accordance with the approved Sampling and Analysis Plan and to support its petition, Saturn collected additional WWTP sludge samples for laboratory testing. The samples were collected from six roll-off containers representing waste generated at Saturn over a seven-week period. The samples were analyzed as follows: (1) Samples for VOC analyses (total and TCLP) were collected from six roll-off containers. The first sample was analyzed for the 40 CFR part 264 Appendix IX VOC constituent list (total and TCLP). VOCs (total and TCLP) detected in the first sample were tested in the samples collected from the second through the sixth roll-off containers. (2) Samples from the six roll-off containers were analyzed for total and TCLP bis(2-ethylhexyl)phthalate. (3) Samples from the six roll-off containers were analyzed for total and TCLP metals (antimony, arsenic, barium, beryllium, chromium, cobalt, copper, lead, mercury, nickel, thallium, tin, vanadium, and zinc) and for hexavalent chromium. (4) Samples from the six roll-off containers were analyzed for corrosivity, total and TCLP cyanide, ignitability, sulfide, oil and grease, and total solids. The Toxicity Characteristic Leaching Procedure (TCLP), SW–846 Method 1311, was used as the extraction procedure for testing the volatile and semi-volatile constituents of concerns. Leachable metals were tested using the Extraction Procedure for Oily Wastes (OWEP), SW–846 Method 1330A. The pH of each sample was measured using SW–846 Method 9045C, and a determination was made that the waste was not ignitable, corrosive, or reactive (see 40 CFR 261.21–261.23). Oil and grease was analyzed using SW–846 Method 9071B, total sulfide was tested using SW–846 Method 9034, and total cyanide was performed using Method SW–846 Method 9012A.

Composite and grab samples of dewatered WWTP sludge were collected

in accordance with the approved Sampling and Analysis Plan on August 19, 2004 and submitted for laboratory testing.

Upon receipt of the laboratory testing results, the data was validated by a third party. The maximum values of constituents detected in any sample of the WWTP sludge or in a TCLP extract of the WWTP sludge are summarized in Table 1.

TABLE 1.—MAXIMUM TOTAL AND TCLP CONCENTRATIONS IN THE DEWATERED WWTP SLUDGE AND CORRESPONDING DELISTING LIMITS

Constituent	Maximum concentration observed[1]		Maximum allowable delisting level (3,000 cubic yards)		Maximum allowable groundwater concentration (µg/l)
	Total (mg/kg)	TCLP (mg/l)	Total (mg/kg)	TCLP (mg/l)	
VOLATILE ORGANIC COMPOUNDS					
Acetone	<7.5	1.7	141,000,000	171	3,750
SEMI-VOLATILE ORGANIC COMPOUNDS					
Bis(2-ethylhexyl)phthalate	<25	<0.0050	51,400	0.146	1.50
METALS					
Antimony	56	<0.05 J	374,000	0.494	6.0
Arsenic	<50	<0.02	312,000	0.224	5.0
Barium	94	<0.35	10,400,000	100	2,000
Beryllium	3.1	<0.029	16,200	0.998	4.0
Chromium	1,310 J	<0.16	10,300,000	5.0	100
Chromium (hexavalent)	<4.2	NT	3,320	3.71	NA
Cobalt	3.6	<0.038	84,400,000	NA	2,250
Copper	91	0.25	56,300,000	21,800	1,300
Lead	108	<0.19	500,000	5.0	15.0
Mercury	0.47	<0.0006	1.82	0.195	2.00
Nickel	4,400	24.2 J	2,430,000	67.8	750
Thallium	<20	<0.026	2,140	0.211	2.00
Tin	<100	3.18	844,000,000	NA	22,500
Vanadium	9.9 J	<0.27	9,850,000	50.6	263
Zinc	17,200	5.72	17,200,000	673	11,300
Cyanide	0.52	<0.05	1,180,000	8.63	200

[1] These levels represent the highest concentration of each constituent found in any one sample and do not necessarily represent the specific levels found in one sample.
<Not detected at the specified concentration.
NA Not applicable.
NT Not tested.
J Estimated Concentration.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

For reasons stated in both the proposal and this final rule, EPA believes that Saturn's petitioned waste should be excluded from hazardous waste control. EPA, therefore, is granting a final generator-specific exclusion to Saturn, of Spring Hill, Tennessee, for a maximum annual generation rate of 3,000 cubic yards of the waste described in its petition as EPA Hazardous Waste Number F019. This waste is required to undergo verification testing before being considered as excluded from Subtitle C regulation. Requirements for waste to be land disposed have been included in this exclusion. The exclusion applies only to the waste as described in Saturn's petition, dated December 2004.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of the delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation. See 40 CFR part 260, appendix I. Nonhazardous waste management is subject to all applicable Federal, state, and local regulations.

B. What Are the Terms of This Exclusion?

In the rule proposed on August 31, 2005 (see 70 FR 51696–51705, August 31, 2005), delisting levels were calculated using the Delisting Risk Assessment Software program (DRAS), a Windows-based software tool. The DRAS estimated the potential release of hazardous constituents from the petitioned waste and predicted the risk associated with those releases. The DRAS uses EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) to predict the potential for release of hazardous constituents to groundwater from landfilled wastes and subsequent potential routes of exposure to a receptor. In the DRAS model, the EPA used the maximum estimated waste volume and maximum reported total and leachate concentrations in the groundwater, soil, surface water or air. The DRAS program back calculated a maximum allowable concentration level that would not exceed protective levels in both the waste and the leachate for each constituent at the annual waste volume of 3,000 cubic yards.

The maximum allowable levels for constituents detected in the WWTP sludge or the leachate from the sludge are summarized in Table 1, above. Table 1 also includes the maximum allowable levels in groundwater at a potential receptor well, as evaluated by the DRAS.

In conclusion, Saturn must dispose of the WWTP sludge in a lined Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial waste. This exclusion applies only to a maximum annual volume of 3,000 cubic yards and is effective only if all conditions contained in this rule are satisfied. Specifically, concentrations measured in the TCLP (or OWEP, where appropriate) extract of Saturn's WWTP sludge must not exceed the following levels (mg/l): antimony—0.494; arsenic—0.224; total chromium—3.71; lead—5.0; nickel—68; thallium—0.211; and zinc—673.

If Saturn violates the terms and conditions established in the exclusion, the EPA will initiate procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the EPA will evaluate the need for enforcement activities on a case-by-case basis.

C. When Is the Delisting Effective?

This rule is effective on December 23, 2005. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule reduces the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication.

These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

The final exclusion being granted today is issued under the Federal RCRA delisting program. States, however, are allowed to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to and managed in any State with delisting authorization, Saturn must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

EPA received public comments on the proposed rule published in 70 FR 51696–51705, August 31, 2005, from Saturn Corporation, Spring Hill, Tennessee (Saturn), the petitioner, and Alliance of Automobile Manufacturers, Washington, DC.

B. Comments and Responses From EPA

Comment: Saturn stated that it supports EPA's efforts to delist the WWTP sludge generated at its Spring Hill, Tennessee facility. In addition to its support, Saturn also highlighted a few minor typing errors as well as a few minor wording changes for clarification concerning the quarterly verification sampling in Table 1 of Appendix IX to part 261 as well as the submittals of the quarterly and annual sampling verification testing in Table 1 of Appendix IX to Part 261.

Response: EPA incorporated Saturn's suggested minor typing errors and clarifications into today's final rule.

Comment: Alliance of Automobile Manufacturers state that it is also in support of EPA in granting this delisting petition and that it believes that the F019 listing itself should be revised to exclude wastewater treatment sludges from automotive industry conversion coating on aluminum when hexavalent chromium and cyanides are not used in the process.

Response: Today's final rule is site-specific and waste-specific; it applies only to Saturn's plant in Spring Hill, Tennessee, and only to the petitioned waste. A revision of the F019 listing would require a separate rule-making. EPA understands the Alliance's concern about the need to revise the F019 listing, but is unable to address this concern at this time.

V. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13084 (63 FR 27655, May 10, 1998). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

VI. 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 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, the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

VII. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: December 1, 2005.

Beverly H. Banister,

Acting Director, Waste Management Division.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under Secs. 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Saturn Corporation	Spring Hill, Tennessee	Dewatered wastewater treatment plant (WWTP) sludge (EPA Hazardous Waste No. F019) generated at a maximum rate of 3,000 cubic yards per calendar year. The sludge must be disposed in a lined, Subtitle D landfill with leachate collection that is licensed, permitted, or otherwise authorized to accept the delisted WWTP sludge in accordance with 40 CFR part 258. The exclusion becomes effective on December 23, 2005. For the exclusion to be valid, Saturn must implement a verification testing program that meets the following conditions: 1. Delisting Levels: The constituent concentrations in an extract of the waste must not exceed the following maximum allowable concentrations in mg/l: antimony—0.494; arsenic—0.224; total chromium—3.71; lead—5.0; nickel—68; thallium—0.211; and zinc—673. Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A, (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of Saturn's sludge meet the delisting levels in this condition. 2. Waste Holding and Handling: (a) Saturn must accumulate the hazardous waste dewatered WWTP sludge in accordance with the applicable regulations of 40 CFR 262.34 and continue to dispose of the dewatered WWTP sludge as hazardous waste until the results of the first quarterly verification testing are available. (b) After the first quarterly verification sampling event described in Condition (3) has been completed and the laboratory data demonstrates that no constituent is present in the sample at a level which exceeds the delisting levels set in Condition (1), Saturn can manage and dispose of the dewatered WWTP sludge as nonhazardous according to all applicable solid waste regulations. (c) If constituent levels in any sample taken by Saturn exceed any of the delisting levels set in Condition (1), Saturn must do the following: (i) Notify EPA in accordance with Condition (7) and (ii) Manage and dispose the dewatered WWTP sludge as hazardous waste generated under Subtitle C of RCRA.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		3. Quarterly Testing Requirements: Upon this exclusion becoming final, Saturn may perform quarterly analytical testing by sampling and analyzing the dewatered WWTP sludge as follows: (i) Collect one representative composite sample (consisting of four grab samples) of the hazardous waste dewatered WWTP sludge at any time after EPA grants the final delisting. In addition, collect the second, third, and fourth quarterly samples at approximately ninety (90)-day intervals after EPA grants the final exclusion. (ii) Analyze the samples for all constituents listed in Condition (1). Any roll-offs from which the composite sample is taken exceeding the delisting levels listed in Condition (1) must be disposed as hazardous waste in a Subtitle C landfill. (iii) Within forty-five (45) days after taking its first quarterly sample, Saturn will report its first quarterly analytical test data to EPA and will include the certification statement required in condition (6). If levels of constituents measured in the sample of the dewatered WWTP sludge do not exceed the levels set forth in Condition (1) of this exclusion, Saturn can manage and dispose the nonhazardous dewatered WWTP sludge according to all applicable solid waste regulations. 4. Annual Verification Testing: (i) If Saturn completes the quarterly testing specified in Condition (3) above, and no sample contains a constituent with a level which exceeds the limits set forth in Condition (1), Saturn may begin annual verification testing on an annual basis. Saturn must collect and analyze one sample of the WWTP sludge on an annual basis as follows: Saturn must test one representative composite sample of the dewatered WWTP sludge for all constituents listed in Condition (1) at least once per calendar year. (ii) The sample collected for annual verification testing shall be a representative composite sample consisting of four grab samples that will be collected in accordance with the appropriate methods described in Condition (1). (iii) The sample for the annual testing for the second and subsequent annual testing events shall be collected within the same calendar month as the first annual verification sample. Saturn will report the results of the annual verification testing to EPA on an annual basis and will include the certification statement required by Condition (6). 5. Changes in Operating Conditions: Saturn must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Saturn in writing that Saturn's sludge must be managed as hazardous waste F019 until Saturn has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and Saturn has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Saturn, in writing, that Saturn must verify that Saturn's sludge continues to meet Condition (1) delisting levels. 6. Data Submittals: Saturn must submit data obtained through verification testing at Saturn or as required by other conditions of this rule to: Chief, North Section, RCRA Enforcement and Compliance Branch, Waste Management Division, U.S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303. If Saturn fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to re-open the exclusion as described in Condition (7). Saturn must: (A) Submit the data obtained through Condition (3) within the time specified. The quarterly verification data must be submitted to EPA in accordance with Condition (3). The annual verification data and certification statement of proper disposal must be submitted to EPA annually upon the anniversary of the effective date of this exclusion. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (B) Compile, Summarize, and Maintain Records: Saturn must compile, summarize, and maintain at Saturn records of operating conditions and analytical data records of analytical data from Condition (3), summarized, and maintained on-site for a minimum of five years. Saturn must furnish these records and data when either the EPA or the State of Tennessee requests them for inspection. (C) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for getting the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for sending false information, including the possibility of fine and imprisonment." 7. Reopener.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) If, at any time after disposal of the delisted waste, Saturn possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted WWTP sludge at Saturn indicating that any constituent is at a level in the leachate higher than the specified delisting level or TCLP regulatory level, then Saturn must report the data, in writing, to the Regional Administrator within ten (10) days of first possessing or being made aware of that data. (B) Based upon the information described in Paragraph (A) and any other information received from any source, the EPA Regional Administrator will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require EPA action, the Regional Administrator will notify Saturn in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notification shall include a statement of the proposed action and a statement providing Saturn with an opportunity to present information as to why the proposed EPA action is not necessary. Saturn shall have ten (10) days from the date of the Regional Administrator's notice to present the information. (D) Following the receipt of information from Saturn, or if Saturn presents no further information after 10 days, the Regional Administrator will issue a final written determination describing the EPA actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. 8. Notification Requirements: Before transporting the delisted waste, Saturn must provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted WWTP sludge for disposal. The notification will be updated if Saturn transports the delisted WWTP sludge to a different disposal facility. Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
*	*	* * * * *

[FR Doc. 05–24367 Filed 12–22–05; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 50

RIN 0906–AA69

Simplification of the Grant Appeals Process

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) is amending regulations to remove the Health Resources and Services Administration (HRSA) from the list of agencies which require grantees to utilize an informal appeals procedure for grant related disputes subject to the departmental appeal procedures. In doing so, HRSA will simplify the appeals procedure for aggrieved HRSA grantees by permitting them direct access to the Departmental Grant Appeals Board.

DATES: This final rule is effective 30 days after December 23, 2005.

FOR FURTHER INFORMATION CONTACT: Gail Lipton, Director, Division of Grants Policy, HRSA, Room 11A–55, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: When HHS first established its Departmental Grant Appeals Board (now the Departmental Appeals Board), there was no provision for the Department's subordinate agencies to first review the disputed actions of officials prior to appeal at the Departmental level. However, it quickly became apparent that a number of disputes could, and would, be resolved quickly by informal means if the grantees' complaints were surfaced to management levels within the HHS subordinate agencies. As a result, the regulations at 45 CFR part 16 were revised to permit subordinate agencies to interpose an ''informal'' level of appeal prior to submission of an appeal to the Departmental Appeals Board. Various agencies in the Public Health Service (which has since been reorganized) instituted an intermediate informal review process as is currently described in 42 CFR part 50, subpart D. The intermediate level of appeal provided these agencies with an opportunity to relatively quickly and economically reverse erroneous Federal decisions, or to reassure grantees that a decision adverse to them was indeed an ''agency'' decision. At the time these regulations were instituted, this informal process was of significant benefit to both grantees and the subordinate agencies. Based on the lessons learned from this process and other means, HRSA instituted a policy of reviewing carefully the adverse determinations of their employees prior to permitting them to be issued so as to avoid erroneous determinations which would be subject to reversal upon appeal at the informal level. HRSA believes that it has reached the point where the adverse determinations being issued in recent years generally represent its best judgment.

HHS therefore believes that, for these agencies and their grantees, this informal process is no longer of benefit, and the cost in time and expense to the grantee is no longer warranted. Consequently, HHS proposed amending 42 CFR part 50, subpart D, to remove HRSA from the list of agencies to which the regulations apply. As a result, under this proposal, grantees wishing to

appeal HRSA's eligible adverse determinations would be entitled to appeal such determinations directly to the Departmental Appeals Board.

We announced our plans to amend the current regulations in a notice of proposed rulemaking (NPRM) published in the **Federal Register**, June 7, 2005 (70 FR 33053–33054). The NPRM provide for a sixty-day comment period. We received no comments. Consequently, the final rule is the same as the proposed rule published in June of this year.

We provide the following information for the public.

Executive Order 12866

Executive Order (EO) 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits. We have determined that the rule is not a significant regulatory action under Section 3(f) of the EO and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that EO. Under the EO, the Office of Management and Budget (OMB) has exempted it from review.

Regulatory Flexibility

The Regulatory Flexibility Act (5 U.S.C. Chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant impact on a substantial number of small entities. We have determined that this is not a ''major'' rule under this Act and therefore does not require a regulatory flexibility analysis.

Unfunded Mandates

The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by States, local or tribal governments, or by the private sector of $100 million or more in any given year. This rule does not have cost implications for the economy of $100 million or more, nor otherwise meet the criteria for a major rule under Executive Order 12291, and therefore does not require a regulation impact analysis.

Executive Order 13132

Executive Order 13132 requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. We received no comments.

Executive Order 13175

Executive Order 13175 requires the Department to develop an accountable process to ensure Ameaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' We received no comments.

Paperwork Reduction Act

There are no new paperwork requirements subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1995.

List of Subjects in 42 CFR Part 50

Administrative practice and procedure, Grant programs—health, Health care.

Dated: October 11, 2005.

Elizabeth M. Duke,

Administrator, Health Resources and Services Administration.

Approved: December 14, 2005.

Michael O. Leavitt,

Secretary of Health and Human Services.

■ Accordingly, HRSA amends 42 CFR part 50 as follows:

PART 50—[AMENDED]

Subpart D—Public Health Service Grant Appeals Procedure

■ 1. The authority citation for part 50, subpart D, continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); 45 CFR 16.3 (c).

■ 2. Section 50.402 is revised to read as follows:

§ 50.402 To what program do these regulations apply?

This subpart applies to all grant and cooperative agreement programs, except block grants, which are administered by the National Institutes of Health; The Centers for Disease Control and Prevention; the Agency for Toxic Substances and Disease Registry; the Food and Drug Administration; and the Office of Public Health and Science. For purposes of this subpart, these entities are hereinafter referred to as ''agencies.''

[FR Doc. 05–24442 Filed 12–22–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS–1286–CN2]

RIN 0938–AN89

Medicare Program; Hospice Wage Index for Fiscal Year 2006

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

ACTION: Final rule, correction.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on August 4, 2005, entitled ''Hospice Wage Index for Fiscal Year 2006.''

EFFECTIVE DATE: This notice is effective on October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Terri Deutsch, (410) 786–9462.

SUPPLEMENTARY INFORMATION:

I. Background

On August 4, 2005, we published a final rule entitled, ''Hospice Wage Index for Fiscal Year 2006 (**Federal Register** Doc. 05–15290, 70 FR 45130). On September 30, 2005, we published a correction notice (**Federal Register** Doc. 05–19609, 70 FR 57174) to correct a number of technical errors that had appeared in the final rule. Based on further review of the August 2005 final rule, we are correcting additional typographical and formatting errors that appeared in Table A and C of the addendum. Specifically, in Table A of the addendum, we are correcting the asterisk that corresponds to the footnotes that appear at the end of the table, as appropriate. We are correcting the wage index values for CBSA codes where the numerical numbers contained typographical errors or where numbers were transposed. In addition, in Table C of the addendum, we are correcting the wage index value figures for the CBSA code 24780, Pitt County, NC, and the CBSA code for 32820, Crittenden County, TN.

This correction notice is consistent with the published hospice wage index values used to make payment as of October 1, 2005. In section II below, we provide a description of the errors and the changes being made to correct the errors.

II. Correction of Errors

In FR Doc. 05–15290, published on August 4, 2005 (70 FR 45130), we are making the following corrections:

Table A—Hospice Wage Index for Urban Areas by CBSA

1. On page 45147, in the fourth column, in the 4th through 23rd entry, for CBSA code 12060, change the MSA code ''520'' to ''0520''.

2. On page 45148, in the third column, in lines 37 through 39, for CBSA code 13980, remove the asterisk from the urban area county codes for ''Montgomery, VA; Pulaski, VA; and Radford City, VA.''

3. On page 45149, in the first column, in the 10th entry, for CBSA code 6580, change the CBSA code ''6580'' to ''16580.''

4. On page 45150—

A. In the fourth column, in the 15th entry, for CBSA code 17140, wage index 0.9207, urban area county code for Bracken, KY*, change the MSA code ''14'' to ''18.''

B. In the third column, in the 15th entry from the bottom, for CBSA code 17980, change the urban area county ''Russell, AL,'' to ''Russell, AL*.''

5. On page 45153—

A. In the fourth column, in the first entry, for CBSA code 22744, change the MSA code ''2860'' to ''2680.''

B. In the third column, for CBSA code 23540 as previously corrected on September 30, 2005 (70 FR 57176) change the wage index number for Alachua, FL* from ''0.9642'' to ''1.0033'' and the wage index number for ''Gilchrist, FL* from ''1.0033'' to ''0.9642.''

C. In the second column, for CBSA code 24660, for urban area county code Randolph, NC*, remove the wage index number ''0.9382'' and add the wage index number ''0.9382'' to the urban area county code ''Rockingham, NC*.''

6. On page 45160 as corrected on September 30, 2005 (70 FR 57176) in the second column—

A. In the second entry from the bottom, for the CBSA code 38540, change the wage index number for ''Bannock, ID*'' from ''0.9773'' to ''1.0183.''

B. In the first entry from the bottom, for the CBSA code 38540, change the wage index number for ''Power, ID*'' from ''1.0183'' to ''0.9773.''

Table C—Blended Hospice Wage Index Codes for Selected Areas

1. On page 45177, in the 6th column, in the 20th line, for the county name of Stanly, NC, change the special hospice wage index code ''50192'' to ''50092.''

2. On page 45188, in the 7th column, in the 25th line from the bottom, for the county name Pitt, NC, change the wage index number ''0.09740'' to ''0.9740.''

3. On page 45190, in the 7th column, in the 27th line, for the county name, Crittenden, TN, change the wage index number ''0.09785'' to ''0.9785.''

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

The revisions contained in this rule correct formatting and typographical errors in various sections of Table A and Table C of the addendum. These corrections are necessary to ensure that the final rule accurately reflects the correct hospice wage index values. Since they are not substantive, but merely technical, we find that public comments on these revisions are both unnecessary and impracticable. Therefore, we find good cause to waive notice and comment procedures.

In addition, the Administrative Procedure Act (APA) normally requires a 30-day delay in the effective date of a final rule. Since this notice simply makes technical modifications to a final rule that has previously gone through notice-and-comment rulemaking and the corrections are only to formatting errors, we believe good cause also exists under the APA to waive the 30-day delay in the effective date.

Section 1871(e)(1)(A) of the Act, as amended by section 903(a) of Pub .L. 108–173, provides that a substantive change in regulations shall not be applied retroactively to items and services furnished before the effective date of the change, unless the Secretary finds that such retroactive application is necessary to comply with statutory requirements or failure to apply the change retroactively would be contrary to the public interest. Although this correction notice is retroactive, it makes no substantive changes, but only corrects minor technical errors. Failure to make these changes retroactive to October 1, 2005, is contrary to the public interest because the published wage index values do not match the actual wage index values utilized by CMS as of October 1, 2005. Actual payments made by CMS to hospice providers will not change. Therefore, we believe there is sufficient cause to make the corrections retroactive.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 12, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–24288 Filed 12–22–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 419 and 485

[CMS–1501–CN2]

RIN 0938–AN46

Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2006 Payment Rates; Correction

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

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on November 10, 2005 entitled ''Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2006 Payment Rates; Final Rule.''

EFFECTIVE DATE: January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Rebecca Kane, (410) 786–0378.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 05–22136 (70 FR 68515), we have identified a number of technical errors that we have described in the ''Summary of Errors'' section and corrected in the ''Correction of Errors'' section below. The provisions in this correction notice are effective as if they had been included in the CY 2006 final rule with comment period. Accordingly, the corrections are effective January 1, 2006.

II. Summary of Errors

On November 10, 2005, we published the CY 2006 Hospital Outpatient Prospective Payment System (OPPS) final rule with comment period. Included in that document were several

technical and typographical errors that we are correcting in section III of this notice.

A. Correction of Technical Errors

We are correcting the following technical errors that were included in the CY 2006 OPPS final rule with comment period affecting drug administration code C8596, estimated expenditures, regulation text, hospital coding for sodium hyaluronate products, and Addendum L.

On page 68680, we neglected to remove the first row, referencing HCPCS code C8956, from Table 31 and the accompanying discussion regarding C8956 from the response to the comment included in the third column, third paragraph. We are correcting these errors in this notice.

On page 68726, we referred to the transfer from the Federal government to Medicare providers in billions rather than millions in the accounting table. We are correcting the error in this notice.

On page 68728, we omitted a reference to pass-through devices in the regulation text as stated in the preamble text at 68559. We correct this omission in this notice.

On page 68643 and in Addendum B we erroneously referred to the creation of a code by the National HCPCS Panel, specifically the creation of HCPCS code J7318. This was incorrect as this code was not created by the National HCPCS Panel. Our error was discovered after publication, and we are taking this opportunity to revise Addendum B to reflect the CY 2006 payment for Sodium Hyaluronate products using HCPCS codes J7317 and J7320, as originally included in the CY 2006 OPPS proposed rule.

On pages 68752–68913 we published Addendum B—Payment Status by HCPCS Code and Related Information—CY 2006. We excluded several codes from this table. In section III of this correction notice we correct this error by publishing the omitted codes.

On pages 68964 through 68980, we published Addendum L—Out-Migration Wage Adjustment CY 2006. We excluded several providers from this table. In Section III of this correction notice, we republish Addendum L.

B. Other Corrections

We are also correcting typographical, formatting, and other technical errors that were contained in the CY 2006 OPPS final rule with comment period.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this takes effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that it is impracticable, unnecessary or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

The policies and payment methodology finalized in the CY 2006 OPPS final rule with comment period have previously been subjected to notice and comment procedures. This correction notice merely provides technical corrections to the CY 2006 OPPS final rule with comment period that was promulgated through notice and comment rulemaking, and does not make substantive changes to the policies or payment methodology that were finalized in the final rule with comment period. For example, this notice corrects typographical errors, makes clarifications to the preamble and regulations text, and revises inaccurate tabular data. Therefore, we find it unnecessary to undertake further notice and comment procedures with respect to this correction notice. We also believe it is in the public interest to waive notice and comment procedures and the 30-day delay in effective date for this notice. This correction notice is intended to ensure that the CY 2006 OPPS final rule with comment period accurately reflects the policies expressed in the final rule, and that the corrected information is made available to the public prior to January 1, 2006, the date on which the final rule becomes effective.

For the reasons stated above, we find that both notice and comment and the 30-day delay in effective date for this correction notice are unnecessary and that it is in the public interest to make this notice effective in conjunction with the final rule to which the corrections apply. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this correction notice.

IV. Correction of Errors

In FR Doc. 05–22136 (70 FR 68515), make the following corrections:

A. Corrections to Preamble Text

1. On page 68516, in column 3, in the second full paragraph, line 3, the term ''OPPA'' is corrected to read ''OPPS.''

2. On page 68517, in column 1, in the 15th paragraph, line 1, the phrase ''(Cost center specific)'' is removed.

3. On page 68518, in column 1, in the 11th paragraph, line 2, the phrase ''and0651'' is corrected to read ''and 0651.''

4. On page 68537,

a. In column 3, in the first full paragraph, lines 5 to 6, the phrase ''of the proposed rule (76 FR 42690)'' is removed.

b. In column 3, in the first full paragraph, line 6, the word ''contained'' is corrected to read ''contains.''

5. On page 68549,

a. In column 2, in the first full paragraph, line 7, the amount ''$246.04'' is corrected to read ''$245.91.''

b. In column 2, in the first full paragraph, line 8, the amount ''$49.21'' is corrected to read ''$49.18.''

6. On page 68551, in column 3; in the second full paragraph, line 12, the term ''TEFRA'' is removed.

7. On page 68552,

a. In column 1, in the second partial paragraph, line 32, the term ''TEFRA'' is removed.

b. In column 2, in the first partial paragraph carried over from column 1, line 14, the term ''TEFRA'' is removed.

c. In column 2, in the first partial paragraph carried over from column 1, line 15, the line is corrected by inserting the phrase ''paid under the OPPS but not under the IPPS'' between the words ''hospitals'' and ''will.''

d. In column 3, in the first partial paragraph carried over from column 2, line 3, the term ''TEFRA'' is removed.

e. In column 3 in the first partial paragraph carried over from column 2, line 5, the term ''TEFRA'' is corrected to read ''these.''

f. In column 3, in the first partial paragraph carried over from column 2, line 10, the term ''TEFRA'' is corrected to read ''these.''

g. In column 3, in the first partial paragraph carried over from column 2, line 17, the term ''TEFRA'' is removed.

h. In column 3, in the first partial paragraph carried over from column 2, line 18, the line is corrected by inserting the phrase term ''not paid under the IPPS'' between the words ''hospitals'' and ''that''.

8. On page 68556, in column 2, in the second full paragraph, in line 20, the

sentence is corrected by adding the following bolded text ''payments, brachytherapy seeds, and any service''.

9. On page 68559,

a. In column 1, below the table footnotes, line 14, following ''biologicals'' the word ''and'' is removed.

b. In column 1, below the table footnotes, line 16 is corrected adding, '', and brachytherapy seeds.'' after ''payment policy''.

10. On page 68561,

a. In column 1, line 7, add a '','' after term ''rural hospitals''.

b. In column 1, in the last partial paragraph, line 7, remove the word ''because'' and add ''as'' in its place.

c. In column 2, in the first partial paragraph carried over from column 1, line 11, ''2 percent'' is corrected to read '' − 2 percent''.

11. On page 68565, column 1, in the fifth full paragraph, line 5, ''2005'' is corrected to read ''2006''.

12. On page 68578, column 1, in the last partial paragraph, line 2, the number ''0042'' is corrected to read ''0429.''

13. On page 68596, column 2, in the first full paragraph,

a. Line 8, the amount ''$2,662.62'' is corrected to read ''$2,709.14.''

b. Line 12, the amount ''$2,975.50'' is corrected to read ''$3,051.67.''

14. On page 68606, in column 1, in the first full paragraph, line 10, the number ''0442'' is corrected to read ''0422.''

15. On page 68628,

a. In column 2, in the first partial paragraph carried over from column 1, line 5, the word ''where'' is corrected to read ''when.''

b. In column 2, in the third full paragraph, line 17, the phrase ''November 13, 2000 final rule'' is corrected to read ''November 13, 2000 interim final rule with comment period.''

16. On page 68630,

a. In column 1, in the first partial paragraph carried over from page 68629, line 4, the date ''August 3'' is corrected to read ''November 13.''

b. In column 2, in the first full paragraph, line 13, the date ''August 3'' is corrected to read ''November 13.''

c. In column 2, in the first full paragraph, line 13, the line is corrected by inserting ''with comment period'' at the end of the sentence.

d. In column 2, in the first full paragraph, line 33, the date ''August 3'' is corrected to read ''November 13.''

17. On page 68637, in Table 22, the footnote is removed from the column one heading.

18. On page 68679, in column 1; in the first partial paragraph at the bottom of the page, line 6, the number ''31'' is corrected to read ''30.''

19. On page 68680,

a. In column 3, in the third paragraph, line 3, the term ''codes'' is corrected to read ''code.''

b. In column 3, in the third paragraph, lines 3 through 8, the sentence is corrected by removing the phrase ''C8956 (Refilling and maintenance of portable or implantable pump or reservoir for drug delivery for therapy/diagnosis, systemic (*e.g.*, intravenous, intra-arterial)) and.''

c. In Table 31, the table is corrected by removing row 1.

20. On page 68717, in column 1, first partial paragraph continued from the previous page, line 24, the line is corrected by inserting the phrase ''brachytherapy seeds,'' after the word ''* * * biologicals,''.

21. On page 68719, in column 1, the third partial paragraph, line 9, the sentence is corrected by inserting the phrase ''at least'' between the word ''of'' and the number ''0.2.''

22. On page 68720, in column 3, in the second full paragraph, line 30, the number ''3.2'' is corrected to read ''3.0.''

23. On page 68726, in table 41, in column 2, row 2, ''$660 Billion.'' is corrected to read ''$660 Million.''

§ 419.43 [Amended]

■ 24. On page 68728,

■ a. In column 1, in the first partial paragraph carried over from page 68727, line 1, the phrase ''APC and devices of'' is corrected to read ''APC, devices of.''

■ b. In column 1, in the first partial paragraph carried over from page 68727, line 3, the sentence is corrected by inserting the phrase, '', and devices paid under § 419.66'' after the phrase ''(including a radioactive source).''

B. Corrections to Addendum A

1. On page 68736, for APC 0339, row 22, column 3, ''Q'' is corrected to read ''S.''

2. On page 68738, for APC 0430, row 27, is removed.

3. On page 68743, for APC 1491, row 23, column 6, ''$2.00'' is removed.

4. On page 68746, APC 1611 is added in numerical order as follows:

a. Column 2 reads ''Hylan G–F 20 injection,''

b. Column 3 reads ''K,''

c. Column 4 is blank,

d. Column 5 reads ''$199.09,''

e. Column 6 is blank,

f. Column 7 reads ''$39.82.''

5. On page 68748,

a. APC 1706, row 18, is removed.

b. For APC 1713, row 25, column 2, ''Inj Fe-based MR contrast, ml'' is corrected to read ''Inj Fe-base MR contrast, 1m1.''

6. On page 68749, APC 7316 is added as follows:

a. Column 2 reads ''Sodium hyaluronate injection,''

b. Column 3 reads ''K,''

c. Column 4 is blank,

d. Column 5 reads ''$106.70,''

e. Column 6 is blank,

f. Column 7 reads ''$21.34.''

7. On page 68750,

a. For APC 9119, row 19, column 2, ''Pentastarch 10% solution'' is corrected to read ''Injection, pegfilgrastim 6mg.''

b. For APC 9126, row 25, column 2, ''Injection, Natalizumab, 1mg'' is corrected to read ''Natalizumab injection.''

8. On page 68751, for APC 9164, row 7, column 2, ''Inj Gad-base MR contrast, ml'' is corrected to read ''Inj Gad-base MR contrast, 1ml.''

C. Corrections to Addendum B

1. On page 68876,

a. For HCPCS code 95965, row 9,

i. In column 4, ''T'' is corrected to read ''S,''

ii. In column 5, ''0430'' is corrected to read ''1523,''

iii. In column 6, ''10.8452'' is removed,

iv. In column 7, ''$645.41'' is corrected to read ''$2,750.00,''

v. In column 9, ''$129.08'' is corrected to read ''$550.00.''

b. For HCPCS code 95966, row 10,

i. In column 4, ''T'' is corrected to read ''S,''

ii. In column 5, ''0430'' is corrected to read ''1514,''

iii. In column 6, ''10.8452'' is deleted,

iv. In column 7, ''$645.41'' is corrected to read ''$1,250.00,''

v. In column 9, ''$129.08'' is corrected to read ''$250.00.''

c. For HCPCS code 95967, row 11,

i. In column 4, ''T'' is corrected to read ''S,''

ii. In column 5, ''0430'' is corrected to read ''1510,''

iii. In column 6, ''10.8452'' is deleted,

iv. In column 7, ''$645.41'' is corrected to read ''$850.00,''

v. In column 9, ''$129.06'' is corrected to read ''$170.00.''

2. On page 68880,

a. For HCPCS code 0001F, row 1, column 4, ''D'' is corrected to read ''E.''

b. For HCPCS code 0005F, row 7, column 4, ''D'' is corrected to read ''E.''

3. On page 68888, for HCPCS code C8956, row 14,

a. In column 4, ''T'' is corrected to read ''D,''

b. In column 5, ''0125'' is removed,

c. In column 6, ''1.9021'' is removed,

d. In column 7, ''$113.20'' is removed,

e. In column 9, ''$22.64'' is removed.

4. On page 68895,

a. For HCPCS code G0375, row 36, column 8, ''$2.00'' is removed.

b. For HCPCS code G0376, row 37, column 8, ''$2.00'' is removed.

5. On page 68901,

a. For HCPCS code J2505, row 20, column 2, ''Pentastarch 10% solution'' is corrected to read ''Injection, pegfilgrastim 6mg.''

b. For HCPCS code J2510, row 21, column 2, ''Sincalide injection'' is corrected to read ''Penicillin g procaine inj.''

6. On page 68902, for HCPCS code J3070, row 26, column 2, ''Pentazocine hcl injection'' is corrected to read ''Pentazocine injection.''

7. On page 68904,

a. For HCPCS code J7317, row 12, column 4,

i. ''D'' is corrected to read ''K,''

ii. In column 5, ''7316'' is added,

iii. In column 7, ''$106.70'' is added,

iv. In column 9, ''$21.34'' is added.

b. For HCPCS code J7318, row 13,

i. In column 4, ''K'' is corrected to read ''D,''

ii. In column 5, ''1706'' is removed,

iii. In column 7, ''$7.20'' is removed,

iv. In column 9, ''$1.44'' is removed,

c. For HCPCS code J7320, row 14,

i. In column 4, ''D'' is corrected to read ''K,''

ii. In column 5, ''1611'' is added,

iii. In column 7, ''$199.09'' is added,

iv. In column 9, ''$39.82'' is added.

8. On page 68907, for HCPCS code K0105, row 8, column 4, ''D'' is corrected to read ''Y.''

9. On page 68912,

a. For HCPCS code Q4079, row 15, column 2, ''Injection, Natalizumab, 1 MG'' is corrected to read ''Natalizumab injection.''

b. For HCPCS code Q9946, row 21, column 2, ''LOCM <=149 mg/ml iodine, 1ml'' is corrected to read ''LOCM 150–199 mg/ml iodine, 1ml.''

c. For HCPCS code Q9952, row 27, column 2, ''Inj Gad-base MR contrast, ml'' is corrected to read ''Inj Gad-base MR contrast, 1ml.''

d. For HCPCS code Q9953, row 28, column 2, ''Inj Fe-based MR contrast, ml'' is corrected to read ''Inj Fe-based MR contrast, 1ml.''

10. The following HCPCS codes were inadvertently omitted from the Addendum B. We correct this error by listing the omitted codes below.

HCPCS/CPT	Short descriptor	CI	SI	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
22010	I&d, p-spine, c/t/cerv-thor	NI	C					
22015	I&d, p-spine, l/s/ls	NI	C					
32503	Resect apical lung tumor	NI	C					
32504	Resect apical lung tum/chest	NI	C					
33507	Repair art, intramural	NI	C					
33548	Restore/remodel, ventricle	NI	C					
33768	Cavopulmonary shunting	NI	C					
33880	Endovasc taa repr incl subcl	NI	C					
33881	Endovasc taa repr w/o subcl	NI	C					
33883	Insert endovasc prosth, taa	NI	C					
33884	Endovasc prosth, taa, add-on	NI	C					
33886	Endovasc prosth, delayed	NI	C					
33889	Artery transpose/endovas taa	NI	C					
33891	Car-car bp grft/endovas taa	NI	C					
33925	Rpr pul art unifocal w/o cpb	NI	C					
33926	Repr pul art, unifocal w/cpb	NI	C					
43770	Lap, place gastr adjust band	NI	C					
43771	Lap, revise adjust gast band	NI	C					
43772	Lap, remove adjust gast band	NI	C					
43773	Lap, change adjust gast band	NI	C					
43774	Lap remov adj gast band/port	NI	C					
44187	Lap, ileo/jejuno-stomy	NI	C					
44188	Lap, colostomy	NI	C					
44227	Lap, close enterostomy	NI	C					
45395	Lap, removal of rectum	NI	C					
45397	Lap, remove rectum w/pouch	NI	C					
45400	Laparoscopic proctopexy	NI	C					
45402	Lap proctopexy w/sig resect	NI	C					
46710	Repr per/vag pouch sngl proc	NI	C					
46712	Repr per/vag pouch dbl proc	NI	C					
50250	Cryoablate renal mass open	NI	C					
61630	Intracranial angioplasty	NI	B					
61635	Intracran angioplsty w/stent	NI	B					
61640	Dilate ic vasospasm, init	NI	B					
61641	Dilate ic vasospasm add-on	NI	B					
61642	Dilate ic vasospasm add-on	NI	B					
75956	Xray, endovasc thor ao repr	NI	C					
75957	Xray, endovasc thor ao repr	NI	C					
75958	Xray, place prox ext thor ao	NI	C					
75959	Xray, place dist ext thor ao	NI	C					
80195	Assay of sirolimus	NI	A					
82271	Occult blood, feces, single	NI	A					
82272	Blood occult peroxidase	NI	A					
83037	Glycosylated hb, home device	NI	A					
83631	Lactoferrin, fecal (quant)	NI	A					
83695	Assay of lipoprotein(a)	NI	A					
83700	Lipopro bld, electrophoretic	NI	A					
83701	Lipoprotein bld, hr fraction	NI	A					
83704	Lipoprotein, bld, by nmr	NI	A					

HCPCS/CPT	Short descriptor	CI	SI	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
83900	Molecule nucleic ampli 2 seq	NI	A					
83907	Lyse cells for nucleic ext	NI	A					
83908	Nucleic acid, signal ampli	NI	A					
83909	Nucleic acid, high resolute	NI	A					
83914	Mutation ident ola/sbce/aspe	NI	A					
86200	Ccp antibody	NI	A					
86355	B cells, total count	NI	A					
86357	Nk cells, total count	NI	A					
86367	Stem cells, total count	NI	A					
86480	Tb test, cell immun measure	NI	A					
87209	Smear, complex stain	NI	A					
87900	Phenotype, infect agent drug	NI	A					
90649	H papilloma vacc 3 dose im	NI	E					
90736	Zoster vacc, sc	NI	E					
90760	Hydration iv infusion, init	NI	B					
90761	Hydrate iv infusion, add-on	NI	B					
90765	Ther/proph/diag iv inf, init	NI	B					
90766	Ther/proph/dg iv inf, add-on	NI	B					
90767	Tx/proph/dg addl seq iv inf	NI	B					
90768	Ther/diag concurrent inf	NI	B					
90774	Ther/proph/diag inj, iv push	NI	B					
90775	Ther/proph/diag inj add-on	NI	B					
92630	Aud rehab pre-ling hear loss	NI	E					
92633	Aud rehab postling hear loss	NI	E					
95251	Gluc monitor, cont, phys i&r	NI	B					
96409	Chemo, iv push, sngl drug	NI	B					
96411	Chemo, iv push, addl drug	NI	B					
96413	Chemo, iv infusion, 1 hr	NI	B					
96415	Chemo, iv infusion, addl hr	NI	B					
96417	Chemo iv infus each addl seq	NI	B					
97760	Orthotic mgmt and training	NI	A					
97761	Prosthetic training	NI	A					
97762	C/o for orthotic/prosth use	NI	A					
98960	Self-mgmt educ & train, 1 pt	NI	E					
98961	Self-mgmt educ/train, 2–4 pt	NI	E					
98962	Self-mgmt educ/train, 5–8 pt	NI	E					
99051	Med serv, eve/wkend/holiday	NI	B					
99053	Med serv 10pm–8am, 24 hr fac.	NI	B					
99060	Out of office emerg med serv	NI	B					
99304	Nursing facility care, init	NI	B					
99305	Nursing facility care, init	NI	B					
99306	Nursing facility care, init	NI	B					
99307	Nursing fac care, subseq	NI	B					
99308	Nursing fac care, subseq	NI	B					
99309	Nursing fac care, subseq	NI	B					
99310	Nursing fac care, subseq	NI	B					
99318	Annual nursing fac assessmnt	NI	B					
99324	Domicil/r-home visit new pat	NI	B					
99325	Domicil/r-home visit new pat	NI	B					
99326	Domicil/r-home visit new pat	NI	B					
99327	Domicil/r-home visit new pat	NI	B					
99328	Domicil/r-home visit new pat	NI	B					
99334	Domicil/r-home visit est pat	NI	B					
99335	Domicil/r-home visit est pat	NI	B					
99336	Domicil/r-home visit est pat	NI	B					
99337	Domicil/r-home visit est pat	NI	B					
99339	Domicil/r-home care supervis	NI	B					
99340	Domicil/r-home care supervis	NI	B					
0090T	Cervical artific disc	NI	C					
0091T	Lumbar artific disc	NI	C					
0092T	Artific disc addl	NI	C					
0093T	Cervical artific diskectomy	NI	C					
0094T	Lumbar artific diskectomy	NI	C					
0095T	Artific diskectomy addl	NI	C					
0096T	Rev cervical artific disc	NI	C					
0097T	Rev lumbar artific disc	NI	C					
0098T	Rev artific disc addl	NI	C					
0103T	Holotranscobalamin	NI	A					
0104T	At rest cardio gas rebreathe	NI	A					
0105T	Exerc cardio gas rebreathe	NI	A					
0111T	Rbc membranes fatty acids	NI	A					

HCPCS/CPT	Short descriptor	CI	SI	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0115T	Med tx mngmt 15 min	NI	B					
0116T	Med tx mngmt subsqt	NI	B					
0117T	Med tx mngmt addl 15 min	NI	B					
0130T	Chron care drug investigatn	NI	B					
0140T	Exhaled breath condensate ph.	NI	A					
0141T	Perq islet transplant	NI	E					
0142T	Open islet transplant	NI	E					
0143T	Laparoscopic islet transplnt	NI	E					
0153T	Implant aneur sensor add-on	NI	C					
1003F	Level of activity assess	NI	E					
1004F	Clin symp vol ovrld assess	NI	E					
1005F	Asthma symptoms evaluate	NI	E					
1006F	Osteoarthritis assess	NI	E					
1007F	Anti-inflm/anlgsc otc assess	NI	E					
1008F	Gi/renal risk assess	NI	E					
2000F	Blood pressure measure	NI	E					
2001F	Weight record	NI	E					
2002F	Clin sign vol ovrld assess	NI	E					
2003F	Auscultation heart perform	NI	E					
2004F	Initial exam involved joints	NI	E					
3000F	Blood press </= 140/90 mmhg	NI	E					
3002F	Blood pressure > 140/90 mmhg.	NI	E					
4003F	Pt ed write/oral, pts w/ hf	NI	E					
4012F	Warfarin therapy rx	NI	E					
4014F	Written discharge instr prvd	NI	E					
4015F	Persist asthma medicine ctrl	NI	E					
4016F	Anti-inflm/anlgsc agent rx	NI	E					
4017F	Gi prophylaxis for nsaid rx	NI	E					
4018F	Therapy exercise joint rx	NI	E					
A0998	Ambulance response/treatment.	NI	E					
A4233	Alkalin batt for glucose mon	NI	Y					
A4234	J-cell batt for glucose mon	NI	Y					
A4235	Lithium batt for glucose mon	NI	Y					
A4236	Silvr oxide batt glucose mon	NI	Y					
A4363	Ostomy clamp, replacement	NI	A					
A4411	Ost skn barr extnd =4 sq	NI	A					
A4412	Ost pouch drain high output	NI	A					
A4604	Tubing with heating element	NI	Y					
A5120	Skin barrier, wipe or swab	NI	A					
A5512	Multi den insert direct form	NI	B					
A5513	Multi den insert custom mold	NI	B					
A6457	Tubular dressing	NI	A					
A6513	Compress burn mask face/neck.	NI	B					
A6530	Compression stocking BK18–30.	NI	E					
A6531	Compression stocking BK30–40.	NI	A					
A6532	Compression stocking BK40–50.	NI	A					
A6533	Gc stocking thighlngth 18–30	NI	E					
A6534	Gc stocking thighlngth 30–40	NI	E					
A6535	Gc stocking thighlngth 40–50	NI	E					
A6536	Gc stocking full lngth 18–30	NI	E					
A6537	Gc stocking full lngth 30–40	NI	E					
A6538	Gc stocking full lngth 40–50	NI	E					
A6539	Gc stocking waistlngth 18–30	NI	E					
A6540	Gc stocking waistlngth 30–40	NI	E					
A6541	Gc stocking waistlngth 40–50	NI	E					
A6542	Gc stocking custom made	NI	E					
A6543	Gc stocking lymphedema	NI	E					
A6544	Gc stocking garter belt	NI	E					
A6549	G compression stocking	NI	E					
A9275	Disp home glucose monitor	NI	E					
A9281	Reaching/grabbing device	NI	E					
A9282	Wig any type	NI	E					
B4185	Parenteral sol 10 gm lipids	NI	B					
E0170	Commode chair electric	NI	Y					
E0171	Commode chair non-electric	NI	Y					

HCPCS/CPT	Short descriptor	CI	SI	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E0172	Seat lift mechanism toilet	NI	E					
E0485	Oral device/appliance prefab	NI	Y					
E0486	Oral device/appliance cusfab	NI	Y					
E0641	Multi-position stnd fram sys	NI	E					
E0642	Dynamic standing frame	NI	E					
E0705	Transfer board or device	NI	B					
E0762	Trans elec jt stim dev sys	NI	B					
E0764	Functional neuromuscularstim	NI	Y					
E0911	HD trapeze bar attach to bed	NI	Y					
E0912	HD trapeze bar free standing	NI	Y					
E1392	Portable oxygen concentrator	NI	Y					
E1812	Knee ext/flex w act res ctrl	NI	Y					
E2207	Crutch and cane holder	NI	Y					
E2208	Cylinder tank carrier	NI	Y					
E2209	Arm trough each	NI	Y					
E2210	Wheelchair bearings	NI	Y					
E2211	Pneumatic propulsion tire	NI	Y					
E2212	Pneumatic prop tire tube	NI	Y					
E2213	Pneumatic prop tire insert	NI	Y					
E2214	Pneumatic caster tire each	NI	Y					
E2215	Pneumatic caster tire tube	NI	Y					
E2216	Foam filled propulsion tire	NI	Y					
E2217	Foam filled caster tire each	NI	Y					
E2218	Foam propulsion tire each	NI	Y					
E2219	Foam caster tire any size ea	NI	Y					
E2220	Solid propulsion tire each	NI	Y					
E2221	Solid caster tire each	NI	Y					
E2222	Solid caster integrated whl	NI	Y					
E2223	Valve replacement only each	NI	Y					
E2224	Propulsion whl excludes tire	NI	Y					
E2225	Caster wheel excludes tire	NI	Y					
E2226	Caster fork replacement only	NI	Y					
E2371	Gr27 sealed leadacid battery	NI	Y					
E2372	Gr27 non-sealed leadacid	NI	Y					
G0333	Dispense fee initial 30 day	NI	M					
G0372	MD service required for PMD	NI	M					
G8006	AMI pt recd aspirin at arriv	NI	M					
G8007	AMI pt did not receiv aspiri	NI	M					
G8008	AMI pt ineligible for aspiri	NI	M					
G8009	AMI pt recd Bblock at arr	NI	M					
G8010	AMI pt did not rec bblock	NI	M					
G8011	AMI pt inelig Bbloc at arriv	NI	M					
G8012	Pneum pt recv antibiotic 4 h	NI	M					
G8013	Pneum pt w/o antibiotic 4 hr	NI	M					
G8014	Pneum pt not elig antibiotic	NI	M					
G8015	Diabetic pt w/ HBA1c>9%	NI	M					
G8016	Diabetic pt w/ HBA1c < or = 9%.	NI	M					
G8017	DM pt inelig for HBA1c measu	NI	M					
G8018	Care not provided for HbA1c	NI	M					
G8019	Diabetic pt w/LDL> 100mg/dl	NI	M					
G8020	Diab pt w/LDL < or = 100mg/dl.	NI	M					
G8021	Diab pt inelig for LDL meas	NI	M					
G8022	Care not provided for LDL	NI	M					
G8023	DM pt w BP> 140/80	NI	M					
G8024	Diabetic pt wBP< 140/80	NI	M					
G8025	Diabetic pt inelig for BP me	NI	M					
G8026	Diabet pt w no care re BP me	NI	M					
G8027	HF p w/LVSD on ACE-I/ARB	NI	M					
G8028	HF pt w/LVSD not on ACE-I/AR.	NI	M					
G8029	HF pt not elig for ACE-I/ARB	NI	M					
G8030	HF pt w/LVSD on Bblocker	NI	M					
G8031	HF pt w/LVSD not on Bblocker.	NI	M					
G8032	HF pt not elig for Bblocker	NI	M					
G8033	AMI-CAD pt on Bblocker	NI	M					
G8034	AMI-CAD pt not on Bblocker	NI	M					
G8035	AMI-CAD pt inelig Bblocker	NI	M					
G8036	AMI-CAD pt doc on antiplatel	NI	M					
G8037	AMI-CAD pt not docu on antip	NI	M					

HCPCS/CPT	Short descriptor	CI	SI	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
G8038	AMI-CAD inelig antiplate mea	NI	M					
G8039	CAD pt w/LDL>100mg/dl	NI	M					
G8040	CAD pt w/LDL< or = 100mg/dl	NI	M					
G8041	CAD pt not eligible for LDL	NI	M					
G8051	Osteoporosis assess	NI	M					
G8052	Osteopor pt not assess	NI	M					
G8053	Pt inelig for osteopor meas	NI	M					
G8055	Falls assess w/ 12 mon	NI	M					
G8056	Not elig for falls assessmen	NI	M					
G8057	Hearing assess receive	NI	M					
G8058	Pt w/o hearing assess	NI	M					
G8059	Pt inelig for hearing assess	NI	M					
G8060	Urinary incont pt assess	NI	M					
G8061	Pt not assess for urinary in	NI	M					
G8062	Pt not elig for urinary inco	NI	M					
G8075	ESRD pt w/ dialy of URR> 65%.	NI	M					
G8076	ESRD pt w/ dialy of URR< 65%.	NI	M					
G8077	ESRD pt not elig for URR/KtV	NI	M					
G8078	ESRD pt w/Hct> or = 33	NI	M					
G8079	ESRD pt w/Hct< 33	NI	M					
G8080	ESRD pt inelig for HCT/Hgb	NI	M					
G8081	ESRD pt w/ auto AV fistula	NI	M					
G8082	ESRD pt w other fistula	NI	M					
G8093	COPD pt rec smoking cessat	NI	M					
G8094	COPD pt w/o smoke cessat int.	NI	M					
G8099	Osteopo pt given Ca+VitD sup.	NI	M					
G8100	Osteop pt inelig for Ca+VitD	NI	M					
G8103	New dx osteo pt w/antiresorp	NI	M					
G8104	Osteo pt inelig for antireso	NI	M					
G8106	Bone dens meas test perf	NI	M					
G8107	Bone dens meas test inelig	NI	M					
G8108	Pt receiv influenza vacc	NI	M					
G8109	Pt w/o influenza vacc	NI	M					
G8110	Pt inelig for influenza vacc	NI	M					
G8111	Pt receiv mammogram	NI	M					
G8112	Pt not doc mammogram	NI	M					
G8113	Pt ineligible mammography	NI	M					
G8114	Care not provided for mamogr	NI	M					
G8115	Pt receiv pneumo vacc	NI	M					
G8116	Pt did not rec pneumo vacc	NI	M					
G8117	Pt was inelig for pneumo vac	NI	M					
G8126	Pt treat w antidepress 12wks	NI	M					
G8127	Pt not treat w/antidepres 12w	NI	M					
G8128	Pt inelig for antidepres med	NI	M					
G8129	Pt treat w/antidepres for 6m	NI	M					
G8130	Pt not treat w/antidepres 6m	NI	M					
G8131	Pt inelig for antidepres med	NI	M					
G8152	Pt w/AB 1 hr prior to incisi	NI	M					
G8153	Pt not doc for AB 1 hr prior	NI	M					
G8154	Pt ineligi for AB therapy	NI	M					
G8155	Pt recd thromboemb prophylax.	NI	M					
G8156	Pt did not rec thromboembo	NI	M					
G8157	Pt ineligi for thrombolism	NI	M					
G8158	Pt recd CABG w/ IMA	NI	M					
G8159	Pt w/CABG w/o IMA	NI	M					
G8160	Pt inelig for CABG w/IMA	NI	M					
G8161	Iso CABG pt rec preop bblock	NI	M					
G8162	Iso CABG pt w/o preop Bblock.	NI	M					
G8163	Iso CABG pt inelig for preo	NI	M					
G8164	Iso CABG pt w/prolng intub	NI	M					
G8165	Iso CABG pt w/o prolng intub	NI	M					
G8166	Iso CABG req surg rexpo	NI	M					
G8167	Iso CABG w/o surg explo	NI	M					
G8170	CEA/ext bypass pt on aspirin	NI	M					
G8171	Pt w/carot endarct/ext bypas	NI	M					
G8172	CEA/ext bypass pt not on asp	NI	M					

HCPCS/CPT	Short descriptor	CI	SI	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
G8182	CAD pt care not prov LDL	NI	M					
G8183	HF/atrial fib pt on warfarin	NI	M					
G8184	HF/atrial fib pt inelig warf	NI	M					
G8185	Osteoarth pt w/ assess pain	NI	M					
G8186	Osteoarth pt inelig assess	NI	M					
J0882	Darbepoetin alfa, esrd use	NI	B					
J0886	Epoetin alfa, esrd	NI	B					
J1675	Histrelin acetate	NI	B					
J7306	Levonorgestrel implant sys	NI	E					
J7341	Non-human, metabolic tissue	NI	K	1707		1.01		0.20
J7620	Albuterol non-compounded	NI	B					
J7627	Budesonide, compounded	NI	B					
J8498	Antiemetic rectal/supp NOS	NI	B					
J8515	Cabergoline, oral 0.25mg	NI	E					
J8540	Oral dexamethasone	NI	K	1708		0.22		0.04
L0491	TLSO 2 piece rigid shell	NI	A					
L0492	TLSO 3 piece rigid shell	NI	A					
L0621	SIO flex pelvisacral prefab	NI	A					
L0622	SIO flex pelvisacral custom	NI	A					
L0623	SIO panel prefab	NI	A					
L0624	SIO panel custom	NI	A					
L0625	LO flexibl L1-below L5 pre	NI	A					
L0626	LO sag stays/panels pre-fab	NI	A					
L0627	LO sagitt rigid panel prefab	NI	A					
L0628	LO flex w/o rigid stays pre	NI	A					
L0629	LSO flex w/rigid stays cust	NI	A					
L0630	LSO post rigid panel pre	NI	A					
L0631	LSO sag-coro rigid frame pre	NI	A					
L0632	LSO sag rigid frame cust	NI	A					
L0633	LSO flexion control prefab	NI	A					
L0634	LSO flexion control custom	NI	A					
L0635	LSO sagit rigid panel prefab	NI	A					
L0636	LSO sagittal rigid panel cus	NI	A					
L0637	LSO sag-coronal panel prefab	NI	A					
L0638	LSO sag-coronal panel custom.	NI	A					
L0639	LSO s/c shell/panel prefab	NI	A					
L0640	LSO s/c shell/panel custom	NI	A					
L0859	MRI compatible system	NI	A					
L3671	SO cap design w/o jnts CF	NI	A					
L3672	SO airplane w/o jnts CF	NI	A					
L3673	SO airplane w/joint CF	NI	A					
L3702	EO w/o joints CF	NI	A					
L3763	EWHO rigid w/o jnts CF	NI	A					
L3764	EWHO w/joint(s) CF	NI	A					
L3765	EWHFO rigid w/o jnts CF	NI	A					
L3766	EWHFO w/joint(s) CF	NI	A					
L3905	WHO w/nontorsion jnt(s) CF	NI	A					
L3913	HFO w/o joints CF	NI	A					
L3919	HO w/o joints CF	NI	A					
L3921	HFO w/joint(s) CF	NI	A					
L3933	FO w/o joints CF	NI	A					
L3935	FO nontorsion joint CF	NI	A					
L3961	SEWHO cap design w/o jnts CF.	NI	A					
L3967	SEWHO airplane w/o jnts CF	NI	A					
L3971	SEWHO cap design w/jnt(s) CF.	NI	A					
L3973	SEWHO airplane w/jnt(s) CF	NI	A					
L3975	SEWHFO cap design w/o jnt CF.	NI	A					
L3976	SEWHFO airplane w/o jnts CF.	NI	A					
L3977	SEWHFO cap desgn w/jnt(s) CF.	NI	A					
L3978	SEWHFO airplane w/jnt(s) CF	NI	A					
L5703	Symes ankle w/o (SACH) foot	NI	A					
L5858	Stance phase only	NI	A					
L5971	SACH foot, replacement	NI	A					
L6621	Flex/ext wrist w/wo friction	NI	A					
L6677	UE triple control harness	NI	A					
L6883	Replc sockt below e/w disa	NI	A					

HCPCS/CPT	Short descriptor	CI	SI	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L6884	Replc sockt above elbow disa	NI	A					
L6885	Replc sockt shldr dis/interc	NI	A					
L7400	Add UE prost be/wd, ultlite	NI	A					
L7401	Add UE prost a/e ultlite mat	NI	A					
L7402	Add UE prost s/d ultlite mat	NI	A					
L7403	Add UE prost b/e acrylic	NI	A					
L7404	Add UE prost a/e acrylic	NI	A					
L7405	Add UE prost s/d acrylic	NI	A					
L7600	Prosthetic donning sleeve	NI	A					
L8623	Lith ion batt CID, non-earlvl	NI	A					
L8624	Lith ion batt CID, ear level	NI	A					
L8680	Implt neurostim elctr each	NI	B					
L8681	Pt prgrm for implt neurostim	NI	A					
L8683	Radiofq trsmtr for implt neu	NI	A					
L8684	Radiof trsmtr implt scrl neu	NI	A					
L8685	Implt nrostm pls gen sng rec	NI	B					
L8686	Implt nrostm pls gen sng non	NI	B					
L8687	Implt nrostm pls gen dua rec	NI	B					
L8688	Implt nrostm pls gen dua non	NI	B					
L8689	External recharging system	NI	A					
Q0510	Dispens fee immunosupressive.	NI	B					
Q0511	Sup fee antiem, antica, immuno.	NI	B					
Q0512	Px sup fee anti-can sub pres	NI	M					
Q0513	Disp fee inhal drugs/30 days	NI	B					
Q0514	Disp fee inhal drugs/90 days	NI	B					
V2788	Presbyopia-correct function	NI	E					

D. Corrections to Addendum L

Addendum L represents all hospitals that are eligible to have their wage index increased by the out-migration adjustment. In the final rule with comment period, we inadvertently did not list all hospitals eligible for the adjustment. We correct this in this notice by replacing Addendum L in its entirety; however we retain the footnote language as published in the final rule.

ADDENDUM L.—OUT-MIGRATION WAGE ADJUSTMENT CY 2006 [1]

Provider no.	Redesignation indicator	Out-migration adjustment	Qualifying county name
010005		0.0259	Marshall.
010008	*	0.0212	Crenshaw.
010009		0.0092	Morgan.
010010		0.0259	Marshall.
010012	*	0.0205	De Kalb.
010022	*	0.0714	Cherokee.
010025	*	0.0235	Chambers.
010029	*	0.0107	Lee.
010035	*	0.0375	Cullman.
010038		0.0062	Calhoun.
010045	*	0.0160	Fayette.
010047		0.0155	Butler.
010054		0.0092	Morgan.
010061		0.0506	Jackson.
010072	*	0.0310	Talladega.
010078		0.0062	Calhoun.
010083	*	0.0121	Baldwin.
010085		0.0092	Morgan.
010100	*	0.0121	Baldwin.
010101	*	0.0310	Talladega.
010109		0.0451	Pickens.
010115		0.0093	Franklin.
010129		0.0121	Baldwin.
010143	*	0.0375	Cullman.
010146		0.0062	Calhoun.
010150	*	0.0155	Butler.
010158	*	0.0093	Franklin.
010164	*	0.0310	Talladega.
013027		0.0121	Baldwin.
014008		0.0121	Baldwin.
014009		0.0092	Morgan.

ADDENDUM L.—OUT-MIGRATION WAGE ADJUSTMENT CY 2006 [1]—Continued

Provider no.	Redesignation indicator	Out-migration adjustment	Qualifying county name
040014	*	0.0159	White.
040019	*	0.0697	St. Francis.
010047	*	0.0090	Randolph.
010069	*	0.0140	Mississippi.
010071	.....	0.0026	Jefferson.
040076	*	0.1075	Hot Spring.
040100	*	0.0159	White.
042007	.....	0.0026	Jefferson.
050008	.....	0.0026	San Francisco
050009	*	0.0478	NAPA.
050013	*	0.0478	NAPA.
050014	*	0.0131	Amador.
050016	.....	0.0103	San Luis Obispo.
050042	*	0.0219	Tehama.
050046	.....	0.0156	Ventura.
050047	.....	0.0026	San Francisco.
050055	.....	0.0026	San Francisco.
050065	*	0.0029	Orange.
050069	*	0.0029	Orange.
050073	*	0.0269	Solano.
050076	*	0.0026	San Francisco.
050082	.....	0.0156	Ventura.
050084	.....	0.0555	San Joaquin.
050089	*	0.0152	San Bernardino.
050090	*	0.0308	Sonoma.
050099	*	0.0152	San Bernardino.
050101	.....	0.0269	Solano.
050117	.....	0.0463	Merced.
050118	*	0.0555	San Joaquin.
050122	.....	0.0555	San Joaquin.
050129	*	0.0152	San Bernardino.
050133	.....	0.0170	Yuba.
050136	*	0.0308	Sonoma.
050140	*	0.0152	San Bernardino.
050150	*	0.0316	Nevada
050152	.....	0.0026	San Francisco.
050159	.....	0.0156	Ventura.
050167	.....	0.0555	San Joaquin.
050168	*	0.0029	Orange.
050173	*	0.0029	Orange.
050174	*	0.0308	Sonoma.
050177	.....	0.0156	Ventura.
050193	*	0.0029	Orange.
050224	*	0.0029	Orange.
050226	*	0.0029	Orange.
050228	*	0.0026	San Francisco.
050230	*	0.0029	Orange.
050232	.....	0.0103	San Luis Obispo.
050236	.....	0.0156	Ventura.
050245	*	0.0152	San Bernardino.
050272	*	0.0152	San Bernardino.
050279	*	0.0152	San Bernardino.
050291	*	0.0308	Sonoma.
050298	*	0.0152	San Bernardino.
050300	*	0.0152	San Bernardino.
050313	.....	0.0555	San Joaquin.
050325	.....	0.0176	Tuolumne.
050327	*	0.0152	San Bernardino.
050331	*	0.0308	Sonoma.
050335	.....	0.0176	Tuolumne.
050336	.....	0.0555	San Joaquin.
050348	*	0.0029	Orange.
050367	.....	0.0269	Solano.
050385	*	0.0308	Sonoma.
050394	.....	0.0156	Ventura.
050407	.....	0.0026	San Francisco.
050426	*	0.0029	Orange.
050444	.....	0.0463	Merced.
050454	.....	0.0026	San Francisco.
050457	.....	0.0026	San Francisco.
050469	*	0.0152	San Bernardino.

ADDENDUM L.—OUT-MIGRATION WAGE ADJUSTMENT CY 2006 [1]—Continued

Provider no.	Redesignation indicator	Out-migration adjustment	Qualifying county name
050476	.....	0.0257	Lake.
050494	*	0.0316	Nevada.
050506	.....	0.0103	San Luis Obispo.
050517	.....	0.0152	San Bernardino.
050526	*	0.0029	Orange.
050528	*	0.0463	Merced.
050535	*	0.0029	Orange.
050539	.....	0.0257	Lake.
050543	*	0.0029	Orange.
050547	*	0.0308	Sonoma.
050548	*	0.0029	Orange.
050549	*	0.0156	Ventura.
050550	*	0.0029	Orange.
050551	*	0.0029	Orange.
050567	*	0.0029	Orange.
050568	.....	0.0062	Madera.
050570	*	0.0029	Orange.
050580	*	0.0029	Orange.
050584	*	0.0152	San Bernardino.
050585	*	0.0029	Orange.
050586	*	0.0152	San Bernardino.
050589	*	0.0029	Orange.
050592	*	0.0029	Orange.
050594	*	0.0029	Orange.
050603	*	0.0029	Orange.
050609	*	0.0029	Orange.
050616	.....	0.0156	Ventura.
050618	*	0.0152	San Bernardino.
050633	.....	0.0103	San Luis Obispo.
050667	*	0.0478	Napa.
050668	*	0.0026	San Francisco.
050678	*	0.0029	Orange.
050680	.....	0.0269	Solano.
050690	*	0.0308	Sonoma.
050693	*	0.0029	Orange.
050695	.....	0.0555	San Joaquin.
050720	*	0.0029	Orange.
050728	*	0.0308	Sonoma.
050731	.....	0.0152	San Bernardino.
052035	.....	0.0029	Orange.
052037	.....	0.0152	San Bernardino.
052039	.....	0.0029	Orange.
052040	.....	0.0152	San Bernardino.
053034	.....	0.0029	Orange.
053037	.....	0.0152	San Bernardino.
053304	.....	0.0029	Orange.
053306	.....	0.0029	Orange.
053308	.....	0.0029	Orange.
054020	.....	0.0026	San Francisco.
054074	.....	0.0269	Solano.
054077	.....	0.0156	Ventura.
054089	.....	0.0026	San Francisco.
054093	.....	0.0152	San Bernardino.
054106	.....	0.0156	Ventura.
054111	.....	0.0152	San Bernardino.
054122	.....	0.0478	Napa.
054123	.....	0.0555	San Joaquin.
054135	.....	0.0029	Orange.
054141	.....	0.0269	Solano.
054144	.....	0.0026	San Francisco.
060001	*	0.0294	Weld.
060003	*	0.0203	Boulder.
060027	*	0.0203	Boulder.
060103	*	0.0203	Boulder.
064007	.....	0.0203	Boulder.
070003	*	0.0009	Windham.
070006	*	0.0047	Fairfield.
070010	*	0.0047	Fairfield.
070018	*	0.0047	Fairfield.
070020	.....	0.0073	Middlesex.
070021	*	0.0009	Windham.

ADDENDUM L.—OUT-MIGRATION WAGE ADJUSTMENT CY 2006 [1]—Continued

Provider no.	Redesignation indicator	Out-migration adjustment	Qualifying county name
070028	*	0.0047	Fairfield.
070033	*	0.0047	Fairfield.
070034	*	0.0047	Fairfield.
073026	.....	0.0009	Windham.
074000	.....	0.0047	Fairfield.
074003	.....	0.0073	Middlesex.
074008	.....	0.0009	Windham.
074012	.....	0.0047	Fairfield.
074014	.....	0.0047	Fairfield.
080001	.....	0.0063	New Castle.
080003	.....	0.0063	New Castle.
082000	.....	0.0063	New Castle.
083300	.....	0.0063	New Castle.
084001	.....	0.0063	New Castle.
084002	.....	0.0063	New Castle.
084003	.....	0.0063	New Castle.
100014	.....	0.0118	Volusia.
100017	.....	0.0118	Volusia.
100045	*	0.0118	Volusia.
100047	.....	0.0021	Charlotte.
100062	.....	0.0060	Marion.
100068	.....	0.0118	Volusia.
100072	.....	0.0118	Volusia.
100077	.....	0.0021	Charlotte.
100102	.....	0.0125	Columbia.
100118	*	0.0398	Flagler.
100156	.....	0.0125	Columbia.
100175	.....	0.0231	De Soto.
100212	.....	0.0060	Marion.
100232	.....	0.0347	Putnam.
100236	.....	0.0021	Charlotte.
100252	*	0.0233	Okeechobee.
100290	.....	0.0582	Sumter.
110023	*	0.0500	Gordon.
110027	.....	0.0387	Franklin.
110029	*	0.0063	Hall.
110041	*	0.0777	Habersham.
110069	*	0.0474	Houston.
110124	.....	0.0428	Wayne.
110136	.....	0.0261	Baldwin.
110150	*	0.0261	Baldwin.
110153	*	0.0474	Houston.
110187	*	0.1172	Lumpkin.
110189	*	0.0031	Fannin.
110190	.....	0.0182	Macon.
110205	*	0.0779	Gilmer.
114018	.....	0.0261	Baldwin.
130003	*	0.0095	Nez Perce.
130024	.....	0.0275	Bonner.
130049	*	0.0349	Kootenai.
130066	.....	0.0349	Kootenai.
140012	*	0.0220	Lee.
140026	.....	0.0346	La Salle.
140033	.....	0.0147	Lake.
140043	*	0.0046	Whiteside.
140058	*	0.0081	Morgan.
140084	.....	0.0147	Lake.
140100	.....	0.0147	Lake.
140110	*	0.0346	La Salle.
140130	.....	0.0147	Lake.
140155	.....	0.0027	Kankakee.
140160	*	0.0286	Stephenson.
140161	*	0.0138	Livingston.
140186	.....	0.0027	Kankakee.
140202	.....	0.0147	Lake.
140205	.....	0.0163	Boone.
140234	*	0.0346	La Salle.
140291	*	0.0147	Lake.
150022	.....	0.0249	Montgomery.
150030	*	0.0201	Henry.
150035	.....	0.0083	Porter.

ADDENDUM L.—OUT-MIGRATION WAGE ADJUSTMENT CY 2006 [1]—Continued

Provider no.	Redesignation indicator	Out-migration adjustment	Qualifying county name
150045	.....	0.0416	De Kalb.
150060	.....	0.0051	Vermillion.
150062	.....	0.0153	Decatur.
150065	*	0.0139	Jackson.
150076	*	0.0189	Marshall.
150088	*	0.0196	Madison.
150091	.....	0.0573	Huntington.
150102	*	0.0160	Starke.
150113	*	0.0196	Madison.
150122	.....	0.0199	Ripley.
154047	.....	0.0189	Marshall.
154050	.....	0.0416	De Kalb.
160013	.....	0.0218	Muscatine.
160026	*	0.0496	Boone.
160030	.....	0.0040	Story.
160032	.....	0.0272	Jasper.
160080	*	0.0049	Clinton.
170137	*	0.0336	Douglas.
180012	*	0.0083	Hardin.
180066	*	0.0567	Logan.
180127	*	0.0352	Franklin.
180128	.....	0.0282	Lawrence.
183028	.....	0.0083	Hardin.
184012	.....	0.0083	Hardin.
190001	*	0.0645	Washington.
190003	*	0.0107	Iberia.
190010	.....	0.0401	Tangipahoa.
190015	*	0.0401	Tangipahoa.
190017	.....	0.0235	St. Landry.
190054	.....	0.0107	Iberia.
190078	.....	0.0235	St. Landry.
190088	.....	0.0705	Webster.
190099	*	0.0390	Avoyelles.
190106	*	0.0238	Allen.
190133	.....	0.0238	Allen.
190144	.....	0.0705	Webster.
190184	.....	0.0161	Caldwell.
190190	.....	0.0161	Caldwell.
190191	*	0.0235	St. Landry.
190246	.....	0.0161	Caldwell.
192034	.....	0.0235	St. Landry.
192036	.....	0.0401	Tangipahoa.
192040	.....	0.0401	Tangipahoa.
192046	.....	0.0645	Washington.
193044	.....	0.0401	Tangipahoa.
193055	.....	0.0161	Caldwell.
193063	.....	0.0401	Tngipahoa.
193068	.....	0.0401	Tangipahoa.
193073	.....	0.0235	St. Landry.
193091	.....	0.0107	Iberia.
194047	.....	0.0705	Webster.
200002	*	0.0129	Lincoln.
200013	.....	0.0186	Waldo.
200024	*	0.0071	Androscoggin.
200032	.....	0.0466	Oxford.
200034	*	0.0071	Androscoggin.
200050	*	0.0140	Hancock.
210001	.....	0.0129	Washington.
210004	.....	0.0040	Montgomery.
210016	.....	0.0040	Montgomery.
210018	.....	0.0040	Montgomery.
210022	.....	0.0040	Montgomery.
210023	.....	0.0209	Ann Arundel.
210043	.....	0.0209	Ann Arundel.
210048	.....	0.0287	Howard.
210057	.....	0.0040	Montgomery.
212002	.....	0.0129	Washington.
213029	.....	0.0040	Montgomery.
214001	.....	0.0209	Ann Arundel.
214003	.....	0.0129	Washington.
214013	.....	0.0040	Montgomery.

ADDENDUM L.—OUT-MIGRATION WAGE ADJUSTMENT CY 2006 [1]—Continued

Provider no.	Redesignation indicator	Out-migration adjustment	Qualifying county name
220001	*	0.0056	Worcester.
220002	.....	0.0249	Middlesex.
220003	*	0.0056	Worcester.
220006	.....	0.0306	Essex.
220010	*	0.0306	Essex.
220011	.....	0.0249	Middlesex.
220019	*	0.0056	Worcester.
220025	*	0.0056	Worcester.
220028	*	0.0056	Worcester.
220029	*	0.0306	Essex.
220033	*	0.0306	Essex.
220035	*	0.0306	Essex.
220049	.....	0.0249	Middlesex.
220058	*	0.0056	Worcester.
220062	*	0.0056	Worcester.
220063	.....	0.0249	Middlesex.
220070	.....	0.0249	Middlesex.
220080	*	0.0306	Essex.
220082	.....	0.0249	Middlesex.
220084	.....	0.0249	Middlesex.
220089	.....	0.0249	Middlesex.
220090	*	0.0056	Worcester.
220095	*	0.0056	Worcester.
220098	.....	0.0249	Middlesex.
220101	.....	0.0249	Middlesex.
220105	.....	0.0249	Middlesex.
220163	*	0.0056	Worcester.
220171	.....	0.0240	Middlesex.
220174	*	0.0306	Essex.
222000	.....	0.0249	Middlesex.
222003	.....	0.0249	Middlesex.
222026	.....	0.0306	Essex.
222044	.....	0.0306	Essex.
222047	.....	0.0306	Essex.
222048	.....	0.0056	Worcester.
223026	.....	0.0249	Middlesex.
223028	.....	0.0306	Essex.
223029	.....	0.0056	Worcester.
223033	.....	0.0056	Worcester.
224007	.....	0.0249	Middlesex.
224002	.....	0.0249	Middlesex.
224026	.....	0.0056	Worcester.
224032	.....	0.0056	Worcester.
224033	.....	0.0306	Essex.
224038	.....	0.0249	Middlesex.
230003	*	0.0035	Ottawa.
230013	*	0.0091	Oakland.
230015	.....	0.0359	St. Joseph.
230019	*	0.0091	Oakland.
230021	.....	0.0136	Berrien.
230022	*	0.0113	Branch.
230029	*	0.0091	Oakland.
230037	*	0.0178	Hillsdale.
230041	.....	0.0099	Bay.
230042	*	0.0685	Allegan.
230047	*	0.0082	MACOMB.
230069	*	0.0487	Livingston.
230071	*	0.0091	Oakland.
230072	*	0.0035	Ottawa.
230075	.....	0.0145	Calhoun.
230078	*	0.0136	Berrien.
230092	.....	0.0389	Jackson.
230093	*	0.0079	Mecosta.
230096	*	0.0359	St. Joseph.
230099	*	0.0339	Monroe.
230106	*	0.0030	Newaygo.
230121	*	0.0691	Shiawassee.
230130	*	0.0091	Oakland.
230151	*	0.0091	Oakland.
230174	*	0.0035	Ottawa.
230184	.....	0.0389	Jackson.

ADDENDUM L.—OUT-MIGRATION WAGE ADJUSTMENT CY 2006 [1]—Continued

Provider no.	Redesignation indicator	Out-migration adjustment	Qualifying county name
230195	*	0.0082	Macomb.
230204	*	0.0082	Macomb.
230207	*	0.0091	Oakland.
230217	*	0.0145	Calhoun.
230222	.....	0.0228	Midland.
230223	*	0.0091	Oakland.
230227	*	0.0082	Macomb.
230254	*	0.0091	Oakland.
230257	*	0.0082	Macomb.
230264	*	0.0082	Macomb.
230269	*	0.0091	Oakland.
230277	*	0.0091	Oakland.
230279	*	0.0487	Livingston.
232020	.....	0.0099	Bay.
232023	.....	0.0082	Macomb.
232025	.....	0.0136	Berrien.
232028	.....	0.0145	Calhoun.
232034	.....	0.0685	Allegan.
232036	.....	0.0389	Jackson.
233025	.....	0.0145	Calhoun.
233028	.....	0.0091	Oakland.
233031	.....	0.0082	Macomb.
234011	.....	0.0091	Oakland.
234021	.....	0.0082	Macomb.
234023	.....	0.0091	Oakland.
234024	.....	0.0082	Macomb.
234037	.....	0.0145	Calhoun.
240013	*	0.0226	Morrison.
240018	*	0.1196	Goodhue.
240021	.....	0.0920	Le Sueur.
240044	.....	0.0868	Winona.
240064	*	0.0138	Itasca.
240069	*	0.0419	Steele.
240071	*	0.0454	Rice.
240152	*	0.0735	Kanabec.
240154	.....	0.0138	Itasca.
240187	*	0.0506	Mc Leod.
240211	*	0.0705	Pine.
250040	*	0.0294	Jackson.
250045	.....	0.0042	Hancock.
254009	.....	0.0294	Jackson.
260011	.....	0.0007	Cole.
260025	*	0.0078	Marion.
260047	*	0.0007	Cole.
260074	*	0.0158	Randolph.
260097	.....	0.0425	Johnson.
260127	.....	0.0158	Pike.
280054	.....	0.0137	Gage.
280077	*	0.0089	Dodge.
280123	.....	0.0137	Gage.
290019	*	0.0026	Carson City.
290049	.....	0.0026	Carson City.
293029	.....	0.0026	Carson City.
300011	*	0.0069	Hillsborough.
300012	*	0.0069	Hillsborough.
300017	.....	0.0361	Rockingham.
300020	*	0.0069	Hillsborough.
300023	.....	0.0361	Rockingham.
300029	.....	0.0361	Rockingham.
300034	*	0.0069	Hillsborough.
303026	.....	0.0361	Rockingham.
304001	.....	0.0361	Rockingham.
310002	*	0.0351	Essex.
310009	*	0.0351	Essex.
310010	.....	0.0092	Mercer.
310011	.....	0.0115	Cape May.
310013	*	0.0351	Essex.
310018	*	0.0351	Essex.
310021	*	0.0092	Mercer.
310038	*	0.0350	Middlesex.
310039	.....	0.0350	Middlesex.

ADDENDUM L.—OUT-MIGRATION WAGE ADJUSTMENT CY 2006 [1]—Continued

Provider no.	Redesignation indicator	Out-migration adjustment	Qualifying county name
310044	.....	0.0092	Mercer.
310054	*	0.0351	Essex.
310070	*	0.0350	Middlesex.
310076	*	0.0351	Essex.
310078	*	0.0351	Essex.
310083	*	0.0351	Essex.
310092	.....	0.0092	Mercer.
310093	*	0.0351	Essex.
310096	*	0.0351	Essex.
310108	.....	0.0350	Middlesex.
310110	.....	0.0092	Mercer.
310119	*	0.0351	Essex.
310123	.....	0.0351	Essex.
310124	.....	0.0350	Middlesex.
312018	.....	0.0350	Middlesex.
313025	.....	0.0351	Essex.
313027	.....	0.0092	Mercer.
314010	.....	0.0351	Essex.
314011	.....	0.0350	Middlesex.
314013	.....	0.0092	Mercer.
314020	.....	0.0351	Essex.
314025	.....	0.0092	Mercer.
320003	.....	0.0629	San Miguel.
320011	.....	0.0442	Rio Arriba.
320018	.....	0.0063	Dona Ana.
320085	.....	0.0063	Dona Ana.
322001	.....	0.0629	San Miguel.
323025	.....	0.0629	San Miguel.
323032	.....	0.0063	Dona Ana.
324007	.....	0.0063	Dona Ana.
324009	.....	0.0063	Dona Ana.
324010	.....	0.0063	Dona Ana.
324011	.....	0.0442	Rio Arriba.
324012	.....	0.0063	Dona Ana.
330004	*	0.0959	Ulster.
330008	*	0.0470	Wyoming.
330027	*	0.0137	Nassau.
330094	*	0.0778	Columbia.
330106	*	0.0137	Nassau.
330126	*	0.0560	Orange.
330135	*	0.0560	Orange.
330167	.....	0.0137	Nassau.
330181	*	0.0137	Nassau.
330182	*	0.0137	Nassau.
330191	*	0.0026	Warren.
330198	.....	0.0137	Nassau.
330205	*	0.0560	Orange.
330209	*	0.0560	Orange.
330224	.....	0.0959	Ulster.
330225	.....	0.0137	Nassau.
330235	*	0.0270	Cayuga.
330259	.....	0.0137	Nassau.
330264	*	0.0560	Orange.
330276	.....	0.0063	Fulton.
330331	.....	0.0137	Nassau.
330332	.....	0.0137	Nassau.
330372	.....	0.0137	Nassau.
330386	*	0.1139	Sullivan.
334017	.....	0.0560	Orange.
334061	.....	0.0560	Orange.
340015	.....	0.0267	Rowan.
340020	.....	0.0207	Lee.
340021	*	0.0216	Cleveland.
340037	.....	0.0216	Cleveland.
340039	*	0.0144	Iredell.
340069	*	0.0053	Wake.
340070	.....	0.0448	Alamance.
340073	*	0.0053	Wake.
340085	.....	0.0377	Davidson.
340096	.....	0.0377	Davidson.
340104	.....	0.0216	Cleveland.

ADDENDUM L.—OUT-MIGRATION WAGE ADJUSTMENT CY 2006 [1]—Continued

Provider no.	Redesignation indicator	Out-migration adjustment	Qualifying county name
340114	*	0.0053	Wake.
340126	*	0.0161	Wilson.
340127	*	0.0961	Granville.
340129	*	0.0144	Iredell.
340133	.....	0.0308	Martin.
340138	*	0.0053	Wake.
340144	*	0.0144	Iredell.
340145	*	0.0563	Lincoln.
340173	*	0.0053	Wake.
344001	.....	0.0053	Wake.
344004	.....	0.0961	Granville.
344011	.....	0.0053	Wake.
344014	.....	0.0053	Wake.
360013	*	0.0166	Shelby.
360025	*	0.0087	Erie.
360036	*	0.0263	Wayne.
360065	*	0.0141	Huron.
360070	.....	0.0028	Stark.
360078	*	0.0159	Portage.
360084	.....	0.0028	Stark.
360086	*	0.0168	Clark.
360095	*	0.0087	Hancock.
360100	.....	0.0028	Stark.
360107	*	0.0213	Sandusky.
360131	.....	0.0028	Stark.
360151	.....	0.0028	Stark.
360156	.....	0.0213	Sandusky.
360175	*	0.0159	Clinton.
360187	*	0.0168	Clark.
360197	*	0.0092	Logan.
360267	.....	0.0028	Stark.
362007	.....	0.0213	Sandusky.
362032	.....	0.0028	Stark.
364031	.....	0.0028	Stark.
364040	.....	0.0168	Clark.
370004	*	0.0193	Ottawa.
370014	*	0.0831	Bryan.
370015	*	0.0463	Mayes.
370023	.....	0.0084	Stephens.
370065	.....	0.0121	Craig.
370113	*	0.0205	Delaware.
370149	.....	0.0356	Pottawatomie.
370179	*	0.0314	Okfuskee.
374017	.....	0.0193	Ottawa.
380002	.....	0.0130	Josephine.
380008	*	0.0201	Linn.
380022	.....	0.0201	Linn.
380029	.....	0.0075	Marion.
380051	.....	0.0075	Marion.
380056	.....	0.0075	Marion.
384008	.....	0.0075	Marion.
390011	.....	0.0012	Cambria.
390044	.....	0.0200	Berks.
390046	.....	0.0098	York.
390056	.....	0.0042	Huntingdon.
390065	*	0.0501	Adams.
390066	*	0.0259	Lebanon.
390096	.....	0.0200	Berks.
390101	.....	0.0098	York.
390110	*	0.0012	Cambria.
390130	.....	0.0012	Cambria.
390138	*	0.0325	Franklin.
390146	.....	0.0053	Warren.
390150	*	0.0206	Greene.
390151	*	0.0325	Franklin.
390162	.....	0.0200	Northampton.
390201	.....	0.1127	Monroe.
390233	.....	0.0098	York.
392031	.....	0.0102	Cambria.
392034	.....	0.0200	Northampton.
393026	.....	0.0200	Berks.

ADDENDUM L.—OUT-MIGRATION WAGE ADJUSTMENT CY 2006 [1]—Continued

Provider no.	Redesignation indicator	Out-migration adjustment	Qualifying county name
393037	.....	0.0098	York.
394014	.....	0.0200	Berks.
394016	.....	0.0053	Warren.
394020	.....	0.0259	Lebanon.
420007	.....	0.0001	Spartanburg.
420020	*	0.0035	Georgetown.
420027	.....	0.0210	Anderson.
420030	*	0.0103	Colleton.
420039	*	0.0153	Union.
420043	.....	0.0177	Cherokee.
420068	*	0.0097	Orangeburg.
420070	*	0.0101	Sumter.
420083	.....	0.0001	Spartanburg.
420093	.....	0.0001	Spartanburg.
420098	.....	0.0035	Georgetown.
423029	.....	0.0210	Anderson.
424011	.....	0.0210	Anderson.
440008	*	0.0663	Henderson.
440024	.....	0.0387	Bradley.
440030	.....	0.0056	Hamblen.
440035	*	0.0441	Montgomery.
440047	.....	0.0499	Gibson.
440056	.....	0.0321	Jefferson.
440060	*	0.0499	Gibson.
420063	.....	0.0011	Washington.
440067	*	0.0056	Hamblen.
440073	*	0.0513	Maury.
440105	.....	0.0011	Washington.
440114	.....	0.0523	Lauderdale.
440115	.....	0.0499	Gibson.
440148	*	0.0568	De Kalb.
440153	.....	0.0007	Cocke.
440174	.....	0.0372	Haywood.
440181	.....	0.0407	Hardeman.
440184	.....	0.0011	Washington.
440185	*	0.0387	Bradley.
444006	.....	0.0011	Washington.
444008	.....	0.0407	Hardeman.
450032	*	0.0416	Harrison.
450039	*	0.0097	Tarrant.
450050	.....	0.0750	Ward.
450059	*	0.0073	Comal.
450064	*	0.0097	Tarrant.
450087	*	0.0097	Tarrant.
450099	*	0.0180	Gray.
450121	*	0.0097	Tarrant.
450135	*	0.0097	Tarrant.
450137	*	0.0097	Tarrant.
450144	*	0.0573	Andrews.
450163	.....	0.0134	Kleberg.
450187	*	0.0264	Washington.
450194	*	0.0328	Cherokee.
450214	*	0.0368	Wharton.
450224	*	0.0411	Wood.
450347	*	0.0427	Walker.
450362	.....	0.0486	Burnet.
450370	.....	0.0258	Colorado.
450389	*	0.0881	Henderson.
450395	.....	0.0484	Polk.
450419	*	0.0097	Tarrant.
450438	*	0.0258	Colorado.
450447	*	0.0358	Navarro.
450451	*	0.0551	Somervell.
450465	.....	0.0435	Matagorda.
450547	*	0.0411	WOOD.
450563	*	0.0097	Tarrant.
450565	.....	0.0486	Palo Pinto.
450596	.....	0.0808	Hood.
450597	.....	0.0077	De Witt.
450623	*	0.0492	Fannin.
450626	.....	0.0294	Jackson.

ADDENDUM L.—OUT-MIGRATION WAGE ADJUSTMENT CY 2006 [1]—Continued

Provider no.	Redesignation indicator	Out-migration adjustment	Qualifying county name
450639	*	0.0097	Tarrant.
450672	*	0.0097	Tarrant.
450675	*	0.0097	Tarrant.
450677	*	0.0097	Tarrant.
450694	*	0.0368	Wharton.
450747	*	0.0195	Anderson.
450755	*	0.0484	Hockley.
450763	.....	0.0236	Hutchinson.
450779	*	0.0097	Tarrant.
450813	.....	0.0195	Anderson.
450858	*	0.0097	Tarrant.
450872	*	0.0097	Tarrant.
450880	*	0.0097	Tarrant.
452018	.....	0.0097	Tarrant.
452019	.....	0.0097	Tarrant.
452028	.....	0.0097	Tarrant.
452088	.....	0.0097	Tarrant.
453040	.....	0.0097	Tarrant.
453041	.....	0.0097	Tarrant.
453042	.....	0.0097	Tarrant.
453089	.....	0.0195	Anderson.
453300	.....	0.0097	Tarrant.
453303	.....	0.0097	Tarrant.
454009	.....	0.0328	Cherokee.
454012	.....	0.0097	Tarrant.
454019	.....	0.0097	Tarrant.
454051	.....	0.0097	Tarrant.
454052	.....	0.0097	Tarrant.
454061	.....	0.0097	Tarrant.
454086	.....	0.0097	Tarrant.
460017	.....	0.0392	Box Elder.
460036	*	0.0700	Wasatch.
460039	*	0.0392	Box Elder.
470018	.....	0.0287	Windsor
490019	.....	0.1240	Culpeper.
490038	.....	0.0022	Smyth.
490047	*	0.0198	Page.
490084	.....	0.0167	Essex.
490105	*	0.0022	Smyth.
490110	.....	0.0082	Montgomery.
494029	.....	0.0022	Smyth.
500003	*	0.0208	Skagit.
500007	.....	0.0208	Skagit.
500019	.....	0.0213	Lewis.
500021	.....	0.0055	Pierce.
500024	.....	0.0023	Thurston.
500039	*	0.0174	Kitsap.
500041	*	0.0118	Cowlitz.
500079	.....	0.0055	Pierce.
500108	.....	0.0055	Pierce.
500122	*	0.0459	Island.
500129	.....	0.0055	Pierce.
500139	.....	0.0023	Thurston.
500143	.....	0.0023	Thurston.
503301	.....	0.0055	Pierece.
504003	.....	0.0055	Pierce.
504010	.....	0.0055	Pierce.
510018	*	0.0209	Jackson.
510028	*	0.0141	Fayette.
510039	.....	0.0112	Ohio.
510047	*	0.0275	Marion.
510050	.....	0.0112	Ohio.
510077	*	0.0021	Mingo.
513025	.....	0.0112	Ohio.
520028	*	0.0157	Green.
520035	.....	0.0077	Sheboygan.
520044	.....	0.0077	SHeboygan.
520057	.....	0.0118	Sauk.
520059	*	0.0200	Racine.
520071	*	0.0239	Jefferson.
520095	*	0.0118	Sauk.

ADDENDUM L.—OUT-MIGRATION WAGE ADJUSTMENT CY 2006 [1]—Continued

Provider no.	Redesignation indicator	Out-migration adjustment	Qualifying county name
520096	*	0.0200	Racine.
520102	*	0.0298	Walworth.
520116	*	0.0239	Jefferson.
520132	.....	0.0077	Sheboygan.
522005	.....	0.0200	Racine.
523026	.....	0.0200	Racine.
524020	.....	0.0118	Sauk.
524021	.....	0.0298	Walworth.

* Hospitals that have been reclassified under section 1886(d)(10) of the Act, reclassified under section 508 Pub. L. 108–173, or redesignated under section 1886(d)(8) of the Act.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 20, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–24447 Filed 12–22–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 422

[CMS–4069–F4]

RIN 0938–AN06

Medicare Program; Establishment of the Medicare Advantage Program

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

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on January 28, 2005 entitled ''Establishment of the Medicare Advantage Program.''

DATES: Except amendments to §§ 422.316 and 422.503, this final rule is effective March 22, 2005. Section 422.316(a), which was stayed from September 1, 2005, until January 1, 2006, by FR Doc. 05–17280 published on September 1, 2005 (70 FR 52023), is effective January 1, 2006. Section 422.503(b)(4)(ii) is effective December 23, 2005.

FOR FURTHER INFORMATION CONTACT: Christopher McClintick, (410) 786–4682.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 05–1322 of January 28, 2005 (70 FR 4588), there were several errors that we identified and corrected in a correcting amendment published September 1, 2005 (FR Doc. 05–17285, 70 FR 52023). Based on further review of the January 28, 2005, final rule, we are making additional typographical and conforming changes. We identify these changes in the ''Summary of Errors'' section and correct these errors in the ''Correction of Errors'' section below. The provisions in this correcting amendment are effective as if they were included in the final rule published on January 28, 2005. Accordingly, with the exception of the revisions to § 422.316(a), which are stayed until January 1, 2006, and § 422.503(b)(4)(ii), which are effective December 23, 2005, the corrections are effective retroactive to March 22, 2005, the effective date of most of the provisions of the January 28, 2005 final rule.

II. Summary of Errors

The errors we are correcting in this correcting amendment pertain to the regulations text only. The changes follow the sequence of the CFR sections affected.

In § 422.2 of the final rule, in the definition of ''Provider network,'' we inadvertently did not include a reference to a ''network Private Fee-for-Service (PFFS) plan,'' a new option made possible by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

In § 422.101, in paragraph (b)(4), we inadvertently referenced paragraph (b)(3) when specifying an exception to the requirements concerning the review of uniform local coverage policies, instead of (b)(3)(ii), the paragraph upon which the exception is based.

In § 422.112, we are revising paragraph (c)(5), which specifies the requirements for designation as an essential hospital, to clarify that the requirement applies to hospitals that are already designated as an essential hospital.

In § 422.216, we are revising paragraphs (b)(1)(i) and (b)(1)(iii) to conform to the changes we made in § 422.114(c) as a result of the changes to section 1852(j) of the Social Security Act (the Act), which explicitly allows PFFS plans to charge differential cost sharing in certain instances.

Also, in § 422.216, which concerns provider credentialing requirements, in paragraph (i) we are correcting typographical errors that resulted in the reference to two non-existent regulations text sections.

In § 422.256, we are revising paragraph (b)(3) to remove a confusing and inadvertent reference to Medicare Savings Account (MSA) plans.

In § 422.316, we are revising paragraph (a) to more clearly indicate that, consistent with section 1833(a)(3)(B) of the Act, the supplemental payment CMS will make directly to the Federally Qualified Health Center (FQHC) is net of what the FQHC may charge as cost sharing under its contract with the Medicare Advantage (MA) organization, not the cost sharing amounts that the FQHC actually collects.

In § 422.503, we are revising paragraph (b)(4)(ii) to revert to a paragraph concerning the administrative and management arrangements necessary to qualify as an MA organization that was inadvertently replaced in the final rule. We are making one technical change to the provision, to refer to ''quality improvement'' instead of ''quality assurance,'' to conform to the change in terminology implemented as part of the MMA.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure

Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the Administrative Procedure Act ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. In addition, section 1871(e)(1)(B) of the Act provides that substantive changes may take effect before the end of the 30-day period that begins on the date that the Secretary has issued the substantive change only if the waiver of the 30-day period is necessary to comply with statutory requirements or the application of the 30-day delay is contrary to the public interest.

Most of the revisions contained in this rule concern conforming changes, correcting cross references, and typographical errors, and therefore, are not substantive. Because they are not substantive, we find that public comment on these revisions is not necessary. The revisions do not represent changes to our policy, and the public interest would, as a result, be best served by timely correction of these technical errors. A delay in the applicability of the non-substantive changes would be contrary to public interest in that such corrections are necessary for, especially, plans transitioning to the new Medicare Advantage program.

One correction that could be viewed as substantive is the change to § 422.503(b)(4)(ii). With respect to this provision, we are revising this paragraph to include language that we had inadvertently deleted pertaining to the administrative and management qualifications of an MA organization. In the case of this substantive correction, we find that public comment is unnecessary because the correction removes an unintended change that was never proposed, not commented on by the public, and not discussed in the preamble to the final rule, and reverts to the language that was in place prior to the effective date of the final rule (except for a technical change of ''quality assurance'' to ''quality improvement'' to reflect a terminology change implemented in the MMA). We believe that failure to correct this error would result in confusion for MA organizations, which is contrary to the public interest. We also find that the 30-day delay ordinarily called for under the APA and section 1871(e)(1)(B) of the Act is contrary to the public interest because the incorrect language that inadvertently replaced the affected section on administrative and management qualifications could, if left in place, result in confusion when the majority of changes to the MA program implemented as a result of the MMA begin on January 1, 2006.

Section 1871(e)(1)(A) of the Act, as amended by section 903(a) of Pub. L. 108–173, provides that a substantive change in regulations shall not be applied retroactively to items and services furnished before the effective date of the change, unless the Secretary finds that such retroactive application is necessary to comply with statutory requirements or failure to apply the change retroactively would be contrary to the public interest.

The provisions of this correcting amendment that apply retroactively make no substantive changes, but merely correct minor technical errors. Failure to make these changes retroactive to March 22, 2005, is contrary to the public interest because of the confusion that could result from the technical errors identified above. It is in the public interest to make the corrections retroactive in that it will help prevent confusion among plans that must now follow these requirements beginning January 1, 2006.

IV. Correction of Errors

Make the following corrections to the regulation text in the January 28, 2005 final rule (70 FR 4588):

List of Subjects in 42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements

■ Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments to part 422:

PART 422—MEDICARE ADVANTAGE PROGRAM

■ 1. The authority citation for part 422 continues to read as follows:

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

■ 2. Amend § 422.2, by revising the definition of ''Provider network'' to read as follows:

§ 422.2 Definitions.

* * * * *

Provider network means the providers with which an MA organization contracts or makes arrangements to furnish covered health care services to Medicare enrollees under an MA coordinated care plan or network PFFS plan.

* * * * *

§ 422.101 [Corrected]

■ 3. Amend § 422.101 paragraph (b)(4), by removing the reference ''(b)(3)'' and adding in its place the reference ''(b)(3)(ii).''

■ 4. Amend § 422.112, by revising paragraph (c)(5) to read as follows:

§ 422.112 Access to services.

* * * * *

(c) * * *

(5) The hospital that is an essential hospital under this paragraph provides convincing evidence to CMS that the amounts normally payable under section 1886 of the Act (and which the MA regional plan has agreed to pay) will be less than the hospital's actual costs of providing care to the MA regional plan's enrollee.

* * * * *

■ 5. Amend § 422.216 by—

■ A. Revising paragraph (b)(1)(i).

■ B. Revising paragraph (b)(1)(iii).

■ C. Revising paragraph (i).

The revisions read as follows:

§ 422.216 Special rules for MA private fee-for-service plans.

* * * * *

(b) * * *

(1) * * *

(i) Contract providers and ''deemed'' contract providers may charge enrollees no more than the cost-sharing and, subject to the limit in paragraph (b)(1)(ii) of this section, balance billing amounts that are permitted under the plan, and these amounts must be the same for ''deemed'' contract providers as for those that have signed contracts in effect, unless access requirements with respect to a particular category of health care providers are met solely through § 422.114(a)(2)(ii) and the MA organization imposes higher beneficiary copayments as permitted under § 422.114(c).

* * * * *

(iii) The MA organization must specify the amount of cost-sharing and balance billing in its contracts with providers and these amounts must be the same for ''deemed'' contract providers as for those that have signed contracts in effect, unless access requirements with respect to a

particular category of health care providers are met solely through § 422.114(a)(2)(ii) and the MA organization imposes higher beneficiary copayments as permitted under § 422.114(c).

* * * * *

(i) *Provider credential requirements.* Contracts with providers must provide that, in order to be paid to provide services to plan enrollees, providers must meet the requirements specified in §§ 422.204(b)(1)(i) and (b)(3).

■ 6. Amend § 422.256, by revising paragraph (b)(3) introductory text to read as follows:

§ 422.256 Review, negotiation and approval of bid.

* * * * *

(b) * * *

(2) * * *

(3) *Limitation on enrollee cost sharing.* For coordinated care plans (including regional MA plans and specialized MA plans) and private fee-for-service plans:

* * * * *

■ 7. Amend § 422.316 by revising paragraph (a) to read as follows:

§ 422.316 Special rules for payouts to Federally qualified health centers.

* * * * *

(a) CMS will pay the amount determined under section 1833(a)(3)(B) of the Act directly to the FQHC at a minimum on a quarterly basis, less the amount the FQHC would receive for the MA enrollee from the MA organization (which includes the cost sharing amount the FQHC may charge an enrollee, as established in the contract between the FQHC and the MA organization); and

* * * * *

■ 8. Amend § 422.503 by revising paragraph (b)(4)(ii) to read as follows:

§ 422.503 General provisions.

* * * * *

(b) * * *

(4) * * *

(ii) Personnel and systems sufficient for the MA organization to organize, implement, control, and evaluate financial and marketing activities, the furnishing of services, the quality improvement program, and the administrative and management aspects of the organization.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 20, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–24446 Filed 12–22–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 423

[CMS–0011–CN]

RIN 0938–AN49

Medicare Program; E-Prescribing and the Prescription Drug Program; Correction

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

ACTION: Final rule; Correction.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on November 7, 2005, entitled ''Medicare Program; E-Prescribing and the Prescription Drug Program.''

EFFECTIVE DATE: November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Gladys Wheeler, (410) 786–0273.

SUPPLEMENTARY INFORMATION:

I. Background

FR Doc. 05–22026, entitled ''Medicare Program E-Prescribing and the Prescription Drug Program,'' which was published November 7, 2005 (70 FR 67568), adopted several final standards for an electronic prescription drug program under Title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). We have identified several technical errors in that final rule. We are correcting those errors in the Correction of Errors section below. Because these technical corrections are not substantive in nature, the effective date of the November 7, 2005, final rule is unaffected by this notice.

II. Summary of Errors

On page 67571, in the second ''Response'' of the first column, we are revising the reference to the *http://www.cms.hhs.gov/hipaa/hipaa2* Web site because, in the near future, the Frequently Asked Questions (FAQs) will be available through a link on the general CMS Web site.

On page 67571, in the last paragraph of the second column, the word ''direction'' should be replaced with the more appropriate word ''discretion.'' Also, in that same paragraph the word ''is'' should be added to the phrase ''and designed'' to improve clarity.

On page 67574, in the fourth full paragraph of the second column, the singular word ''criterion'' should have been in the plural form. Therefore, ''criterion,'', needs to be replaced with ''criteria''.

On page 67581, in the first full paragraph of the second column, the word ''may'' was inadvertently omitted.

On page 67592, in the first response of the second column, we inadvertently left language related to an initial plan to include computer-generated prescription facsimiles in the definition of electronic media after a phase-in period. We explicitly exempted computer-generated facsimiles from the requirements to use the NCPDP SCRIPT standard in the final regulatory text. Therefore, the preamble discussion of a phase-in should be deleted.

III. Correction of Errors

FR Doc. 05–22026, entitled ''Medicare Program E-Prescribing and the Prescription Drug Program,'' which was published November 7, 2005 (70 FR 67568), is corrected as follows:

1. On page 67571,

a. In the first column, fourth full paragraph, lines 9 and 10, the CMS Web site address ''(*http://www.cms.hhs.gov/hippa/hippa2*)'' is corrected to read ''(*http://www.cms.hhs.gov*).''

b. In the second column, last paragraph, first sentence,—

(1) Line 2, the word ''direction'' is corrected to read ''discretion'';

(2) Line 6, the phrase ''and designed'' is corrected to read ''and is designed.''

2. On page 67574, in the second column, in the fourth full paragraph, line 6, the word ''criterion'' is corrected to read ''criteria.''

3. On page 67581, in the second column, in the first full paragraph, line 3, the phrase ''PDPs continue'' is corrected to read ''PDPs may continue.''

4. On page 67592, in the second column, the second full paragraph, lines 11 through 23, the sentences beginning with the phrase ''We also believe that our'' and ending with the phrase ''costs associated with e-prescribing adoption'' are deleted.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public

interest and incorporate a statement of the finding and the reasons for it into the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the regulations. Therefore, we find good cause to waive notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 20, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–24445 Filed 12–22–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

42 CFR Part 484

[CMS–3006–F]

RIN 0938–AJ10

Medicare and Medicaid Programs: Reporting Outcome and Assessment Information Set Data as Part of the Conditions of Participation for Home Health Agencies

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

ACTION: Final rule.

SUMMARY: This final rule makes revisions in response to public comments received on the January 25, 1999 interim final rule with comment period (64 FR 3748). The interim final rule requires electronic reporting of data from the Outcome and Assessment Information Set as a Condition of Participation for home health agencies.

DATES: *Effective Dates:* This final rule is effective on June 21, 2006.

FOR FURTHER INFORMATION CONTACT: Rebecca Donnay (410) 786–1428, Patricia Sevast (410) 786–8135, Steve Miller (410) 786–6656.

SUPPLEMENTARY INFORMATION:

I. Background

A. General Legislative Background

Home health services are furnished to Medicare beneficiaries under the Hospital Insurance (Part A) and Supplemental Medical Insurance (Part B) benefits of the Medicare program, and are described in section 1861(m) of the Social Security Act (the Act). These services must be furnished by, or under arrangement with, a home health agency (HHA) that participates in the Medicare program, and must be provided on a visiting basis in the beneficiary's home.

Section 1861(o) of the Act specifies certain requirements that an HHA must meet to participate in the Medicare program. In particular, section 1861(o)(6) of the Act provides that an HHA must meet the Conditions of Participation (CoPs) specified in section 1891(a) of the Act, and any other CoPs that we find necessary in the interest of the health and safety of HHA patients. Section 1861(o)(8) of the Act provides that an HHA must meet additional requirements that the Secretary finds necessary for the effective and efficient operation of the home health program.

Section 1891 of the Act sets forth many of the conditions that HHAs must meet to participate in the Medicare program. Specifically, section 1891(a) of the Act establishes requirements for HHAs with respect to patient rights, home health aide training and competency, and compliance with applicable Federal, State, and local laws. Under section 1891 of the Act, we are responsible for assuring that the CoPs, and their enforcement, are adequate to protect the health and safety of all individuals under the care of an HHA and to promote the effective and efficient use of Medicare funds.

Under the authority of sections 1861(o), 1871, and 1891 of the Act, we have established in regulations the requirements that an HHA must meet to participate in Medicare. These requirements are set forth at 42 CFR part 484, Home Health Services. The CoPs apply to an HHA as an entity and the services furnished to all individuals under the care of the HHA, unless a condition is specifically limited to Medicare beneficiaries. Existing regulations in § 440.70(d) specify that HHAs participating in the Medicaid program must also meet the Medicare CoPs.

In accordance with sections 1864 and 1891(c) of the Act, State agencies generally conduct surveys of HHAs to determine whether they are complying with the CoPs. Section 1864 of the Act authorizes the use of State agencies to determine providers' compliance with the CoPs. Responsibilities of States in ensuring compliance with the CoPs are set forth at 42 CFR part 488, Survey, Certification, and Enforcement Procedures.

B. Legislation and Related Regulations

Section 1861(o) of the Act, as amended by section 4603 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), enacted on August 5, 1997, requires us to establish a Home Health Prospective Payment System (HHPPS) for services on or after October 1, 1999. Section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for 1999 (OCESAA) (Pub. L. 105–277), enacted on October 21, 1998, delayed the implementation date of the HHPPS until October 1, 2000.

In order to implement the prospective payment system, it was necessary that we have data from HHAs to develop a reliable case-mix adjustor system. Section 4602 of the BBA provided that, for cost reporting periods beginning on or after October 1, 1997, we may require HHAs to submit additional information that we consider necessary for the development of a reliable case-mix system. The Outcome and Assessment Information Set (OASIS), the assessment instrument developed to measure patient health care outcomes in HHAs, is also a vehicle through which information is collected and used for the case-mix system.

Thus, to facilitate the implementation of the prospective payment system and to gather data to be used to evaluate and develop plans to improve outcomes of care in HHAs, we published two regulations in the **Federal Register** on January 25, 1999. The final rule, Comprehensive Assessment and Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies (64 FR 3764), requires that HHAs complete a comprehensive assessment for each patient, and that they incorporate the OASIS into their current patient assessment process. In addition, we published an interim final rule with comment period to require HHAs to electronically report data from the OASIS to the State survey agency, or other entity designated by us (64 FR 3748).

The June 18, 1999, notice (64 FR 32984) in the **Federal Register** entitled ''Mandatory Use, Collection, Encoding, and Transmission of Outcome and Assessment Information Set (OASIS) for Home Health Agencies (HHAs)'', announced the effective dates for the mandatory use, collection, encoding, and transmission of OASIS data for all Medicare/Medicaid patients receiving skilled services. This notice also described the development of a new OASIS System of Records (SOR). We indicated that for patients receiving only personal care services, regardless of payer source, requirements for OASIS and the transmission of those data would be delayed until further notice. In addition, the notice announced that for non-Medicare/non-Medicaid

patients receiving skilled services, there would be no encoding and transmission of OASIS data until further notice.

Until recently, HHAs were required by § 484.55 to perform a comprehensive assessment on non-Medicare/non-Medicaid patients receiving skilled services using OASIS even though they were not required to encode and transmit OASIS data collected on these patients. Section 704 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), enacted on December 8, 2003 (Pub. L. 108–173), however, temporarily suspended the collection of OASIS data on an HHA's non-Medicare/non-Medicaid patients required by § 484.55 until we reported to the Congress how OASIS information on non-Medicare/non-Medicaid patients was and could be used by large HHAs, including the value of collecting OASIS information by small HHAs compared to the administrative burden. We are also required by the MMA to publish final regulations regarding the collection and use of OASIS information. On December 11, 2003, we issued a survey and certification memorandum (S&C–04–12) instructing State survey agencies (SAs) that: (1) Effective December 8, 2003, and until further notice, SAs must not cite any deficiency for an HHA's failure to include the OASIS data set as part of the patient-specific, comprehensive assessment for non-Medicare/non-Medicaid patients otherwise required by § 484.55; and (2) any pending survey findings related to an HHA's omission to collect OASIS data on non-Medicare/non-Medicaid patients will be suspended.

After the January 25, 1999, and June 18, 1999, **Federal Register** publications, we expected that HHAs would incorporate the OASIS data set into their own agency assessment process, and that all patients receiving skilled services from Medicare-approved HHAs would be assessed at certain times, incorporating the specified OASIS data items. HHAs would encode and transmit OASIS data to the State agency, and HHAs would use the validation feedback reports, data management system reports, the Outcome-based Quality Monitoring (OBQM) reports, and the Outcome-based Quality Improvement (OBQI) reports generated by the State for agency improvement.

Since the effective date of the OASIS requirements, HHAs nationwide have been actively working to meet these goals. State OASIS Educational Coordinators (OECs) report that most HHAs have successfully incorporated the OASIS data set into their own agency assessment process and have trained their own staff in implementing OASIS. HHAs are assessing Medicare and Medicaid patients receiving skilled care, and are encoding and transmitting these assessments to the State agency. In most cases, HHAs are using the OASIS State system feedback reports to improve data collection and submission. Most clinicians and other agency staff have developed skills for tasks associated with OASIS data collection, data entry, and transmission. By using the many resources we have made available to providers (for example, State-sponsored training, Home Assessment Validation Entry (HAVEN), telephone and e-mail help lines, comprehensive User's Manuals, and the CMS OASIS Web page) agencies have, for the most part, successfully implemented OASIS.

An analysis of OASIS data in the CMS national repository shows that nearly all of the HHAs expected to submit OASIS data have done so. Over 56.4 million assessments have been submitted by HHAs from every State since August 1999. Currently, the State survey and certification agencies are contacting HHAs that have not submitted OASIS data and are initiating standard monitoring and enforcement procedures.

Over the next several years, home health agencies are encouraged to take steps toward the adoption of electronic medical records (EMRs) that will allow for reporting of clinical quality data from the electronic record directly to a CMS data repository. CMS intends to begin working toward creating measures specifications and a system or mechanism, or both, that will accept the data directly. The Department is presently working cooperatively with other Federal agencies in the development of Federal health architecture data standards. CMS encourages home health agencies that are developing systems to conform them to both industry standards and any Federal health architecture data standards, and to ensure that they would capture the data necessary for quality health measures. Ideally, such systems will also provide point-of-care decision support that enables high levels of performance on the measures. Home health agencies using EMRs to produce data on quality measures will be held to the same performance expectations as home health agencies not using EMRs. We are exploring requirements for the submission of electronically produced data and other options to encourage the submission of such data.

II. Provisions of the Interim Final Rule With Comment Period and Discussion of Public Comments

In the January 25, 1999, interim final rule with comment period (64 FR 3749), we generally mandated that all HHAs participating in Medicare and Medicaid (including managed care organizations providing home health services to Medicare and Medicaid beneficiaries) report their OASIS data to the database we established within each State via electronic transmission. The interim final rule required State agencies and the CMS OASIS contractors to maintain OASIS databases according to our specifications. To ensure confidentiality of individual patient-identifiable data collected for OASIS databases, we set forth requirements for State agencies, CMS OASIS contractors, and HHAs regarding the release of this information. We received approximately 200 public comments on the interim final rule (64 FR 3748), which we address below.

A. Section 484.11, Condition of Participation: Release of Patient-Identifiable OASIS Information

At § 484.11, Condition of Participation: Release of Patient-Identifiable OASIS Information, we require that the HHA, or an agent acting on behalf of the HHA, ensure the confidentiality of all patient-identifiable information contained in the clinical record and may not release patient-identifiable OASIS information to the public. We also specify that an agent acting on behalf of the HHA, in accordance with a written contract between the HHA and the agent, may not use or disclose the information. The agent may use or disclose data only to the extent that the HHA itself is permitted to do so.

Comment: Many commenters were concerned about the confidential nature of OASIS data that are transmitted and questioned how we will ensure the protection of collected and reported patient-identifiable information.

Response: Confidentiality of medical information is not a new requirement. Health information, by its very nature is sensitive and private. Because the privacy of patient-identifiable information is one of our major priorities we have taken exhaustive steps to ensure the privacy of this information by making the provision a condition of participation to emphasize its seriousness. We endeavor to ensure that access to an agency's OASIS data (hard copy or electronic data) is adequately controlled by the HHA. Under this requirement, the HHA must ensure the confidentiality of all patient-

identifiable OASIS information contained in the clinical records, and may not release it for any reason other than for its intended purpose in conducting the business of the agency. As with any other medical information maintained by the agency, HHAs must have policies and procedures governing the confidentiality of OASIS data. In addition, we note that HHAs that are covered entities must comply with the requirements of the Privacy and Security Rules issued under the Health Insurance Portability and Accountability Act of 1996 (HIPPA).

Ensuring confidentiality of OASIS data includes mechanisms such as having policies and procedures for assigning and maintaining passwords—that *must* be kept secure—for access to HAVEN and for transmitting OASIS data to the State agency. This CoP also allows HHAs to choose to encode and transmit OASIS data to the State agency itself, or to contract with an outside entity (agent or vendor) to fulfill these requirements. Experience indicates that there are a number of secure methods that can be used to send OASIS data to vendors. Some examples of secure methods are to use a courier service, the United States Postal Service, or fax. However, use of fax transmissions must comply with section 2202.16 of the State Operations Manual, which provides guidelines for fax transmission of OASIS data.

Agents or vendors acting on behalf of the HHA, such as a data entry and submission vendor, are bound by the same confidentiality rules as the HHA. OASIS data must be used only as a matter of agency business. As such, a written contract must be in place that, among other things, defines the nature of agency business with regard to OASIS data. Violations that compromise data confidentiality by an entity that is contracted with the HHA are the responsibility of the HHA, and will constitute a condition-level finding of non-compliance.

Once the HHA data reach the State agency, there are additional safeguards in place to protect the confidentiality of the OASIS data. The HHA OASIS system is designed to conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include, but are not limited to: The Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Clinger-Cohen Act of 1996, the Federal Information Security Management Act of 2002, the Department's Privacy and Security Rules, and OMB Circular A–130 (revised), Appendix III, ''Security of Federal Automated Information Resources.'' We have prepared a comprehensive system security plan as required by the OMB Circular. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems.''

Some of the specific methods that we are using to ensure the security of the HHA OASIS system and the information within it are described below.

We have safeguards for authorized users and monitors these users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, we have physical safeguards in place to reduce the exposure of computer records and, thus, achieve an optimum level of protection and security for the HHA OASIS system. For computerized records, we have established safeguards in accordance with HHS standards and NIST guidelines; for example, security codes will be used, permitting access to authorized personnel exclusively. System security procedures are established in accordance with HHS, Information Resource Management Circular #10, HHS Information Systems Security Program Policy of December 15, 2004; CMS Information Systems Security Policy, Standards and Guidelines; and OMB Circular No. A–130 (revised) Appendix III.

Comment: One commenter was particularly concerned about patients' social security numbers. The commenter stated that social security numbers should not be used as an identifier for medical records stored by the government. Other commenters were concerned about reporting information collected from the OASIS that pertains to a patient's psychological profile and lifestyle.

Response: We have endeavored to put many physical, technical, and procedural safeguards in place to protect health information. Only those individuals with a legitimate need for this information will be allowed to have access. States and HHAs must take similar precautions. The transmission of all identifiable health information will be secure at all times if it is transmitted according to the requirements outlined in this final rule, which strictly controls access to prevent any unauthorized use. In addition, health information (including OASIS) is encoded and transmitted from providers to State agencies over closed loop telephone lines. In July 2000, in response to industry concerns, we made available the Medicare data communication network (MDCN) communications link from each HHA to its respective State health agency to allow the HHAs to submit OASIS data and retrieve reports. The MDCN, both hardware and software, allows direct dial-up access to the State agency by each registered MDCN user in each HHA. This supersedes use of the current dial-up connection process, which previously was the only way HHAs could submit OASIS data and retrieve reports. This new system allows each HHA to control all aspects of encoding, submitting, and receiving reports according to its policy and promotes a higher level of personal security with individual user IDs. There will be no additional cost to the HHA for the use of this dial-up service. Multiple users in an agency will be able to access the State agency with individual MDCN user IDs. In order to verify that the person trying to access the information is authorized, several safeguards are in place. For example, in the OASIS State system, a person must enter a user ID and password at three different checkpoints before access is permitted. There is no ''back door'' into the system that would allow unauthorized or illegal access.

Comment: A few commenters suggested that we eliminate OASIS questions that solicit sensitive financial information on patients, and remove the requirement for information to be reported to CMS.

Response: We believe commenters were referring to OASIS item M0160, ''Financial Factors.'' We have never required the collection or transmission of OASIS item M0160. In addition, we established a Regulations Reform Advisory Committee to further reduce regulatory burden. As a result of earlier recommendations from that committee, we have eliminated this item from the OASIS instrument. In addition to the OASIS item related to financial factors, we have also eliminated the following items from the OASIS instrument: M0310, ''Structural Barriers'; M0320, ''Safety Hazards'; M0330, ''Sanitation Hazards'; and M0600, ''Patient Behaviors.'' Earlier versions of HAVEN (5.0 and earlier) currently allow

encoding of these items for HHA use, but will automatically prevent transmission at the source. As part of the assessment process, HHAs may continue to collect the information. However, if HHAs transmit the information, it will not be stored in the State's system.

B. Section 484.20, Condition of Participation: Reporting OASIS Information

In § 484.20, Condition of Participation: Reporting OASIS Information, we require HHAs to report to CMS OASIS data collected on all patients. This requirement applies to all patients except prepartum and postpartum patients, patients under the age of 18, patients not receiving skilled health care services, and non-Medicare/non-Medicaid patients. As stated above, on June 18, 1999, we published a notice (64 FR 32984) that delayed the applicability of the collection requirements to patients receiving only personal care services and delayed the requirement to encode and report collected OASIS data on non-Medicare/non-Medicaid patients until further notice. Currently, the policy to delay the applicability of the collection requirements to patients receiving only personal care services and to delay the requirement to encode and report collected OASIS data on non-Medicare/non-Medicaid patients remains in effect. There is also a temporary suspension on the collection of OASIS data on non-Medicare/non-Medicaid patients effective December 8, 2003, under section 704 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Pub L. 108–173) (MMA).

General Comments on Reporting OASIS Data

We received several comments in support of our efforts to collect and report OASIS data for the purpose of tracking the quality of patient outcomes.

Comment: One commenter stated that many nurses, because of the substantial demands of their jobs, have not been able to devote sufficient time to assessing a patient's health care needs, compromising the quality of the care provided. The commenter believes that OASIS enables nurses to more thoroughly assess their patients' needs. The commenter also stated that OASIS is ''the best thing created by CMS.'' The commenter also noted that OASIS data could indicate that some patients actually need home care and may also reveal abuses of the Medicare program.

Response: We appreciate the positive comment. In addition to using OASIS to develop the HHPPS, in the quality measurement and improvement system, and in the Survey and Certification program, we plan to use OASIS to support our program integrity efforts as we administer the Medicare program.

Comment: Several commenters supported the principle of having HHAs collect and report OASIS data for quality outcome measurement and stated that they were looking forward to using the data. Commenters believed that OASIS would have positive results in identifying standards of care industry-wide, in addition to offering State-specific information concerning the care patients received. Other commenters stated that the industry has many questions regarding OASIS and its use and asked that we continue to provide clear and precise guidelines for OASIS reporting requirements.

Response: We appreciate the endorsement and support for OASIS, and we believe that OASIS data will assist HHAs in improving the quality of their services. We recognize that agencies may continue to require guidance on collecting and reporting OASIS information. Therefore, we will continue to provide guidance and updated information to HHAs via state-sponsored training, telephone, and e-mail help lines and by posting relevant information on our Web site.

Comment: One commenter acknowledged the usefulness of OASIS outcome data for both HHAs and CMS but questioned the connection between CMS obtaining data and translating those data into useable information to improve care.

Response: We appreciate the supportive comments. Since April 1999, HHAs have collected, encoded, and reported OASIS information. The reports generated from the information are outcome-based and used for quality improvement. For some time, these Outcome Based Quality Improvement and Outcome Based Quality Monitoring (OBQI/OBQM) reports have been used for comparative analyses. These reports are shared with HHAs for use in their quality monitoring and improvement activities.

For example, through a contract with the Center for Health Services Research, University of Colorado, we implemented the Medicare Home Health Quality Assurance (MEQA) demonstration to determine the feasibility of, and establish the methodology for, implementing OBQI programs in HHAs. Under the demonstration, 50 HHAs nationwide collected OASIS data at regular intervals for all adult patients. We computed outcome measures using OASIS data and provided risk-adjusted outcome reports for specific patient conditions (focused reports) and for all adult patients (global reports). We provided instruction to HHAs in using outcome reports to target areas for improvement or reinforcement. We implemented and monitored a plan of action for behavioral change while using yearly outcome reports to determine if targeted outcomes improved. Data from the reports during the MEQA demonstration indicate that there has been a 25 percent rate of reduction in hospitalizations over the length of the demonstration and 80 percent of participating HHAs experienced a significant improvement in targeted outcomes.

In the Home Health Outcome Based Quality Improvement (HH–OBQI) System Pilot Project, five Quality Improvement Organizations (QIOs) found similar levels of improvement in targeted outcomes to those levels experienced in the MEQA demonstration. The pilot project tasked QIOs in five States (Maryland, Michigan, New York, Rhode Island, and Virginia) with helping HHAs nationwide to identify opportunities to use the quality reports for improvement of home health quality of care for Medicare beneficiaries. These five QIOs serve as a coordinating body to oversee the establishment of a national HH OBQI System for home health care. The five QIOs, using OASIS outcome reports and their own analysis of OASIS data, the five QIOs distribute information and guidance to all other QIOs participating in the HH OBQI System. The other QIOs, in turn, provide education, consultation, and other technical assistance to HHAs in developing and managing outcome-based, continuous quality improvement programs.

Comment: Several commenters stated that OASIS should only be used for Medicare patients, so as not to destroy its usefulness for the HHPPS. Commenters were concerned that the quality of OASIS data would be adversely affected if collected and reported on patients from such diverse programs as Medicare, Medicaid, Medicaid waiver patients, and non-Medicare/non-Medicaid patients.

Several commenters specifically stated that OASIS should be re-evaluated for Medicaid patients, patients under Medicaid Home and Community-Based Waiver programs, and patients receiving ''personal-care-only'' services. One commenter stated the belief that the OASIS demonstration projects did not include patients receiving personal-care-only services. A few commenters suggested that we limit OASIS reporting to only a core set of

data elements needed for the development of the HHPPS.

Response: We received many comments regarding the application of OASIS to HHA populations. Collecting OASIS data on all patients for quality and assessment purposes does not affect the integrity of the HHPPS. Limiting reported OASIS data only to items under consideration for HHPPS will harm the integrity and risk adjustment of quality indicators (as discussed in the July 3, 2000 final rule for HHPPS) and eliminate the ability to evaluate the effects of HHPPS on quality or to improve HHPPS over time.

With regard to the quality of OASIS data, the intent of OASIS is to ensure that HHA patients are receiving quality care. However, we recognize the assessment needs for patients requiring personal-care-only services may be different than for patients who require skilled services, such as nursing and rehabilitative therapy. To address these concerns and further research the issues, we have delayed the requirement for agencies to use OASIS for the personal-care-only population until further notice. We published the notice of the delay (64 FR 32984) on June 18, 1999. We are continuing this delay until we determine an appropriate balance between the advantages of collecting OASIS data from this population of patients and the reported burdens on providers.

In addition, MMA, which was enacted on December 8, 2003, temporarily suspends the collection of OASIS data on an HHA's non-Medicare/non-Medicaid patients until further notice. HHAs may continue to incorporate OASIS items into their patient-specific, comprehensive assessment of non-Medicare/non-Medicaid patients for their own use but are no longer required to do so.

The inclusion of Medicaid waiver patients in the collection and reporting of OASIS data is a decision that may be made by individual States. Medicare-approved HHAs must report OASIS data for all other patients (that is, other than the previously discussed exceptions, and those for whom collection is delayed). The requirements governing who may provide services under waiver programs are left to each state's discretion. We do not require Medicaid waiver patients to be served by Medicare-approved HHAs, and States may choose providers that do not meet Medicare requirements (including the collection and reporting of OASIS data) to furnish services to individuals in State waiver programs.

Comment: Many commenters asked that we clarify our policy concerning a patient's refusal to answer a question. Commenters were concerned that agencies would be penalized if a patient refused to answer an OASIS question and stated that because of the patient's refusal, there would be no OASIS information to be reported to us.

Response: There is no Federal requirement that an HHA deny services to a home health patient if the patient refuses to allow clinicians to conduct a comprehensive assessment, refuses to answer any question during the comprehensive assessment, or refuses to allow the release of any information from the comprehensive assessment to us. However, for Medicare and Medicaid patients, the collection and transmission of OASIS data is required to meet the home health CoPs and for payment.

Doctors, nurses, and therapists are trained to do assessments of their patients as part of their routine care whether the patient is cooperative or not. Patient assessments are critical for providers to know if patients' needs are being met or if their health conditions are improving. It is important to understand that HHAs will continue to perform comprehensive assessments of their uncooperative clients. OASIS is a standardized data format for nurses and other home health professionals for assessing patients' needs, developing the appropriate plan of care, assessing that care over the course of treatment, and learning how to improve the quality of care over time. While patients may refuse to answer a direct question (or indeed, may provide an inaccurate or a misleading response), clinicians are taught to assess patients to the best of their ability. However, State surveyors are obligated to assess the HHA's performance of its data collection responsibilities. If an agency has an unusually high rate of patients refusing to answer assessment questions, it may warrant a review of the process the HHA is using to conduct assessments.

An HHA will have the opportunity to respond to any deficiencies cited by the surveyor in the HHA's plan of correction. CMS and its agents (State survey agencies) expect HHAs to comply with these regulations and will work with agencies to achieve compliance. We expect agencies to make a good faith effort to use OASIS. During initial implementation, which lasted until the end of 1999, we did not cite deficiencies unless an HHA was doing nothing to comply with the OASIS collection and reporting requirements. Beginning in 2000, we shifted from a more ''global'' approach of determining overall compliance to a more specific consideration of each requirement. Now each OASIS requirement is reviewed for compliance exactly as it is written, in the same manner as all other existing home health requirements. We took this action because proper OASIS data collection and reporting has payment and quality implications.

1. Section 484.20(a), Standard: Encoding and Transmitting OASIS Data

We have revised § 484.20(a) to require HHAs to encode and electronically transmit to the State agency or CMS OASIS contractor accurate and complete OASIS data for each applicable agency patient within 30 calendar days from the date the assessment was completed (that is, the date entered at OASIS item M0090). We have removed the ''lock'' requirement that appeared at § 484.20(c)(1) to allow HHAs the option of making corrections to OASIS data at any time without edit warnings. Since HHAs will now be able to make corrections to transmitted OASIS data at any time, we determined that there is no compelling reason to require HHAs to encode OASIS data within a specific timeframe. Therefore, we are no longer requiring HHAs to encode OASIS data within 7 days of completing an OASIS data set. Instead, HHAs will have 30 calendar days from the date the assessment was completed to both encode and transmit completed OASIS data to the State agency or CMS OASIS contractor. In other words, once the qualified clinical staff member has collected the OASIS data set at the time specified in § 484.55, HHAs may take up to 30 calendar days after collection to: (1) Enter it into their computer systems using the Home Assessment Validation Entry (HAVEN) software or the vendor software meeting our data submission specifications; (2) electronically transmit the accurate, complete, and encoded data to the State agency or CMS OASIS contractor; and (3) establish HHA policy which will be in compliance with the instructions within the OASIS Implementation Manual Chapter 1, page 1.4, which require that HHAs develop ''policies and procedures establishing the necessary data entry and transmission mechanisms and, very importantly, develop and maintain appropriate data quality monitoring activities.''

The changes in § 484.20(a) do not alter the need for HHAs to ensure that the data items on the patients clinical record match the encoded data that are sent to the State (see OASIS Implementation Manual, Chapter 12, pages 12.1 and 12.2). HHAs must also continue to conduct data quality audits on a routine basis as outlined in the

OASIS Implementation Manual, Chapter 12, pages 12.1 and 12.2.

Currently, OBQI/OBQM reports are available 2 months after submission of completed assessments. However, many HHAs are requesting that the OBQI/OBQM reports be more timely. Now that we are requiring HHAs to both encode and transmit completed OASIS data within 30 calendar days, we expect the reports to be available 30 days sooner. Currently, 50 percent of the HHAs transmit OASIS assessments by the 16th day after completion, and the majority of HHAs (75 percent) transmit assessments by the 30th day after completion. HHAs must continue to comply at all times with requirements for safeguarding the confidentiality of patient-identifiable information.

Comment: Several commenters were concerned about the resources required to encode and transmit OASIS data. One commenter stated that the increased time to complete data entry adds to difficulties in meeting the 7-day encoding requirement. Another commenter suggested that the requirement be extended to 14 days, especially for rural providers.

Response: After reviewing comments, we agree with commenters' concerns about the 7-day time frame for encoding. Therefore, we will allow HHAs 30 calendar days after the assessment is completed to encode and transmit OASIS data items. We have revised this timeframe based on industry concerns and the need to confirm the accuracy of their data. We believe this revised timeframe will be less burdensome for HHAs. These 30 calendar days are in addition to the time frames currently allowed for collection of the OASIS items set forth at § 484.55. We are providing the revised timeframe of 30 calendar days for agencies to encode their OASIS data, resolve any outstanding data collection issues, and transmit the accurate and completed OASIS data. We assigned time frames that we believe best represent a balance between efficient, timely data collection and entry, and the burden placed on the HHA. As this process evolves, we will continue to explore techniques to make the reporting process as efficient as possible.

2. Section 484.20(b), Standard: Accuracy of Encoded OASIS Data

Section 484.20(b) requires that the encoded OASIS data accurately reflect the patient's status at the time of the assessment. Before transmission, the HHA must ensure that data items on its own collection record match the encoded data that are sent to the State. We expect HHAs to devise a method to track this process that includes comparison of data collected at the time of the assessment to data entered after the initial assessment. We expect agencies to use their validation reports to confirm proper data submission or to identify areas for improving data submission.

Comment: Several commenters expressed concern that we did not include time spent calling the professionals responsible for the assessment to obtain clarification of assessment data if there are errors found during encoding in our estimate of the costs associated with OASIS reporting. Commenters also stated that a registered nurse or other full-time employee would need to manage the paper work and computerization of OASIS.

Response: We agree with commenters that HHAs may need to designate a staff person to coordinate the OASIS data collection and reporting systems. The burden estimate took this into account in the January 25, 1999 final rule (64 FR 3748). Some agencies may be able to assign these duties to current staff, while others may decide they need to hire additional personnel, at the HHA's discretion. This person could have a clinical or computer background.

3. Section 484.20(c), Standard: Transmittal of OASIS Data

In existing § 484.20(c)(1), we required HHAs to electronically transmit to the State agency or CMS OASIS contractor accurate, completed, encoded, and locked OASIS data for each applicable patient at least monthly. Now that we are combining the requirement to electronically transmit OASIS data with the requirement to encode OASIS data in § 484.20(a) and removing the ''lock'' requirement, we have removed existing § 484.20(c)(1) and redesignated § 484.20(c)(2) through § 484.20(c)(4) as § 484.20(c)(1) through § 484.20(c)(3), respectively.

Newly designated § 484.20(c)(1) requires HHAs to transmit the OASIS data in a format that meets the data format standard specified at § 484.20(d). Newly designated § 484.20(c)(2) requires HHAs to transmit successfully test data to the State agency or CMS OASIS contractor. Newly designated § 484.20(c)(3) requires HHAs to transmit data using electronic communications protocols as directed by us. As of July 1, 2000, those HHAs that are required to submit OASIS data for submission and interim reports must do so via the MDCN, which replaces the previous dial-up connection for submission and interim reports. In January 2004, we started requiring HHAs to use a CMS-assigned branch identification number (where applicable) to identify branch-specific OASIS assessment information in a uniform fashion nationwide. This process is described below.

During the development stage of OASIS implementation, the National Association for Home Care (NAHC), engaged in a series of teleconferences with its member HHAs to solicit suggestions about OASIS data entry software. HHAs proposed that the outcome reports be made available at the branch level, rather than limited to data that represent the agency as a whole. NAHC transmitted its concerns to us, and, in response, we agreed to create a field in the HAVEN data entry software to allow HHAs to enter a self-defined number that identifies the assessment information sent to the State agency by a branch office.

An analysis of OASIS data submitted by HHAs to State agencies nationwide, from the period July 1999 to January 2000, shows that 1.8 million of the 4 million assessments submitted included identifying information for branches. We were encouraged that so many HHAs wanted to identify assessment information submitted by their branches. Subsequently, we determined that assignment of unique branch identification numbers would facilitate HHAs' ability to receive outcome reports specific to their branches.

Providing HHAs with the outcome reports specific to their branches will help both the State agency and HHAs to monitor the quality of care being furnished to branch patients. The State agency, after reviewing the specific branch outcome reports, will be better able to target scarce survey resources when conducting HHA surveys. Branch-specific information will also allow the parent HHA to use its own objective performance criteria to assess and improve patient services, outcomes, and satisfaction at the branch level.

As a result of input from the home health industry, we revised the OASIS data set to accommodate branch identifications. The new items developed are: (M0014) Branch State and (M0016) Branch ID. The State in which the branch is located is the two-letter postal service abbreviation where the agency branch is located. For the Branch ID, rather than continuing to allow HHAs to enter a self-defined number that identifies the assessment information that the branch sent to the State agency, we have standardized the identification numbering system for HHA branches to ensure that these assessments will be linked to the proper branch. This national numbering system links each branch number to the parent HHA provider number by numbering

each branch with the same Federally assigned provider number as the parent with two modifications. There is a ''Q'' between the State code and four-digit provider designation plus three more digits for a 10-character branch identifier. The last three digits allows us to assign up to 999 branches to one parent HHA with branch identification numbers being used only once. If an HHA branch closes, we will terminate its unique branch identification number and will not re-use it to identify another branch of that HHA or subunit. For example, an HHA in a state has three branches. The parent agency's Medicare provider number is 017001. The branches are assigned the branch identification numbers 01Q7001001, 01Q7001002, and 01Q7001003. We have made a corresponding revision to the regulation text by adding a new paragraph § 484.20(c)(4).

On the OASIS B–1 (10/1998) data set, which we used to implement OASIS data collection and reporting initially, the fields ''Branch State'' and ''Branch ID'' are optional. On the December 2002 version of the OASIS B–1 data set, which is being used for OASIS collection and reporting as of January 1, 2004, ''Branch ID'' is required for submission of all assessment records completed by a branch. We expect HHA branches to place their CMS-assigned branch identification number on each OASIS assessment at M0016, and subsequently encode and transmit the assessment to the State agency. We have added the requirement to include branch identification numbers in § 484.20(c)(4).

Comment: One commenter was concerned that HHA branch offices are not allowed to transmit their own OASIS data to the State. The commenter stated that the interim final rule is silent regarding this policy, but according to our Web site, branch offices are required to deliver OASIS assessment data to the parent for transmission to the State agency. The commenter stated that this practice would generate mistakes, thus compromising OASIS data. The commenter suggested that HHA branch offices be allowed to transmit their own OASIS data via a dial-up connection to the State agency using the same OASIS ID code and password as the parent agency.

Response: The HAVEN data entry software was originally designed for single submission by the parent HHA for security reasons. The State survey agency assigned one specific user identification and password to each parent HHA in the State. Moreover, the previous data management program could not accommodate separate user identification numbers and passwords to all existing HHA branches. Based on industry concerns, and in response to their needs to permit submission by branches, we installed in each HHA, a communication link to the State agency for submission of OASIS and the retrieval of reports. The MDCN was installed in all HHAs in July 2000, to allow direct dial-up access to the State agency by each registered MDCN user in each HHA. This was a change to the previous system, which allowed the dial-up connection to be used only for submission of OASIS data and retrieval of reports. There was no additional charge to the HHA for the use of this MDCN dial-up service. Multiple users in an agency, including branch users, are now able to access the State agency with individual MDCN user IDs. This system allows the branch to control all aspects of encoding, submission, and receiving reports, according to the parent HHA policy, and promotes a higher level of personal security with the assignment of individual user IDs.

We have begun to assign identification numbers to every existing branch of a parent HHA and subunit. The identification system has been implemented nationally and uniquely identifies every branch of every HHA certified to participate in the Medicare home health program. It also links the parent to the branch. Having a system to identify branches gives us the capability of associating survey results with individual HHA branches. Also, by including the branch identification number on OASIS assessments, we will have the capability of developing outcome reports that will help HHAs differentiate and monitor the quality of care delivered by their agencies down to the HHA branch level.

4. Section 484.20(d), Standard: Data Format

At § 484.20(d), we specify that HHAs must encode and transmit data using the software available from CMS or software that conforms to CMS standard electronic record layout, edit specifications, and data dictionaries and includes OASIS data items specified in § 484.55(e). To meet the data format requirements, HHAs may use the HAVEN software developed by CMS, or use other vendors' software if it conforms to our standardized electronic record formats, edit specifications, data dictionaries, and can pass [CMS-defined] standardized edits. The HAVEN software is made available to all HHAs free of charge, either via download from the Internet or by requesting a compact disc (CD). Agencies can call the HAVEN help line at 1–877–201–4721 to order a HAVEN CD and/or to ask any other HAVEN-related questions they may have.

The required OASIS data set is available at all times on our Web site located at *http://www.cms.hhs.gov/oasis.* HHAs may access the Web site and download the required OASIS data set for each data collection time point. HHAs may also obtain hard copies of the OASIS data set from the National Technical Information Service (NTIS) at 1–800–553–6847.

Comment: Several commenters stated that the HAVEN computer screen is extremely slow and that HHA staff spend time waiting for screen response. The commenter believes that the slowness of the software directly relates to an increase in agency cost. One commenter stated that while HAVEN is free, it does not meet the needs of every agency, nor can every agency access the Internet. This commenter also stated that some agencies are opting to scan the hard copy assessments, because it is more cost effective. However, the commenter stated that HAVEN does not allow for scanning. One commenter stated that their agency convened a taskforce to prepare for OASIS. The taskforce recommended that the agency not use CMS HAVEN software because the software did not have the ability to track outcomes internally.

Response: HAVEN is a tool designed solely for entering, creating, and maintaining OASIS data files for transmission to the State survey agency. HAVEN is not a tool for developing outcome reports. Rather, the files created by HAVEN are part of the process that we use to develop these reports. Outcome reports will be available to all agencies, free of charge. HHAs can electronically access the OBQI/OBQM reports in a manner similar to the submission process.

While HAVEN will operate on older systems, we continue to recommend that agencies use a computer system compatible with the current industry standard. We have always cautioned that HAVEN may not perform as well on older computer systems as it would if run on a newer or more powerful system. Finally, some of the slowness may be due to multiple simultaneous users. Newer versions of HAVEN are released to accommodate multiple simultaneous use. Although we provide HAVEN as a tool to assist agencies in complying with the requirements, agencies may use vendors' products or develop software that meets their own unique needs in addition to meeting OASIS regulatory requirements. Vendor products, however, must meet our

minimum data, format, and transmission specifications.

Comment: One commenter suggested the need to enter the same data multiple times was a flaw in the software that could be reduced if HHAs allowed software vendors to interface, or to map data entry so that one entry would satisfy both data sets.

Response: We believe the commenter may be referring to the situation that requires duplicate entry into an HHA's original claims and assessment software, and then re-entry of the same data into the HAVEN software. Since HAVEN software is available free of charge, our experience is that vendors of the original claims and assessment software are now incorporating the HAVEN software into their own software so that duplicate entry will no longer occur.

In addition, we implemented the patient tracking sheet (PTS) for HHAs nationwide on December 16, 2002. With implementation of the PTS, HHAs no longer need to re-enter the information from 18 common patient demographic items collected at the start of care and on subsequent assessments. These items only need to be updated as appropriate.

C. Section 488.68,State Agency Responsibilities for OASIS Collection and Database Requirements

Under section 1891(b) of the Act, we must assure that processes are in place to protect the health and safety of individuals under the care of an HHA and to promote the effective and efficient use of public moneys. Section 1864 of the Act authorizes the use of State agencies to determine a provider's compliance with the CoPs. State responsibilities for ensuring compliance with the CoPs are set forth in part 488, and entitled ''Survey, Certification, and Enforcement Procedures.'' We did not receive any public comments on this section. Nevertheless, we have summarized the provisions of § 488.68 as set forth in the January 25, 1999, interim final rule below.

In accordance with the provisions referenced above, we added a new § 488.68, State agency responsibilities for OASIS collection and data base requirements. This section provides that the overall responsibility for fulfilling requirements to operate and maintain the OASIS system rests with the State agency or other entity that we designate. The State may delegate this responsibility to the State agency, another State component, or enter into an agreement with a private entity to operate the system, or we may contract with an entity directly, if the State is unable or unwilling to perform these operations. If the State system is operated by an entity other than the State agency, the State must ensure that it has suitable access to this system to fully support all OASIS-driven functions required of it (for example, outcome-based quality improvement reports and survey-specific data).

1. Section 488.68(a), Establish and Maintain the OASIS Data Base

In § 488.68(a), we require that the State agency or other entity that we designate must use a standard system developed or approved to collect, store, and analyze CMS data generated by OASIS. To meet this requirement, we are using the system developed to compile the Minimum Data Set (MDS) assessments (the CMS standard State system), which has already been procured, installed, and utilized. As part of the survey responsibilities, § 488.68(a) also provides that States will be responsible for basic system management responsibilities, such as hardware and software maintenance, system backup, and monitoring the status of the database.

We also set forth requirements that States must meet if they seek modification of the standard State system. Specifically, State agencies must obtain our approval before modifying any parts of the system. The State agency or CMS OASIS contractor may not modify any aspect of the standard State system that pertains to the standard CMS-approved OASIS data items, standard CMS-approved record formats and validation edits, and standard CMS-approved agency encoding and transmission methods. It also cannot maintain patient data on the system that we do not require to be reported on the OASIS State system.

2. Section 488.68(b), Analyze and Edit OASIS Data

In § 488.68(b), we provide that the State agency or CMS OASIS contractor is responsible for analyzing and preparing OASIS data for us to retrieve. Upon receipt of data from an HHA, we require that the State agency or CMS OASIS contractor edit the data as specified by us, and ensure that the HHA resolves errors within the time limits we specify.

We also require that the State agency or CMS OASIS contractor analyze the data and generate outcome reports as we specify. In addition to the responsibility for generating outcome reports, the State system issues validation reports once OASIS data are received in the system, to provide feedback to HHAs as to whether the OASIS data they sent has been accepted or rejected, and if rejected, the reasons why.

3. Section 488.68(c), Ensure Accuracy of OASIS Data

In § 488.68(c), we require the State agency to review an HHA's records to verify that the records are consistent with the OASIS data reported to the State agency or CMS OASIS contractor as part of the survey process. In keeping with § 484.20(b), which requires that HHAs' encoded OASIS data accurately reflect the patient's status at the time the information is collected, we expect that HHAs will develop a means to ensure that the data input into the computer and transmitted to the State agency or CMS OASIS contractor reflects the data collected by the appropriate skilled professionals. We expect HHAs to devise a method to track this process, which should include the comparison of data collected at the time of the assessment to data entered after assessment. We expect HHAs to use the validation reports created by the State agencies to confirm proper data submission or to identify areas for improving data submission. We suggest that HHAs retain final validation reports for about 12 months, or until the next OBQI report is available.

4. Section 488.68(d), Restrict Access to OASIS Data

To secure and control access to patient-identifiable information, in § 488.68(d) we require that the State agency or CMS OASIS contractor be responsible for restricting the access to OASIS data. Specifically, we require that the State agency or CMS OASIS contractor must assure that access to data is restricted to the State agency component that conducts surveys for purposes related to this function, except for the transmission of data and reports to us and to other entities only when authorized by us.

We also specify that patient-identifiable OASIS data may not be released to the public by the State agency or CMS OASIS contractor except to the extent it is permitted under the Privacy Act of 1974 and the HHS Privacy Rule, 45 CFR Parts 160 and 164. In the June 18, 1999 SOR (64 FR 32992), and subsequently revised notice published December 27, 2001 (66 FR 66903), we outlined the provisions governing the disclosure of the information we collect. Consistent with the provisions in those notices, the State agency or CMS OASIS contractor is not permitted to release patient-identifiable information to the public but may release provider-specific aggregated data that do not contain individual patient identifiers.

5. Section 488.68(e), Provide Training and Technical Support for HHAs

In § 488.68(e), we require the State agency or CMS OASIS contractor to provide training and technical support for HHAs. Specifically, we require training on the administration and integration of the OASIS data set into the HHA's own assessment process. We also specify that the State agency is responsible for instructing each HHA on the use of software to encode and transmit OASIS data.

The State agency staff (or contractors) who operate the CMS standard system will provide training as needed to designated HHA staff on the use of the software that we provide. In a similar manner, we will continue to provide standardized instructions for using the free software and submitting information on our website. The designated trainer in the HHA should train HHA staff responsible for collecting OASIS information, as needed, using a standard training curriculum and manual, which we provide. A User's Manual is available electronically on our website and is available in hard copy from the National Technical Information Service by calling 1–800–553–6847.

III. Provisions of the Final Rule

In this final rule, we are adopting the provisions as set forth in the interim final rule with comment period with the following revisions:

- We have revised the standard in § 484.20(a), Encoding and transmitting OASIS data, to allow 30 days from the date the assessment is completed for the agency to encode and submit OASIS data.
- We have removed the requirement in § 484.20(c)(1), which required HHAs to electronically transmit accurate, completed, encoded, and locked OASIS data for each patient to the State agency or CMS OASIS contractor at least monthly. This removes the ''lock'' requirement, which was required at implementation. Experience has indicated that the lock function is no longer necessary.
- We have redesignated the requirement in § 484.20(c)(2) as § 484.20(c)(1). This requirement provides that OASIS data must be transmitted in a format that meets the data format standard specified in § 484.20(d).
- We have redesignated the data submission requirement at § 484.20(c)(3) as § 484.20(c)(2) and have removed the reference to a specific time frame of March 26, 1999 to April 26, 1999. When the January 25, 1999, interim final rule was published, we assumed that no agencies were reporting OASIS information, and all would need to establish connectivity via a test transmission to the State agency before submission of the required data. Now that we are beyond the effective date when all existing agencies were expected to transmit required data, a test transmission is only required when an HHA that is not currently Medicare-approved applies for approval. As such, we expect that HHA to meet all of the Medicare home health CoPs, including demonstrating that it is collecting and can transmit OASIS data, before receiving its Medicare approval. States will work with agencies on a case-by-case basis to issue a temporary user identification number and password for the new HHA to demonstrate compliance.
- We have redesignated the requirement in § 484.20(c)(4) as § 484.20(c)(3). This requirement provides that HHAs must transmit data using electronic communications software that provides a direct telephone connection from the HHA to the State agency or CMS OASIS contractor.
- We have added a new paragraph § 484.20(c)(4) to include the CMS-assigned branch identification number as applicable.

IV. Collection of Information Requirements

The information collection requirements contained in § 484.20 of this document are subject to the PRA; however, these information collection requirements are currently approved under OMB control number 0938–0761 ''Medicare and Medicaid Programs Use of the OASIS as Part of the CoPs for HHAs,'' with a current expiration date of June 30, 2006. The currently approved collection authorizes HHAs to collect and transmit OASIS data.

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 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). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of 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 Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule will have no consequential effect on the governments mentioned 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. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

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

List of Subjects in 42 CFR Part 484

Health facilities, Health Professions, Medicare, Reporting and Recordkeeping Requirements.

■ For reasons set forth in the preamble, CMS amends 42 CFR part 484 as follows:

PART 484—HOME HEALTH SERVICES

■ 1. The authority citation for part 484 continues to read as follows:

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

Subpart B—Administration

■ 2. Section 484.20 is amended by revising paragraphs (a) and (c) to read as follows:

§ 484.20 Condition of participation: Reporting OASIS information.

* * * * *

(a) *Standard: Encoding and transmitting OASIS data.* An HHA must encode and electronically transmit each completed OASIS assessment to the State agency or the CMS OASIS contractor, regarding each beneficiary with respect to which such information is required to be transmitted (as determined by the Secretary), within 30 days of completing the assessment of the beneficiary.

* * * * *

(c) *Standard: Transmittal of OASIS data.* An HHA must—

(1) For all completed assessments, transmit OASIS data in a format that meets the requirements of paragraph (d) of this section.

(2) Successfully transmit test data to the State agency or CMS OASIS contractor.

(3) Transmit data using electronics communications software that provides a direct telephone connection from the HHA to the State agency or CMS OASIS contractor.

(4) Transmit data that includes the CMS-assigned branch identification number, as applicable.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.778, Medical Assistance Program)

Dated: May 20, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: September 12, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–24389 Filed 12–22–05; 8:45 am]

BILLING CODE 4121–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 05–203]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission concludes that its current rules regarding eligibility criteria for compensation from the Interstate Telecommunications Relay Services (TRS) Fund do not reflect advances in the way that TRS is offered, particularly with respect to the two Internet-based forms of TRS, Video Relay Service (VRS) and Internet-Protocol (IP) Relay. Therefore, the Commission amends its rules to permit common carriers desiring to offer VRS and IP Relay service and receive compensation from the Interstate TRS Fund (Fund) to seek certification from the Commission. In doing so, the Commission largely adopts the proposal set forth in the *Second Improved TRS Order's NPRM.* Through this action, the certification procedure will permit common carriers desiring to offer only VRS and/or IP Relay, and not the other forms of TRS, to receive compensation from the Fund without having to meet one of the existing three eligibility criteria set forth in the Commission's rules. Also in this document, the Commission addresses a related issue raised in Hands On Video Relay Services, Inc.'s (Hands On) petition for reconsideration of the *2004 TRS Report and Order,* which challenges the Commission's dismissal of Hands On application for certification as a VRS provider eligible for compensation from the Fund. Because the Commission adopts a new eligibility rule that permits Hands On to seek certification as a VRS provider eligible for compensation from the Fund without being part of a certified state TRS, the Commission concludes this issue is moot. Also, in this document, the Commission seeks approval from the Office of Management and Budget (OMB) for any Paperwork Reduction Act (PRA) burdens contained in this document that will modify OMB Control No. 3060–1047. The revised PRA burdens are related to new rules permitting common carriers seeking to offer VRS or IP Relay service, that are not part of a certified state program or have not contracted with an entity that is, to qualify for compensation from the Fund through a Commission-level certification process.

DATES: Effective January 23, 2006, except for § 47 CFR 64.605 (a)(2), (c)(2), (e)(2), (f)(2), and (g), which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date. Written comments on the Paperwork Reduction Act (PRA) information collection requirements must be submitted by the general public, Office of Management and Budget (OMB), and other interested parties on or before January 23, 2006.

ADDRESSES: You may submit PRA comments identified by [CG Docket Number 03–123 and/or OMB Control Number 3060–1047], by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- E-mail: Parties who choose to file by e-mail should submit their comments to Leslie Smith at *Leslie.Smith@fcc.gov* and to Kristy L. LaLonde at *Kristy_L.LaLonde@omb.eop.gov.* Please include the CG Docket Number 03–123 and/or OMB Control Number 3060–1047 in the subject line of the message.
- Mail: Parties who choose to file by paper should submit their comments to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street SW., Washington, DC 20554, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0539 or TTY: (202) 418–0432.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at *Thomas.Chandler@fcc.gov.* For additional information concerning the PRA information collection requirements contained in the document, contact Leslie Smith at (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.* If you would like to obtain or view a copy of this revised information collection, you may do so

by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION: This document contains modified information collection requirements subject to the PRA of 1995, Public Law 104–13. These will be submitted to OMB for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection(s) contained in this proceeding. This is a summary of the Commission's document FCC 05–203, adopted December 8, 2005, and released December 12, 2005, in CG Docket 03–123. This *Report and Order and Order on Reconsideration* addresses issues arising from the Notice of Proposed Rulemaking (*NPRM*) in the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Second Report and Order, Order on Reconsideration, and *NPRM* (*Second Improved TRS Order*), CC Docket No. 98–67, CG Docket No. 03–123, FCC 03–112; published at 68 FR 50973, August 25, 2003 and 68 FR 50993, August 25, 2003; and from the Further Notice of Proposed Rulemaking (*FNPRM*), in the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Report and Order, Order on Reconsideration, and *FNPRM* (*2004 TRS Report and Order*), CC Docket Nos. 90–571 and 98–67, CG Docket No. 03–123, FCC 04–137; published at 69 FR 53346, September 1, 2004 and 69 FR 53382, September 1, 2004. Also, this *Report and Order and Order on Reconsideration* addresses issues raised in the Hands On October 1, 2004, petition for reconsideration of the *2004 TRS Report and Order.* The full text of document FCC 05–203 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Report and Order and Order on Reconsideration* and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site *http://www.bcpiweb.com* or by calling 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document FCC 05–203 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro.*

Paperwork Reduction Act

This document contains modified information collection requirements. The Commission, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, and as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on the information collection requirements contained in the *Report and Order and Order on Reconsideration.* Public and agency comments are due January 23, 2006. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In this document, the Commission has assessed the effects of a new TRS eligibility that will allow more entities to become VRS and IP Relay providers. The Commission finds that some entities that may seek to become providers eligible for compensation from the Fund may be business entities with fewer than 25 employees.

Synopsis

In this *Report and Order, and Order on Reconsideration,* the Commission addresses the issue of the certification and oversight of telecommunications relay service (TRS) providers seeking compensation from the Fund, raised in the *NPRM* of the *Second Improved TRS Order* and the *FNPRM* of the *2004 TRS Report and Order.* TRS enables an individual with a hearing or speech disability to communicate by telephone or other device with a person without such a disability. This is accomplished through TRS facilities that are staffed by specially trained communications assistants (CAs) who relay conversations between persons using various types of assistive communication devices and persons who do not require such assistive devices. *See generally* 47 U.S.C. 225(a)(3). This document also addresses the related issue raised in Hands On Video Relay Services, Inc.'s (Hands On) petition for reconsideration of the *2004 TRS Report and Order,* which dismissed Hands On's application for certification as a VRS provider eligible for compensation from the Fund. *See* Hands On, Petition for Partial Reconsideration, CC Docket Nos. 90–571 and 98–67, CG Docket No. 03–123 (October 1, 2004) (Hands On Petition). The Commission amends the TRS regulations to permit common carriers seeking to offer VRS and IP Relay and receive compensation from the Fund to apply to the Commission for certification as an entity providing these services in compliance with the TRS rules, and therefore eligible for compensation from the Fund. *See generally* 47 CFR 64.601 *et seq.* (the TRS regulations). This certification procedure will permit common carriers desiring to offer VRS or IP Relay, and not the other forms of TRS, to do so without having to meet one of the existing eligibility criteria set forth in the rules. *See* 47 CFR 64.604(c)(5)(iii)(F) (setting forth three eligibility categories for receiving compensation from the Fund). Because the Commission adopts a new eligibility rule that permits Hands On to seek certification as a VRS provider eligible for compensation from the Fund without being part of a certified state TRS program, the Commission concludes that the issue raised in Hands On's Petition is moot.

Background

Telecommunications Relay Service

Title IV of the Americans with Disabilities Act of 1990 (ADA), Public Law Number 101–336, section 401, 104 Statute 327, 336–69 (1990), adding Section 225 to the Communications Act of 1934 (Act), as amended, 47 U.S.C. 225; implementing regulations at 47 CFR 64.601 *et seq.*, requires the Commission to ensure that TRS is available to persons in the United States with hearing and speech disabilities. TRS enables a person with a hearing or speech disability to communicate through the telephone system. The statute requires that TRS offer persons with hearing or speech disabilities telephone transmission services that are ''functionally equivalent'' to voice telephone services. 47 U.S.C. 225(a)(3). In adopting Title IV of the ADA, Congress recognized that persons with hearing or speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services. *See generally 2004 TRS Report and Order,* 19 FCC Rcd at 12479–12480, paragraph 3 (discussing legislative history of Title IV of the ADA). The intent of Title IV is to further the Act's goal of universal service by ensuring that individuals with hearing or speech disabilities have

access to the nation's telephone system. *See, e.g.*, 47 U.S.C. 225(a)(3). *See also* H.R. Report Number 485, Part 2, 101st Congress, 2nd Session at 129 (1990) (House Report).

Section 225 of the Communications Act requires certain common carriers to offer TRS throughout the areas in which they offer service. 47 U.S.C. 225(c). When TRS was implemented, TRS calls were placed using a TTY connected to the Public Switched Telephone Network (PSTN). In a ''traditional'' TTY text-based TRS call, the user dials the telephone number for a TRS provider using a TTY. This first step for the TRS user, the completion of the outbound call to the TRS provider, is equivalent to reaching a ''dial tone.'' The caller then types the number of the person he or she wishes to call. The CA, in turn, places an outbound voice call to the called party. The CA serves as the ''link'' in the conversation, converting all TTY messages typed by the caller into voice messages, and all voice messages from the called party into typed text messages for the TTY user. The process is performed in reverse when a voice telephone user initiates a traditional TRS call to a TTY user. *See generally 2004 TRS Report and Order,* 19 FCC Rcd at 12480, paragraph 3, note 18. States have primary jurisdiction over the provision of intrastate TRS through certified state TRS programs, *see* 47 CFR 64.605 (''State Certification''); *see also 2004 TRS Report and Order,* 19 FCC Rcd at 12517–12518, paragraph 103, and are responsible for compensating the TRS providers for the costs of intrastate service. *See* 47 U.S.C. 225(c)(3)(B). When TRS providers handle interstate calls, those calls are billed to, and compensated by, the Fund. *See also* 47 CFR 64.604(c)(5)(iii)(E) and (F).

The Fund is funded by contributions from all common carriers providing interstate telecommunications services, and is administered by the TRS Fund administrator, currently the National Exchange Carrier Association, Inc. (NECA). The amount of each carrier's contribution is the product of the carrier's interstate end-user telecommunications revenue and a contribution factor determined annually by the Commission. *See* 47 CFR 64.604(c)(5)(iii)(A) and (B). The fund administrator uses these funds to compensate TRS providers for the costs of providing the various forms of TRS.

Under the TRS regulations, providers ''eligible for receiving payments from the [Interstate] TRS Fund,'' *see* 47 CFR 64.604(c)(5)(iii)(F), must fall under one of three categories: (1) TRS facilities operated under contract with and/or by certified state TRS programs, *see* 47 CFR 64.604(c)(5)(iii)(F)(1); (2) TRS facilities owned by or operated under contract with a common carrier providing interstate services, *see* 47 CFR 64.604(c)(5)(iii)(F)(2); or (3) interstate common carriers offering TRS, *see* 47 CFR 64.604(c)(5)(iii)(F)(3). These three categories reflect the statutory regime that requires common carriers offering voice telephone service to also provide TRS, *see* 47 U.S.C. 225(c). Common carriers may offer TRS ''individually, through designees, through a competitively selected vendor, or in concert with other carriers.'' Therefore, every common carrier required to offer TRS need not necessarily do so individually. *See 2004 TRS Report and Order,* 19 FCC Rcd at 12480, paragraph 3, note 19 (distinguishing between interstate and intrastate TRS, and giving states the option to have ''certified'' state TRS programs). Currently all 50 states, Puerto Rico, and the District of Columbia have certified state programs. The legislative history of Section 225 makes clear that Congress ''hope[d] and expect[ed] that all states would promptly adopt a certified state program.'' House Report at 130.

Fund payments are made at per-minute compensation rates proposed each year by the fund administrator, and then approved or modified by the Commission in accordance with the Commission's rules. 47 CFR 64.604(c)(5)(iii). The regulations provide that ''TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. * * * Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval.'' 47 CFR 64.604(c)(5)(iii)(E). The per-minute compensation rates are presently based on the projected average cost per minute for providing each service. *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67, CG Docket No. 03–123, FCC 05–135, Order; published at 70 FR 38134, July 1, 2005.

In March 2000, the Commission recognized VRS as a form of TRS. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, at 5152–5154, paragraphs 21–27 (March 6, 2000); published at 65 FR 38432, June 21, 2000 and 65 FR 38490, June 21, 2000, (*Improved TRS Order and FNPRM*); *see also* 47 CFR 64.601(17) (defining VRS). VRS requires the use of a broadband Internet connection between the VRS user and the CA, which allows the user to communicate in sign language via a video link. The CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in American Sign Language (ASL) with the deaf person and by voice with the hearing person. As a result, the conversation between the two end users, deaf and hearing, flows in near real time. VRS therefore provides a degree of ''functional equivalency'' that is not attainable with text-based TRS, by allowing those persons whose primary language is ASL to communicate in ASL, just as a hearing person does with, *e.g.*, spoken English. As a result, VRS has quickly become a very popular service.

In April 2002, the Commission recognized a second Internet-based form of TRS—IP Relay. *See Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779 (April 22, 2002); published at 67 FR 39863, June 11, 2002 and 67 FR 39929, June 11, 2002, (*IP Relay Declaratory Ruling and FNPRM*). IP Relay calls are text-based calls, but the user connects to the TRS facility via a computer (or other similar device) and the Internet, rather than via a TTY and the PSTN. A user establishes a local connection to an Internet service provider using a computer, web phone, personal digital assistant, or other IP-enabled device, selects the Internet address of an IP Relay provider, and is connected to a CA who handles the call in the same way that TTY-based calls are handled. IP Relay, like VRS, has become a popular service because the user can make a relay call with any computer (or similar device) connected to the Internet, rather than with a dedicated TTY. *See Improved TRS Order and FNPRM,* 15 FCC Rcd at 5149, paragraph 15 (VRS); *IP Relay Declaratory Ruling and FNPRM,* 17 FCC Rcd 7779, at 7786, paragraph 20 (IP Relay).

The Provision of VRS and IP Relay and Eligibility for Compensation From the Interstate TRS Fund

Because the two Internet based forms of TRS—VRS and IP Relay—use the Internet for one leg of the call, it is currently not possible to determine the geographic location of the party using the service, and therefore to determine whether a particular call is interstate or intrastate. As a result, on an interim

basis, the costs of providing both *intra*state and *inter*state VRS and IP Relay are compensated from the Fund. In addition, because VRS and IP Relay are services that are not tied to the PSTN or the provision of voice telephony, it became possible for entities that are not traditional voice telephone companies to offer these services. In particular, some entities sought to provide only VRS service under the third category of eligible TRS providers—''Interstate common carriers offering TRS''—even though they were not traditional common carriers (*i.e.*, voice telephone companies) under the statute. Such entities could provide VRS and receive compensation from the Fund either by becoming part of a certified state program (first eligibility category) or subcontracting with an entity offering TRS and eligible for compensation from the Fund (second eligibility category).

As a result, in the *NPRM* accompanying the June *2003 Second Improved TRS Order*, the Commission sought comment on ''whether, and if so, how, the Commission should amend its rules to address the provision of TRS in circumstances not presently covered by the regulations, including a provider's eligibility for cost recovery for services currently reimbursed solely from the Fund.'' *Second Improved TRS Order*, 18 FCC Rcd at 12444, paragraph 136. The Commission noted the absence of a Commission-level certification process for TRS providers, leaving TRS providers not participating in a certified state program without a method for qualifying for compensation for interstate TRS. The Commission therefore sought comment on whether it should establish a federal certification process, either generally or specifically for IP Relay, VRS, and ''any other technology that does not fit easily into the traditional jurisdictional separation of intrastate and interstate.'' *Second Improved TRS Order*, 18 FCC Rcd at 12445, para. 139; *see also*, 18 FCC Rcd at 12444, paragraph 137.

The Commission tentatively concluded that under such a process TRS providers would apply to the Commission for certification as an interstate TRS provider, ''providing evidence that they are in compliance with the mandatory minimum standards found in 47 CFR 64.604 of its rules.'' *Second Improved TRS Order*, 18 FCC Rcd at 12444, paragraph 137. In addition, the Commission proposed requiring such TRS providers to keep a log of any complaints received and their disposition of those complaints, detailing compliance with the mandatory minimum standards and listing the resolution of each complaint filed against the provider. *Second Improved TRS Order*, 18 FCC Rcd at 12444, paragraph 137. The Commission included proposed rules of such a certification process, adding a fourth prong to the eligibility criteria for interstate TRS providers ''certified by the Commission'' pursuant to new certification rules. *Second Improved TRS Order*, 18 FCC Rcd at 12467–12468, Appendix E (setting forth proposed rules).

The commenters generally agreed that a federal certification requirement is appropriate if a TRS provider does not participate in a state TRS program, is not a traditional common carrier, and is providing Internet-based TRS, such as IP Relay and VRS. In this regard, several providers asserted that a federal certification process should be an alternative to participating in a state TRS program, and not an additional regulatory requirement for new or existing TRS providers. All supporting commenters agreed that the Commission-certified providers should also be required to submit annual complaint logs and waiver reports presently required of the existing VRS and IP Relay providers.

The 2004 TRS Report and Order

In the *2004 TRS Report and Order*, the Commission deferred a decision on this issue but invited further comment in the accompanying *FNPRM. 2004 TRS Report and Order*, 19 FCC Rcd at 12517–12518, paragraph 103. The Commission characterized the underlying issue as two-fold: ''(1) How to define those entities providing TRS that are eligible for compensation from the Fund for providing eligible services; and (2) how to ensure that such entities are providing TRS in compliance with the TRS mandatory minimum standards.'' *2004 TRS Report and Order*, 19 FCC Rcd at 12517–12518, paragraph 103. The Commission sought additional comment on whether it should separately ''certify'' and/or oversee providers of IP Relay and VRS. *2004 TRS Report and Order*, 19 FCC Rcd at 12570, paragraph 250. The Commission noted that ''because for both of these services there are presently only a handful of national providers, which consumers can access via computer without regard to geographic location, it may be either unnecessary or unworkable to have all 50 states oversee these providers.''

In response to the *FNPRM*, four TRS providers filed comments. Comments were filed by Hamilton (October 18, 2004), Hands On (October 15, 2004), Sorenson (October 18, 2004), and Sprint (October 18, 2004). Hands On, Hamilton, and Sorenson support a federal certification process as a way to promote competition and innovation while decreasing administrative costs by allowing providers actually providing the service to bill the Fund directly. Hamilton asserts that a certification system would assure provider compliance with minimum TRS standards.'' Sorenson asserts that the state certification process is slow and costly, and that most states will certify only one provider. Comments filed by the National Association for State Relay Administration (NASRA) noted that most states would opt for one VRS provider, which would eliminate the benefits of a competitive, multi-vendor environment for VRS. Sorenson also asserts that to ensure the integrity of the Fund, new entrants should be required to file financial reports demonstrating financial stability, and that all certified providers should be required to file detailed complaint logs, annual waiver reports, and annual detailed call audit reports for all calls submitted for payment. Sorenson and Hands On also assert that existing providers should either be ''grandfathered'' into certification or presumed to meet the certification requirements. Sprint, however, opposes Commission certification of providers, stating that the Commission should make the provision of VRS and IP Relay mandatory and make the states responsible for compensating intrastate minutes, therefore also making the states responsible for ensuring compliance with the mandatory minimum standards. Sprint also asserts that the current complaint procedures are sufficient to keep the Commission informed about service problems, making the federal certification program an unnecessary use of Commission resources.

Hands On's Application for ''Certification'' as a VRS Provider

On August 30, 2002, Hands On filed an application for ''certification'' as a VRS provider eligible for compensation from the Fund. The application indicated that Hands On sought to provide only VRS, and not any of the mandatory relay services traditional common carriers are required to provide. Further, Hands On sought to provide VRS neither as part of a certified state program nor as a service operated in contract with a common carrier providing interstate TRS. *See* 47 CFR 64.604(c)(5)(iii)(F). Hands On argued eligibility under the third prong; *i.e.*, as an Interstate common carrier offering TRS pursuant to 47 CFR 64.604.

See 47 CFR 64.604(c)(5)(iii)(F)(3). Hands On also acknowledged that the regulations do not specify any requirement for ''certification'' of TRS providers as eligible for compensation from the Fund. In the *2004 TRS Report and Order*, the Commission dismissed Hands On's application without prejudice, based on the lack of a Commission certification process. *2004 TRS Report and Order*, 19 FCC Rcd at 12531, paragraph 148 (citing, in part, 47 CFR 64.605) (footnote omitted).

Hands On's Petition for Reconsideration

On October 1, 2004, Hands On filed a petition for reconsideration of, *inter alia*, the Commission's dismissal of its application for certification. *See Communication Services for the Deaf, Inc., Hands On Video Relay Service, Inc., National Video Relay Service Coalition, and Hamilton Relay, Inc., File Petitions for Reconsideration of Telecommunications Relay Service Requirements from the Report and Order, and Order on Reconsideration, and Further Notice of Proposed Rulemaking*, CC Docket Nos. 90–571 and 98–67, CG Docket No. 03–123, DA 04–3266, Public Notice, 19 FCC Rcd 19929 (October 15, 2004); published at 69 FR 65401, November 12, 2004. Hands On seeks a ruling that it is entitled to receive compensation from the Fund without either providing its service as part of a certified state program or operating under contract with a common carrier providing interstate TRS and eligible for compensation from the Fund. Hands On asserts that it falls under the third eligibility prong of 47 CFR 64.604(c)(5)(iii)(F)(3)—''Interstate common carriers offering TRS pursuant to § 64.604 of the Commission's rules''—and that under that prong it is entitled to compensation for its service from the Fund upon giving notice, whether or not the Commission has a separate certification process. MCI, the only commenter responding to the Hands On Petition, asserts that only compliance with mandatory minimum standards is necessary for reimbursement, and no Commission-wide certification is needed.

Discussion

The Commission concludes that the present eligibility criteria for compensation from the Fund set forth in the Commission's rules do not reflect advances in the way that TRS is offered, particularly with respect to VRS and IP Relay. Therefore, the Commission amends its rules to permit common carriers desiring to offer VRS and IP Relay and receive compensation from the Fund to seek certification from the Commission. In so doing, the Commission largely adopts the proposal set forth in *Second Improved TRS Order's NPRM. See Second Improved TRS Order*, 18 FCC Rcd at 12443–12445, paragraphs 134–140. This certification procedure will permit common carriers desiring to offer only VRS and/or IP Relay, and not the other forms of TRS, to receive compensation from the Fund without having to meet one of the existing three eligibility criteria set forth in the rules.

The present three categories for eligibility for compensation from the Fund were adopted at a time when *all* TRS calls were carried over telephone lines, and therefore all calls could be categorized as either interstate or intrastate. *See Telecommunications Relay Services, and the Americans With Disabilities Act of 1990*, CC Docket No. 90–571, FCC 93–357, Third Report and Order, 8 FCC Rcd 5300 (July 20, 1993), published at 58 FR 39671, July 26, 1993, (adopting TRS cost recovery rules). As a result, the states were given the primary role of regulating, and compensating, the provision of intrastate TRS through the state certification process. *See generally 2004 TRS Report and Order*, 19 FCC Rcd at 12480–12483, paragraphs 4–8; *see also* House Report at 131. The third eligibility category—''Interstate common carriers offering TRS pursuant to § 64.604 of the Commission's rules''—has been the means by which some entities that are not voice telephone service providers have sought to offer VRS. 47 CFR 64.604(c)(5)(iii)(F)(3). The Commission previously construed the third eligibility prong, however, as applying to common carriers obligated to provide TRS in a state that does not have a certified program. In the *2004 TRS Report and Order*, the Commission noted that, as a general matter, the Commission has construed the eligibility requirements to require eligible providers to be either part of a state program or to provide service under contract with another provider obligated to provide TRS services. *2004 TRS Report and Order*, 19 FCC Rcd at 12517–12518, paragraph 103, note 304. The Commission noted that the three eligibility categories were modeled upon the ways in which common carriers may be deemed to be in compliance with their underlying obligation under sections 225(c)(1)–(2) of the Communications Act. It also noted that presently every state has a certified state TRS program, although they are not required to do so. *See generally 2004 TRS Report and Order*, 19 FCC Rcd at 12481, paragraph 6, note 25. The Commission now adopts a fourth eligibility criterion, which will allow common carriers seeking to offer VRS or IP Relay and receive compensation to do so without being part of a certified state program or contracting with an entity that is. Therefore, the Commission need not revisit its prior construction of the third eligibility category. Moreover, in the event that in the future a state either declines to seek recertification or fails to qualify for recertification, common carriers in that state may need to rely on the third eligibility category to receive compensation from the Fund for eligible TRS services.

In the *Report and Order and Order on Reconsideration*, the Commission specifically allows common carriers seeking to offer VRS or IP Relay, that are not part of a certified state program or have not contracted with an entity that is, to qualify for compensation from the Fund through a Commission-level certification process. The Commission recognizes that, with the advent of Internet-based forms of TRS, and particularly with the required expertise of sign language interpreters necessary for the provision of VRS, entities that have not offered voice telephony service or traditional TRS may desire to offer VRS or IP Relay. The Commission further recognizes that requiring such entities to either contract with a state or with another provider—opportunities over which, as a practical matter, a new provider has little control—both elevates form over substance and artificially precludes new providers from offering service, thereby depriving consumers of additional choices. The record reflects that many states have been reluctant to accept VRS providers into their certified state programs. Presently, three VRS providers qualify for compensation from the Fund because they are part of a certified state program: Hands On (Washington); Sorenson (Utah); and Communication Access Center (CAC) (Michigan). The record reflects that other entities that desire to offer VRS have been unable to join a certified state program. *See, e.g., Ex Parte* Submission of Daryl Crouse, President, Snap Telecommunications, Inc. (Snap) (July 1, 2005) (submitted by counsel) (Snap *Ex Parte*) (asserting that Snap, which desires to offer VRS and receive compensation from the Fund, sought state certification but no state expressed an interest); *see also* NASRA Comments at 3–4 (noting that most states would opt for one VRS provider). States have little incentive to assume oversight responsibility for these services, which are offered on a

nationwide basis, particularly because states are not currently paying for the services. In addition, contracting with a provider that already offers TRS as part of a state program has made it uneconomical for some new providers to offer service. As Hands On has asserted, a ''direct certification by the Commission of VRS providers is likely to decrease the cost of service by allowing providers actually delivering the service to bill the Fund directly, rather than contracting with a state agency or existing telephone carrier (that would demand a substantial share of the compensation).'' The Commission concludes that common carriers seeking to provide VRS or IP Relay, and only those services, should not be precluded from doing so simply because they cannot contract with a State or another eligible TRS provider. According to Snap, the first eligibility category ''is no longer a viable option for new entrants because states are either completely uninformed about TRS Fund eligibility for VRS providers (since VRS is a *non-mandatory* service under the FCC's rules), or they are reluctant to certify and vouch for a new VRS provider due to the additional costs and burdens that might entail in terms of the state's oversight and audit responsibilities.''

Moreover, as Hamilton, Sorenson, and the TDI Coalition have suggested, a federal certification program for VRS and IP Relay will allow the Commission to ensure that consumers receive high quality service without unduly burdening IP Relay and VRS providers. Sorenson, for example, states that ''a federal certification process—if properly administered—will encourage additional TRS providers to enter the market, ensuring the widespread availability of TRS services.''

Permitting common carriers to provide VRS and IP Relay and receive compensation from the Fund through certification by the Commission furthers the goals of section 225 of the Communications Act. First, Commission certification will allow providers to offer service without contracting with a State or another TRS provider, possibly reducing the cost of providing service. Second, this *Report and Order and Order on Reconsideration* will enhance competition in the provision of VRS and IP Relay by permitting new entities to offer service, thereby giving consumers greater choice. In addition, the Commission anticipates that new providers will bring innovation to the provision of VRS and IP Relay, both with new equipment and new service features. Finally, and more broadly, because VRS requires broadband Internet service, new VRS providers may stimulate greater broadband deployment. *See 2004 TRS Report and Order*, 19 FCC Rcd at 12568, paragraph 243.

As a result, the Commission concludes that common carriers seeking to offer VRS or IP Relay and receive compensation from the Fund independent of a certified state program or a common carrier offering TRS, may seek certification from the Commission to do so by providing documentation to the Commission as outlined below (and in amended 47 CFR 64.605). *See* Rule Changes at the end of this document. This documentation shall include, in narrative form: (1) A description of the forms of TRS to be provided; (2) a description of how the provider will meet all non-waived mandatory minimum standards applicable to each form of TRS offered, *see generally 2004 TRS Report and Order*, 19 FCC Rcd at 12594, Appendix E (summarizing waivers of TRS mandatory minimum standards for VRS and IP Relay); (3) a description of the provider's procedures for ensuring ongoing compliance with all applicable TRS rules; (4) a description of the provider's complaint procedures; (5) a narrative describing any areas in which the provider's service will differ from the applicable mandatory minimum standards; (6) a narrative establishing that services that differ from the mandatory minimum standards do not violate applicable mandatory minimum standards; (7) demonstration of status as common carrier; and (8) a statement that the provider will file annual compliance reports demonstrating continued compliance with these rules. *Non-common carriers* seeking to offer VRS or IP Relay may continue to do so by joining a certified state program or subcontracting with an entity offering TRS and eligible for compensation from the Fund. However, the Commission requires providers to be common carriers under the Commission certification procedure adopted in this *Report and Order and Order on Reconsideration*, because section 225 of the Communications Act is expressly directed at common carriers providing TRS. *See* 47 U.S.C. 225(c); *see also* 47 U.S.C. 225(a)(1) (defining ''common carrier'' for purposes of Section 225 of the Communications Act). These procedures largely mirror those proposed in the *NPRM* in the *Second Improved TRS Order. See Second Improved TRS Order*, 18 FCC Rcd at 12443–12445, paragraphs 134–140.

After review of this documentation, the Commission shall certify that the provider is eligible for compensation from the Fund if the Commission finds that: (1) The provision of VRS or IP Relay will meet or exceed all non-waived operational, technical, and functional mandatory minimum standards; (2) the VRS or IP Relay provider makes available adequate procedures and remedies for ensuring ongoing compliance with the Commission's rules, including that it makes available for TRS users informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints; and (3) where the VRS or IP Relay provider's service differs from the mandatory minimum standards, the TRS provider establishes that its service does not violate applicable mandatory minimum standards. The Commission will issue a Public Notice certifying that a VRS or IP Relay provider is eligible for compensation from the Fund under this new provision. A provider seeking eligibility must also comply with all applicable TRS regulations, including 47 CFR 64.604(c)(5)(iii)(C), (D), (E), and (G). After a VRS or IP Relay provider obtains certification under the fourth eligibility prong, the provider need only submit a letter of intent to the fund administrator in order to become eligible to receive compensation. *See* 47 CFR 64.604(c)(5)(iii)(G) (requiring an eligible provider to notify the TRS Fund administrator of its intent to participate in the Fund at least 30 days prior to seeking compensation from the Fund).

The Commission further amends 47 CFR 64.605 to provide that the certification granted under new 47 CFR 64.604(c)(5)(iii)(F)(4) shall remain in effect for five years, and that a certified provider must file for renewal at least 90 days prior to the expiration of certification by filing the documentation required for certification. Although the Commission proposed a one year certification period, the record reflects that a five year period is preferable for administrative reasons and for consistency with the certification of state programs. *See* 47 CFR 64.605(c). In addition, the Commission amends 47 CFR 64.605 to provide that it may suspend or revoke certification if the Commission determines that certification is no longer warranted, and may require certified VRS or IP Relay providers to submit documentation demonstrating ongoing compliance with Commission rules and all applicable TRS mandatory minimum standards. These provisions largely mirror the existing certification requirements for state TRS programs.

The Commission also amends 47 CFR 64.605 to require VRS or IP Relay TRS providers certified under the fourth prong to notify the Commission of

substantive changes in their TRS programs, services, and features within 60 days of when such changes may occur, and to certify that they continue to meet federal mandatory minimum standards after implementing the substantive change. Finally, the Commission amends 47 CFR 64.605 to require these certified VRS or IP Relay providers to file with the Commission, on an annual basis, a detailed report providing evidence of ongoing compliance with all applicable TRS mandatory minimum standards. Among other TRS mandatory minimum standards, the Commission notes that certified VRS or IP Relay providers must comply with 47 CFR 64.604(c)(1), addressing consumer complaint logs and the filing of complaint log summaries with the Commission. Certified VRS and IP Relay providers must also file any annual reports required by the Commission's waiver of applicable mandatory minimum standards. *See generally 2004 TRS Report and Order,* 19 FCC Rcd at 12520–12521, paragraph 111. The Commission believes that these requirements, taken together, will be sufficient to ensure that providers certified under this new provision will offer service in compliance with its rules, and will also provide a means by which the Commission can monitor compliance and service quality. The Commission therefore declines to require the filing of financial statements indicating financial stability. The Commission believes that a provider meeting the requirements adopted herein will be sufficiently qualified to offer VRS or IP Relay without a showing of its financial standing.

In sum, the Commission has adopted a new eligibility category for VRS and IP Relay providers seeking compensation from the Fund to reflect the present reality that the provision of TRS is migrating to these Internet-based services, and that VRS and IP Relay are presently operated as national services without regard to the provision of traditional PSTN-based telephony or the physical location of the users and the relay facilities. Persons with hearing and speech disabilities, entitled by section 225 of the Communications Act to functionally equivalent telephone services, will benefit by having a greater choice of VRS and IP Relay providers. The Commission anticipates that the addition of new providers will not only enhance competition, but advance technological development, increase quality of service, and reduce costs. In this way, the Commission further fulfills two statutory mandates under section 225 of the Communications Act: ensuring that TRS is available ''to the extent possible and in the most efficient manner'' to persons with hearing and speech disabilities, 47 U.S.C. 225(b)(1), and ''encourage[ing] * * * the use of existing technology and * * * not discourage[ing] or impair[ing] the development of improved technology.'' 47 U.S.C. 225(d)(2).

Order on Reconsideration

Hands On seeks reconsideration of the Commission's dismissal in the *2004 TRS Report and Order* of its application for certification as a VRS provider eligible for compensation from the Fund. *2004 TRS Report and Order,* 19 FCC Rcd at 12531, paragraphs 147–148. Because the Commission adopts a new eligibility rule that permits Hands On to seek certification as a VRS provider eligible for compensation from the Fund without being part of a certified state TRS program, the Commission concludes that this issue is moot.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 605(b). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

This *Report and Order and Order on Reconsideration* addresses a petition for reconsideration of the Commission's prior conclusion not to certify common carriers providing TRS as eligible to receive compensation from the Fund. The *Report and Order and Order on Reconsideration* reverses the Commission's prior determination in this regard and concludes that the Commission will certify common carriers desiring to offer Video Relay Service (VRS) as TRS service providers eligible for compensation from the Fund. The Commission concludes that the public interest is best served by Commission certification of common carriers providing VRS and IP Relay service as eligible for Interstate TRS funding. The Commission finds that by so certifying common carriers providing VRS and IP Relay services, it will enhance competition in the provision of VRS and IP Relay by permitting new entities to offer service, thereby giving consumers greater choice. In addition, the Commission anticipates that new providers will bring innovation to the provision of VRS and IP Relay, both with new equipment and new features. Moreover, the Commission does not believe that the certification of additional VRS or IP Relay service providers will have an appreciable impact on the required size of the Fund. Indeed, the Commission expects that Federal certification is likely to reduce the costs of entry of new service providers (by eliminating the need to seek State certification or contracting with a State or another TRS provider), and that additional competition will help to lower the cost of VRS and IP Relay services. Therefore, given the lack of a significant economic impact, the Commission certifies that the requirements of the *Report and Order and Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities.

The Commission also notes that, arguably, there are not a substantial number of small entities that will be affected by our action. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002). According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513310 (issued October 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.'') Currently, only

eight providers are providing VRS and being compensated from the Fund: AT&T, Communication Access Center for the Deaf and Hard of Hearing, Hamilton, Hands On, MCI, Nordia, Sorenson, and Sprint. The Commission expects that only one of the providers noted above is a small entity under the SBA's small business size standard. In addition, the Interstate Fund Administrator is the only entity that will be required to pay to eligible providers of VRS and IP Relay services the costs of providing interstate service. The Commission will send a copy of this *Report and Order and Order on Reconsideration,* including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. 5 U.S.C. 605(b).

Congressional Review Act

The Commission will send a copy of this *Report and Order and Order on Reconsideration* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to the authority contained in sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, this *Report and Order, and Order on Reconsideration Is hereby Adopted.*

The Petition for Partial Reconsideration filed by Hands On *Is moot,* as provided herein, to the extent it addresses Hands On's application for certification as a VRS provider.

This *Report and Order, and Order on Reconsideration* and the amendments to §§ 64.604 and 64.605 of the Commission's rules in the Rule Changes shall be effective January 23, 2006, except for §§ 64.605(a)(2), (c)(2), (e)(2), (f)(2), and (g), which contains information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order, and Order on Reconsideration,* including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Section 64.604 is amended by removing the period at the end of paragraph (c)(5)(iii)(F)(*3*) and adding '';or'' in its place, and by adding paragraph (c)(5)(iii)(F)(*4*) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(F) * * *

(*4*) Video Relay Service (VRS) and Internet Protocol (IP) Relay providers certified by the Commission pursuant to § 64.605.

* * * * *

■ 3. Section 64.605 is revised to read as follows:

§ 64.605 VRS and IP Relay Provider and TRS program certification.

(a) *Documentation.* (1) *Certified state program.* Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned ''TRS State Certification Application.'' All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification including notification in the **Federal Register**.

(2) *VRS and IP Relay provider.* Any entity desiring to provide VRS or IP Relay services, independent from any certified state TRS program or any TRS provider otherwise eligible for compensation from the Interstate TRS Fund, and to receive compensation from the Interstate TRS Fund, shall submit documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned ''VRS and IP Relay Certification Application.'' The documentation shall include, in narrative form:

(i) A description of the forms of TRS to be provided (*i.e.*, VRS and/or IP Relay);

(ii) A description of how the provider will meet all non-waived mandatory minimum standards applicable to each form of TRS offered;

(iii) A description of the provider's procedures for ensuring compliance with all applicable TRS rules;

(iv) A description of the provider's complaint procedures;

(v) A narrative describing any areas in which the provider's service will differ from the applicable mandatory minimum standards;

(vi) A narrative establishing that services that differ from the mandatory minimum standards do not violate applicable mandatory minimum standards;

(vii) Demonstration of status as a common carrier; and

(viii) A statement that the provider will file annual compliance reports demonstrating continued compliance with these rules.

(b) (1) *Requirements for state certification.* After review of state documentation, the Commission shall certify, by letter, or order, the state program if the Commission determines that the state certification documentation:

(i) Establishes that the state program meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604;

(ii) Establishes that the state program makes available adequate procedures and remedies for enforcing the requirements of the state program, including that it makes available to TRS users informational materials on state and Commission complaint procedures sufficient for users to know the proper procedures for filing complaints; and

(iii) Where a state program exceeds the mandatory minimum standards contained in § 64.604, the state establishes that its program in no way conflicts with federal law.

(2) Requirements for VRS and IP Relay Provider FCC Certification. After review of certification documentation,

the Commission shall certify, by Public Notice, that the VRS or IP Relay provider is eligible for compensation from the Interstate TRS Fund if the Commission determines that the certification documentation:

(i) Establishes that the provision of VRS and/or IP Relay will meet or exceed all non-waived operational, technical, and functional minimum standards contained in § 64.604;

(ii) Establishes that the VRS and/or IP Relay provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section and the mandatory minimum standards contained in § 64.604, including that it makes available for TRS users informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints; and

(iii) Where the TRS service differs from the mandatory minimum standards contained in § 64.604, the VRS and/or IP Relay provider establishes that its service does not violate applicable mandatory minimum standards.

(c)(1) *State certification period.* State certification shall remain in effect for five years. One year prior to expiration of certification, a state may apply for renewal of its certification by filing documentation as prescribed by paragraphs (a) and (b) of this section.

(2) *VRS and IP Relay Provider FCC certification period.* Certification granted under this section shall remain in effect for five years. A VRS or IP Relay provider may apply for renewal of its certification by filing documentation with the Commission, at least 90 days prior to expiration of certification, containing the information described in paragraph (a)(2) of this section.

(d) *Method of funding.* Except as provided in § 64.604, the Commission shall not refuse to certify a state program based solely on the method such state will implement for funding intrastate TRS, but funding mechanisms, if labeled, shall be labeled in a manner that promote national understanding of TRS and do not offend the public.

(e)(1) *Suspension or revocation of state certification.* The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS. The Commission may, on its own motion, require a certified state program to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a state program may not be in compliance with the minimum standards.

(2) *Suspension or revocation of VRS and IP Relay Provider FCC certification.* The Commission may suspend or revoke the certification of a VRS or IP Relay provider if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. The Commission may, on its own motion, require a certified VRS or IP Relay provider to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a certified VRS or IP Relay provider may not be in compliance with the minimum standards.

(f) *Notification of substantive change.* (1) States must notify the Commission of substantive changes in their TRS programs within 60 days of when they occur, and must certify that the state TRS program continues to meet federal minimum standards after implementing the substantive change.

(2) VRS and IP Relay providers certified under this section must notify the Commission of substantive changes in their TRS programs, services, and features within 60 days of when such changes occur, and must certify that the interstate TRS provider continues to meet federal minimum standards after implementing the substantive change.

(g) VRS and IP Relay providers certified under this section shall file with the Commission, on an annual basis, a report providing evidence that they are in compliance with § 64.604.

[FR Doc. 05–24419 Filed 12–22–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 050915240–5332–02; I.D. 090905A]

RIN 0648–AS66

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Essential Fish Habitat Amendment

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Generic Amendment 3 to the Fishery Management Plans (FMPs) of the Gulf of Mexico (EFH Amendment 3), which was prepared by the Gulf of Mexico Fishery Management Council (Council). EFH Amendment 3 amends each of the seven Council FMPs -shrimp, red drum, reef fish, coastal migratory pelagic resources, coral and coral reefs, stone crab, and spiny lobster- to describe and identify essential fish habitat (EFH); minimize to the extent practicable the adverse effects of fishing on EFH; and encourage conservation and management of EFH. This final rule establishes additional habitat areas of particular concern (HAPCs), restricts fishing activities within HAPCs to protect EFH, and requires a weak link in bottom trawl gear to protect EFH. The intended effect of this final rule is to facilitate long-term protection of EFH and, thus, better conserve and manage fishery resources in the Gulf of Mexico.

DATES: This final rule is effective January 23, 2006, except for § 622.34(q), which is effective January 24, 2006.

ADDRESSES: Copies of the Final Regulatory Flexibility Analysis (FRFA) are available from Peter Hood, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727–824–5305; fax: 727–824–5308; e-mail: *Peter.Hood@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone: 727–551–5728; fax: 727–824–5308; e-mail: *Peter.Hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: EFH Amendment 3 addresses fisheries under the FMPs for coral and coral reef resources, coastal migratory pelagics, red drum, reef fish, shrimp, spiny lobster, and stone crab. The FMPs were prepared by the Council, except for the FMPs for coastal migratory pelagics and spiny lobster that were prepared jointly by the South Atlantic and Gulf of Mexico Fishery Management Councils. All of these FMPs, except the spiny lobster and stone crab FMPs, are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. The Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic is implemented by regulations at 50 CFR part 640. The Fishery Management Plan for the Stone Crab

Fishery of the Gulf of Mexico is implemented by regulations at 50 CFR part 654.

NMFS published a notice of availability for EFH Amendment 3 on September 15, 2005, and requested public comment on the amendment (70 FR 54518). On September 26, 2005, NMFS published the proposed rule to implement EFH Amendment 3 and requested public comment on the proposed rule (70 FR 56157). NMFS approved EFH Amendment 3 on December 12, 2005. The rationale for the measures in EFH Amendment 3 is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

Comments and Responses

Following is a summary of the comments received on EFH Amendment 3 and the proposed rule along with NMFS' responses.

Comment 1: Restrictions on anchoring in the Stetson, East Flower Garden, West Flower Garden, and McGrail Banks HAPCs should be constrained to only those areas where coral reefs are present, and not areas within the HAPCs where corals are not present.

Response: As stated in the amendment, the restrictions on the majority of the areas encompassed within East Flower Garden, West Flower Garden, and Stetson Banks HAPCs are consistent with restrictions already imposed by the statutes governing the Flower Garden Banks National Marine Sanctuary (Sanctuary), which has jurisdiction for these areas. The rationale for slightly larger HAPC boundaries is based on recent bathymetric and biological surveys that incorporate the entire physical area of these geological features and that serve as the basis for new boundaries for the Sanctuary that will be proposed in the near future.

McGrail Bank, although not managed by the Sanctuary, has extensive growth of reef-building corals. This bank runs linearly from the southeast to the northwest. To maximize the protection of these corals, north-south and east-west boundaries capturing the southeast and northwest extent of the bank were selected by the Council and NMFS to aid in enforcement of the area restrictions, simplify boundaries for the vessel operators to whom the restrictions apply, and maintain consistency with the boundary orientation of other northern Gulf of Mexico HAPCs.

Comment 2: Longline gear and bottom trawls should be restricted because they damage other fisheries.

Response: NMFS recognizes that these gears can damage habitats of some federally managed fishery species. Accordingly, the regulations implemented through this final rule will further restrict where and how these gear types can be used. NMFS believes these regulations restrict these gear types to the extent justified by the supporting analyses.

Comment 3: Longline fishing and anchoring restrictions in the entire Pulley Ridge HAPC would be harmful to many commercial fishermen dependent on this area.

Response: As described in the environmental impact statement (EIS) for this amendment, although coral reefs are not common in the Gulf of Mexico, they support a wide array of finfish and invertebrate species. Many of these species, such as groupers and snappers, are important to Gulf of Mexico fisheries. As stated in the amendment and in the EIS, fishermen target these areas because of the abundance of these species. However, fishing activities such as the use of longlines and anchoring can damage coral reefs. Longlines, particularly during retrieval, can snag corals, thus breaking or upending them. Dragging and pulling anchors and anchor chains through corals has been documented to break and crush coral formations. Therefore, limiting these activities is necessary to protect this important habitat.

The deepest hermatypic coral reef known in American waters is located in the southern portion of the Pulley Ridge HAPC. The northern area of the HAPC does not contain living corals, but does show a unique mixed hard bottom habitat. Because the fishing restrictions outlined in this rule are designed to protect corals, only part of the southern half of this HAPC where the corals are abundant was designated for gear and anchoring restrictions. The Council selected this area because it provided the best balance between protecting corals while not resulting in substantial economic hardship to any particular fishery or fishing community.

Classification

The Administrator, Southeast Region, NMFS, determined that EFH Amendment 3 is necessary for the conservation and management of the shrimp, red drum, reef fish, coastal migratory pelagic resources, coral and coral reefs, stone crab, and spiny lobster fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA that incorporates the initial regulatory flexibility analysis (IRFA) and a summary of the analyses completed to support the action. No significant issues were raised by public comments regarding the IRFA or the economic impacts of the rule. A summary of the FRFA follows.

This action will identify EFH, identify HAPC, and establish gear and fishing restrictions to protect this habitat. The purpose of this action is to prevent, minimize, or mitigate adverse fishing impacts to EFH and HAPC. The Magnuson-Stevens Act, as amended, provides the statutory basis for the rule.

No significant issues were raised by public comments in response to the IRFA or the economic impacts of the rule. Therefore, no changes were made in the final rule as a result of such comments.

No duplicative, overlapping, or conflicting Federal rules have been identified.

All commercial and for-hire fishing operations in the Gulf of Mexico could be affected by the final rule either directly by altering their gear usage or fishing locations, or indirectly by affecting fishery-wide harvest patterns. These commercial fishing operations include the shrimp, reef fish, spiny lobster, and stone crab fisheries. Participation in multiple fisheries by individual entities is common. The mobile and shallow depth-related nature of fishing for pelagic species should exclude those operations that exclusively fish for these species from the effects of the final rule. However, operations that fish for both pelagic and bottom species will be captured in the following discussion.

The Small Business Administration (SBA) defines a small business as one that is independently owned and operated and not dominant in its field of operation, and has annual receipts not in excess of $3.5 million in the case of commercial harvesting entities or $6.0 million in the case of for-hire entities, or has fewer than 500 employees in the case of fish processors, or fewer than 100 employees in the case of fish dealers.

The number of shrimp vessels operating in the Gulf of Mexico in the federal shrimp fishery is estimated to be approximately 2,951 vessels, while the number of smaller shrimp boats operating in state waters is estimated at less than 10,000. However, many of these shrimp fishing operations are not currently fishing due to a combination of poor economic conditions in the fishery and the destruction of vessels and infrastructure by hurricanes.

Detailed economic and social information has not been collected from Gulf shrimp fishermen for over 10 years, although a socioeconomic survey of the shrimp fishery is presently underway. The historical estimate of average gross revenues for shrimp vessels is approximately $82,000. Given the economic conditions currently experienced by the fishery, present average revenues are likely substantially less. Although there are several individuals or corporations that own and operate more than one vessel in the shrimp fishery, their actual number and size is not known.

There are approximately 1,145 vessels permitted to fish in the commercial reef fish fishery of the Gulf of Mexico. An average reef fish vessel is estimated to generate revenues of approximately $65,000. Average revenue performance within the fleet varies, however, depending upon the gear utilized and the area fished, ranging from a low of approximately $24,000 for vertical line vessels fishing in the eastern Gulf to $117,000 for bottom longline vessels fishing Gulf-wide.

In 2001, 2,235 fishermen possessed a spiny lobster trap certificate. Total revenues in the 2001 fishery were approximately $15 million, or an average of less than $7,000 per fisherman. Landings in 2001 were markedly lower than historical performance. Using peak revenues of approximately $30 million in 1999 and the same number of fisherman results in average revenues of still less than $14,000 per participant.

From 1985 to 1994, an average of 720 fishing craft operated in the stone crab fishery. Of these craft, an average of 234 were vessels greater than 5.0 net tons (4.5 net metric tons), and 486 were smaller boats. More recent estimates are not available. The highest annual total ex-vessel revenues from stone crab landings were registered in 1997 at $31.9 million, or an average of approximately $44,000 per vessel. On the assumption that the majority of harvests are made by the larger vessels, if all landings are attributed to the average of 234 participating larger vessels, then the average gross revenue would amount to about $136,427.

There are approximately 1,857 vessels with for-hire moratorium permits in the Gulf of Mexico, encompassing both charter and headboat operations. On average, charter boats are estimated to generate gross revenues ranging from $58,000 in the eastern Gulf to $81,000 in the western Gulf, or an overall average of $64,000. Headboats are estimated to generate gross revenues ranging from $281,000 in the eastern Gulf to $550,000 in the western Gulf, or an overall average of $400,000.

Fish dealers may also be affected by the measures in this final rule to the extent that the measures affect harvests. There are 227 Federally permitted reef fish dealers in the Gulf region. Average employment information per reef fish dealer is not known. Although dealers and processors are not synonymous entities, total employment in 1997 for reef fish processors in the entire Southeast was estimated at approximately 700 individuals, both part- and full-time. It is assumed all processors must be dealers, yet a dealer need not be a processor. Further, processing is a much more labor-intensive exercise than dealing. Therefore, given the employment estimate for the processing sector, it is assumed that all reef fish dealers are small businesses.

In 2002, 626 dealers were identified in the Gulf of Mexico shrimp fishery. This figure was a substantial increase from 1999–2001 when 310 to 320 dealers typically operated in the fishery. The increase, however, is believed to represent an attempt by more shrimp fishermen to market their product directly in response to depressed market conditions. Similar to the reef fish sector, employment data on shrimp dealers are not available. Total employment in the shrimp processing sector in 2002, however, was approximately 4,300 individuals across 74 firms, with the largest processor employing less than 500 individuals. Thus, as in the reef fish sector, all shrimp dealers are assumed to be small business entities.

Based on the SBA benchmark standards and the gross revenue and employment profiles presented above for the various fisheries, all commercial and for-hire fishing vessels and reef fish and shrimp dealers potentially affected by the final rule are considered small entities.

None of the measures considered in this rule will alter existing reporting and recordkeeping requirements. None of the compliance requirements will require additional professional skills.

The final rule could directly or indirectly affect all commercial and for-hire entities that operate in the Gulf of Mexico. All of these entities are considered small business entities. The final rule will, therefore, affect a substantial number of small entities.

The outcome of ''significant economic impact'' can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is, do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All the business operations affected by the rule are considered small business entities, so the issue of disproportionality does not arise in the present case.

The profitability question is, do the regulations significantly reduce profit for a substantial number of small entities? The designation of EFH or HAPC will not have any direct effect on fishing activity or profits because designation does not impose fishing restrictions. The anchoring prohibition will primarily affect vessels using vertical lines over the live coral areas of Pulley Ridge, the East and West Flower Gardens, and the McGrail Bank. Landings data do not provide precise harvest or fishing locations, and the proposed restricted areas generally lie within larger geographical statistical grids. Total harvests from the grid within which Pulley Ridge lies (NMFS Statistical Area 2) accounted for only 3.1 percent of average annual total reef fish harvests from 2000–2002 and, although not quantified, similar results are expected for the other protected areas. Because Pulley Ridge and other protected areas do not encompass the entirety of the statistical areas within which they lie, any harvest reduction attributed to the anchoring restriction is expected to be less than the total area contribution.

The prohibition on the use of bottom trawls, bottom longlines, and buoy gear will primarily affect fishermen using these gears in the coral areas of Pulley Ridge. As previously stated, the coral areas within Pulley Ridge lie completely within NMFS Statistical Area 2. Logbook data for the entire area show that the value of all longline reef fish and shark landings from 2000 through 2003 averaged $662,000, or 4.1 percent of the Gulf-wide total for these species. However, it is not anticipated that these landings and revenues will be removed from the fishery because it is expected that most, if not all, of this fishing effort will relocate to adjacent areas where fishing activity already exceeds that of Statistical Area 2. This relocation may have some minor, but unquantifiable, effect on fishing costs. Relocation of buoy gear fishing will similarly be expected to affect fishing costs. However, it is unknown how much, if any, buoy gear fishing occurs in the proposed protected areas.

The prohibition on bottom trawls is not expected to affect fishing behavior because trawl fishermen are expected to currently avoid these areas because shrimp are generally not abundant over coral, and the costs associated with gear

entanglement and damage is not consistent with efficient trawling activity.

It is not anticipated that any trap fishermen (fish, lobster, or stone crab) will be impacted by the rule because this gear is not believed to be utilized to any significant degree in the restricted areas.

The requirement for a weak link in the tickler chain of bottom trawls used over all habitats is expected to have minor impacts on gear costs and may reduce harvests and increase costs if gear is lost due to entanglement and link separation. Successful trawling operation encourages the avoidance of entanglements. A weak link may increase this behavior, potentially changing where trawling occurs, costs of operation, and harvest rates. It is not possible, however, to quantify these effects.

Several alternatives were considered to the gear restrictions intended to prevent, minimize, or mitigate adverse fishing impacts on the essential fish habitat. The no action alternative would have eliminated the potential adverse impacts of the rule but would not achieve the Council's objectives.

The second alternative to the gear restrictions would have prohibited bottom trawling over coral reefs, required aluminum doors on trawls, limited the length and deployment rate (number of sets per day) of bottom longline sets on hard bottom, required circle hooks on vertical lines and limited sinker weights, and required buoys on anchors. This alternative lacked the habitat protection afforded by the anchoring and trap/pot prohibitions of the final rule and would not, therefore, have achieved the habitat protection of the final rule. The Council also concluded that the longline set and sinker restrictions were impractical and would have increased the adverse economic impacts to fishery participants over the final rule. In total, this alternative would not have met the Council's objectives of providing practical habitat protection while minimizing adverse economic impacts.

The third alternative contained all the provisions of the second alternative and would have additionally limited tickler chains, headropes, and vessel length for trawl vessels, and prohibited trotlines when using traps or pots. Although this alternative would have increased the habitat protection over the second alternative, this alternative still would not have included the full extent of the habitat protection afforded by the anchoring and trap/pot prohibitions fo the final rule. Further, the adverse economic impacts associated with the impractical longline set and sinker restrictions of the second alternative would not be reduced. Thus, this alternative would still not have met the Council's objectives of providing practical habitat protection while minimizing adverse economic impacts.

The fourth alternative would have increased the headrope and vessel length restrictions of the third alternative and prohibited the use of tickler chains on all bottoms; the use of all traps, pots, bottom longline, and buoy gear on coral reef; and the use of anchors on coral. While this alternative would have increased the protection of habitat relative to the second and third alternatives, this alternative would have also unnecessarily reduced the efficiency of trawl gear, thereby increasing the adverse impacts of the action on fishery participants.

The fifth alternative would have prohibited the use of all gear and fishing activities that have adverse impacts on essential fish habitat in the EEZ. This alternative would have resulted in the greatest protection to the environment. However, since virtually all fishing methods except for surface trawling have the potential to result in adverse impacts on essential fish habitat, this alternative would result in whole-scale elimination of fisheries, with severe adverse economic impacts. The Council determined that such protection would be greater than necessary to protect the environment while maintaining sustainable fisheries. This alternative, therefore, exceeded the objectives of the action and would impose an excessive economic burden on fishery participants.

The final alternative would have established restrictions applicable to fishing over live hard bottom and would have limited the length and deployment rate of bottom longline sets, prohibited trotlines when using traps or pots, prohibited all anchoring, and enacted a seasonal closure for shrimp trawl fishing. The longline and anchoring provisions of this alternative are impractical, and the longline provisions could reduce the efficiency of vessels, thereby increasing adverse economic impacts without clearly demonstrable benefits. Further, a seasonal shrimp trawling closure is difficult to justify given the inability to determine, absent vessel monitoring systems, exactly where fishing effort occurs and the apparent low fishing pressure in the areas that are the most likely candidates for closure. Overall, this alternative would not meet the Council's objectives as well as the final rule.

Copies of the FRFA are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 20, 2005.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.31, paragraph (m) is added to read as follows:

§ 622.31 Prohibited gear and methods.

* * * * *

(m) *Weak link.* A bottom trawl that does not have a weak link in the tickler chain may not be used to fish in the Gulf EEZ. For the purposes of this paragraph, a weak link is defined as a length or section of the tickler chain that has a breaking strength less than the chain itself and is easily seen as such when visually inspected.

■ 3. In § 622.34, paragraph (d) introductory text, and paragraphs (d)(1), and (j) are revised; paragraph (q) is reserved; and paragraphs (r), (s), and (t) are added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(d) *Tortugas marine reserves HAPC.* The following activities are prohibited within the Tortugas marine reserves HAPC: Fishing for any species and bottom anchoring by fishing vessels.

(1) *EEZ portion of Tortugas North.* The area is bounded by rhumb lines connecting the following points: From point A at 24°40′00″ N. lat., 83°06′00″ W. long. to point B at 24°46′00″ N. lat., 83°06′00″ W. long. to point C at 24°46′00″ N. lat., 83°00′00″ W. long.; thence along the line denoting the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11434, to point A at 24°40′00″ N. lat., 83°06′00″ W. long.

* * * * *

(j) *West and East Flower Garden Banks HAPC.* The following activities are prohibited year-round in the HAPC: Fishing with a bottom longline, bottom trawl, buoy gear, dredge, pot, or trap and bottom anchoring by fishing vessels.

(1) *West Flower Garden Bank.* West Flower Garden Bank is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°55′22.8″	93°53′09.6″
B	27°55′22.8″	93°46′46.0″
C	27°49′03.0″	93°46′46.0″
D	27°49′03.0″	93°53′09.6″
A	27°55′22.8″	93°53′09.6″

(2) *East Flower Garden Bank.* East Flower Garden Bank is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°59′14.4″	93°38′58.2″
B	27°59′14.4″	93°34′03.5″
C	27°52′36.5″	93°34′03.5″
D	27°52′36.5″	93°38′58.2″
A	27°59′14.4″	93°38′58.2″

* * * * *

(r) *Pulley Ridge HAPC.* Fishing with a bottom longline, bottom trawl, buoy gear, pot, or trap and bottom anchoring by fishing vessels are prohibited year-round in the area of the HAPC bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°58′18″	83°38′33″
B	24°58′18″	83°37′00″
C	24°41′11″	83°37′00″
D	24°40′00″	83°41′22″
E	24°43′55″	83°47′15″
A	24°58′18″	83°38′33″

(s) *Stetson Bank HAPC.* Fishing with a bottom longline, bottom trawl, buoy gear, pot, or trap and bottom anchoring by fishing vessels are prohibited year-round in the HAPC, which is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°10′38.3″	94°18′36.5″
B	28°10′38.3″	94°17′06.3″
C	28°09′18.6″	94°17′06.3″
D	28°09′18.6″	94°18′36.5″
A	28°10′38.3″	94°18′36.5″

(t) *McGrail Bank HAPC.* Fishing with a bottom longline, bottom trawl, buoy gear, pot, or trap and bottom anchoring by fishing vessels are prohibited year-round in the HAPC, which is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°59′06.0″	92°37′19.2″
B	27°59′06.0″	92°32′17.4″
C	27°55′55.5″	92°32′17.4″
D	27°55′55.5″	92°37′19.2″
A	27°59′06.0″	92°37′19.2″

[FR Doc. 05–24416 Filed 12–20–05; 1:48 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 246
Friday, December 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 VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AH21

Total Disability Ratings Based on Inability of the Individual To Engage in Substantially Gainful Employment

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of proposed rule.

SUMMARY: In a document published in the **Federal Register** at 66 FR 49886 on October 1, 2001, the Department of Veterans Affairs (VA) proposed to amend those portions of its adjudication regulations and its Schedule for Rating Disabilities dealing with the issue of total disability ratings based on inability of the individual to engage in substantially gainful employment in claims for service-connected compensation or non-service-connected pension. This document withdraws that proposed rule.

DATES: The proposed rule is withdrawn as of December 23, 2005.

FOR FURTHER INFORMATION CONTACT: Beth Easter, Consultant, Policy and Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Ave., NW., Washington, DC 20420, telephone (202) 273–7141.

SUPPLEMENTARY INFORMATION: The purpose of VA's notice of proposed rulemaking was to clarify the procedures and substantive standards for determining whether a veteran's disabilities, although they do not meet the schedular requirements for a total disability rating, nonetheless prevent him or her from engaging in substantially gainful employment. The intended effect of the rulemaking was to ensure consistency of decisions concerning claims for total disability ratings based upon individual unemployability. VA has carefully considered the issues relating to the payment of benefits under the proposed rule and determined that it does not accomplish the stated purpose or intended effect. Accordingly, VA is withdrawing the proposal and is developing a new proposal, which it intends to publish at a later date.

Approved: December 14, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

[FR Doc. E5–7758 Filed 12–22–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900–AM29

Accreditation of Service Organization Representatives and Agents

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations governing accreditation of representatives of claimants for veterans' benefits. These proposed changes would require that recognized organizations periodically recertify the qualifications of accredited representatives, and require that VA is notified when a recognized organization requests cancellation of a representative's accreditation based upon misconduct or lack of competence, or if a representative resigns to avoid cancellation of accreditation for misconduct or lack of competence. The proposed changes would also require that accredited claims agents periodically reestablish their good character and reputation and qualifications to assist claimants for VA benefits. We would also clarify that the authority to cancel accreditation includes the authority to suspend accreditation for a period of time. The purpose of these proposed changes is to ensure that claimants for veterans' benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims.

DATES: Comments must be received on or before February 21, 2006.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail through *www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AM29.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Michelle D.D. Bernstein, Staff Attorney, Office of General Counsel (022G), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6315. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Section 5902 of title 38, United States Code, authorizes the Secretary of Veterans Affairs to recognize representatives of approved organizations for the preparation, presentation, and prosecution of claims under laws administered by the Secretary. Section 5904 of title 38, United States Code, authorizes the Secretary to recognize any individual as an agent or attorney for the preparation, presentation, and prosecution of claims under laws administered by the Secretary. It further authorizes the Secretary to require such individuals to show that they are of good moral character and in good repute, are qualified to render claimants valuable service, and otherwise are competent to assist claimants in presenting claims as a prerequisite to recognition. Section 5901 of title 38, United States Code, prohibits an individual from acting as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by the Secretary, unless such individual has been recognized for such purposes by the Secretary. The purpose of the regulation of representatives is to assure that claimants for Department of Veterans Affairs (VA) benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for such benefits. See 38 CFR 14.626.

The Secretary has promulgated regulations specifying criteria that must be met for an individual to be approved as an accredited representative through a recognized organization or as an accredited claims agent. Pursuant to 38 CFR 14.629(a), recognized organizations

must certify that each prospective representative is of good character and reputation and has demonstrated an ability to represent claimants. In addition, the organization must certify that the prospective representative is a member in good standing or paid employee of the organization or accredited and functioning as a representative of another recognized organization. Individuals desiring accreditation as an agent must establish their good character and reputation and qualifications to assist claimants in the preparation of their claims under 38 CFR 14.629(b). They must file a specific application (VA Form 21a) containing particular information and achieve a passing score on a written VA examination. If, subsequent to having been certified or accredited, a representative or agent fails to meet any of these criteria, they would no longer be qualified to represent claimants for veterans' benefits.

After a period of time, a representative may no longer have the requisite ties to the certifying organization through membership or employment to qualify as an accredited representative, the representative may not have maintained the skills required for effective representation, or information may have come to light concerning the representative's competence or character. Similarly, an agent may not have maintained the skills, competence, or good character required to assist claimants. Consequently, we propose to require that recognized organizations periodically recertify the qualifications of the accredited representatives of the organization and that agents reestablish their character, reputation and qualifications to assist VA benefits claimants by refiling VA Form 21a and retaking the written examination. Recertification of representatives would be accomplished using the same VA Form 21 that is currently used for requests for accreditation, except that only the certifying official of the recognized organization, not the individual representatives, would be required to sign the form for purposes of recertification. The organization would file the form with the VA Office of General Counsel not later than five years after initial accreditation of the representative by VA or the most recent recertification of the representative by the organization. Thus, as an initial requirement under this rule, recognized organizations would be required to recertify the character and qualifications of any representative that received VA accreditation five or more years before the effective date of the rule. Recertification will ensure that claimants for VA benefits continue to have responsible, qualified representation. Requiring recertification every five years strikes an appropriate balance between the need to assure continuing qualifications and the need to avoid unnecessary paperwork for organizations and the Department.

Pursuant to 38 CFR 14.633(a), VA may cancel the accreditation of a representative at the request of the organization that certified the individual to VA. Under current regulations, when an organization requests that VA cancel the accreditation of one of its representative's, the organization need not disclose the reason for requesting cancellation. Individuals may be accredited through more than one organization, and when one organization requests cancellation of a representative's accreditation for cause, such as misconduct or incompetence, it is desirable that VA and the other organization or organizations through which the individual is accredited know the basis for the cancellation, so that they may determine whether the individual should remain accredited through the other organization or organizations. Further, the individual may later seek accreditation through another organization, and this information would be valuable to VA in determining whether to approve the accreditation.

Therefore, we propose to add a requirement to 38 CFR 14.633(a) that any recognized organization requesting that a particular representative's accreditation be cancelled inform VA if the reason for such request for cancellation is misconduct or lack of competence on the part of the representative or resignation of the representative to avoid cancellation of accreditation for misconduct or lack of competence. Only if VA learns of any improper conduct or incompetence on the part of an accredited representative can it investigate and, if necessary, take action to terminate accreditation through other organizations to assure that claimants have responsible, qualified representation.

In addition, we propose to clarify that the authority to cancel accreditation includes the authority to suspend accreditation for a period of time. We consider our current authority to cancel accreditation to include the lesser sanction of suspension, and this amendment would make that clear. Suspension may be appropriate in cases involving extenuating circumstances or where misconduct is not so severe as to warrant the harsher penalty of permanently canceling the authority to represent claimants.

Finally, we propose to remove the requirement in 38 CFR 14.633 that we maintain records for three years in a case that has been under inquiry or when accreditation has been canceled or suspended because we do not limit our maintenance of such records.

Paperwork Reduction Act of 1995

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this proposed regulation are revisions of existing collections under Office of Management and Budget (OMB) Control No. 2900–0018, which pertains to the application for accreditation as a service organization representative, and OMB Control No. 2900–0605, which pertains to the application for accreditation as a claims agent. Comments on the information collections included in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Regulations Management (00REG1)), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail through *www.Regulations.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AM29,'' and must be received on or before February 21, 2006.

Comments by the public on proposed collections of information will help VA in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections 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.

OMB assigns control numbers to collections of information it approves. VA 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.

Title: Accreditation of Service Organization Representatives and Agents.

Summary of collection of information:

- Section 14.629(a)—Under this section, VA requires the individual and organization seeking accreditation to provide basic information demonstrating eligibility for accreditation and VA requires the sponsoring recognized organization to certify that the individual is of good character and is qualified to present claims. VA proposes to require recognized veterans service organizations to recertify the qualifications of accredited representatives of the organization every five years.
- Section 14.629(b)—Under this section, VA requires individuals seeking accreditation to establish their good character, reputation, and qualifications to present claims. VA proposes to require agents to reestablish their good character and qualifications by filing VA Form 21a and passing a written VA examination every five years.
- Section 14.633(a)—Under this section, VA proposes to require recognized veterans service organizations to inform VA of the reason for a request to cancel a representative's accreditation under certain circumstances.

Description of need for information and proposed use of information: The collections of information are necessary to ensure that claimants for VA benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims. VA will use this information to determine whether particular individuals are qualified to represent claimants before VA.

Description of likely respondents: Individuals applying for accreditation as agents and service organization representatives and recognized service organizations that request accreditation of representatives or that have representatives accredited to represent claimants for VA benefits.

Estimated number of respondents: For recertifications under 38 CFR 14.629(a), we anticipate receiving 2,360 responses in fiscal year 2006. For recertifications under 38 CFR 14.629(b), we anticipate receiving 8 responses in fiscal year 2006. Under 38 CFR 14.633(a), we anticipate receiving no more than 20 responses in fiscal year 2006.

Estimated frequency of responses: For recertifications under 38 CFR 14.629(a) and (b), once every five years. Under 38 CFR 14.633(a), on occasion.

Estimated average burden per response: For recertifications under 38 CFR 14.629(a), 10 minutes. Under 38 CFR 14.629(b), 10 minutes. Under 38 CFR 14.633(a), 30 minutes.

Estimated total annual reporting burden: For recertifications under 38 CFR 14.629(a), 393 hours in fiscal year 2006. Under 38 CFR 14.629(b), no more than 2 hours in fiscal year 2006. Under 38 CFR 14.633(a), 10 hours in fiscal year 2006.

Executive Order 12866—Regulatory Planning and Review

VA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

VA concludes that this proposed rule is a significant regulatory action under the Executive Order since it raises novel legal and policy issues under Section 3(f)(4). VA concludes, however, that this proposed rule does not meet the significance threshold of $100 million effect on the economy in any one year under Section 3(f)(1). VA requests comments regarding this determination, and invites commenters to submit any relevant data that will assist the agency in estimating the impact of this rulemaking.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This proposed rule would affect the 87 veterans service organizations and 42 agents recognized by VA to represent benefit claimants. However, it would not have a significant economic impact on these organizations because it would only impose reporting requirements the costs of which would not be significant. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

There are no Federal Domestic Assistance programs associated with this proposal.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

Approved: September 12, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 14 as follows:

PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

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

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5902–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

2. Revise § 14.629(a) introductory text, (b)(1) introductory text, and (b)(2) to read as follows:

§ 14.629 Requirements for accreditation of service organization representatives; agents; and attorneys.

* * * * *

(a) *Service Organization Representatives.* A recognized organization shall file with the Office of

the General Counsel VA Form 21 (Application for Accreditation as Service Organization Representative) for each person it desires accredited as a representative of that organization. For each of its accredited representatives, a recognized organization shall complete and file with the Office of the General Counsel, not later than five years after initial accreditation through that organization or the most recent recertification by that organization, VA Form 21 to certify that the representative continues to meet the criteria for accreditation specified in paragraph (a)(1), (2) and (3) of this section. In recommending a person, the organization shall certify that the designee:

* * * * *

(b) * * * (1) An individual desiring accreditation as an agent must establish and demonstrate that he or she is of good character and reputation and is qualified to render assistance to claimants in the presentation of their claims(s). All accredited agents must seek reaccreditation every five years. An individual desiring accreditation or reaccreditation as an agent must file a completed application with the Office of the General Counsel on VA Form 21a on which the applicant submits the following:

* * * * *

(2) Applicants for accreditation or reaccreditation must achieve a score of 75 percent or more on a written examination administered by VA as a prerequisite to accreditation and must achieve such score at least every five years to maintain accreditation. No applicant shall be allowed to sit for the examination more than twice in any 6-month period.

(Authority: 38 U.S.C. 501(a), 5940)

* * * * *

3. Section 14.633 is amended by:

a. Revising paragraphs (a) and (e)(2)(i).

b. In paragraphs (b), (c) introductory text, and (d), adding ''or suspended'' after ''canceled'' each time it appears.

c. In paragraph (e)(1), removing ''and maintain the record for 3 years''.

d. In paragraph (e)(2)(ii), adding ''or suspension'' after ''cancellation'' and ''or suspended'' after ''cancel'' each time it appears.

e. In paragraph (g), adding ''or suspension or continuation of suspension'' after ''termination'', and by removing the last sentence of the paragraph.

The revisions read as follows:

§ 14.633 Termination of accreditation of agents, attorneys, and representatives.

(a) Accreditation may be canceled at the request of an agent, attorney, representative, or canceled or suspended at the request of an organization. When an organization requests cancellation of the accreditation of a representative due to misconduct or lack of competence on the part of the representative or because the representative resigned to avoid cancellation of accreditation for misconduct or lack of competence, the organization shall inform VA of the reason for the request for cancellation and the facts and circumstances surrounding any incident that led to the request.

* * * * *

(e) * * *

(2) * * *

(i) As to representatives, suspend accreditation immediately and notify the representative and the representative's organization of the interim suspension and of an intent to cancel or continue suspension of accreditation. The notice to the representative will also state the reasons for the interim suspension and impending cancellation or continuation of suspension, and inform the representative of a right to request a hearing on the matter or to submit additional evidence within 10 working days following receipt of such notice. Such time may be extended for a reasonable period upon a showing of sufficient cause.

* * * * *

[FR Doc. E5–7759 Filed 12–22–05; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP–2005–0322; FRL–7751–3]

Benzaldehyde, Captafol, Hexaconazole, Paraformaldehyde, Sodium dimethyldithiocarbamate, and Tetradifon; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke specific tolerances and tolerance exemptions for residues of the insecticides paraformaldehyde and tetradifon; fungicides captafol, hexaconazole, and sodium dimethyldithiocarbamate; and bee repellant benzaldehyde. EPA canceled food use registrations or deleted food uses from registrations following requests for voluntary cancellation or use deletion by the registrants, or non-payment of registration maintenance fees. Also, stakeholders have withdrawn their support for import tolerances for captafol and hexaconazole. EPA expects to determine whether any individuals or groups want to support these tolerances. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. The regulatory actions proposed in this document pertain to the proposed revocation of 39 tolerances and tolerance exemptions of which 38 would be counted as tolerance reassessments toward the August 2006 review deadline.

DATES: Comments must be received on or before February 21, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP–2005–0322, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Agency Web Site*: EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.
- *E-mail*: Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number EPA-HQ-OPP–2005–0322.
- *Mail*: 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 EPA-HQ-OPP–2005–0322.
- *Hand Delivery*: 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 EPA-HQ-OPP–2005–0322. Such deliveries are only accepted during the Docket's normal hours of operation, and

special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP–2005–0322. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the 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:

Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address:*nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. 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/*.

C. What Should I Consider as I Prepare My Comments for EPA?

1.*Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

D. What Can I do if I Wish the Agency to Maintain a Tolerance That the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke certain specific tolerances and tolerance exemptions for residues of the insecticides paraformaldehyde and tetradifon; fungicides captafol, hexaconazole, and sodium dimethyldithiocarbamate; and bee repellant benzaldehyde because these specific tolerances and tolerance exemptions correspond to uses which are no longer current or registered under FIFRA in the United States, or no longer supported as import tolerances. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

1. *Benzaldehyde*. The last active registration for use of benzaldehyde as a bee repellant in the harvesting of honey was canceled in 1991 due to non-payment of the maintenance fee, and therefore the tolerance exemption is no longer needed. EPA is proposing to revoke the tolerance exemption in 40 CFR 180.1229 for residues of benzaldehyde when used as a bee repellant in the harvesting of honey.

2. *Captafol*. The Republic of Indonesia's Indonesian Ministry of Agriculture had commented to a proposed rule to revoke tolerances for captafol and several other pesticides, published in the **Federal Register** of June 9, 1993 (58 FR 32320)(FRL–4183–6). The commenter had stated that the use of captafol was being reevaluated in that country, might undergo a phase out, and requested that EPA not revoke the onion, potato, and tomato tolerances in 40 CFR 180.267. In the **Federal Register** of July 21, 1999 (64 FR 39049)(FRL–6092–7), EPA published a final rule in which it revoked specific captafol tolerances and responded to the 1993 comment received from the Republic of Indonesia by stating that the Agency would not take final action on the three tolerances in 40 CFR 180.267 for residues of captafol on onion, potato, and tomato at that time. In April 2005, EPA determined that captafol has not been registered in Indonesia since 1998. Also, the Indonesian Ministry of Agriculture verified that it no longer has a continuing interest in the three captafol tolerances for importation purposes. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.267 for residues of the fungicide captafol in or on onion, potato, and tomato.

3. *Hexaconazole*. There have been no active U.S. registrations for hexaconazole on banana since 1992. Recently, Syngenta has informed EPA that it has voluntarily chosen to no longer support the hexaconazole tolerance on banana for the purpose of importation. Consequently, the tolerance is no longer needed. Therefore, EPA is proposing to revoke the tolerance in 40 CFR 180.488 for residues of the fungicide hexaconazole in or on banana.

4. *Paraformaldehyde*. The last active registration for paraformaldehyde use as an insecticide for the soil treatment of sugar beets was canceled in 1989 due to non-payment of the maintenance fee, and therefore the tolerance exemptions are no longer needed. EPA is proposing to revoke the tolerance exemptions in 40 CFR 180.1024 for residues of the insecticide paraformaldehyde in or on beet, sugar, roots and beet, sugar, tops, when applied to the soil not later than planting.

5. *Sodium dimethyldithiocarbamate*. The last active registration for use of sodium dimethyldithiocarbamate on melons was canceled in 1993 due to non-payment of the maintenance fee, and therefore the tolerance is no longer needed. EPA is proposing to revoke the tolerance in 40 CFR 180.152 for residues of the fungicide sodium dimethyldithiocarbamate, calculated as zinc ethylenebisdithiocarbamate, in or on melon.

6. *Tetradifon*. The last tetradifon registrations were canceled in 1990 due to non-payment of maintenance fees. Uniroyal Chemical Company (which later became part of Crompton Corporation) had commented to a proposed revocation of tetradifon tolerances published in the **Federal Register** of August 1, 2001 (66 FR 39705)(FRL–6786–4). Uniroyal noted that it had submitted certain studies to EPA in 1998 and 1996, and requested that EPA not revoke any of the tetradifon tolerances in 40 CFR 180.174. In the **Federal Register** of January 24, 2003 (68 FR 3425)(FRL–7187–3), EPA published a final rule and responded to Uniroyal's comment by stating that the Agency would not take final action on the tetradifon tolerances in 40 CFR 180.174 at that time. During follow-up communication, EPA received a letter from Crompton Corporation (now Chemtura Corporation) that it no longer supports retention of the tolerances for tetradifon. Therefore, EPA is proposing to revoke all the tolerances in 40 CFR 180.174 for residues of the insecticide tetradifon in or on apple; apricot; cherry; citron, citrus; crabapples; cucumber; fig; fig, dried fruit; grapefruit; grape; hop, dried; hop, vine; lemon; lime; meat; melon; milk; nectarine; orange, sweet; peach; pear; peppermint; plum, prune, fresh; pumpkin; quince; spearmint, tops; strawberry; tangerine; tea, dried; tomato; and winter squash.

B. What is the Agency's Authority for Taking This Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, 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 exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 et seq.). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances

even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When do These Actions Become Effective?

EPA is proposing that revocation of these tolerances and tolerance exemptions become effective on the date of publication of the final rule in the **Federal Register** because their associated uses have been canceled for several years. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION.**

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of December 8, 2005, EPA has reassessed over 7,820 tolerances. This document proposes to revoke a total of 39 tolerances and tolerance exemptions of which 38 would be counted as tolerance reassessments toward the August 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are The Proposed Actions Consistent With International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standard established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke specific tolerances and tolerance exemptions established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed 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 as required by 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 other 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). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. 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 proposed 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 proposed 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 proposed 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 proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: December 13, 2005.

James Jones,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be 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.

§§ 180.152, 180.174, 180.267, 180.488, 180.1024 and 180.1229 [Removed]

2. Sections 180.152, 180.174, 180.267, 180.488, 180.1024 and 180.1229 are removed.

[FR Doc. E5–7693 Filed 12–22–05; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Chapter I, Subchapter B

[Docket No. PHMSA–91–13289 (FS–1)]

RIN 2137–AC00

Safeguarding Food From Contamination During Transportation

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Withdrawal of notices of proposed rulemaking.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA), the successor agency to the Research and Special Programs Administration (RSPA), is withdrawing the notice of proposed rulemaking published on May 21, 1993, and the supplemental notice of proposed rulemaking published on December 21, 2004. In those notices, the Agency proposed to implement the Sanitary Food Transportation Act of 1990 by amending its regulations to address the safe transportation of food and food products in commerce. On August 10, 2005, the President signed the Sanitary Food Transportation Act of 2005, which transferred authority for regulating the safe transportation of food from the U.S. Department of Transportation to the U.S. Department of Health and Human Services.

FOR FURTHER INFORMATION CONTACT: Helen Engrum, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

I. Background

The Sanitary Food Transportation Act of 1990 (SFTA); required the

Department of Transportation (DOT) to promulgate regulations to promote the safe transportation of food products. (Pub. L. 101–500, 104 Stat. 1213 [Nov. 3, 1990]). Among other requirements, SFTA required DOT, in consultation with the Department of Health and Human Services (HHS), the Department of Agriculture (USDA), and the Environmental Protection Agency, to:

(1) Issue regulations with respect to the transportation of food, food additives, drugs, devices, and cosmetics, as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), in motor vehicles or rail cars that are used to transport either refuse or non-food products that could make the food unsafe as a result of such transportation;

(2) Issue regulations governing the construction and use of cargo tanks and rail cars used to transport food products, including prohibiting the transportation of food products in cargo tanks and rail cars used to transport non-food products that would make the products unsafe; and

(3) Designate and publish a list of non-food products that may not be transported in cargo tanks and tank cars that are also used to transport food products.

II. Current Rulemaking

On May 21, 1993, the Agency published a notice of proposed rulemaking (NPRM) to implement SFTA. (58 FR 29698). Commenters generally opposed the proposals in the NPRM and recommended that DOT defer to the HHS' Food and Drug Administration (FDA) and USDA on food safety issues.

After considering the comments to the NPRM, the Agency concluded the expertise for ensuring the safety of our nation's food supply, including transportation, lies with USDA and FDA. Based on its work with USDA and FDA, DOT determined that the public interest would be more effectively served and better addressed by building on the present statutory authority, existing enforcement and technical expertise, and operational framework already established within USDA and FDA. Implementation of a food transportation safety program under DOT would have required unnecessary duplication of personnel and funds to promulgate regulations and to conduct certain training, research and testing activities. It could result in duplication, overlap, or conflict with current or pending FDA and USDA regulations.

After a thorough review of the alternatives, the Agency issued a supplemental notice of proposed rulemaking (SNPRM) on December 21, 2004 proposing to direct compliance with the existing requirements of FDA and USDA for the sanitary transportation of food. (69 FR 76432). In the SNPRM, the Agency proposed to add a new part 121 to subchapter B of Title 49 of the Code of Federal Regulations to include definitions applicable to the transportation of food and food products and to refer to requirements of USDA (9 CFR parts 1 through 599) and FDA (21 CFR parts 1 through 1299) that apply to persons who offer for transportation or transport food in commerce by motor vehicle or rail car. We also proposed to recommend use of guidance documents and materials promulgated by FDA and USDA related to food transportation safety and security. This approach would have prevented duplication or conflict with existing regulations and would have assured primary responsibility for food safety would rest with FDA and USDA.

In response to the SNPRM, we received approximately 17 comments from food associations, highway and rail associations, freight companies, the Dangerous Goods Advisory Council, and several state governments' departments of agriculture. The majority of comments strongly supported DOT's efforts to implement SFTA by relying on the agencies that are best equipped to address these issues. The commenters agreed safeguarding food and food products from contamination during transportation in commerce is best handled and carried out by USDA and FDA. Several commenters suggested revisions to USDA and FDA requirements to address perceived shortcomings in those regulatory programs. However, such revisions were not proposed and thus are outside the scope of the rulemaking.

III. Sanitary Food Transportation Act of 2005

On August 10, 2005, the President signed the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU; Pub. L. 109–59, 119 Stat. 1144). Subtitle B of Title VII of SAFETEA–LU—the Sanitary Food Transportation Act of 2005—amended the Federal Food, Drug, and Cosmetic Act to assign the regulatory authority for food transportation safety to HHS and to require DOT, in consultation with HHS and USDA to establish procedures for transportation safety inspections to identify suspected incidents of food contamination or adulteration. Accordingly, DOT's responsibilities in this area are limited to (1) developing and implementing a training program for its inspectors that perform commercial motor vehicle or railroad safety inspections, and (2) notifying HHS or USDA, as applicable, of any instances of potential food contamination or adulteration identified during safety inspections. DOT is no longer required to issue regulations applicable to the safe transportation of food.

Accordingly, PHMSA is withdrawing the May 21, 1993 NPRM, and December 21, 2004 SNPRM and terminating this rulemaking docket. Consistent with the re-allocation of food safety responsibilities in SAFETEA–LU, we will continue to work with USDA and FDA on inspection and enforcement issues. To this end, the three agencies plan to enter into a memorandum of understanding to ensure the agencies work together effectively to assure the Nation's food supply is safe and secure, particularly in the distribution channels involving transportation. USDA's Food Safety and Inspection Service (FSIS) and FDA will provide practical information regarding their regulations and activities concerning food safety and security. Further, FSIS and FDA will provide guidance to, and coordinate with, DOT on sharing of significant information resulting from DOT safety inspections. FSIS and FDA will work with DOT to develop standard training for transportation inspectors to enable them to recognize suspected incidents of contamination or adulteration or other potential food safety or security concerns encountered during their inspections and to report these incidents to FSIS or FDA.

Issued in Washington, DC on December 20, 2005, under authority delegated in 49 CFR 1.53(i).

Stacey L. Gerard,

Acting Assistant Administrator/Chief Safety Officer.

[FR Doc. 05–24435 Filed 12–22–05; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 70, No. 246

Friday, December 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

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Technical Assistance for Specialty Crops Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.604.

SUMMARY: The Commodity Credit Corporation (CCC) announces the availability of funding for the 2006 Technical Assistance for Specialty Crops (TASC) Program. The intended effect of this notice is to solicit applications from the private sector and from government agencies for participation in the FY 2006 TASC Program. The TASC Program is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: See paragraph IV.3 below for a detailed description of relevant dates.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., STOP 1042, Washington, DC 20250–1042, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *mosadmin@fas.usda.gov.* Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/tasc/tasc.html.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The TASC Program is authorized by section 3205 of Pub. L. 107–171. TASC regulations appear at 7 CFR part 1487.

Purpose: The TASC Program is designed to assist U.S. organizations by providing funding for private and public sector projects and technical assistance that address sanitary, phytosanitary, and technical barriers that prohibit or threaten the export of U.S. specialty crops. U.S. specialty crops, for the purpose of the TASC Program, are defined to include all cultivated plants, or the products thereof, produced in the U.S., except wheat, feed grains, oilseeds, cotton, rice, peanuts, sugar, and tobacco.

As a general matter, TASC Program projects should be designed to accomplish the following goals:

- Projects should address a sanitary, phytosanitary, or related technical barrier that prohibits or threatens the export of U.S. specialty crops;
- Projects should demonstrably benefit the represented industry and not a specific company or brand; and,
- Projects must address barriers to U.S. specialty crops that are currently available on a commercial basis and for which barrier removal would predominantly benefit U.S. exports.

Examples of expenses that the CCC may agree to reimburse under the TASC Program include, but are not limited to: initial pre-clearance programs, export protocol and work plan support, seminars and workshops, study tours, field surveys, development of pest lists, pest and disease research, database development, reasonable logistical and administrative support, and travel and per diem expenses.

II. Award Information

In general, all qualified proposals received before the specified application deadlines will compete for funding. The limited funds and the range of barriers affecting the exports of U.S. specialty crops worldwide preclude CCC from approving large budgets for individual projects. In prior years, the amount of funding per proposal has ranged from $13,000 to $250,000, the maximum allowed.

Applicants may submit multiple proposals, and applicants with previously approved TASC proposals may apply for additional funding. However, no TASC participant may have more than three approved projects under way at any given time.

The FAS will consider providing either grant funds as direct assistance to U.S. organizations or providing technical assistance on behalf of U.S. organizations, provided that the organization submits timely and qualified proposals. The FAS will review all proposals against the evaluation criteria contained in the program regulations.

Funding for successful proposals will be provided through specific agreements. These agreements will incorporate the proposal as approved by FAS. FAS must approve in advance any subsequent changes to the project. The FAS or another Federal agency may have involvement in the implementation of approved projects.

III. Eligibility Information

1. Eligible Applicants: Any United States organization, private or government, may apply to the program. Government organizations consist of federal, state, and local agencies. Private organizations include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups, and private companies.

Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. organizations, but are not eligible for funding assistance from the program.

2. Cost Sharing or Matching: Although a minimum level of cost share contribution is not required, it is very strongly encouraged in this highly competitive program. If provided, such support may be in the form of cash, goods, or in-kind services which are dedicated to the project by the organization that submitted the proposal, private industry entities, host governments, or foreign third parties.

IV. Application and Submission Information

1. Address to Request Application Package: Organizations can submit applications to the FAS through the Unified Export Strategy (UES) application Internet Web site. Applicants also have the option of submitting electronic versions in the UES format (along with two paper copies) of their applications to the FAS on diskette.

Applicants planning to use the UES Internet-based system must contact the FAS Marketing Operations Staff on (202) 720–4327 to obtain site access information including a user ID and password. The UES Internet-based application, including a Help file containing step-by-step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html.* Applicants are not

required to use the UES, but are strongly encouraged to do so because it reduces paperwork and expedites the FAS processing and review cycle.

Applicants who choose to submit applications on diskette can obtain an application format by contacting the Marketing Operations Staff, phone (202) 720–4327, fax: (202) 720–9361, e-mail: *mosadmin@fas.usda.gov*.

2. Content and Form of Application Submission: All TASC proposals must contain complete information about the proposed projects as described in § 1487.5(b) of the TASC Program regulations. In addition, in accordance with the Office of Management and Budget's issuance of a final policy (68 FR 38402) regarding the use of a universal identifier for all Federal grants and cooperative agreements, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711. Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

3. Submission Dates and Times: TASC funding is limited, and in order to assure sufficient resources are available to meet unanticipated needs during the fiscal year, TASC proposals will, generally, only be evaluated on a semi-annual basis. That is:

- Proposals received prior to, but not later than, 5 p.m. (local time Washington, DC) February 1, 2006, will be considered for funding with other proposals received by that date;
- Proposals received prior to, but not later than, 5 p.m. (local time Washington, DC) July 1, 2006, will be considered for funding with other proposals received by that date;
- Proposals not approved for funding during the applicable review period will be reconsidered for funding after the applicable review period only if the applicant specifically requests such reconsideration in writing, and only if funding remains available.
- Proposals received after 5 p.m. (local time Washington, DC) July 1, 2006, will be considered for funding only if funding remains available.

Notwithstanding the foregoing, a proposal may be submitted for expedited consideration under the TASC Quick Response process if, in addition to meeting all requirements of the TASC program, a proposal clearly identifies a time-sensitive activity. In these cases, a proposal may be submitted at any time for an immediate evaluation.

All proposals will be date stamped upon receipt.

4. Funding Restrictions: Proposals which request more than $250,000 of CCC funding in a given year will not be considered. Proposals to fund projects that exceed three years in duration will not be considered. No TASC participant may have more than three approved projects under way at any given time. Although funded projects may take place in the United States, all eligible projects must specifically address sanitary, phytosanitary, or technical barriers to the export of U.S. specialty crops.

Certain types of expenses are not eligible for reimbursement by the program. For example, program funds shall not be used to reimburse the costs of market research, advertising, or other promotional expenses. CCC will not reimburse unreasonable expenditures or any expenditure made prior to approval of a proposal.

5. Other Submission Requirements: All Internet-based applications must be properly submitted by 5 p.m. (local time in Washington, DC) on February 1, 2006, or July 1, 2006, in order to be considered during the applicable review period.

All applications on diskette (with two accompanying paper copies) and any other applications must be received by 5 p.m. (local time in Washington, DC) on February 1, 2006, or July 1, 2006, at one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, 1250 Maryland Avenue, SW., 4th Floor, Washington, DC 20024.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave. SW., Washington, DC 20250–1042.

V. Application Review Information

1. Criteria: The FAS follows the evaluation criteria set forth in § 1487.6 of the TASC regulations.

2. Review and Selection Process: The FAS will review proposals for eligibility and will evaluate each proposal against the factors described above. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit the proposals and funding recommendations to the Deputy Administrator, Commodity and Marketing Programs. The FAS may, when appropriate to the subject matter of the proposal, request the assistance of other U.S. government experts in evaluating the merits of a proposal.

VI. Award Administration Information

1. Award Notices. The FAS will notify each applicant in writing of the final disposition of its application. The FAS will send an approval letter and agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including levels of funding, timelines for implementation, and written evaluation requirements.

2. Administrative and National Policy Requirements: The agreements will incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant. Interested parties should review the TASC Program regulations found at 7 CFR part 1487 in addition to this announcement.

3. Reporting: TASC participants are subject to the reporting and recordkeeping requirements described in the TASC programming regulations, as well as the requirements described in 7 CFR part 3019. In addition, participants are required to submit a written report(s), on no less than an annual basis, and a final report, each of which evaluates their TASC project using the performance measures presented in the approved proposal.

VII. Agency Contact

For additional information or assistance, contact the Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1042, Washington, DC 20250–1042, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *mosadmin@fas.usda.gov.*

Signed at Washington, DC, on December 15, 2005

W. Kirk Miller,

Administrator, Foreign Agricultural Service, and Acting Vice President, Commodity Credit Corporation.

[FR Doc. 05–24426 Filed 12–22–05; 8:45am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Annual List of Newspapers To Be Used by the Alaska Region for Publication of Legal Notices of Proposed Actions and Legal Notices of Decisions Subject to Administrative Appeal Under 36 CFR 215

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that Ranger Districts, Forests, and the Regional Office of the Alaska Region will use to publish legal notice of all decisions subject to appeal under 36 CFR 215 and to publish legal notices for public comment on actions subject to the notice and comment provisions of 36 CFR 215, as updated on June 4, 2003. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notice of actions subject to public comment and decisions subject to appeal under 36 CFR 215, thereby allowing them to receive constructive notice of a decision or proposed action, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers begins on January 1, 2006. This list of newspapers will remain in effect until it is superseded by a new list, published in the **Federal Register**.

ADDRESSES: Robin Dale, Alaska Region Group Leader for Appeals, Litigation and FOIA; Forest Service, Alaska Region; P.O. Box 21628; Juneau, Alaska 99802–1628.

FOR FURTHER INFORMATION CONTACT: Robin Dale; Alaska Region Group Leader for Appeals, Litigation and FOIA; (907) 586–9344.

SUPPLEMENTARY INFORMATION: This notice provides the list of newspapers that Responsible Officials in the Alaska Region will use to give notice of decisions subject to notice, comment, and appeal under 36 CFR 215. The timeframe for comment on a proposed action shall be based on the date of publication of the legal notice of the proposed action in the newspapers of record identified in this notice. The timeframe for appeal under 36 CFR 215 shall be based on the date of publication of the legal notice of the decision in the newspaper of record identified in this notice.

The newspapers to be used for giving notice of Forest Service decisions in the Alaska Region are as follows:

Alaska Regional Office

Decisions of the Alaska Regional Forester: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska; and the Anchorage Daily News, published daily in Anchorage, Alaska.

Chugach National Forest

Decisions of the Forest Supervisor and the Glacier and Seward District Rangers: Anchorage Daily News, published daily in Anchorage, Alaska.

Decisions of the Cordova District Ranger: Cordova Times, published weekly in Cordova, Alaska.

Tongass National Forest

Decisions of the Forest Supervisor: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska.

Decisions of the Craig District Ranger, the Ketchikan/Misty District Ranger, and the Throne Bay District Ranger: Ketchikan Daily News, published daily except Sundays and official holidays in Ketchikan, Alaska.

Decisions of the Admiralty Island National Monument Ranger, the Juneau District Ranger, the Hoonah District Ranger, and the Yakutat District Ragner: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska.

Decisions of the Petersburg District Ranger: Petersburg Pilot, published weekly in Petersburg, Alaska.

Decisions of the Sitka District Ranger: Daily Sitka Sentinel, published daily except Saturday, Sunday, and official holidays in Sitka, Alaska.

Decisions of the Wrangell District Ranger: Wrangell Sentinel, published weekly in Wrangell, Alaska.

Supplemental notices may be published in any newspaper, but the timeframes for making comments or filing appeals will be calculated based upon the date that notices are published in the newspapers of record listed in this notice.

Dated: December 14, 2005.

Beth G. Pendleton,

Acting Regional Forester.

[FR Doc. 05–24402 Filed 12–22–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) has changed its January meeting from a teleconference to a regular meeting. This meeting will now be held January 20 and 21, 2006 in Wrangell, Alaska. The purpose of the meeting is to review project funding proposals pursuant to Title II, Public Law 106–393, H.R. 2389, the Secure Rural Schools ad Community Self-Determination Act of 2000, also called the ''Payments to States'' Act. The RAC may make funding recommendations at this meeting. Opportunities for public comment on the proposals will be provided at the meeting.

DATES: The meeting will be held Friday, January 20, 2006, from 8 a.m. until 5:15 p.m. (or the conclusion of public testimony), and on Saturday, January 21, 2006, from 8 a.m. until 9:30 a.m.

ADDRESSES: The meeting will be held at the James and Elsie Nolan Center, 1096 Outer Drive, Wrangell, Alaska.

FOR FURTHER INFORMATION CONTACT: Patty Grantham, Petersburg District Ranger, P.O. Box 1328, Petersburg, AK 99833, phone (907) 722–3871, e-mail *pagrantham@fs.fed.us,* or Mark Hummell, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99833, phone (907) 874–2323, e-mail *mhummel@fs.fed.us.* Toll-free conference calling is available for the meeting; please call or e-mail for specific information. For further information on RAC history, operations, and the application process, a Web site is available at *www.fs.fed.us/payments.* Once in the Web site, follow the links to the Wrangell-Petersburg Resource Advisory Committee.

SUPPLEMENTARY INFORMATION: This meeting will focus on the review and discussion of proposals received by the RAC for funding under Title II of the Payments to States legislation (Pub. L. 106–393). New proposals (initial reading) may be discussed. The committee may make recommendations for project funding at the meeting. A field trip to review proposals proximate to the Wrangell, Alaska area may take place. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 16, 2005.

Forest Cole,

Forest Supervisor.

[FR Doc. 05–24398 Filed 12–22–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Province Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Province Advisory Committee will meet on Thursday, January 12, 2006, at the Gifford Pinchot National Forest Headquarters, 10600 NE 51st Circle, Vancouver, WA 98682. The meeting will begin at 9:30 a.m. and continue until 4 p.m.

The purpose of the meeting is to share information on the following programs: Stewardship Authority contracts for restoration of National Forest lands and associated projects; Forest and regional invasive species programs; status of the Gifford Pinchot National Forest road maintenance program, and to share information among members.

All Southwest Washington Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides an opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled for 1:30 p.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on Committee business at any time.

FOR FURTHER INFORMATION CONTACT: Tom Knappenbeger, Public Affairs Officer, at (360) 891–5005, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE., 51st Circle, Vancouver, WA 98682.

Dated: December 19, 2005.

Lynn Burditt,

Deputy Forest Supervisor.

[FR Doc. 05–24404 Filed 12–22–05; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

Comments Must Be Received on or Before: January 22, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and 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 products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and 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 products and 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 products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSNs: Ergo Nylon Ladle
NSN: M.R. 861—Ergo Nylon Ladle
Product/NSNs: Ergo Nylon Spaghetti Server
NSN: M.R. 857—Ergo Nylon Spaghetti Server
NPA: Cincinnati Association for the Blind, Cincinnati, Ohio
Contracting Activity: Defense Commissary Agency (DeCA), Fort Lee, Virginia

Services

Service Type/Location: Medical Transcription (At the following VA Medical Centers and Community Based Outpatient Clinics)
- Fayetteville Community Based Outpatient Clinics, Arkansas
- G. V. (Sonny) Montgomery VA Medical Center, Jackson, Mississippi
- Gulf Coast Community Based Outpatient Clinics, Mississippi
- Overton Brooks VA Medical Center, Shreveport, Louisiana
- VA Medical Center, 1011 Honor Heights Drive, Muskogee, Oklahoma
- VA Medical Center, Biloxi, Mississippi
- VA Medical Center, Fayetteville, Arkansas

NPA: Lighthouse for the Blind of Houston, Houston, Texas
Contracting Activity: VA Medical Center—Overton Brooks, Shreveport, Louisiana

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial U.S. Federal Building and Post Office, 522 North Central Avenue, Phoenix, Arizona
NPA: Goodwill Community Services, Inc., Phoenix, Arizona
Contracting Activity: General Services Administration

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–7763 Filed 12–22–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Effective Date: January 22, 2006.

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 CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov*.

SUPPLEMENTARY INFORMATION: On October 14, and October 28, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 60062, and 62092) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are 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 services to the Government.
2. 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.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Basewide Custodial Services
U.S. Naval Academy Complex, Annapolis, Maryland
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland
Contracting Activity: Naval Facilities Engineering Command, Chesapeake, Washington, DC
Service Type/Location: Custodial Services
West Point Gym, Building 705–C Barry Road
West Point Middle School, Building 705–A Barry Road
West Point, New York
NPA: Occupations, Inc., Middletown, New York
Contracting Activity: Directorate of Contracting, West Point, New York

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.

Sheryl D. Kennerly,
Director, Information Management.

[FR Doc. E5–7764 Filed 12–22–05; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–881)

Certain Malleable Iron Pipe Fittings From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Anvil International, Inc. and Ward Manufacturing, Inc., domestic producers and interested parties in this proceeding, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain malleable iron pipe fittings (''MPF'') from the People's Republic of China (''PRC''). The period of review (''POR'') is December 2, 2003, through November 30, 2004. We have preliminarily determined that sales were made below normal value (''NV''). If these preliminary results are adopted in our final results of review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of MPF during the POR for which the importer–specific assessment rates are above *de minimis*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 23, 2005.

FOR FURTHER INFORMATION CONTACT: Tisha Loeper–Viti at (202) 482–7425 or Ryan Douglas at (202) 482–1277, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2004, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 69 FR 69889 (December 1, 2004). On December 30, 2004, in accordance with 19 CFR 351.213(b)(1), Anvil International, Inc. and Ward Manufacturing, Inc. (collectively, ''the petitioners'') requested that the Department conduct administrative reviews of Beijing Sai Lin Ke Hardware Co., Ltd. (''SLK''), Langfang Pannext Pipe Fitting Co., Ltd. (''Pannext''), Chengde Malleable Iron General Factory (''Chengde''), and SCE Co., Ltd. (''SCE'').

On January 31, 2005, the Department published a notice of initiation of this administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 4818 (January 31, 2005). On September 2, 2005, the Department extended the due date for the preliminary results of this review to December 16, 2005. *See Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 70 FR 52634 (September 2, 2005).

On March 14, 2005, we issued antidumping questionnaires to SLK, Pannext, Chengde and SCE. SLK, Pannext, and SCE submitted timely responses to the Department's questionnaire in April and May 2005. For information on Chengde's response, *see* the *Facts Otherwise Available* section below. We issued supplemental questionnaires in July and November of 2005 to certain respondents, as appropriate, and received timely responses to each.

On August 15, 2005, the petitioners submitted publicly available information for consideration in valuing the factors of production (''FOPs''). SLK and Pannext submitted information for this purpose on August 25, 2005. The petitioners submitted rebuttal comments on September 2, 2005.

Scope of the Order

For purposes of this order, the products covered are certain malleable iron pipe fittings, cast, other than grooved fittings, from the PRC. The merchandise is currently classifiable under item numbers 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Excluded from the scope of this order are metal compression couplings, which are imported under HTSUS number 7307.19.90.80. A metal compression coupling consists of a coupling body, two gaskets, and two compression nuts. These products range in diameter from 1/2 inch to 2 inches and are carried only in galvanized finish. Although HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the scope of this proceeding is dispositive.

Separate–Rates Determination

The Department has treated the PRC as a non–market-economy (''NME'') country in all past antidumping duty investigations and administrative reviews. *See, e.g., Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China*, 69 FR 34130 (June 18, 2004). A designation as an NME country remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Tariff Act of 1930, as Amended (''the Act'').

It is the Department's standard policy to assign all exporters of subject merchandise subject to review in an NME country a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''Sparklers''); and *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'').

SLK, Pannext, and SCE all provided the requested separate–rate information in their responses to our original and supplemental questionnaires. Accordingly, consistent with *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 (April 30, 1996), we performed separate–rates analyses to determine whether each exporter is independent from government control.

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

One of the respondents has placed on the record a number of documents to demonstrate absence of *de jure* control including the ''Foreign Trade Law of the People's Republic of China,'' the ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations,'' and the ''Law of the People's Republic of China on Foreign Capital Enterprises.'' The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. *See, e.g., Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695 (June 7, 2001), unchanged in the final determination. We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondent.

B. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has the authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

SLK and SCE reported that they are wholly owned by foreign entities. Pannext reported that it is privately owned by individual shareholders. Each has asserted the following: (1) There is no government participation in setting export prices; (2) sales managers and authorized employees have the authority to bind sales contracts; (3) they do not have to notify any government authorities of management selections; (4) there are no restrictions on the use of export revenue; (5) each is responsible for financing its own losses. The questionnaire responses of SLK, Pannext, and SCE do not suggest that pricing is coordinated among exporters. During our analysis of the information on the record, we found no information indicating the existence of government control. Consequently, we preliminarily determine that SLK, Pannext, and SCE have met the criteria for the application of a separate rate.

Because we find the information provided by Chengde to be unreliable and Chengde has not cooperated to the best of its ability, we are applying an adverse inference with respect to Chengde for these preliminary results and preliminarily find that it is part of the PRC–wide entity. For further information, *see* the *Facts Otherwise Available* section below.

Export Price

For all sales made by SCE and certain sales made by Pannext,[1] we based the U.S. price on export price (''EP''), in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation and constructed export price (''CEP'') was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States.

For SCE, we deducted foreign inland freight, foreign brokerage and handling, international ocean freight, marine insurance, and U.S. inland freight

[1] In this review, Pannext has reported that all of its sales are EP transactions. For purposes of these preliminary results, however, we are treating Pannext's sales made through its U.S. affiliate as CEP transactions. See the Constructed Export Price section below for further details.

expenses, where appropriate, from the gross unit price, in accordance with section 772(c) of the Act.

For Pannext, we deducted discounts, foreign inland freight, foreign brokerage and handling, international ocean freight, marine insurance, freight surcharges, U.S. brokerage and handling expenses, and U.S. import duties, where appropriate, from the gross unit price, in accordance with section 772(c) of the Act.

Constructed Export Price

In accordance with section 772(b) of the Act, we used CEP methodology when the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. We calculated CEP for all of SLK's sales and, as described further below, for certain U.S. sales made by Pannext through its U.S. affiliate to unaffiliated U.S. customers.

For SLK, we made adjustments to the gross unit price for foreign inland freight, foreign warehousing, foreign brokerage and handling, international ocean freight, marine insurance, U.S. inland freight, U.S. brokerage and handling expenses, U.S. warehousing, and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including commissions, credit expenses, advertising expenses, inventory carrying costs, and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

In this review, Pannext has reported that all of its sales are EP transactions. In the LTFV investigation, however, Pannext reported all sales through its U.S. affiliate as CEP transactions. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 33911 (June 6, 2003), unchanged in the final determination. We find that the sales in the current review follow the same fact pattern as the sales reported as CEP transactions during the LTFV investigation. Pannext reported that its date of sale (*i.e.*, date all material terms of sale are set) is the date of shipment and that its U.S. affiliate issues the official invoice to the unaffiliated U.S. customer upon shipment of the merchandise by Pannext to the U.S. customer. Pannext issues an invoice to the U.S. affiliate (*e.g.*, a transfer–price sale between Pannext and the U.S. affiliate) for the sale typically in an amount that differs from that between the U.S. affiliate and the unaffiliated U.S. customer. According to Pannext, its U.S. affiliate receives the purchase order, order confirmation, and payment from the unaffiliated U.S. customer. In its questionnaire response, Pannext describes its U.S. affiliate as its ''sales headquarters'' that is involved in the marketing and sale of subject merchandise and incurs expenses typically associated with CEP sales (*e.g.*, indirect selling expenses, credit expenses, etc.). Pannext further reported that the chairman of Pannext is also the president of the U.S. affiliate and has the power to contractually bind Pannext to U.S. sales. Based on this information and the fact that Pannext has not demonstrated sufficiently why the Department should not continue to treat these sales as CEP transactions in the current review, we find that the sales made through Pannext's U.S. affiliate should be treated as CEP transactions consistent with the Department's treatment of such sales in the LTFV investigation.

For Pannext's CEP transactions, we made adjustments to the gross unit price for discounts, foreign inland freight, foreign brokerage and handling, international ocean freight, marine insurance, freight surcharges, U.S. brokerage and handling expenses, and U.S. import duties. In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including credit expenses and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Where movement expenses were provided by PRC service providers or paid for in Chinese renminbi, we valued these services using Indian surrogate values. *See Surrogate Values* section below. Where applicable, we used the actual reported expense for those movement expenses provided by market economy (''ME'') suppliers and paid for in an ME currency.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine normal value (''NV'') using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home–market prices, third–country prices, or constructed value and no party has argued otherwise, we calculated NV based on FOP in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Because we are using surrogate–country FOP prices to determine NV, section 773(c)(4) of the Act requires that the Department use values from an ME (surrogate) country that is at a level of economic development comparable to that of the PRC and that is a significant producer of comparable merchandise. We find that India, Indonesia, Sri Lanka, the Philippines, and Egypt are ME countries at a level of economic development comparable to that of the PRC. For a further discussion of our surrogate selection, see the February 14, 2005, memorandum from Ron Lorentzen to Wendy Frankel regarding Request for a List of Surrogate Countries, which is available in the Department's Central Records Unit (''CRU''), room B099 of the main Commerce building. In addition, according to the *Monthly Statistics of the Foreign Trade of India (''MSFTI'')* as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and available from World Trade Atlas, we found that India exported 12,073,802 kilograms of comparable merchandise (*i.e.*, cast iron pipe fittings NESOI or steel based on HTS number 7307.19) during the POR valued at USD 24,535,575. *See World Trade Atlas* at *http://www.gtis.com/wta.htm.* Therefore, we find that India is a significant producer of comparable merchandise. Additionally, we are able to access Indian data that are contemporaneous with this POR. As in the LTFV investigation, we have chosen India as the primary surrogate country and are using Indian prices to value the FOPs. *See* the December 16, 2005, memorandum from Ryan A. Douglas to the File regarding Preliminary Valuation of Factors of Production (''FOP Memo'').

We selected, where possible, publicly available values from India that were average non–export values, representative of a range of prices within the POR or most contemporaneous with the POR, product–specific, and tax–exclusive. Also, where we have relied upon import values, we have excluded imports from NME countries as well as from South Korea, Thailand, and Indonesia. The Department has found that South Korea, Thailand, and Indonesia maintain broadly available, non–industry-specific export subsidies. The existence of these subsidies provides sufficient reason to believe or suspect that export prices from these countries may be subsidized. *See Final Determination of Sales at Less*

Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1. Our practice of excluding subsidized prices has been upheld in *China National Machinery Import and Export Corporation v. United States*, 293 F. Supp. 2d 1334, 1136 (CIT 2003).

While it is our preferred methodology to use a producer's actual FOPs in the calculation of NV, the Department has found it necessary to depart from that practice in instances where the actual FOP is a process provided by a subcontractor. In such cases, where we have had difficulty obtaining reliable surrogate values for the subcontracted production processes, we have resorted to using the subcontractor's FOPs as the producer's own. *See Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order, in Part,* 69 FR 12119 (March 15, 2004), and accompanying Issues and Decision Memorandum at comment 4. In the instant review, one of SLK's suppliers subcontracted its galvanizing process to another company. SLK has provided the FOPs for these processes along with the supplier's own FOPs. Due to the difficulty in obtaining reliable surrogate values for galvanizing, we have instead applied values to the subcontractors' FOPs.

Surrogate Values

To value all material inputs, by–products, and packing materials, we used per–kilogram import values obtained from *MSFTI.* As appropriate, we adjusted these values to account for freight costs incurred between the suppliers and the factory. We calculated these freight costs based on the shorter of the reported distance from the domestic supplier to the factory or distance from the port in accordance with the decision in *Sigma Corporation v. United States*, 117F. 3d 1401, 1407–8 (Fed. Cir. 1997). We made currency conversions into U.S. dollars, in accordance with section 773A of the Act, based on the exchange rates in effect on the dates of the U.S. sale(s) as certified by the U.S. Federal Reserve Bank.

To value electricity, we used the 2000 electricity price data from *International Energy Agency, Energy Prices and Taxes - Quarterly Statistics (Second Quarter 2003).* To value water, we used the Revised Maharashtra Industrial Development Corporation water rates for June 1, 2003, available at *http://www.midcindia.com/water_supply.* To value coke and firewood, we used the per–kilogram values obtained from MSFTI and made adjustments to account for freight costs incurred between the suppliers and the factory. To value coal we used the *Teri Energy Data Directory & Yearbook* (2004).

For labor, we used the most recent regression–based wage rate for the PRC in ''Expected Wages of Selected NME Countries,'' available at *http://ia.ita.doc.gov.*

For factory overhead, selling, general, and administrative expenses (''SG&A''), and profit values, we used the 2002–2003 financial statements of Vishal Malleables Limited (''Vishal'') and the 2003–2004 financial statements of Ennore Foundries Limited (''Ennore'') and Bhagwati Autocast Limited (''Bhagwati''), all of which are Indian producers of comparable merchandise. From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (''ML&E'') costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. The Department used the 2001–2002 financial statements of Vishal in the final determination of the LTFV investigation. *See Final Determination* at comment 3. Although the petitioner claimed in its September 2, 2005, submission, that both Ennore and Bhagwati were primarily producers of merchandise for the automotive industry and, therefore, not producers of comparable merchandise, we observe that both companies produce primarily cast iron products utilizing substantially the same raw materials and production processes as the respondents in the current review. We also observe that Vishal manufactures products for the automotive industry as well. Furthermore, it is the Department's preference to use multiple financial statements when they are not distortive or otherwise unreliable, in order to eliminate potential distortions that may arise from using those of a single producer. *See, e.g., Final Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 45006 (August 27, 2001), and accompanying Issues and Decision Memorandum at Comment 1 and *Brake Rotors From the People's Republic of China: Preliminary Results of Third New Shipper Review and Preliminary Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 64 FR 73007 (December 29, 1999). We find it appropriate, therefore, for these preliminary results, to average the financial ratios derived from the financial statements of Vishal, Ennore, and Bhagwati to calculate factory overhead and SG&A expenses for the respondents and, as Bhagwati did not earn a profit in 2003–2004, to average the profit ratios of only Vishal and Ennore.

SLK and Pannext have also placed on the record of the current review the 2002–2003 financial statements of Rajesh Malleables Limited (''Rajesh''), an Indian producer of identical merchandise. We have declined to include Rajesh's financial data in our calculation of surrogate financial ratios because we have determined that this company is a ''sick company'' under India's Sick Industrial Companies (Special Provisions) Act of 1985, amended 1993. It is the Department's policy not to use the financial statements of ''sick'' companies in its calculations of surrogate financial ratios. *See, e.g., Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 3.

In calculating the surrogate ratios for Vishal, Ennore, and Bhagwati for purposes of this review, we deviated from the methodology used in the LTFV investigation in two respects. First, regarding the treatment of job and process charges, although such charges are treated as overhead expenses in the financial statements, we are categorizing these expenses as ML&E in order to mirror the respondents' experience, explained below, as much as possible and avoid double counting. One of the respondents is an independent producer and the FOPs we are using for the second respondent are from its supplier, which is also an integrated producer. The third respondent, SLK, purchases MPF from several producers, two of which are not fully integrated. These two producers out–source certain processes to sub–contractors. As explained below in the *Facts Otherwise Available* section, however, we are valuing the actual inputs used in these processes, rather than valuing the processes themselves, and including them in ML&E in the respondent's build–up of NV. Therefore, it is appropriate to apply the surrogate financial ratios to these producers' costs as if they were also integrated producers in order to avoid double counting the expenses associated with the out–sourced processes.

Second, regarding the treatment of changes in inventory, it is the

Department's practice to exclude from our calculation of surrogate financial ratios increases or decreases in finished–goods inventory, as well as increases or decreases in the broader categories of stock or inventory where there is insufficient detail regarding the content of these categories. We find that each of the financial statements we are analyzing here, however, provides sufficient detail that enables us to discriminate between inventory changes in finished goods and inventory changes in work–in-process and raw materials. As the latter two items are properly categorized as production expenses, we are including them in our calculation as ML&E. Consistent with the LTFV investigation, we continue to exclude changes in finished–goods inventory.

We used two sources to calculate a surrogate value for domestic brokerage expenses. We averaged December 2003–November 2004 data contained in Essar Steel's February 28, 2005, public version response submitted in the antidumping duty administrative review of Hot–Rolled Carbon Steel Flat Products from India with October 2002–September 2003 data contained in Pidilite Industries' March 9, 2004, public version response submitted in the antidumping duty investigation of Carbazole Violet Pigment 23 from India. The brokerage expense data reported by Essar Steel and Pidilite Industries in their public versions is ranged data. We first derived an average per–unit amount from each source. We then adjusted each average rate for inflation and, finally, averaged the two per–unit amounts to derive an overall average rate for the POR.

To value truck freight, we used the freight rates published by Indian Freight Exchange available at *http://www.infreight.com.* To value domestic warehousing, we used a rate obtained from the Board of Jawaharlal Nehru Port Trust, available at *http://www.jnport.com/new_site/itarriff_crc.asp.* To value international ocean freight and U.S. inland freight, we used price quotes obtained from Maersk Sealand available at *http://www.maersksealand.com.* To value marine insurance, we used a price quote obtained from RJG Consultants and available at *http://www.rjgconstultants.com.* Where necessary, we adjusted the surrogate values to reflect inflation/deflation using the Indian Wholesale Price Index as published on the Reserve Bank of India Web site, available at *http://www.rbi.org.in.*

For further detail regarding all of the above surrogate values, see the FOP Memo.

Facts Otherwise Available

Section 776(a)(1) and (2) of the Act provides that the Department shall apply ''facts otherwise available'' if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. The purpose of applying an adverse inference is ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).

SLK

SLK purchased MPF from several unaffiliated suppliers in the PRC. For one supplier, SLK was able to provide the Department with FOPs based only on a standard production formula. Because this information is not based on the supplier's actual production experience and it cannot be verified, the Department has declined to use the reported FOPs. SLK also suggested an alternative methodology; however, we do not have sufficient information at this time to apply that alternative. Due to the totality of the circumstances, however, we have determined that SLK has acted to the best of its ability to provide the Department with the requested information and, in the absence of the actual FOPs, for the purposes of these preliminary results, an adverse inference is not warranted. As facts otherwise available for those products that SLK also purchased from other suppliers, we are using the weighted–average FOPs (weighted by purchased quantity) of the other suppliers. For those U.S. sales of products not purchased from other suppliers (*i.e.*, unique products provided only by this supplier), we are applying SLK's weighted–average margin calculated for its other reported U.S. sales.

For another of SLK's suppliers, SLK was unable to provide complete FOPs for galvanized MPF. During the POR, this supplier subcontracted the galvanizing process to two different subcontractors: one for the first nine months of the POR and the other for the last three months of the POR. Because the first subcontractor did not maintain production records, SLK was able to provide the Department with complete FOPs for only those products produced during the last three months of the POR. Because of the small percentage of NV attributable to galvanizing, and because SLK has cooperated with the Department's request for information to the best of its ability, for the purposes of the prelminary results, we are applying neutral facts available by using the three months of data representing the FOPs for galvanizing MPF provided by the second subcontractor for the full POR.

SLK reported that certain products it sold to the U.S. during the POR were sold out of its own inventory and not purchased from any of its suppliers during the POR. Thus, for these products, SLK was unable to provide the Department with purchased quantities to use as a weighting factor to average each supplier's reported FOPs.[2] Additionally, SLK was unable to provide FOP data for approximately one half of those products because none of SLK's suppliers produced these products during the POR. The percentage of sales, by volume, that these products represent is less than three percent of its U.S. sales during the POR. Because of this, and because the Department did not request SLK to provide FOPs for these products based on a prior period, we find that an adverse inference is not warranted for the preliminary results. As neutral facts available, where we are unable to weight average the product–specific FOPs of each supplier by SLK's purchased quantities, we are using a simple average of the reported product–specific FOPs provided by the suppliers of that product. For the remaining products sold out of inventory, none of SLK's suppliers reported FOPs. For sales of these products, for the purpose of the preliminary results, we are applying SLK's weighted–average margin calculated using its other

[2] The Department requested that SLK report the quantities of each product it purchased from each supplier during the POR. This information is being used to weight the product-specific FOPs of each supplier during the POR.

reported U.S. sales as neutral facts available.

Finally, SLK did not report FOPs for a small number of unique products purchased from all but one of its suppliers. Due to the small number of sales affected by these missing FOPs, for the purpose of the preliminary results, we are applying neutral facts available to these sales. As neutral facts available, we are applying the average of the FOPs for the same products purchased from other suppliers, if available. If unavailable, we are applying SLK's weighted–average margin.

We will provide SLK with an opportunity to cure the deficiencies discussed above and will revisit the facts–available calls for SLK for the final results of review in light of the adequacy of SLK's response to this opportunity. If appropriate, we may resort to the use of adverse facts available (''AFA'') for SLK for the final results of review.

For further detail, *see* the December 16, 2005, memorandum from Jennifer Moats to the File regarding the 2003–2004 Administrative Review of the Antidumping Duty Order on Certain Malleable Iron Pipe Fittings from the People's Republic of China: Analysis Memorandum for Preliminary Results for Beijing Sai Lin Ke Hardware Co., Ltd.

Pannext

Pannext did not report FOPs for less than one percent of its U.S. sales made during the POR. Pannext has stated that it was not able to supply FOPs for these sales because the products were sold out of inventory and were not produced during the POR. Pannext has suggested that the Department use the FOPs of the most similar products that were produced during the POR and identified the most similar products in its December 1, 2005, submission to the Department. However, Pannext did not provide any supporting information on the criteria used to identify the products on this list as ''most similar'' to those products without reported FOP data. Therefore, we are unable to use Pannext's suggested methodology for these preliminary results. Because the sales in question constitute a small percentage of Pannext's sales of MPF to the United States during the POR and Pannext has cooperated to the best of its ability, we find that an adverse inference is not warranted in this case. As neutral facts available, for purposes of the preliminary results, we are applying Pannext's calculated weighted–average margin of its other reported U.S. sales during the POR to those U.S. sales that were sold out of inventory. We will provide Pannext with an additional opportunity to explain the methodology it used to identify the ''most similar'' products reported to the Department following these preliminary results, and will revisit this issue for the final results of this proceeding. If appropriate, we may resort to the use of AFA for Pannext for the final results of review.

For further detail, *see* the December 16, 2005, memorandum from Sochieta Moth to the File regarding the 2003–2004 Administrative Review of the Antidumping Duty Order on Certain Malleable Iron Pipe Fittings from the People's Republic of China: Analysis Memorandum for Preliminary Results for Pannext Fittings Corporation.

Chengde

In the current proceeding, Chengde significantly impeded both our ability to complete the review of the MPF order which we are conducting pursuant to section 751 of the Act, and to impose the correct antidumping duties, as mandated by section 731 of the Act. As discussed below, we preliminarily find that its failure to cooperate with the Department to the best of its ability in responding to the Department's request for information warrants the use of adverse facts available in determining dumping margins for its sales of merchandise subject to the order.

Chengde has had extensive difficulty complying with the Department's filing and service requirements during the course of this proceeding. On April 29, 2005, the Department rejected Chengde's sections A, C, and D questionnaire responses due to filing format and service deficiencies, offering Chengde the opportunity to correct the deficiencies and resubmit its responses. Chengde resubmitted its responses on May 18, 2005. The Department subsequently discovered that the submissions contained inconsistencies regarding bracketed information. After giving Chengde multiple opportunities to re–bracket the proprietary information and resubmit its responses correctly, which Chengde did not do, the Department notified Chengde on July 7, 2005, that Chengde's improperly bracketed information would be treated as public information by the Department. On July 21, 2005, after improperly filing a request for an extension and failing to serve it on the other parties to the proceeding, the Department again reminded Chengde of the filing requirements and helped it meet those requirements.

In addition to filing problems, Chengde had difficulty complying with the Department's requests for information. Thus far we have issued two supplemental questionnaires to Chengde. The first supplemental questionnaire was issued on July 20, 2005. Chengde's response was received on August 10, 2005. On November 23, 2005, we issued a second supplemental questionnaire to Chengde requesting, among other things, revised U.S. sales and FOP databases and reconciliations for Chengde's reported FOPs. Chengde requested an extension until December 23, 2005, to respond to the supplemental questionnaire. The Department granted Chengde the full extension requested, on the condition that Chengde provide the Department with a specified minimal amount of information necessary for the Department to perform its calculation analysis of Chengde's sales of subject merchandise during the POR. Chengde provided revised databases on December 5, 2005. However, we find that the databases are so deficient they cannot be used for the purpose of performing a calculation for Chengde. Our review of the data revealed several major inconsistencies and omissions in Chengde's most recent U.S. sales and FOP databases. For example, Chengde did not provide FOP data for 26 of its sales (representing 23 different products), and it provided different per–piece weights for the same products in its FOP and U.S. sales databases. Because Chengde has not provided complete or usable data to the Department despite the multiple opportunities provided, pursuant to section 776(a)(1) of the Act, the Department will apply facts available to Chengde because it did not provide the necessary information to calculate a dumping margin. Because Chengde has not cooperated to the best of its ability pursuant to section 776(b) of the Act, it is appropriate to use AFA for Chengde for purposes of the preliminary results of review. Furthermore, we find that because Chengde's information is unreliable it does not merit a separate rate and will be subject to the PRC–wide rate.

As AFA for the PRC–wide entity (including Chengde), for the preliminary results, we are applying the highest weighted–average margin calculated in this proceeding (*i.e.*, 200.24 percent). In this case, the rate is the margin calculated for another respondent (*i.e.*, SCE) in the instant segment of the proceeding.

For further detail, see the December 16, 2005, memorandum from Tisha Loeper–Viti to Wendy J. Frankel regarding the 2003–2004 Administrative Review of the Antidumping Duty Order on Certain Malleable Iron Pipe Fittings

from the People's Republic of China: Adverse Facts Available Analysis Memorandum for Preliminary Results for Chengde Malleable Iron General Factory.

We intend to issue Chengde one more supplemental questionnaire outlining the deficiencies we are able to identify in its current submissions. Should Chengde's forthcoming response to the Department's second and third (to be issued following the preliminary results) supplemental questionnaires be incomplete or unusable, or should Chengde fail to provide additional data requested by the Department within the requested time frame, we may continue to use AFA for Chengde for the final results of review.

Corroboration of Secondary Information

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is defined in the SAA as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The SAA provides that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See id.* The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See id.* As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (''TRBs''), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. While the Department need not prove that the selected facts available are the best alternative information (SAA at 869), where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin.'' *See TRBs*, 61 FR at 57392. *See also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin).

In this review, we are using as AFA the margin calculated for a respondent in the instant review, which constitutes secondary information within the meaning of the SAA. *See* SAA at 870.

Unlike other types of information such as input costs or selling expenses, however, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as facts available a calculated dumping margin from the current or from a prior segment of the proceeding, it is not necessary to question the reliability of the margin if it was calculated from sales and cost data. The 200.24 percent rate is based on information provided by SCE in the instant review of this proceeding. Therefore, we consider this rate to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Nothing in the record of this review calls into question the relevance of the margin we have selected as AFA. Moreover, the selected margin will be applied as the PRC–wide rate and will be applicable to exporters who do not have a separate rate. Thus, it is appropriate to use the selected rate as adverse facts available in the instant review. Accordingly, we have corroborated the AFA rate identified above, as required, by section 776(c) of the Act (i.e., established its probative value).

Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final results for the purpose of determining the most appropriate final margin based on total AFA. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139 (January 7, 2000).

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Margin (percent)
Beijing Sai Lin Ke Hardware Co., Ltd	23.44
Langfang Pannext Pipe Fitting Co., Ltd.	5.25
SCE Co., Ltd.	200.24
PRC–Wide Entity (including Chengde)	200.24

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. See 19 CFR § 351.224(b). Interested parties are invited to comment on the preliminary results. Interested parties may submit case briefs and rebuttal briefs, limited to issues raised in the case briefs. The Department will notify all parties of the briefing and hearing request schedule at a later date. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities. Further, we would appreciate if parties submitting written comments provide an additional copy of the public version of any such comments on a diskette. Any interested party may request a hearing. *See* 19 CFR 351.310(c). The Department will publish a notice of the final results of this review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from publication of this notice.

Assessment

Pursuant to 19 CFR 351.212(b), the Department calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. To determine whether the duty assessment rates covering the period were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we calculate importer (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis* and the respondent has reported reliable entered values, we apply the assessment rate to the entered value of the importer's/customer's entries during the review period. Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis* and we do not have entered values for all U.S. sales, we calculate a per–unit assessment rate by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by

the total quantity sold to that importer (or customer). The Department will issue assessment instructions directly to CBP within 15 days of publication of the final results of review.

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of the final results for all shipments of MPF from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the above listed respondents, which each have a separate rate, the cash deposit rate will be the company–specific rate established in the final results of the review; (2) the cash deposit rates for any other companies that have separate rates established in the investigation, but were not reviewed in this proceeding, will not change; (3) for all other PRC exporters, the cash deposit rate will be 200.24 percent, the PRC–wide rate established in the LTFV; and (4) for non–PRC exporters of MPF from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 16, 2005.

Stephen J. Claeys,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–7785 Filed 12–22–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

Date: January 13, 2006.

Time: 9 a.m. to 4 p.m.

Place: Department of Commerce, 14th and Constitution NW., Washington, DC 20230, Room 4830.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold a plenary meeting on January 13, 2006, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, in Room 4830. The ETTAC will discuss global climate change mitigation initiatives, the European Union's electronic and other waste initiatives, updated negotiations in the World Trade Organization's environmental goods and services trade liberalization, the Export-Import Bank's environmental exports program, U.S. EPA's Environmental Technologies Verification (ETV) Program, the USG role in the Asia-Pacific Partnership, and an overview of the U.S. International Trade Commission's environmental services sector market analysis. The meeting is open to the public and time will be permitted for public comment.

Written comments concerning ETTAC affairs are welcome anytime before or after the meeting. Minutes will be available within 30 days of this meeting.

The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2006.

For further information phone Ellen Bohon, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–0359. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225.

Dated: December 15, 2005.

Joe O. Neuhoff,

Director, Office of Energy and Environmental Industries.

[FR Doc. E5–7767 Filed 12–22–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 051202321–5335–02]

Small Grants Programs and Precision Measurement Grants Program; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the following programs are soliciting applications for financial assistance for FY 2006: (1) The Electronics and Electrical Engineering Laboratory Grants Program; (2) the Manufacturing Engineering Laboratory Grants Program; (3) the Chemical Science and Technology Laboratory Grants Program; (4) the Physics Laboratory Grants Program; (5) the Materials Science and Engineering Laboratory Grants Program; (6) the Building Research Grants and Cooperative Agreements Program; (7) the Fire Research Grants Program; (8) the Information Technology Laboratory Grants Program; and (9) the Precision Measurement Grants Program. Each program will only consider applications that are within the scientific scope of the program as described in this notice and in the detailed program descriptions found in the Federal Funding Opportunity (FFO) announcement for these programs. Prior to preparation of a proposal, it is strongly suggested that potential applicants contact the Program Manager for the appropriate field of research, as specified in the FFO announcement found at *http://www.grants.gov*, for clarification of the program objectives and to determine whether their proposal is responsive to this notice.

DATES: See below.

ADDRESSES: See below.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Standards—11.609

Electronics and Electrical Engineering Laboratory (EEEL) Grants Program

Program Description: The Electronics and Electrical Engineering Laboratory (EEEL) Grants Program will provide grants and cooperative agreements for the development of fundamental electrical metrology and of metrology supporting industry and government agencies in the broad areas of

semiconductors, electronic instrumentation, radio-frequency technology, optoelectronics, magnetics, video, electronic commerce as applied to electronic products and devices, the transmission and distribution of electrical power, national electrical standards (fundamental, generally quantum-based physical standards), and law enforcement standards.

DATES: All applications, paper and electronic, must be received no later than 5 p.m., Eastern Standard Time on June 30, 2006.

ADDRESSES: Paper applications must be submitted to: Sheilda Bryner, Electronics and Electrical Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8100, Gaithersburg, MD 20899–8100. Electronic applications and associated proposal information should be uploaded to grants.gov.

FOR FURTHER INFORMATION CONTACT: For complete information about this program and instructions for applying by paper or electronically, read the Federal Funding Opportunity (FFO) Notice at *http://www.grants.gov*. A paper copy of the FFO may be obtained by calling (301) 975–6328. Program questions should be addressed to Sheilda Bryner, Electronics and Electrical Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8100, Gaithersburg, MD 20899–8100, Tel.: (301) 975–2220, Fax: (301) 975–4091. All grants related administration questions concerning this program should be addressed to: Joyce Brigham, NIST Grants and Agreements Management Division, (301) 975–6328; *joyce.brigham@nist.gov*. For assistance with using Grants.gov contact *support@grants.gov*.

Funding Availability: In fiscal year 2005, the EEEL Grants Program made 13 new awards, totaling $866,613. The amount available each year fluctuates considerably based on programmatic needs. Individual awards are expected to range between $5,000 and $150,000.

For the Electronics and Electrical Engineering Laboratory Grants Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the Electronics and Electrical Engineering Laboratory Grants Program, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant, (i.e., the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: As authorized by 15 U.S.C. 272(b) and (c), the NIST Electronics and Electrical Engineering Laboratory conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The Electronics and Electrical Engineering Laboratory Grants Program is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; state, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: For the Electronics and Electrical Engineering Laboratory Grants Program, proposals will be reviewed in a three-step process. First, the EEEL Grants Coordinator, or the Deputy Director of EEEL, will determine the compatibility of the applicant's proposal with EEEL Program Areas and the relevance to the objectives of the Electronics and Electrical Engineering Laboratory Grants Program, described in the Program Description section above. If it is determined that the proposal is incomplete or non-responsive to the scope of the stated objectives, the proposal will not be reviewed for technical merit. If it is determined that all funds available for the EEEL Grants Program for the given fiscal year have been exhausted, the proposal will not be reviewed for technical merit. Proposers may contact EEEL at (301) 975–2220 to find out if funds have been exhausted for the fiscal year. EEEL will also post a notice on its Web site, *http://www.eeel.nist.gov/eeel_grants,* when funds are exhausted for the fiscal year. EEEL will notify proposers in writing if their proposals are not reviewed for technical merit.

Second, proposals will be distributed for technical review by the EEEL Grants Coordinator, or other technical professionals familiar with the programs of the Electronics and Electrical Engineering Laboratory, to the appropriate Division or Office based on technical area. At least three independent, objective individuals knowledgeable about the particular scientific area described in the Program Description section above that the proposal addresses will conduct a technical review of each proposal, based on the evaluation criteria described above. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus.

Reviews will be conducted on a quarterly basis, and all proposals received during the quarter will be ranked based on the reviewers' scores.

Third, the Division Chief or Office Director will make application selections. In making application selections, the Division Chief or Office Director will take into consideration the results of the reviewers' evaluations, the availability of funding, and relevance to the objectives of the Electronics and Electrical Engineering Laboratory Grants Program, as described in the Program Description section above. The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the Electronics and Electrical Engineering Laboratory Grants Program, the evaluation criteria and weights to be used by the technical reviewers in evaluating the proposals are as follows:

Proposal addresses specific program objectives as described in this notice (25%)

Proposal provides evidence of applicant's expertise in relevant technical area (20%)

Proposal offers innovative approach (20%)

Proposal provides realistic schedule with defined milestones (20%)

Proposal provides adequate rationale for budget (15%)

Cost Share Requirements: The Electronics and Electrical Engineering Laboratory Grants Program does not require any matching funds.

Manufacturing Engineering Laboratory (MEL) Grants Program

Program Description: The Manufacturing Engineering Laboratory (MEL) Grants Program will provide grants and cooperative agreements in the following fields of research: Dimensional Metrology for Manufacturing, Mechanical Metrology for Manufacturing, Intelligent Systems, and Information Systems Integration for Applications in Manufacturing.

DATES: All applications, paper and electronic, must be received no later than 5 p.m. Eastern Standard Time on September 30, 2006. Proposals received between July 1, 2006 and September 30, 2006 may be processed and considered for funding under this solicitation in the next fiscal year, subject to the availability of funds.

ADDRESSES: Paper applications must be submitted to: Mrs. Mary Lou Norris, Manufacturing Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8200, Building 220, Room B322, Gaithersburg, Maryland 20899–8200. Electronic applications and associated proposal information should be uploaded to grants.gov.

FOR FURTHER INFORMATION CONTACT: For complete information about this program and instructions for applying by paper or electronically, read the Federal Funding Opportunity (FFO) Notice at *http://www.grants.gov.* A paper copy of the FFO may be obtained by calling (301) 975–6328. Program questions should be addressed to Mrs. Mary Lou Norris, Manufacturing Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8200, Building 220, Room B322, Gaithersburg, Maryland 20899–8200, Tel: (301) 975–3400, E-mail: *mnorris@nist.gov.* All grants related administration questions concerning this program should be addressed to: Joyce Brigham, NIST Grants and Agreements Management Division, (301) 975–6328; *joyce.brigham@nist.gov.* For assistance with using Grants.gov contact *support@grants.gov.*

Funding Availability: In fiscal year 2005, the MEL Grants Program funded 11 new awards, totaling $834,342. In fiscal year 2006 the MEL Grants Program anticipates funding of approximately $500,000, including new awards and continuing projects. Individual awards are expected to range from approximately $25,000 to $300,000.

For the MEL Grants Program, proposals will be considered for research projects from one to five years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the MEL program, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant, (i.e., the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: As authorized under 15 U.S.C. 272(b) and (c), the MEL conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The MEL Grants Program is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; state, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: For the MEL Grants Program responsive proposals will be assigned, as received on a rolling basis, to the most appropriate area for review. At least three independent, objective individuals knowledgeable about the particular scientific area described in the Program Description section above that the proposal addresses will conduct a technical review of proposals based on the evaluation criteria. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus. The Division Chief or Laboratory Director will make application selections. In making application selections, the Division Chief or Laboratory Director will take into consideration the results of the reviewers' evaluations, the availability of funds, and relevance to the objectives of the MEL Grants Program. These objectives are described above in the Program Description section above. The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The original application will be returned to the applicant.

Evaluation Criteria: For the MEL Grants Program, the evaluation criteria the technical reviewers will use in evaluating the proposals are as follows:

1. Rationality. Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.
2. Technical Merit of Contribution. Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of manufacturing engineering and metrology research.
3. Qualifications of Technical Personnel. Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.
4. Resources Availability. Reviewers will consider the extent to which the proposer has access to the necessary facilities and overall support to accomplish project objectives.

Each of these factors will be given equal weight in the evaluation process.

Cost Share Requirements: The MEL Grants Program does not require any matching funds.

Chemical Science and Technology Laboratory Grants Program

Program Description: The Chemical Science and Technology Laboratory (CSTL) Grants Program will provide grants and cooperative agreements in the following fields of measurement science research, focused on reference methods, reference materials and reference data: Biotechnology, Process Measurements, Surface and

Microanalysis Science, Physical and Chemical Properties, and Analytical Chemistry.

DATES: All applications, paper and electronic, must be received no later than 5 p.m. Eastern Standard Time on September 30, 2006. Proposals received between July 1, 2006 and September 30, 2006 may be processed and considered for funding under this solicitation in the next fiscal year, subject to the availability of funds.

ADDRESSES: Paper applications must be submitted to: Dr. William F. Koch, Chemical Science and Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8300, Gaithersburg, MD 20899–8300. Electronic applications and associated proposal information should be uploaded to grants.gov.

FOR FURTHER INFORMATION CONTACT: For complete information about this program and instructions for applying by paper or electronically, read the Federal Funding Opportunity (FFO) Notice at *http://www.grants.gov.* A paper copy of the FFO may be obtained by calling (301) 975–6328. Program questions should be addressed to Dr. William F. Koch, Chemical Science and Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8300, Gaithersburg, MD 20899–8300, Tel (301) 975–8301, E-Mail: *william.koch@nist.gov.* All grants related administration questions concerning this program should be addressed to: Joyce Brigham, NIST Grants and Agreements Management Division, (301) 975–6328; *joyce.brigham@nist.gov.* For assistance with using Grants.gov contact *support@grants.gov.*

Funding Availability: No funds have been set aside specifically for support of the CSTL Grants Program. The availability of funds depends upon actual authorization of funds and other costs expected to be incurred by individual divisions within the laboratory. Where funds are identified as available for grants, those funds will be awarded to highly ranked proposals as determined by the process described in this notice.

In fiscal year 2005, the CSTL Grants Program funded 10 new awards, totaling $830,254. In fiscal year 2006, the CSTL Grants Program anticipates funding of approximately $500,000. Individual awards are expected to range from approximately $5,000 to $100,000.

For the Chemical Science and Technology Laboratory Grant Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the Chemical Science and Technology Laboratory program, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant, (i.e. the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: As authorized under 15 U.S.C. 272(b) and (c), the Chemical Science and Technology Laboratory conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The Chemical Science and Technology Laboratory Grants Program is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; state, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: For the Chemical Science and Technology Laboratory Grants Program, proposals will be reviewed in a three-step process. First, the Deputy Director of CSTL, or appropriate CSTL Division Chief, will determine the compatibility of the applicant's proposal with CSTL Program Areas and the relevance to the objectives of the Chemical Science and Technology Laboratory Grants Program, described in the Program Description section above. If it is determined that the proposal is incomplete or non-responsive to the scope of the stated objectives, the proposal will not be reviewed for technical merit.

Second, at least three independent, objective individuals knowledgeable about the particular measurement science area described in the section above that the proposal addresses will conduct a technical review of each proposal, based on the evaluation criteria described below. Reviews will be conducted on a quarterly basis, subject to the availability of funds, and all responsive, complete proposals received and reviewed since the last quarter will be ranked based on the reviewers' scores. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus.

Third, the Division Chief will make application selections, taking into consideration the results of the reviewers' evaluations, the availability of funds, and the relevance of the proposal to the program objectives described in the Program Description section above.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decisions of the Grants Officer are final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the Chemical Science and Technology Laboratory Grants Program, the evaluation criteria the technical reviewers will use in evaluating the proposals are as follows:

1. Rationality. Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.

2. Qualifications of Technical Personnel. Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.

3. Resources Availability. Reviewers will consider the extent to which the proposer has access to the necessary facilities and overall support to accomplish project objectives.

4. Technical Merit of Contribution. Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of measurement science, especially as it pertains to reference methods, reference materials and reference data in Chemical Science and Technology.

Each of these factors will be given equal weight in the evaluation process.

Cost Share Requirements: The Chemical Science and Technology Laboratory Grants Program does not require any matching funds.

Physics Laboratory Grants Program

Program Description: The Physics Laboratory (PL) Grants Program will provide grants and cooperative agreements in the following fields of research: Electron and Optical Physics, Atomic Physics, Optical Technology, Ionizing Radiation, Time and Frequency, and Quantum Physics.

DATES: All applications, paper and electronic, must be received no later than 5 p.m., Eastern Standard Time on September 30, 2006. Proposals received between July 1, 2006 and September 30, 2006 may be processed and considered for funding under this solicitation in the next fiscal year, subject to the availability of funds.

ADDRESSES: Paper applications must be submitted to: Ms. Anita Sweigert, Physics Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400. Electronic applications and associated proposal information should be uploaded to grants.gov.

FOR FURTHER INFORMATION CONTACT: For complete information about this program and instructions for applying by paper or electronically, read the Federal Funding Opportunity (FFO) Notice at *http://www.grants.gov*. A paper copy of the FFO may be obtained by calling (301) 975–6328. Program questions should be addressed to Ms. Anita Sweigert, Physics Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400, Tel (301) 975–4200, E-Mail: *anita.sweigert@nist.gov*. It is strongly suggested to first confirm the program objectives with the Program Manager prior to preparing a detailed proposal. All grants related administration questions concerning this program should be addressed to: Joyce Brigham, NIST Grants and Agreements Management Division, (301) 975–6328; *joyce.brigham@nist.gov*. For assistance with using Grants.gov contact *support@grants.gov*.

Funding Availability: In fiscal year 2005, the PL Grants Program funded 21 new awards, totaling $2,274,427. In fiscal year 2006, the PL Grants Program anticipates funding of approximately $1,700,000, including new awards and continuing projects. Funding availability will be apportioned by quarter. Individual awards are expected to range from approximately $5,000 to $300,000.

For the Physics Laboratory Grants Program, proposals will be considered for research projects from one to five years. When a proposal for a multi-year project is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the Physics Laboratory program, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant (*i.e.*, the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: As authorized under 15 U.S.C. 272(b) and (c), the Physics Laboratory conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The Physics Laboratory Grants Program is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; state, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: For the Physics Laboratory Grants Program, responsive proposals will be considered as follows: First, at least three independent, objective individuals knowledgeable about the particular scientific area described in the proposal will conduct a technical review of each proposal, based on the evaluation criteria described below. Reviews will be conducted on a monthly basis within each division of the Physics Laboratory, and all proposals received during the month will be ranked based on the reviewers' scores. If non-Federal reviewers are used, reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus.

Next, the Division Chief will make final application selections, taking into consideration the results of the reviewers' evaluations, including rank; the compilation of a slate that, when taken as a whole, is likely to best further the program interests described in the Program Description section above; and the availability of funds.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible.

Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award.

The decisions of the Grants Officer are final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the Physics Laboratory Grants Program, the evaluation criteria the technical reviewers will use in evaluating the proposals are as follows:

1. Rationality. Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.
2. Qualifications of Technical Personnel. Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.
3. Resources Availability. Reviewers will consider the extent to which the proposer has access to the necessary facilities and overall support to accomplish project objectives.
4. Technical Merit of Contribution. Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of physics.

Each of these factors will be given equal weight in the evaluation process.

Cost Share Requirements: The Physics Laboratory Grants Program does not require any matching funds.

MSEL Grants Program

Program Description: The Materials Science and Engineering Laboratory (MSEL) Grants Program will provide grants and cooperative agreements in the following fields of research: Ceramics; Metallurgy; Polymer Sciences; Materials Reliability; and Neutron Scattering Research and Spectroscopy.

DATES: All applications, paper and electronic, must be received no later than 5 p.m. Eastern Standard Time on September 30, 2006. Proposals received between July 1, 2006 and September 30, 2006 may be processed and considered for funding under this solicitation in the next fiscal year, subject to the availability of funds.

ADDRESSES: Paper applications must be submitted to: Dr. Stephen W. Freiman, Materials Science and Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8500, Gaithersburg, Maryland 20899–8500. Electronic applications and associated proposal information should be uploaded to grants.gov.

FOR FURTHER INFORMATION CONTACT: For complete information about this program and instructions for applying by paper or electronically, read the Federal Funding Opportunity (FFO) Notice at *http://www.grants.gov.* A paper copy of the FFO may be obtained by calling (301) 975–6328. Program questions should be addressed to Dr. Stephen W. Freiman, Materials Science and Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8500, Gaithersburg, Maryland 20899–8500, Tel: (301) 975–5658, E-mail: *stephen.freiman@nist.gov.* All grants related administration questions concerning this program should be addressed to: Joyce Brigham, NIST Grants and Agreements Management Division, (301) 975–6328; *joyce.brigham@nist.gov.* For assistance with using Grants.gov contact *support@nist.gov.*

Funding Availability: In fiscal year 2005, the MSEL Grants Program funded 36 new awards, totaling $4,966,802. In fiscal year 2006, the MSEL Grants Program anticipates funding of approximately $4,500,000, including new awards and continuing projects. Most grants and cooperative agreements are expected to be in the $25,000 to $100,000 per year range.

For the MSEL Grants Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the MSEL program, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant, (i.e., the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: As authorized under 15 U.S.C. 272 (b) and (c), the MSEL conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The MSEL Grants Program is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; state, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: For the MSEL Grants Program proposals will be reviewed in a two-step process. First, at least three independent, objective individuals knowledgeable about the particular scientific area described in the Program Description section above that the proposal addresses will conduct a technical review of proposals, as they are received on a rolling basis, based on the evaluation criteria. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus. Second, the Division Chief or Center Director or Laboratory Deputy Director will make application selections. In making application selections, the Division Chief or Center Director or Laboratory Deputy Director will take into consideration the results of the reviewers' evaluations, the availability of funds, and relevance to the objectives of the MSEL Grants Program, described above in the Program Description section. The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the MSEL Grants Program, the evaluation criteria the technical reviewers will use in evaluating the proposals are as follows:

1. Rationality. Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.
2. Qualifications of Technical Personnel. Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.
3. Resources Availability. Reviewers will consider the extent to which the proposer has access to the necessary facilities and overall support to accomplish project objectives.
4. Technical Merit of Contribution. Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of materials science and engineering and neutron research.

Each of these factors will be given equal weight in the evaluation process.

Cost Share Requirements: The MSEL Grants Program does not require any matching funds.

Building Research Grants and Cooperative Agreements Program

Program Description: The Building Research Grants and Cooperative Agreements Program will provide grants and cooperative agreements in the following fields of research: Structures, Construction Metrology and Automation, Inorganic Materials, Polymeric Materials, HVAC & R Equipment Performance, Mechanical Systems and Controls, Heat Transfer and Alternative Energy Systems, Computer Integrated Building Processes, and Indoor Air Quality and Ventilation.

DATES: All applications, paper and electronic, must be received no later than 5 p.m. Eastern Standard Time on September 30, 2006. Proposals received between July 1, 2006 and September 30, 2006 may be processed and considered for funding under this solicitation in the next fiscal year, subject to the availability of funds.

ADDRESSES: Paper applications must be submitted to: Karen Perry, Building and Fire Research Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8602,

Gaithersburg, MD 20899–8602. Electronic applications and associated proposal information should be uploaded to grants.gov.

FOR FURTHER INFORMATION CONTACT: For complete information about this program and instructions for applying by paper or electronically, read the Federal Funding Opportunity (FFO) Notice at *http://www.grants.gov.* A paper copy of the FFO may be obtained by calling (301) 975–6328. Program questions should be addressed to Karen Perry, Building and Fire Research Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8602, Gaithersburg, MD 20899–8602, Tel.: (301) 975–5910, Fax: (301) 975–4032, *http://www.bfrl.nist.gov.* All grants related administration questions concerning this program should be addressed to: Joyce Brigham, NIST Grants and Agreements Management Division, (301) 975–6328; *joyce.brigham@nist.gov.* For assistance with using Grants.gov contact *support@grants.gov.*

Funding Availability: In fiscal year 2005, the Building Research Grants and Cooperative Agreements Program funded 4 new awards, totaling $603,964. No funds have been set aside specifically for support of the Building Research Grants and Cooperative Agreements Program. The availability of funds depends upon actual authorization of funds and other costs expected to be incurred by the individual divisions. The amount available each year fluctuates considerably based on programmatic needs. Individual awards are expected to range between $5,000 and $150,000.

For the Building Research Grants and Cooperative Agreements Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the Building Research Grants and Cooperative Agreements Program, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant (i.e., the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: As authorized by 15 U.S.C. 272(b) and (c), the NIST Building and Fire Research Laboratory conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The Building Research Grants and Cooperative Agreements Program is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; state, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for recordkeeping purposes. The remaining copies will be destroyed.

Responsive proposals will be forwarded to the appropriate Division Chief, who will assign them to appropriate reviewers. At least three independent, objective individuals knowledgeable about the particular scientific area described in the Program Description section above that the proposal addresses will conduct a technical review of each proposal, based on the evaluation criteria described below. When non-Federal reviewers are used, reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus.

Reviews will be conducted no less than once per quarter, and all proposals since the last review session will be ranked based on the reviewers' scores.

Next, the Division Chief, Laboratory Deputy Director, or Laboratory Director will make application selections. In making application selections, the Division Chief, Laboratory Deputy Director, or Laboratory Director will take into consideration the results of the evaluations, the scores of the reviewers, the availability of funds, and relevance to the objectives of the Building Research Grants and Cooperative Agreements Program, as described in the Program Description section above.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The award decision of the Grants Officer is final. Applicants should allow up to 90 days processing time.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: The Divisions will score proposals based on the following criteria and weights:

1. Technical quality of the research. Reviewers will assess the rationality, innovation and imagination of the proposal and the fit to NIST's in-house building research programs. (0–35 points)

2. Potential impact of the results. Reviewers will assess the potential impact and the technical application of the results to our in-house programs and the building industry. (0–25 points)

3. Staff and institution capability to do the work. Reviewers will evaluate the quality of the facilities and experience of the staff to assess the likelihood of achieving the objective of the proposal. (0–20 points)

4. Match of budget to proposed work. Reviewers will assess the budget against the proposed work to ascertain the reasonableness of the request. (0–20 points)

Cost Share Requirements: The Building Research Grants and Cooperative Agreements Program does not require any matching funds.

Fire Research Grants Program

Program Description: The Fire Research Grants Program will provide funding for innovative ideas in the fire research area generated by the proposal writer, who chooses the topic and approach.

DATES: All applications, paper and electronic, must be received no later than 5 p.m. Eastern Standard Time on September 30, 2006. Proposals received between May 1, 2006 and September 30, 2006 will be processed and considered for funding under this solicitation, but if selected, proposals may be funded in

the next fiscal year, subject to the availability of funds.

ADDRESSES: Paper applications must be submitted to: Ms. Wanda Duffin-Ricks, Building and Fire Research Laboratory (BFRL), National Institute of Standards and Technology, 100 Bureau Drive, Stop 8660, Gaithersburg, Maryland 20899–8660. Electronic applications and associated proposal information should be uploaded to grants.gov.

FOR FURTHER INFORMATION CONTACT: For complete information about this program and instructions for applying by paper or electronically, read the Federal Funding Opportunity (FFO) Notice at *http://www.grants.gov*. A paper copy of the FFO may be obtained by calling (301) 975–6328. Program questions should be addressed to Ms. Wanda Duffin-Ricks, Building and Fire Research Laboratory (BFRL), National Institute of Standards and Technology, 100 Bureau Drive, Stop 8660, Gaithersburg, Maryland 20899–8660, Tel: (301) 975–6863, E-mail: *wanda.duffin@nist.gov*, Web site: *http://www.bfrl.nist.gov*. All grants related administration questions concerning this program should be addressed to: Joyce Brigham, NIST Grants and Agreements Management Division, (301) 975–6328; *joyce.brigham@nist.gov*. For assistance with using Grants.gov contact *support@grants.gov*.

Funding Availability: For the Fire Research Grants Program, the annual budget is approximately $1.0 to $1.5 million. Because of commitments for the support of multi-year projects and because proposals may have been deferred from the previous year's competition, only a portion of the budget is available to fund applications received in response to this notice. Most grants and cooperative agreements are in the $25,000 to $125,000 per year range, with a maximum requested duration of three years. In fiscal year 2005, the Fire Research Grants Program funded 8 new awards, totaling $620,224.

For the Fire Research Grants Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year project is approved, funding will normally be provided for only the first year of the program. If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Funding for each subsequent year of a multi-year proposal will be contingent on satisfactory progress, continuing relevance to the mission of the NIST Fire Research Program, and the availability of funds.

Statutory Authority: As authorized by 15 U.S.C. 278f, the NIST Building and Fire Research Laboratory conducts directly and through grants and cooperative agreements, a basic and applied fire research program.

Eligibility: The Fire Research Grants Program is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; state, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: Prospective proposers are encouraged to contact the group leaders listed in the FFO announcement to determine the responsiveness of the proposal and compliance with program objectives prior to preparation of a detailed proposal. Responsive proposals will be assigned, as received on a rolling basis, to the most appropriate group. Proposals are evaluated for technical merit based on the evaluation criteria described above by at least three reviewers chosen from NIST professionals, technical experts from other interested government agencies, and experts from the fire research community at large. When non-Federal reviewers are used, reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus. The group leaders will make funding recommendations to the Division Chief based on the technical evaluation score and the relationship of the work proposed to the objectives of the program.

In making application selections, the Division Chief will take into consideration the results of the evaluations, the scores of the reviewers, the group leader's recommendation, the availability of funds, and relevance to the objectives of the Fire Research Grants Program, as described in the Program Description section above. The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The award decision of the Grants Officer is final. Applicants should allow up to 90 days processing time.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the Fire Research Grants Program, the technical evaluation criteria are as follows:

1. Technical quality of the research. Reviewers will assess the rationality, innovation and imagination of the proposal. (0–35 points).
2. Potential impact of the results. Reviewers will assess the potential impact and the technical application of the results to the fire safety community. (0–25 points)
3. Staff and institution capability to do the work. Reviewers will evaluate the quality of the facilities and experience of the staff to assess the likelihood of achieving the objective of the proposal. (0–20 points)
4. Match of budget to proposed work. Reviewers will assess the budget against the proposed work to ascertain the reasonableness of the request. (0–20 points)

Cost Share Requirements: The Fire Research Grants Program does not require any matching funds.

Information Technology Laboratory (ITL) Grants Program

Program Description: The Information Technology Laboratory Grants Program will provide grants and cooperative agreements in the broad areas of mathematical and computational sciences, advanced network technologies, and information access. Specific objectives of interest in these areas of research include: Quantum information theory, computational materials science, computational nanotechnology, mathematical knowledge management, visual data analysis, verification and validation of computer models, software testing, human-robot interaction, human factors in voting systems, security for the IPv6 transition from and coexistence with IPv6, and device mobility among heterogeneous networks. For details on these various activities, please see the Information Technology Laboratory Web site at *http://www.itl.nist.gov*. Additionally, the ITL Grant Program will provide grants and cooperative agreements in support of conferences, workshops, and other technical research groups that focus on trends and future focus areas of information technology.

DATES: All applications, paper and electronic, must be received no later than 5 p.m. Eastern Standard Time on September 30, 2006. Proposals received between July 1, 2006 and September 30,

2006 will be processed and considered for funding under this solicitation, but if selected, proposals may be funded in the next fiscal year, subject to the availability of funds.

ADDRESSES: Paper applications must be submitted to: Kirk Dohne, Information Technology Laboratory (ITL), National Institute of Standards and Technology, 100 Bureau Drive, Stop 8900, Gaithersburg, Maryland 20899–8900. Electronic applications and associated proposal information should be uploaded to grants.gov.

FOR FURTHER INFORMATION CONTACT: For complete information about this program and instructions for applying by paper or electronically, read the Federal Funding Opportunity (FFO) Notice at *http://www.grants.gov*. A paper copy of the FFO may be obtained by calling (301) 975–6328. Program questions should be addressed to Kirk Dohne, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8900, Gaithersburg, Maryland 20899–8200, Tel: (301) 975–8480, E-mail: *kirk.dohne@nist.gov*; Fax: (301) 975–2378, Web site: *http://www.itl.nist.gov*. It is strongly suggested to first confirm the program objectives with the Program Manager prior to preparing a detailed proposal. All grants related administration questions concerning this program should be addressed to: Joyce Brigham, NIST Grants and Agreements Management Division, (301) 975–6328; *joyce.brigham@nist.gov*. For assistance with using Grants.gov contact *support@grants.gov*.

Funding Availability: In fiscal year 2005, the Information Technology Laboratory did not participate in the grants program, therefore no historical data is available for that period. No funds have been set aside specifically for support of the Information Technology Laboratory Grants Program. The availability of funds depends upon actual authorization of funds and other costs expected to be incurred by the individual divisions. The amount available each year fluctuates considerably based on programmatic needs. Individual awards are expected to range between $10,000 and $150,000.

For the Information Technology Laboratory Grants Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the Information Technology Laboratory Grants Program, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant (i.e., the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: As authorized under 15 U.S.C. 272(b) and (c), the ITL conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The ITL Grants Program is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; state, local, and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: For the Information Technology Laboratory (ITL) Grants Program, proposals will be reviewed in a three-step process. First, the Deputy Director of ITL, or appropriate designee, will determine the compatibility of the applicant's proposal with ITL Program Areas and the relevance to the objectives of the ITL Grants Program, described in the Program Description section above. If it is determined that the proposal is incomplete or non-responsive to the scope of the stated objectives, the proposal will not be reviewed for technical merit. If a proposal is determined to be incomplete or non-responsive, or if it is determined that all available funds have been exhausted, the proposal will not be reviewed for technical merit. Proposers may contact ITL at (301) 975–8480 to find out if funds have been exhausted for the fiscal year. ITL will also post a notice on its Web site, *www.itl.nist.gov*, when funds are exhausted for the fiscal year. ITL will notify proposers in writing if their proposals are not reviewed for technical merit.

Second, at least three independent, objective individuals knowledgeable about the particular measurement science area described in the section above that the proposal addresses will conduct a technical review of each proposal, based on the evaluation criteria described above. Reviews will be conducted on a quarterly basis, and all responsive, complete proposals received and reviewed since the last quarter will be ranked based on the reviewers' scores. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus.

Third, the Division Chief, in accord with the Director of ITL, will make application selections, taking into consideration the results of the reviewers' evaluations, the availability of funds, and the relevance of the proposal to the program objectives described in the Program Description section above.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decisions of the Grants Officer are final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the ITL Grants Program, the evaluation criteria the technical reviewers will use in evaluating the proposals are as follows:

1. Rationality. Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.

2. Technical Merit of Contribution. Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of manufacturing engineering and metrology research.

3. Qualifications of Technical Personnel. Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.

4. Resources Availability. Reviewers will consider the extent to which the proposer has access to the necessary facilities and overall support to accomplish project objectives.

Each of these factors will be given equal weight in the evaluation process.

Precision Measurement Grants Program

Program Description: The National Institute of Standards and Technology (NIST) announces that the Precision Measurement Grants Program is soliciting applications for financial assistance for FY 2005. The Precision Measurement Grants Program is seeking proposals for significant research in the field of fundamental measurement or the determination of fundamental constants. As part of its research program, since 1970 NIST has awarded Precision Measurement Grants primarily to universities and colleges so that faculty may conduct significant research in the field of fundamental measurement or the determination of fundamental constants. NIST sponsors these grants and cooperative agreements primarily to encourage basic, measurement-related research in universities and colleges and other research laboratories and to foster contacts between NIST scientists and those faculty members of academic institutions and other researchers who are actively engaged in such work. The Precision Measurement Grants are also intended to make it possible for researchers to pursue new ideas for which other sources of support may be difficult to find. There is some latitude in research topics that will be considered under the Precision Measurement Grants Program. The key requirement is that the proposed project support NIST's ongoing work in the field of basic measurement science.

DATES: Abbreviated proposals must be received at the address listed below no later than 5 p.m. Eastern Standard Time on February 3, 2006. Proposals received after this deadline will be returned with no further consideration. Finalists will be selected by approximately March 23, 2006, and will be requested to submit full proposals to NIST. All full proposals, paper and electronic, must be received no later than 5 p.m. Eastern Standard Time on May 5, 2006.

ADDRESSES: Abbreviated proposals and paper applications must be submitted to: Dr. Peter J. Mohr; Manager, NIST Precision Measurement Grants Program; National Institute of Standards and Technology; 100 Bureau Drive, Stop 8420; Gaithersburg, MD 20899–8420. Electronic final proposals should be uploaded to Grants.gov.

FOR FURTHER INFORMATION CONTACT: For complete information about this program and instructions for applying by paper or electronically, read the Federal Funding Opportunity (FFO) Notice at *http://www.grants.gov.* A paper copy of the FFO may be obtained by calling (301) 975–6328. Technical questions should be addressed to: Dr. Peter J. Mohr at the address listed in the Addresses section above, or at Tel: (301) 975–3217; E-mail: *mohr@nist.gov*. Grants Administration questions should be addressed to: Grants and Agreements Management Division; National Institute of Standards and Technology; 100 Bureau Drive, Stop 1650; Gaithersburg, MD 20899–1650; Tel: (301) 975–6328. For assistance with using Grants.gov contact *support@grants.gov*.

Funding Availability: Applicants should propose multi-year projects for up to three years at no more than $50,000 per year. NIST anticipates spending $100,000 this year for two new grants at $50,000 each for the first year of the research projects. NIST may award both, one, or neither of these new awards. Second and third year funding will be at the discretion of NIST, based on satisfactory performance, continuing relevance to program objectives, and the availability of funds.

Statutory Authority: The authority for the Precision Measurement Grants Program is as follows: As authorized by 15 U.S.C. 272 (b) and (c), NIST conducts directly, and supports through grants, a basic and applied research program in the general area of fundamental measurement and the determination of fundamental constants of nature.

Eligibility: Eligible applicants are institutions of higher education; hospitals; non-profit organizations; commercial organizations; state, local and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; international organizations; and Federal agencies with appropriate legal authority.

Review and Selection Process: All abbreviated proposals and full applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated objectives for each program. Incomplete or non-responsive abbreviated proposals and full applications will not be reviewed for technical merit.

The Program will retain one copy of each non-responsive abbreviated proposal and full application for three years for record keeping purposes. The remaining copies will be destroyed.

To simplify the proposal writing and evaluation process, the following selection procedure will be used:

All applicants must submit an abbreviated proposal (original and two signed copies), containing a description of the proposed project, including sufficient information to address the evaluation criteria, with a total length of no more than five (5) double spaced pages, to the mailing address given above in the ''Addresses'' section. These proposals will be screened to determine whether they address the requirements outlined in this notice. Proposals that do not meet those requirements will not be considered further. Eight independent, objective individuals, at least half of whom are NIST employees, and who are knowledgeable about the scientific areas that the program addresses will conduct a technical review of each abbreviated proposal, based on the evaluation criteria described in the Evaluation Criteria section for this program. The proposals will then be ranked based on the average of the reviewers' rankings. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but the ranking will be determined on an individual basis, not as a consensus.

The Chief of the Atomic Physics Division of the Physics Laboratory, the selecting official, will then select approximately four to eight finalists. In selecting finalists, the selecting official will take into consideration the results of the reviewers' evaluations, including rank, and relevance to the program objectives described above in the Program Description section. Applicants not selected as finalists will be notified in writing.

Finalists will then be asked in writing to submit full proposals in accordance with the requirements set forth in the Content and Form of Application Submission section of the FFO. The same independent reviewers that reviewed the abbreviated proposals will then evaluate the full proposals based on the same evaluation criteria, and the proposals will be ranked as previously described. In selecting proposals that will be recommended for funding, the selecting official will take into consideration the results of the reviewers' evaluations, including rank and relevance to the program objectives described in the Program Description section of this notice.

The final approval of selected applications and award of grants will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible.

Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award.

The decision of the Grants Officer is final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: The evaluation criteria to be used in evaluating the abbreviated application proposals and full proposals are:

1. The importance of the proposed research—Does it have the potential of answering some currently pressing question or of opening up a whole new area of activity?

2. The relationship of the proposed research to NIST's ongoing work—Will it support one of NIST's current efforts to develop a new or improved fundamental measurement method or physical standard, test the basic laws of physics, or provide an improved value for a fundamental constant?

3. The feasibility of the research and the potential impact of the grant—Is it likely that significant progress can be made in a three year time period with the funds and personnel available and that the funding will enable work that would otherwise not be done with existing or potential funding?

4. The qualifications of the applicant—Does the educational and employment background and the quality of the research, based on recent publications, of the applicant indicate that there is a high probability that the proposed research will be carried out successfully?

Each of these factors is given equal weight in the evaluation process.

Cost Share Requirements: The Precision Measurement Grants Program does not require any matching funds.

The following information applies to all programs announced in this notice:

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389). On the form SF–424, the applicant's 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be entered in the Applicant Identifier block (68 FR 38402).

Collaborations with NIST Employees: All applications should include a description of any work proposed to be performed by an entity other than the applicant, and the cost of such work should ordinarily be included in the budget.

If an applicant proposes collaboration with NIST, the statement of work should include a statement of this intention, a description of the collaboration, and prominently identify the NIST employee(s) involved, if known. Any collaboration by a NIST employee must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the approval of the proposed collaboration. Any unapproved collaboration will be stricken from the proposal prior to the merit review.

Use of NIST Intellectual Property: If the applicant anticipates using any NIST-owned intellectual property to carry out the work proposed, the applicant should identify such intellectual property. This information will be used to ensure that no NIST employee involved in the development of the intellectual property will participate in the review process for that competition. In addition, if the applicant intends to use NIST-owned intellectual property, the applicant must comply with all statutes and regulations governing the licensing of Federal government patents and inventions, described at 35 U.S.C. sec. 200–212, 37 CFR part 401, 15 CFR 14.36, and in section 20 of the Department of Commerce Pre-Award Notification Requirements published on December 30, 2004 (69 FR 78389). Questions about these requirements may be directed to the Counsel for NIST, 301–975–2803.

Any use of NIST-owned intellectual property by a proposer is at the sole discretion of NIST and will be negotiated on a case-by-case basis if a project is deemed meritorious. The applicant should indicate within the statement of work whether it already has a license to use such intellectual property or whether it intends to seek one.

If any inventions made in whole or in part by a NIST employee arise in the course of an award made pursuant to this notice, the United States government may retain its ownership rights in any such invention. Licensing or other disposition of NIST's rights in such inventions will be determined solely by NIST, and include the possibility of NIST putting the intellectual property into the public domain.

Initial Screening of all Applications: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated objectives for each program. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects: Any proposal that includes research involving human subjects, human tissue, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR part 27. In addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other federal agencies regarding these topics, all regulatory policies and guidance adopted by DHHS, FDA, and other Federal agencies on these topics, and all Presidential statements of policy on these topics.

NIST will accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) possessing a current, valid Federal-wide Assurance (FWA) from DHHS. NIST will not issue a single project assurance (SPA) for any IRB reviewing any human subjects protocol proposed to NIST.

On August 9, 2001, the President announced his decision to allow Federal funds to be used for research on existing human embryonic stem cell lines as long as prior to his announcement (1) the derivation process (which commences with the removal of the inner cell mass from the blastocyst) had already been initiated and (2) the

embryo from which the stem cell line was derived no longer had the possibility of development as a human being. NIST will follow guidance issued by the National Institutes of Health at *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/stemcell.pdf* for funding such research.

Research Projects Involving Vertebrate Animals: Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's ''Guide for the Care and Use of Laboratory Animals'' which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR parts 1, 2, and 3, and if appropriate, 21 CFR part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

Limitation of Liability: In no event will the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige the agency to award any specific project or to obligate any available funds. Funding of any award under any program announced in this notice is subject to the availability of funds.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Administrative Procedure Act/Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553 (a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: December 15, 2005.

William Jeffrey,

Director, NIST.

[FR Doc. 05–24424 Filed 12–22–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of Intent to Evaluate and Notice of Availability of Final Findings.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performances of the Ashepoo-Combahee-Edisto (ACE) Basin (South Carolina) National Estuarine Research Reserve, the Jobos Bay (Puerto Rico) National Estuarine Research Reserve, the North Carolina Coastal Management Program, and the Commonwealth of the Northern Mariana Islands (CNMI) Coastal Management Program.

The Coastal Zone Management Program evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA) and regulations at 15 CFR Part 923, Subpart L. The National Estuarine Research Reserve evaluations will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR Part 921, Subpart E and Part 923, Subpart L. The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document or Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

Each evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. A public meeting will be held as part of the site visit. Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meeting during the site visits.

The ACE Basin (South Carolina) National Estuarine Research Reserve evaluation site visit will be held January 30-February 3, 2006. One public meeting will be held during the week. The public meeting will be held on Tuesday, January 31, 2006, at 6:30 p.m. at the Edisto Interpretive Center, Edisto Beach State Park, 8377 State Cabin Road, Edisto Island, South Carolina.

The Jobos Bay (Puerto Rico) National Estuarine Research Reserve (NERR) evaluation site visit will be held January 30-February 3, 2006. One public meeting will be held during the week. The public meeting will be held on Wednesday, February 1, 2006, at 5 p.m. at the Jobos Bay NERR Visitors' Center, Road 705, Kilometer 2.3, Main Street, Aguirre, Puerto Rico.

The North Carolina Coastal Management Program evaluation site visit will be held February 6–10, 2006. Three public meetings will be held during the week. The first public meeting will be held on Monday, February 6, 2006, at 6 p.m. at the North Carolina Department of Environment and Natural Resources, Wilmington Regional Office, Room 200, 127 Cardinal Drive Extension, Wilmington, North Carolina. The second public meeting will be held on Tuesday, February 7, 2006, at 6 p.m. at the Carteret County Courthouse, Commissioners Boardroom, One Courthouse Square, Beaufort, North Carolina. The third public meeting will be held on Wednesday, February 8, 2006, at 6 p.m. at the Dare County Commissioners Office, 204 Ananias Dare Street, Manteo, North Carolina.

The CNMI Coastal Management Program evaluation site visit will be held February 13–17, 2006. One public meeting will be held during the week. The public meeting will be held on Tuesday, February 14, 2006, at 5 p.m. at the Coastal Resource Management Office, First Floor Conference Room, Morgen Building, San Jose, Saipan.

Copies of states' most recent performance reports, as well as OCRM's evaluation notification and supplemental information request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting held for a Program. Please

direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910. When the evaluations are completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Notice is hereby given of the availability of the final evaluation findings for the Hawaii and Louisiana Coastal Management Programs (CMPs); and the Great Bay (New Hampshire) and Hudson River (New York) National Estuarine Research Reserves (NERRs). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of CMPs and the operation and management of NERRs.

The states of Hawaii and Louisiana were found to be implementing and enforcing their federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. The Great Bay (New Hampshire) and Hudson River (New York) NERRs were found to be adhering to programmatic requirements of the NERR System.

Copies of these final evaluation findings may be obtained upon written request from: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or *Ralph.Cantral@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563–7118.

Dated: December 16, 2005.

Mitchell Luxenberg,

Acting Chief Financial Officer.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

[FR Doc. 05–24391 Filed 12–22–05; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

[I.D. 111805B]

Marine Mammals and Endangered Species, National Marine Fisheries Service Permit No. 960–1528–01; U.S. Fish and Wildlife Service Permit No. PRT017891

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service, Interior.

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that the Museum of Natural History Collections, Department of Environmental Studies, University of California, Santa Cruz, CA 95064 [Principal Investigator: Tonya Haff], has been issued an amendment to scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203 (1–800–358–2104).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Jennifer Skidmore, Office of Protected Resources, NMFS, (301)713–2289; and Monica Farris, Branch of Permits, USFWS (1–800–358–2104)

SUPPLEMENTARY INFORMATION: On July 25, 2005, notice was published in the **Federal Register** (70 FR 42535) that a request to amend Permit No. 960–1528/PRT017891 had been submitted by the above-named organization. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA;16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR parts 18 and 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 17 and 222–226).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Dated: November 9, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: December 14, 2005.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 05–24422 Filed 12–22–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–5340–33; I.D. 061505A]

RIN 0648–ZB55

Availability of Grant Funds for Fiscal Year 2006

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Omnibus notice; availability of grant funds.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) announces a second availability of grant funds for Fiscal Year 2006. The purpose of this notice is to provide the general public with a consolidated source of program and application information related to NOAA's competitive grant offerings. It contains the information about those programs as required to be published in the **Federal Register**. This omnibus notice is designed to replace multiple **Federal Register** notices that traditionally advertised the availability of NOAA's discretionary funds for its various programs. Applicants must comply with all requirements contained in the full funding opportunity announcements for each project competition in this announcement. It should be noted that additional program initiatives unanticipated at the time of

the publication of this notice may be announced later in the year.

DATES: Applications must be received by the date and time indicated under each program listing in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Applications must be submitted to the addresses listed in the **SUPPLEMENTARY INFORMATION** section for each program. This **Federal Register** notice may be found at the Grants.gov Web site, *http://www.grants.gov*, and the NOAA Web site at *http://www.ago.noaa.gov/grants/funding.shtml*.

FOR FURTHER INFORMATION CONTACT: For a copy of the full funding opportunity announcement and/or application kit, access it at Grants.gov, via NOAA's Web site, or by contacting the person listed as the information contact under each program.

SUPPLEMENTARY INFORMATION: NOAA published its first omnibus notice announcing the availability of grant funds for both projects and fellowships/scholarships/internships for Fiscal Year 2006 in the **Federal Register** on June 30, 2005 (70 FR 37766). The evaluation criteria and selection procedures contained in that notice are applicable to this solicitation. For a copy of the June 30, 2005, omnibus notice, please go to: *http://www.Grants.gov* or *http://www.ago.noaa.gov/grants/funding.shtml*. Applicants must comply with all requirements contained in the full funding opportunity announcements for each project competition in this announcement. This omnibus notice describes funding opportunities for the following NOAA discretionary grant programs:

List of NOAA Project Competitions

Detailed information is found elsewhere in this notice.

National Marine Fisheries Service

1. Chesapeake Bay Integrated Science Program
2. Mid-Atlantic Research Set-Aside
3. Proactive Species Conservation Program

National Ocean Service

1. Bay Watershed Education & Training (B-WET) Program, San Francisco and Santa Barbara
2. Geodetic Science and Applied Research

National Weather Service

1. Minority Serving Institution (MSI) Program

Oceanic and Atmospheric Research

1. NOAA's Great Lakes Ecosystem Research Program
2. Sea Grant - Marine Aquaculture Program
3. Sea Grant - Regional Research, Information Planning and Coordination

Electronic Access

As has been the case since October 1, 2004, applicants can access, download and submit electronic grant applications for NOAA Programs through the Grants.gov Web site at *www.Grants.gov*. These announcements will also be available at the NOAA web site or by contacting the program official identified below. However, applicants without Internet access may still submit hard copies of their applications. The closing dates for applications filed through Grants.gov are the same as for the paper submissions noted in this announcement. For applicants filing through Grants.gov, NOAA strongly recommends that you do not wait until the application deadline date to begin the application process. Registration may take up to 10 business days.

Getting started with Grants.gov is easy! Go to www.Grants.gov. There are two key features on the site: Find Grant Opportunities and Apply for Grants. Everything else on the site is designed to support these two features and your use of them. While you can begin searching for grant opportunities for which you would like to apply immediately, it is recommended that you complete the remaining Get Started steps sooner rather than later, so that when you find an opportunity for which you would like to apply, you are ready to go.

Get Started Step 1 B Find Grant Opportunity for Which You Would Like to Apply

Start your search for Federal government-wide grant opportunities and register to receive automatic e-mail notifications of new grant opportunities or any modifications to grant opportunities as they are posted to the site by clicking the Find Grant Opportunities tab at the top of the page.

Get Started Step 2 B Register with Central Contractor Registry (CCR)

Your organization will also need to be registered with Central Contractor Registry. You can register with them online. This will take about 30 minutes. You should receive your CCR registration within three business days. Important: You must have a DUNS number from Dun & Bradstreet before you register with CCR. Many organizations already have a DUNS number. To determine if your organization already has a DUNS number or to obtain a DUNS number, contact Dun & Bradstreet at 1–866–705–5711. This will take about 10 minutes and is free of charge. Be sure to complete the Marketing Partner ID (MPIN) and Electronic Business Primary Point of Contact fields during the CCR registration process. These are mandatory fields that are required when submitting grant applications through Grants.gov.

Get Started Step 3 B Register with the Credential Provider

You must register with a Credential Provider to receive a username and password. This will be required to securely submit your grant application.

Get Started Step 4 B Register with Grants.gov

The final step in the Get Started process is to register with Grants.gov. This will be required to submit grant applications on behalf of your organization. After you have completed the registration process, you will receive e-mail notification confirming that you are able to submit applications through Grants.gov.

Get Started Step 5 B Log on to Grants.gov

After you have registered with Grants.gov, you can log on to Grants.gov to verify if you have registered successfully, to check application status, and to update information in your applicant profile, such as your name, telephone number, e-mail address, and title. In the future, you will have the ability to determine if you are authorized to submit applications through Grants.gov on behalf of your organization.

NOAA Project Competitions

National Marine Fisheries Service

1. Chesapeake Bay Integrated Science Program

SUMMARY DESCRIPTION: The NOAA Chesapeake Bay Office's (NCBO) Chesapeake Bay Integrated Science Program is a competitive program that supports vital restoration, research, monitoring, analysis, modeling and assessment activities that will assist the Chesapeake Bay Program, NOAA, and other program partners in reaching the goal of effective ecosystem-based management and integrated restoration. All projects supported through this program must address the strategic goals and objectives of NCBO *http://noaa.chesapeakebay.net* and provide timely information for making resource management decisions in an ecosystem context. Science Program priorities are designed to be responsive to and

compatible with the scientific and technical information needs of the Chesapeake Bay as identified on NCBO's Funding Opportunities web page *http://noaa.chesapeakebay.net/fundingopportunities.aspx*.

FUNDING AVAILABILITY: This solicitation announces funds in the amount of $5,000,000 may be available in FY 2006 in award amounts to be determined by the proposals and available funds. Annual funding is anticipated to fund projects for up to 3 years duration, but is dependent on funding made available in the federal FY06 appropriation. Funding for subsequent years will also depend on the performance of grantees to successfully conduct activities as determined by the Federal Program Officer through performance reports, site visits, and compliance with award conditions. It is the intent of the NOAA Chesapeake Bay Office to renew funding for several projects currently being supported by this ongoing science program, pending successful review of a new workplan and adequate progress reports and/or site visits. It is also the intent of NCBO to award funding to new projects as available funds permit.

STATUTORY AUTHORITY: 16 U.S.C. 661

CFDA: 11.457 Chesapeake Bay Studies

APPLICATION DEADLINE: Full proposals must be received by 5 p.m. eastern time on March 15, 2006. Letters of Intent must be received by 5 p.m. eastern time on February 3, 2006.

ADDRESS FOR SUBMITTING PROPOSAL(S): Electronic application packages are strongly encouraged and are available at: *http://www.grants.gov/*. If the applicant has difficulty accessing Grants.gov or downloading the required forms from the NCBO Web site, they should contact Derek Orner, NOAA Chesapeake Bay Office; 410 Severn Avenue, Suite 107A, Annapolis, MD 21403, or by phone at 410–267–5676, or fax to 410–267–5666, or via Internet at *derek.orner@noaa.gov*. Paper applications are available on the NCBO Web site: *http://noaa.chesapeakebay.net/* or can be obtained by contacting Derek Orner.

INFORMATION CONTACTS: Derek Orner, NOAA Chesapeake Bay Office; 410 Severn Avenue, Suite 107A, Annapolis, MD 21403, or by phone at 410–267–5676, or fax to 410–267–5666, or via Internet at *derek.orner@noaa.gov*.

ELIGIBILITY: Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

COST-SHARING REQUIREMENTS: No cost sharing is required under this program, however, the NCBO strongly encourages applicants to share as much of the project costs as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process. Priority selection will be given to proposals that propose cash rather than in-kind contributions.

INTERGOVERNMENTAL REVIEW: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

2. Mid-Atlantic Research Set-Aside

SUMMARY DESCRIPTION: The research set-aside (RSA) Program provides a mechanism to fund research and compensate vessels through the sale of fish harvested under a research quota. For fishing year 2007 (January 1–December 31, 2007), NOAA's National Marine Fisheries Service (NMFS) announces that up to 3 percent of the total allowable landings (TAL) in certain Mid-Atlantic fisheries may be dedicated to research endeavors under the RSA program. The setting of the actual RSA quotas will be the subject of future rulemaking. NMFS is soliciting proposals for research activities concerning the summer flounder, scup, black sea bass, Loligo squid, Illex squid, Atlantic mackerel, butterfish, bluefish, and tilefish fisheries. The set-asides may range between 0 and 3 percent of each species' TAL. The set-aside allocated for a given species is designated primarily for research involving that species. However, to promote research for species where it would otherwise be infeasible, individual research projects may involve a percentage of the set-aside allocations for several other species listed in this notice. Therefore, in addition to, or in lieu of, applying for part of the set-aside involving a species directly involved in a research project, applicants may also apply for up to 25 percent of the RSA quota for species not directly involved in a particular research project. No Federal funds are provided for research under this notification, but rather the opportunity to fish and sell the catch to generate income to offset research costs. Projects funded under an RSA allocation (or award) must enhance understanding of the fishery resource or contribute to the body of information on which management decisions are made.

FUNDING AVAILABILITY: No Federal funds are provided for research under this notification, but rather the opportunity to fish and sell the catch to generate income. The Federal Government may issue an Exempted Fishing Permit (EFP) or Letter of Acknowledgment (LOA), as applicable, which may provide special fishing privileges in response to research proposals selected under this program. In the past several years, two to five awards have been issued per year. It is anticipated that no more than five awards will be issued for the 2007 fishing year.

STATUTORY AUTHORITY: Issuing grants is consistent with sections 303(b)(11), 402(e), and 404(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1853(b)(11), 16 U.S.C. 1881a(e), and 16 U.S.C. 1881c(c), respectively.

The award of a set-aside from the TAL of selected species resulted from the approval of Framework Adjustment 1 (Framework 1) to the Atlantic Mackerel, Squid, and Butterfish; Summer Flounder, Scup, and Black Sea Bass; and Bluefish Fishery Management Plans (FMPs); and the RSA provisions of the Tilefish FMP. Framework 1 established a procedure through which RSA amounts are set annually as part of the Mid-Atlantic Fishery Management Council's (Council) quota-setting process and codified in regulations at 50 CFR 648.21(g).

CFDA: 11.454, Unallied Management Projects

APPLICATION DEADLINE: Applications must be received by NMFS on or before 5 p.m. e.s.t. on February 21, 2006.

ADDRESS FOR SUBMITTING APPLICATION(S): Applications should be submitted through *http://www.grants.gov*, and use the following funding opportunity # NMFS-NERO–2006–2000437 unless an applicant does not have Internet access. In that case, hard copies should be sent to NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark proposals ''Attention: Mid-Atlantic Research Set-Aside Program.''

INFORMATION CONTACT: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, by phone at 302–674–2331 ext. 19, or fax at 302–674–5399; Clay Heaton, Fishery Management Specialist, Mid-Atlantic Fishery Management Council, by phone 302–674–2331 ext. 13, or via e-mail at *cheaton@mafmc.org*; or Paul Perra, Fishery Policy Analyst, NMFS, Northeast Regional Office, One

Blackburn Drive, Gloucester, MA 01930, by phone 978–281–9153, by fax at 978–281–9135, or via e-mail at *paul.perra@noaa.gov*.

ELIGIBILITY: Eligible applicants include, but are not limited to, institutions of higher education, hospitals, other nonprofits, commercial organizations, individuals, state, local and Native American tribal governments. Federal agencies and institutions are not eligible to receive Federal assistance under this notice. Additionally, employees of any Federal agency or Regional Fishery Management Council are ineligible to submit an application under this program. However, Council members who are not Federal employees may submit an application.

COST SHARING REQUIREMENTS: None

INTERGOVERNMENTAL REVIEW: Applicants under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

3. Proactive Species Conservation Program

SUMMARY DESCRIPTION: The National Marine Fisheries Service (NMFS) announces the availability of federal funding to support the conservation of marine and anadromous species of concern. To raise awareness of potentially at-risk species and to foster their proactive conservation, the NMFS created a ''species of concern'' list in April 2004 (69 FR 19975). Under this solicitation, the NMFS is seeking to support the development and implementation of conservation plans for these federally identified species of concern. Any state, tribal, or local entity that has management or regulatory authority over activities that affect these species is eligible to apply. A current list of NMFS' species of concern can be found at *http://www.nmfs.noaa.gov/pr/species/concern/#list*.

FUNDING AVAILABILITY: Approximately $2.0M in funding may be available for multi-year awards in FY 2006, in award amounts of $400K to $1.0M per fiscal year. Award periods will be for 5 years, with annual funding contingent on the availability of Federal appropriations.

STATUTORY AUTHORITY: 16 U.S.C. 661

CFDA: 11.472, Unallied Science Programs.

APPLICATION DEADLINE: Proposals must be received by 5 p.m. eastern time on March 1, 2006.

ADDRESS FOR SUBMITTING PROPOSAL(S): Applicants should submit proposals online through www.grants.gov. If online submission is not possible, paper or electronic applications may also be submitted to NOAA/NMFS/Office of Protected Resources, Attn: Lisa Manning, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910; e-mail: *lisa.manning@noaa.gov*.

INFORMATION CONTACTS: Lisa Manning, 1315 East-West Highway, Silver Spring, MD 20910; e-mail: *lisa.manning@noaa.gov*; phone: 301–713–1401.

ELIGIBILITY: State, local or Indian tribal governments that have regulatory or management authority over activities that affect one or more species of concern identified by NMFS.

COST SHARING REQUIREMENTS: There are no cost-sharing or matching requirements under this solicitation.

INTERGOVERNMENTAL REVIEW: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

National Ocean Service

1. Bay Watershed Education & Training (B-WET) Program, San Francisco and Santa Barbara

SUMMARY DESCRIPTION: The California B-WET grant program is a competitively based program that supports existing environmental education programs, fosters the growth of new programs, and encourages the development of partnerships among environmental education programs throughout the Monterey Bay, San Francisco Bay and Santa Barbara Channel watersheds. Funded projects provide Meaningful Watershed Experiences for students and Professional Development Opportunities for Teachers in the Area of Environmental Education.

FUNDING AVAILABILITY: This solicitation announces that approximately $1,050,000 may be available in FY 2006 in award amounts to be determined by the proposals and available funds. It is anticipated that approximately 25 grants will be awarded with these funds. This solicitation announces that approximately $1,050,000 may be available in FY 2006 in award amounts to be determined by the proposals and available funds. About $700,000 will be made available to the San Francisco watershed area and about $350,000 will be made available to the Santa Barbara Channel watershed area. About $525,000 will be for proposals that provide opportunities for students to participate in a Meaningful Watershed Experience. About $525,000 will be for proposals that provide opportunities for Professional Development in the area of Environmental Education for Teachers. Proposals may be submitted for up to 3 years. However, funds will be made available for only a 12-month award period and any continuation of the award period will depend on submission of a successful proposal subject to technical and panel reviews, adequate progress on previous award(s), and available funding to continue the award. The National Marine Sanctuary Program may continue funding existing grants that were funded in the previous application process. New grants will be awarded to continue these projects under this announcement pending successful review of a new application package, and adequate progress reports and/or site visits.

STATUTORY AUTHORITY: 16 U.S.C. 1440, 15 U.S.C. 1540.

CFDA: 11.429, Marine Sanctuary Program.

APPLICATION DEADLINE: Proposals must be received by 5 p.m. pacific standard time on February 21, 2006.

ADDRESS FOR SUBMITTING PROPOSAL(S): Applicants are encouraged to submit proposals electronically through the Grants.gov on-line system. If you are submitting hard copy proposals you may send them to Seaberry Nachbar, Monterey Bay National Marine Sanctuary Office; 299 Foam Street, Monterey, CA 93940.

INFORMATION CONTACT: Seaberry Nachbar, phone 831–647–4204, fax 831–647–4250, Internet at *seaberry.nachbar@noaa.gov*.

ELIGIBILITY: Eligible applicants for both areas of interest are K-through–12 public and independent schools and school systems, institutions of higher education, nonprofit organizations, state or local government agencies, and Indian tribal governments. Individuals and Federal agencies are not eligible.

COST SHARING REQUIREMENTS: No cost sharing is required under this program however, the National Marine Sanctuary Program strongly encourages applicants to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process with cash being the preferred method of contribution.

INTERGOVERNMENTAL REVIEW: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

2. Geodetic Science and Applied Research (GSAR) Program

SUMMARY DESCRIPTION: The GSAR Program represents an NOAA/NGS effort to conduct basic and applied research in the geodetic sciences that advances positioning operations and services in support of transportation and commerce on a national basis. This opportunity is focused on a specific problem: To develop scientific and management applications for the Shallow Water Positioning System (SWaPS). Post-processing the GPS data allows the user to recover the same position again with sub-meter accuracy. There are at least five additional priorities that will be addressed in the future in the GSAR Program.

FUNDING AVAILABILITY: This funding opportunity announces that $27,300 will be available through this announcement for fiscal year 2006. Proposals should be prepared assuming a three-year budget of no more than $75,000. It is expected that one award will be made, depending on availability of funds.

STATUTORY AUTHORITY: 33 U.S.C. 883d.

CFDA: 11.400, Applied Geodetic Research.

APPLICATION DEADLINE: Proposals must be received by the NGS no later than 5 p.m., eastern standard time January 23, 2006.

ADDRESS FOR SUBMITTING PROPOSAL(S): Proposals should be submitted through Grants.gov APPLY. For those applicants without Internet access, proposals should be submitted to: Geosciences Research Division; NOAA National Geodetic Survey; N/NGS6; 1315 East-West Highway, Room 8106; Silver Spring, MD 20910.

INFORMATION CONTACTS: Dr. Gerald Mader: (301) 713-2854 ext. 201, or fax to (301) 713-4176, or via Internet at *Gerald.L.Mader@noaa.gov*.

ELIGIBILITY: Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, international organizations, state, local, and Indian tribal governments and federally funded educational institutions such as the Naval Postgraduate School. Please Note: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

COST SHARING REQUIREMENTS: No cost sharing is required under this program.

INTERGOVERNMENTAL REVIEW: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

National Weather Service

1. Minority Serving Institution (MSI) Program

SUMMARY DESCRIPTION: NWS is soliciting projects to be conducted by university investigators for 1-year or 2-years, with an anticipated start date of [244 days after RFA publication date or nearest first day of the month]. The NWS MSI Program represents an NOAA/NWS effort to promote and increase diversity in the atmospheric and related sciences through collaborative research between operational forecasters and academic institutions which have expertise in the environmental sciences, as well as capacity building for colleges and universities with emerging programs. These activities will engage researchers and students in applied research of interest to the operational meteorological community and develop new educational opportunities for the public.

FUNDING AVAILABILITY: Approximately $150,000 will be available through this announcement for fiscal year 2006. Proposals should be prepared assuming an annual budget of no more than $50,000. It is expected that approximately three awards will be made, depending on availability of funds.

STATUTORY AUTHORITY: 15 USC 313; 49 USC 44720(b); 33 USC 883d; 15 USC 2904; 15 USC 2934

CFDA: 11.468, Applied Meteorological Research

APPLICATION DEADLINE: Proposals must be received by the NWS no later than 5 p.m., e.s.t., March 23, 2006.

ADDRESS FOR SUBMITTING PROPOSAL(S): Proposals should be submitted through Grants.gov. For applicants without Internet access, send hard copies of proposals to: OAA/NWS; 1325 East-West Highway, Room 15330; Silver Spring, Maryland 20910–3283.

INFORMATION CONTACT: Sam Contorno, NOAA/NWS; 1325 East-West Highway, Room 15330, Silver Spring, MD 20910–3283, or by phone at 301–713–3557 ext. 150, or fax to 301– 3–1253, or via Internet at *samuel.contorno@noaa.gov*.

ELIGIBILITY: Minority Serving Institutions eligible to submit proposals include institutions of higher education identified by the Department of Education as: (i) Historically Black Colleges and Universities, (ii) Hispanic-Serving Institutions, (iii) Tribal Colleges and Universities, or (iv) Alaska Native or Native Hawaiian Serving Institutions on the most recent ''United States Department of Education Accredited Post-Secondary Minority Institutions'' list (at the date of publication of this announcement). Proposals will not be accepted from non-profit organizations, foundations, auxiliary services or any other entity on behalf of MSIs.

COST SHARING REQUIREMENTS: None.

INTERGOVERNMENTAL REVIEW: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Oceanic and Atmospheric Research (OAR)

1. NOAA's Great Lakes Ecosystem Research Program

SUMMARY DESCRIPTION: Great Lakes Environmental Research Laboratory (GLERL) is actively involved in research on ecological prediction, aquatic invasive species, physical environment prediction, and environmental observing systems. Specific research projects include studies on the zebra mussel in the Great Lakes, the impacts of climate change on the Great Lakes and mid-U.S. water resources, the development of coastal environmental forecast systems, Great Lakes water supplies, water level forecasting, food web interactions and regulation and forecasting risks to Human Health (e.g. beach closings, drinking water quality and harmful algal blooms).

FUNDING AVAILABILITY: Total anticipated federal funding for FY 2006 is $2.1M in first year funding for 40 - 200 number of awards. Federal Funding for FY 2007 and beyond may be used in part to fund some awards submitted under this competition. We anticipate that the annual cost of most funded projects will fall between $1,000 and $200,000 per year. Actual funding levels will depend upon the final FY 2006 and subsequent budget appropriations.

STATUTORY AUTHORITY: 33 USC 883d.

CFDA: 11.460, Special Oceanic and Atmospheric Projects

APPLICATION DEADLINE: Letters of Intent should be received at GLERL no later than 5 p.m. eastern standard time, February 15, 2006. Full proposals must be received no later than 5 p.m. eastern standard time, March 15, 2006.

ADDRESS FOR SUBMITTING PROPOSAL(S): Letters of Intent (LOI). LOIs are encouraged to be submitted by facsimile or e-mail to the identified

NOAA program element's program manager or to *GLERLgrants@noaa.gov*. If an applicant does not have Internet access, LOI hard copies should be sent to the Program Managers listed with each program in the Program Priorities section or to the GLERL Grants Manager, Sandra Salyers, NOAA/GLERL, 2205 Commonwealth Blvd., Ann Arbor, MI, 48103, phone 734–741–2246. Proposals should be submitted through Grants.gov APPLY *http://www.grants.gov*. If an applicant does not have Internet access, please contact the GLERL Grants Manager (see above) for hard copy instructions.

INFORMATION CONTACT: Sandra Salyers, NOAA/GLERL, 2205 Commonwealth Blvd; Ann Arbor, MI, 48103, phone 734–741–2246

ELIGIBILITY: Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, international organizations, state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

COST SHARING REQUIREMENTS: No cost sharing is required.

INTERGOVERNMENTAL REVIEW: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

2. Sea Grant - Marine Aquaculture Program

SUMMARY DESCRIPTION: NOAA is seeking preliminary proposals and full proposals for demonstration projects and innovative research for the development of environmentally and economically sustainable marine aquaculture in nearshore, open water, and terrestrial environments. The Great Lakes are considered marine for this competition. Priorities include: (1) site specific commercial/pilot scale projects to demonstrate technical and economic feasibility; (2) studies to assess environmental impacts of current marine aquaculture facilities; (3) development of environmental models and GIS tools to aid site selection for new facilities; and (4) research on such topics as husbandry techniques and production systems, nutrition, disease diagnostics and control, economic and marketing analyses, product transport, worker safety, and others.

Projects funded under this competition should support NOAA's overall goals for its marine aquaculture program, which are to: (1) Establish a comprehensive regulatory program for the conduct of marine aquaculture operations; (2) Develop appropriate technologies to support commercial marine aquaculture and enhancement of wild stocks; (3) Establish and implement procedures for the environmental assessment and monitoring of marine aquaculture activities; (4) Conduct education and outreach activities to establish a well informed public on marine aquaculture; and (5) Meet international obligations to promote environmentally sustainable practices for the conduct of marine aquaculture. Accomplishment of these goals should lead to a well-managed marine aquaculture industry in the United States; a well-informed public that understands U.S. aquaculture issues, and improved access to the latest aquaculture research results.

FUNDING AVAILABILITY: Up to $4 million will be available for proposals of one or two years duration, with individual projects up to $800,000. It is anticipated that we will make approximately ten awards, two or three pilot scale demonstration projects at the $800,000 level for the two-year period and the remainder at or about the $200,000 level.

STATUTORY AUTHORITY: 33 U.S.C. 1121–1131

CFDA: 11.417, Sea Grant Support

APPLICATION DEADLINE: Preliminary proposals: 4 p.m., e.s.t., on February 28, 2006. Full proposals: 4 p.m., e.d.s.t., April 13, 2006.

ADDRESS FOR SUBMITTING APPLICATIONS: Preliminary proposals should be submitted in hard copy only. Preliminary proposals and full proposals from those that do not have access to Internet should be sent to: James McVey, NOAA R/SG; 1315 East-West Highway, Bldg SSMC 3, Room 11828, Silver Spring, MD 20910–3283, tel. 301–713–2435.

Applications for full proposals are made through grants.gov. For academic submissions from Sea Grant states it is recommended that you contact your local Sea Grant Director to facilitate full proposal submission through Grants.gov.

INFORMATION CONTACT: Dr. James McVey, 301–713–2435; via Internet at *Jim.McVey@noaa.gov*.

ELIGIBILITY: Institutions of higher education, nonprofit organizations, commercial organizations, Federal, state, local and Indian tribal governments are eligible. Only those who submit preliminary proposals by the preliminary proposal deadline are eligible to submit full proposals.

COST SHARING REQUIREMENTS: None

INTERGOVERNMENTAL REVIEW: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

3. Sea Grant - Regional Research, Information Planning and Coordination

SUMMARY DESCRIPTION: The NOAA National Sea Grant College Program (Sea Grant) is soliciting proposals for the development of regional research and information plans for U.S. coastal, ocean, and Great Lakes areas. The objective is to use Sea Grant's university capabilities to facilitate discussions among the broad range of regional ocean, coastal, and Great Lakes stakeholders to help identify and prioritize critical resource management problems and associated research and information needs necessary for practical solutions.

FUNDING AVAILABILITY: NOAA Sea Grant will make available $750,000 in FY 2006, $1,375,000 in FY2007, $925,000 in FY2008, $550,000 in FY2009, $550,000 in FY2010, and $250,000 in FY2011 (assuming appropriations are available) for grants to regional planning teams. A total of $250,000 of federal Sea Grant funds will be made available for each region over two years to cover the completion of a regional research and information plan. In FY2006, $750,000 will be made available for six regions. In FY2007, $1,375,000 will be made available for all eleven regions. In FY2008, $625,000 will be made available to complete the five regional plans that were initiated in FY2007. Proposals may request up to an additional three years of staff support (up to $50,000 per year) to help implement completed regional plans. NOAA will make available $300,000 in FY2008, $550,000 in FY2009 and FY2010, and $250,000 in FY2011 to support these regional staff. It is expected that Sea Grant programs within each region will work together and submit one proposal that covers a 2–5 year period. It is anticipated that final recommendations for funding under this announcement will be made in March 2006, and that projects funded under this announcement will have a start date no earlier than June 1, 2006.

STATUTORY AUTHORITY: 33 U.S.C. 1121 *et seq.*, as amended

CFDA: 11.417, Sea Grant Support

APPLICATION DEADLINE: Applications must be received by 5 p.m. e.s.t. on February 9, 2006.

ADDRESS FOR SUBMITTING APPLICATIONS: Applications should be submitted through Grants.gov APPLY *http://www.grants.gov*. Applicants for whom online application is an undue hardship may submit hard copies (an original and two copies) to: National Sea Grant College Program, R/SG, Attn:

Regional Competition, Rm 11732, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. The full text of the funding opportunity announcement for this competition can be accessed via Grants.gov FIND Web site: *http://www.grants.gov*. This announcement will also be available at the NOAA Web site: *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML* or by contacting the program official identified in INFORMATION CONTACT.

INFORMATION CONTACT: Dr. Leon M. Cammen at *leon.cammen@noaa.gov* or 301–713–2435 ext. 136.

ELIGIBILITY: Proposals may be submitted only by the designated managing Sea Grant College or Institutional Program.

COST SHARING REQUIREMENTS: Matching funds equal to at least 50 percent of the Federal funding must be provided to support the proposed regional planning.

INTERGOVERNMENTAL REVIEW: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2006 appropriations. In no event will NOAA or the Department of Commerce be responsible for application preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that, they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register**, (69 FR 66177) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the Internet *http://www.dunandbradstreet.com*.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals that are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216____6____TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc__ceq.htm*.

Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)).

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: December 20, 2005.

Helen Hurcombe,

Director, Acquisition and Grants Office, National Oceanic and Atmospheric Administration.

[FR Doc. E5–7786 Filed 12–22–05; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121905D]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held January 9 – 12, 2006.

ADDRESSES: These meetings will be held at the Omni Corpus Christi Hotel – Bayfront Tower, 900 North Shoreline Boulevard, Corpus Christi, TX 78401.

Council address: Gulf of Mexico Fishery Management Council, 2203

North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Council

Wednesday, January 11, 2006

8:30 a.m. – Convene.

8:45 a.m. – 11:30 a.m. – Receive public testimony on (a) Reef Fish Amendment 26 (Red Snapper Individual Fishing Quota (IFQ); (b) The Texas Shrimp Closure; and (c) Exempted fishing permits (if any).

1 p.m. – 3 p.m. – Receive the Reef Fish Management Committee Report.

3 p.m. – 4:30 p.m. – Receive the joint Reef Fish/Shrimp Management Committees Report.

4:30 p.m. – 5:30 p.m. – Receive Litigation Briefing (CLOSED SESSION).

Thursday, January 12, 2006

8:30 a.m. – 9 a.m. – Receive the Budget/Personnel Committee Report.

9 a.m. – 9:30 a.m. – Receive the Administrative Policy Committee Report.

9:30 a.m. – 9:45 a.m. – Receive the Habitat Protection Committee Report.

9:45 a.m. – 10 a.m. – Receive the Shrimp Management Committee Report.

10 a.m. – 10:15 a.m. – Receive the South Atlantic Fishery Management Council (SAFMC) Meeting Report.

10:15 a.m. – 10:30 a.m. – Receive the Enforcement Reports.

10:30 a.m. – 10:45 a.m. – Adoption of the Law Enforcement Advisory Panel (LEAP) Operation Plan.

10:45 a.m. – 11 a.m. – Receive the NMFS Regional Administrator's Report.

11 a.m. – 11:30 a.m. – Receive the State Director's Reports.

11:30 a.m. – 11:45 a.m. – Other Business.

Committee

Monday, January 9, 2006

8:30 a.m. – 10:30 a.m. – The Habitat Protection Committee will hear a report of the Southeast Aquatic Resources Partnership (SARP) Meeting and a report of the Texas Habitat Protection AP Meeting. The Committee will receive presentations of Shell Oil Liquified Natural Gas (LNG) Proposals and Gulf Foundation CRP Habitat Grants. Then the Committee will receive an update on the Gulf of Mexico Summit.

10:30 a.m. – 11:30 a.m. – The Shrimp Management Committee will meet to review the Texas Closure.

1 p.m. – 5:30 p.m. – The Reef Fish Management Committee will hear an update on the second red snapper referendum. The Committee will hear a status report on the Grouper Allocation Amendment. Then, the Committee will discuss possible mechanisms to trigger vertical line fishing at the end of the grouper season.

Tuesday, January 10, 2006

8:30 a.m. – 12 noon – The joint Reef Fish/Shrimp Management Committees will review a scoping document for a joint Reef Fish 27/Shrimp 14 Amendment to consider changes to regulations for the directed red snapper fishery targeted at reducing shrimp trawl by-catch; by-catch in the directed red snapper fishery; and effort limitation alternatives for the shrimp fishery. The Committee will also review another scoping document for a joint Reef Fish 28/Shrimp 15 Amendment to consider at such issues as gear and depth restrictions for the red snapper fishery; further reducing bycatch in the red snapper and shrimp fisheries; effort reduction in the shrimp fishery; as well as other management alternatives. The Committees will hear the Shrimp Advisory Panel's (AP) comments on these two documents.

1:30 p.m. – 3 p.m. – The Budget/Personnel Committee will meet to review Family Medical Leave Act (FMLA) revisions to the Statement of Organization Practices and Procedures (SOPPs) and make recommendations to Council. The Committee will also review the factors affecting the CY 2006 Budget.

3 p.m. – 5:30 p.m. – The Administrative Policy Committee will discuss the revisions made to the SOPPs regarding the Scientific and Statistical Committee (SSC) operations by the SSC Operations Task Force and make recommendations to Council. The Committee will hear a presentation by staff on video conferencing and discuss holding public comment sessions.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: December 20, 2005.

Emily Menashes,

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

[FR Doc. E5–7777 Filed 12–22–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army (OAA–RPA), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 21, 2006.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Military Surface Deployment and Distribution Command, 661 Sheppard Place, Ft. Eustis, VA 23604, ATTN: (Kim

Morrison). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Signature and Tally Record; DD Form 1907; OMB Control Number 0702–0027.

Needs and Uses: Signature and Tally Record (STR) is an integral part of the Defense Transportation System and is used for commercial movements of all sensitive and classified material. The STR provides continuous responsibility for the custody of shipments in transit and requires each person responsible for the proper handling of the cargo to sign their name at the time they assume responsibility for the shipment, from point of origin, and at specified stages until delivery at destination. A copy of the STR, along with other transportation documentation is forwarded by the carrier to the appropriate finance center for payment.

Affected Public: Business or Other For-Profit.

Annual Burden Hours: 3,750.

Number of Respondents: 130.

Responses Per Respondent: 577.

Average Burden Per Response: 3 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The destination transportation officer uses the DD Form 1907 to assure that the carriers utilize the STR and provide the transportation service as requested by origin shipper. A copy of the STR, along with other transportation documentation, is forwarded by the carrier to the appropriate finance center for payment. The DD Form 1907 verifies the protected services requested in Bill of Lading that was provided.

Dated: December 14, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–24392 Filed 12–22–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army (OAA–RPA), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (c) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 21, 2006.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Director of Admissions, U.S. Military Academy, Official Mail & Distribution Center, ATTN: (Joseph Dineen), 646 Swift Road, West Point, NY 10996–1905. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address, or call Department of the Army Reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Pre-Candidate Procedures; USMA–375, USMA–723, USMA–450, USMA–21–12, USMA–21–27, USMA–381; OMB Control Number (0702–0060.

Needs and Uses: West Point candidates provides personal background information which allows the West Point Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by West Point's Office of Institutional Research for correlation with success in graduation and military careers.

Affected Public: Individuals or Households.

Annual Burden Hours: 8,350.

Number of Respondents: 66,200.

Responses Per Respondent: 1.

Average Burden Per Response: 9 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: Title 10, U.S.C. 4336 provides requirements for admission of candidates to the U.S. Military Academy. The U.S. Military Academy (USMA) strives to motivate outstanding candidates to apply for admission to USMA. Once candidates are found, USMA collects information necessary to nurture them through successful completion of the application process.

Dated: December 14, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–24393 Filed 12–22–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army (OAA–RPA), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 21, 2006.

ADDRESSES: Written comments and recommendations on the proposed

information collection should be sent to the Director of Admissions, U.S. Military Academy, Official Mail & Distribution Center, ATTN: (Joseph Dineen), 646 Swift Road, West Point, NY 10996–1905. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Offered Candidate Procedures; USMA Forms 5–490, 2–66, 847, 5–489, 5–519, 8–2, 5–599, 480–1; OMB Control Number 0702–0062.

Needs and Uses: West Point candidates provide personal background information that allows the West Point Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by West Point's Office of Institutional Research for correlation with success in graduation and military careers. The purpose of this activity is to obtain a group of applicants who eventually may be evaluated for admission to the USMA.

Affected Public: Individuals or Households.

Annual Burden Hours: 11,720.

Number of Respondents: 19,525.

Responses per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: Title 10, U.S.C. 4346 provides requirements for admission of candidates to the U.S. Military Academy. The U.S. Military Academy (USMA) strives to motivate outstanding potential candidates to apply for admission to USMA. Once candidates are found, USMA collects information necessary to nurture them through successful completion of the application process.

Dated: December 14, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–24394 Filed 12–22–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army (OAA–RPA), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 21, 2006.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Director of Admissions, U.S. Military Academy, Official Mail & Distribution Center, ATTN: (Joseph Dineen), 646 Swift Road, West Point, NY 10996–1905. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Candidate Procedures; USMA Forms 21–16, 21–23, 21–15, 21–26, 5–520, 5–518, 5–497, 481, 546, 5–2, 5–26, 5–515, 481–1, 520, 261, 21–14, 21–8; OMB Control Number 0702–0061.

Needs and Uses: West Point candidates provide personal background information that allows the West Point Admissions Committee to make subjective judgments on non-academic experiences. Data are also used by West Point's Office of Institutional Research for correlation with success in graduation and military careers.

Affected Public: Individuals or Households.

Annual Burden Hours: 11,720.

Number of Respondents: 19,525.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: Title 10, U.S.C. 4346 provides requirements for admission of candidates to the U.S. Military Academy. The U.S. Military Academy (USMA) strives to motivate outstanding potential candidates to apply for admission to USMA. Once candidates are found, USMA collects information necessary to nurture them through successful completion of the application process.

Dated: December 14, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–24395 Filed 12–22–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement for the Prado Basin Master Plan, San Bernardino and Riverside Counties, CA

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

ACTION: Notice of availability.

SUMMARY: The Environmental Impact Statement (EIS) addresses potential environmental impacts associated with the proposed Prado Basin Master Plan, and identifies recommended measures to reduce such impacts. The Prado Basin Master Plan proposes a range of recreation uses and features for identified planning areas with the Basin. Specific site plans and layouts for these proposed uses would be prepared when future specific development plans are proposed. The impact discussion, in turn, is purposely general in nature, and recommended measures to reduce impacts allow for flexibility. The potential impacts as stated and the commitment to minimize impacts are intended to provide a framework for future proposals. They also provide some guidelines for impacts that will require mitigation; short of making untimely, detailed, recommendations. This approach allows future recreation development sponsors the appropriate

flexibility to design and formulate specific mitigation, including the parties responsible for implementation and verification, when details of specific Master Plan development proposals are presented. The U.S. Army Corps of Engineers has cooperated with counterparts in Orange, San Bernardino and Riverside Counties in Developing this Master Plan.

Two alternatives are proposed for consideration for the Prado Basin: Adopting the proposed Prado Basin Master Plan, and the No Project alternative. The proposed plan would serve as a guide for orderly and coordinated use, development and management of the land in the Prado Basin. The discussion of affected environment and potential environmental impacts in this Environmental Impact Statement (EIS) are based on evaluation of land use designations proposed in the Basin Master Plan. Specific development proposals within the general land use Planning Areas would require appropriate National Environmental Policy act (NEPA) clearance to specifically address the potential environmental effects of those proposals.

The No Project Alternative would eliminate the implementation of the recreation land use contemplated in the proposed Basin Master Plan, and in the continuation of current land use activities on the site. This alternative would result in the Corps being unable to meet its project objectives such as providing for the expressed public interests for recreation.

DATES: Comments concerning this Draft EIS should be submitted by January 23, 2005.

ADDRESSES: District Engineer, U.S. Army Corps of Engineers, Los Angeles District, ATTN: CESPL–PD–RQ, P.O. Box 532711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Ms. Nedenia Kennedy, Chief, Environmental Policy Group, telephone (213) 452–3856, Mr. Alex Watt, Chief, Environmental Resources Branch, telephone (213) 452–3840.

SUPPLEMENTARY INFORMATION: 1. *Authorization.* This Master Plan was prepared as a guide for the orderly and coordinated use, development and management of all resources in the existing and proposed Prado Flood Control Basin. Under guidance at ER 1130–2–550, ''Preparation of Project Master Plans,'' dated November 15, 1996, ''master plans are to be developed and kept current for all Civil Works projects and other fee-owned lands for which the Corps has administrative responsibility for management.'' The master plan is to be an ''essential element in fostering an efficient and cost-effective project natural resources management program,'' and by providing direction for project development and use is ''a vital tool for the responsible stewardship of project resources for the benefit of present and future generations * * * [that] * * * promotes the protection, conservation and enhancement of natural, cultural and man-made resources.'' The previous Master Plan for the Prado Flood Control Basin was prepared in February 1976, and no longer adequately implements Corps policies and goals summarized above. The 1976 Master Plan, moreover, did not contemplate notable changes in the physical environment, and notably the substantial increase in the amount of biologically valuable reparian plant communities, the increase in species and populations of threatened and endangered species in the Basin; combined with the dramatic increase in visitation and variety of public outdoor recreation opportunities, plus the changing profile of adjacent land use types and development intensity.

2. *Background.* Construction of Prado Dam was authorized by the Flood Control Act of 1936, as amended (Pub. L. 74–738), as part of a general plan for the construction of flood control facilities in the Santa Ana River Basin in Southern California. Construction of the Dam was completed in May 1941. The Flood Control Act of 1944, as amended, (Pub. L. 78–534), authorized the United States Army Corps of Engineers (Corps) to construct, maintain and operate public park and recreation facilities at water resources development projects. The law also permitted the Corps to authorize local interests to construct, maintain and operate recreation facilities.

Because flood reduction remains the primary purpose of the Prado Dam project, this document first considers these requirements, or constraints. It also identifies environmentally sensitive areas, and multiple resources management areas for continued and future use. Careful planning is required to balance the sometimes competing needs and desires of the public for high-density recreation uses with environmental protection requirements and with the flood control protection purpose of the Prado Basin. This Master Plan is intended, therefore, to allow balanced use of the subject natural and recreation resources.

Conceptual guidance is provided in this plan for recreation development for Corps lands located primarily in upland portions of the Prado Basin. Under guidelines such as the Corps Environmental Operating Principles, this plan supports leaving the lower portions of the Basin as a natural refuge as evaluated in the EIS. Specific development proposals for recreation and environmental features under this plan, however, will still require supplemental evaluation and documentation under NEPA.

This DEIS, in turn, provides: (1) A description of alternatives, including the No-Action alternative; (2) an analysis of existing and future conditions in the area without the project; (3) and an analysis of potential impacts associated with the two alternatives, including the preferred alternative (proposed action).

3. *Proposed Action.* The proposed Prado Basin Master Plan is considered a '' * * * continuing and dynamic document * * * '' that presents broad concepts, not specific design proposals. The Basin Master Plan identifies numerous ''Planning Areas'' in the Prado Basin and gives a range of land use development alternatives based on input from local agencies and potential development intensity. These Planning Areas are described in detail, and specific recreational use proposals are provided for most areas up to the 556-foot (169 meter) contour elevation. For each recreation use alternative, a more detailed list of potential site design components is described.

The purpose of this Environmental Impact Statement (EIS) is to evaluate the potential environmental impacts of the land uses proposed in the Basin Master Plan, and to recommend methods to mitigate for future, specific, development proposals. This environmental review is conducted at a programmatic level to provide environmental clearance for the Master Plan in accordance with the National Environmental Policy Act. The Impact analysis considers the highest intensity of development anticipated for each Planning Area. Further NEPA clearance for specific proposals would be required in the form of an Environmental Assessment (EA) for minor changes in use/intensity from what was evaluated in the EIS or in the form of a site-specific EIS for major changes in proposed use or development intensity.

4. *Alternatives.*

a. *No Action:* The No Project alternative would eliminate the implementation of the recreation land uses in the Proposed Basin Master Plan and in the continuation of current land use activities on the site. This alternative would result in the Corps being unable to meet its project

objectives such as providing for the expressed public interest for recreation. No Planning Areas would be designated as such.

b. *Proposed Master Plan Alternative:* The proposed Basin Master Plan would serve as a guide for orderly and coordinated use, development and management of land in the Prado Basin. Specific development proposals within the general land use Planning Areas will require appropriate National Environmental Policy Act (NEPA) clearance to specifically address the potential environmental effects of those proposals.

5. *Scoping Process.* Participation of all interested Federal, State and County resource agencies, as well as Native American peoples, groups with environmental interests, and all interested individuals has been and is encouraged. The public review period will conclude 45 days after publication of this notice.

The U.S. Army Corps of Engineers will consider public concerns on the Draft EIS. A summary of the Public Hearing and written comment letters and responses will be incorporated into the Final EIS as appropriate.

6. *Dates.* The draft EIS will be released for public review on or about December 9, 2005. The Environmental Protection Agency plans to publish a Notice of Availability of the Draft EIS in the **Federal Register** on or about December 9, 2005. The public review of the Draft EIS ends on January 23, 2006. The final Public Hearing will be scheduled in January, 2006 at the El Prado Golf Course, 6555 Pine Avenue, Chino, California. The location, date, and time of the public hearing will be announced in the local news media, and separate notice will be sent to all parties on the project mailing list.

Dated: December 8, 2005.

Mark R. Blackburn,

Lieutenant Colonel, US Army, Acting District Engineer.

[FR Doc. 05–24399 Filed 12–22–05; 8:45am]

BILLING CODE 3710–KF–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Educational Opportunity Centers (EOC) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.066A.

DATES: *Applications Available:* December 23, 2005.

Deadline for Transmittal of Applications: February 15, 2006.

Deadline for Intergovernmental Review: April 17, 2006.

Eligible Applicants: Institutions of higher education, public and private agencies and organizations; combinations of institutions, agencies, and organizations; and secondary schools under exceptional circumstances, such as if there is no institution, agency, or organization capable of carrying out an EOC project in the proposed target area.

Estimated Available Funds: The Administration has requested $48,972,000 for new awards for this program for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $220,000–$2,200,000.

Estimated Average Size of Awards: $352,000.

Maximum Award: We will not fund any application at an amount exceeding the maximum amounts specified below for a single budget period of 12 months. We may choose not to further consider or review applications with budgets that exceed the maximum amounts specified below if we conclude, during our initial review of the application, that the proposed goals and objectives cannot be obtained with the specified maximum amount.

- For an applicant who is not currently receiving an EOC Program grant, the maximum award amount is $220,000 for a project that will serve a minimum of 1,000 eligible participants.
- For an applicant who is currently receiving an EOC Program grant the maximum award is the greater of (a) $220,000 or (b) an amount equal to 103 percent of the applicant's prior grant award amount for FY 2005.

Estimated Number of Awards: 140.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the EOC Program is to provide information with respect to financial and academic assistance available for individuals who desire to pursue a program of postsecondary education, and provide assistance to those individuals in applying for admission to institutions that offer programs of postsecondary education, including assistance in preparing necessary applications for use by admissions and financial aid officers.

Program Authority: 20 U.S.C. 1070a–11 and 1070a–16.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98 and 99. (b) The regulations for this program in 34 CFR part 644.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $48,972,000 for new awards for this program for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $220,000–$2,200,000.

Estimated Average Size of Awards: $352,000.

Maximum Award: We will not fund any application at an amount exceeding the maximum amounts specified below for a single budget period of 12 months. We may choose not to further consider or review applications with budgets that exceed the maximum amounts specified below if we conclude, during our initial review of the application, that the proposed goals and objectives cannot be obtained with the specified maximum amount.

- For an applicant who is not currently receiving an EOC Program grant, the maximum award amount is $220,000 for a project that will serve a minimum of 1,000 eligible participants.
- For an applicant who is currently receiving an EOC Program grant the maximum award is the greater of (a) $220,000 or (b) an amount equal to 103 percent of the applicant's prior grant award amount for FY 2005.

Estimated Number of Awards: 140.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education, public and private agencies and organizations; combinations of institutions, agencies,

and organizations; and, secondary schools in exceptional circumstances, such as if there is no institution, agency, or organization capable of carrying out an EOC project in the proposed target area.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:* An applicant may submit more than one application, if each separate application describes a project that will serve different target schools and target populations. A secondary school applicant must submit a certification that there is no other eligible entity in the proposed target area that is capable of carrying out an EOC project.

IV. Application and Submission Information

1. *Address To Request Application Package:* Margaret Wingfield or Rachael Couch, U.S. Department of Education, 1990 K Street, NW., suite 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by e-mail: *TRIO@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting either of the program contact persons listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program. Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the section of the narrative that addresses the selection criteria to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, captions and all text in charts, tables, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will be rejected.
- Use 12-point font.

The page limit does not apply to Part I, the application for federal assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget information summary form (ED Form 524); and Part IV, the assurances and certifications. The page limit also does not apply to a table of contents. If you include any attachments or appendices, these items will be counted as part of the Program Narrative (Part III) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the program narrative.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times: Applications Available:* December 23, 2005.

Deadline for Transmittal of Applications: February 15, 2006.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to Section IV. 6. *Other Submission Requirements* in this notice.

Deadline for Intergovernmental Review: April 17, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference the regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the EOC Program—CFDA Number 84.066A must be submitted electronically using the Grants.gov Apply site at: *http://www.grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the EOC Program at: *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC, time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC, time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC, time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at: *http://e-Grants.ed.gov/*

help/GrantsgovSubmissionProcedures.pdf.

• To submit your application via Grants.gov, you must complete all the steps in the Grants.gov registration process (see *http://www.grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically including all information typically included on the Application for Federal Education Assistance (SF 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC, time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC, time, on the deadline date, please contact either of the persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC, time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Geraldine Smith, U.S. Department of Education, 1990 K Street, NW., suite 7000, Washington, DC 20006–8510. FAX: (202) 502–7857.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.066A),
400 Maryland Avenue, SW.,
Washington, DC 20202–4260;
or

By mail through a commercial carrier:
U.S. Department of Education,
Application Control Center—Stop 4260, Attention: (CFDA Number 84.066A), 7100 Old Landover Road,
Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must

deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.066A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC, time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (SF 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 644.21 and are listed in the application package.

Note: Under the ''Objectives'' selection criterion, 34 CFR 644.21(b), applicants must address both outcome and process objectives that are related to each of the purposes of the EOC Program as described in 34 CFR 644.1. The application package for this program specifies the following four objectives related to the purposes of the EOC program: Increasing enrollment in continuing education programs, increasing applications for student financial aid, increasing applications for postsecondary education admissions, and increasing postsecondary education enrollment. The EOC Program Profile page in the application package details more specific information that applicants must submit regarding these four objectives. Applicants may, but are not required to, develop additional objectives for their project.

2. *Review and Selection Process:* The Secretary will select an application for funding in rank-order, based on the application's total score for the selection criteria and prior experience, pursuant to 34 CFR 644.20 through 644.22. If there are insufficient funds for two or more applications with the same total scores, the Secretary will choose among the tied applications so as to serve geographical areas and eligible populations that have been underserved by the EOC Program.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditures information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The success of the EOC Program is measured by the EOC Program participants' success in enrollment in continuing education programs, completion of applications for student financial aid, submission of applications for postsecondary admission, and postsecondary education enrollment. All EOC Program grantees will be required to submit an annual performance report.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Margaret Wingfield or Rachael Couch, U.S. Department of Education, 1990 K Street, NW., suite 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by e-mail: TRIO@ed.gov

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *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: *www.gpoaccess.gov/nara/index.html.*

Dated: December 20, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. E5–7784 Filed 12–22–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184H.

Dates:Applications Available: December 23, 2005.

Deadline for Transmittal of Applications: February 6, 2006.

Deadline for Intergovernmental Review: April 7, 2006.

Eligible Applicants: Institutions of higher education (IHEs), consortia thereof, public and private nonprofit organizations, including faith-based organizations, and individuals.

Estimated Available Funds: $1,750,000. Contingent upon the availability of funds, we may make additional awards in FY 2007 and subsequent years from the list of nonfunded applications from this competition.

Estimated Number of Awards: 14.

Estimated Range of Awards: $100,000—$150,000.

Estimated Average Size of Awards: $125,000.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months. Projects will be funded for one year with an option for an additional year, contingent upon substantial progress by the grantee and the availability of funds.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Grant Competition to Prevent High-Risk Drinking or Violent Behavior Among College Students provides awards to develop or enhance, implement, and evaluate campus-and/or community-based strategies to prevent high-risk drinking or violent behavior among college students.

Priorities: These priorities are from the notice of final priorities and selection criteria for this program, published in the **Federal Register** on December 27, 2000 (65 FR 82224–82226), and the correction notice published in the **Federal Register** on January 10, 2001 (66 FR 1963) (collectively, the Notice of Final Priorities and Selection Criteria).

Absolute Priorities: For FY 2006 and any subsequent year in which we make awards on the basis of the list of nonfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet either of the absolute priorities.

These priorities are:

Absolute Priority One—Develop or Enhance, Implement, and Evaluate Campus—and/or Community-Based Strategies To Prevent High-Risk Drinking Among College Students

Under this priority, applicants are required to:

(1) Identify a specific student population to be served by the grant and provide a justification for its selection;

(2) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates related to high-risk drinking by the population selected;

(3) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving the goals and objectives will be measured annually;

(4) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing high-risk drinking by the target population;

(5) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(6) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period.

Absolute Priority Two—Develop or Enhance, Implement, and Evaluate Campus—and/or Community-Based Strategies To Prevent Violent Behavior Among College Students

Under this priority, applicants are required to:

(1) Identify a specific student population to be served by the grant and provide a justification for its selection;

(2) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates related to violent behavior;

(3) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving the goals and objectives will be measured annually;

(4) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing violent behavior among college students;

(5) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(6) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period.

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) the Notice of Final Priority and Selection Criteria.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,750,000. Contingent upon the availability of funds, we may make additional awards in FY 2007 and subsequent years from the list of nonfunded applications from this competition.

Estimated Range of Awards: $100,000—$150,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months. Projects will be funded for one year with an option for an additional year, contingent upon substantial progress by the grantee and the availability of funds.

III. Eligibility Information

1. *Eligible Applicants:* IHEs, consortia thereof, public and private nonprofit organizations, including faith-based organizations, and individuals.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll-free): 1–877–433–7827.0 Fax: 1–301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You also may contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

You may also access the electronic version of the application at the following Web site: *www.ed.gov/programs/dvphighrisk/index.html.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.184H.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The program narrative section should not exceed 25 double-spaced pages using a standard font no smaller than 12-point, with 1-inch margins (top, bottom, left, and right). The narrative should follow the format and sequence of the selection criteria.

3. *Submission Dates and Times:* Applications Available: December 23, 2005.

Deadline for Transmittal of Applications: February 6, 2006.

Applications for grants under this competition may be submitted

electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: April 7, 2006.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC, time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC, time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC, time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC, time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC, time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC, time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184H), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.184H), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184H), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC, time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from the Notice of Final Priorities and Selection Criteria and are listed in the application package.

2. *Review and Selection Process:* An additional factor we may consider in selecting an application for an award is the geographic distribution of the projects, in addition to the rank order of applicants.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* If funded, you are expected to collect data on the key GPRA performance measures for this program and report those data to the Department in your annual performance report and final performance report. At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. We also may require more frequent performance reports in accordance with 34 CFR 75.720(c).

4. *Performance Measures:* We have identified the following key GPRA performance measures for assessing the effectiveness of this program at the end of these two-year grants: (1) The percentage of grantees that achieve a five percent decrease in high-risk drinking among students served by the project (Absolute Priority One) and (2) the percentage of grantees that achieve a five percent decrease in violent behavior among students served by the project (Absolute Priority Two).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Richard Lucey, Jr., U.S. Department of Education, 400 Maryland Avenue, SW., room 3E335, Washington, DC 20202–6450. Telephone: (202) 205–5471 or by e-mail: *richard.lucey@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at (800) 877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

VIII. Other Information

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *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 (888) 293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in text or PDF at the following site: *www.ed.gov/programs/ dvphighrisk/ applicant.html.*

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: December 20, 2005.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E5–7783 Filed 12–22–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 25, 2006, 1 p.m.–8:30 p.m.

ADDRESSES: Jemez Complex, Santa Fe Community College, 6401 Richards Avenue, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or e-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is

to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1 p.m. Call to Order by Deputy Designated Federal Officer (DDFO), Christina Houston.
Establishment of a Quorum.
Welcome and Introductions by Chair, J. D. Campbell.
Approval of Agenda.
Approval of Minutes of November 30, 2005 Board Meeting.
1:15 p.m. Board Business.
A. Report from Chair, J. D. Campbell.
B. Report from Department of Energy, DDFO, Christina Houston.
C. Report from Executive Director, Menice B. Santistevan
D. Consideration and Action on Fiscal Year 2006 Northern New Mexico Citizens' Advisory Board Budget.
E. New Business.
2:45 p.m. Break.
3 p.m. Reports.
A. Community Involvement Committee, Grace Perez.
B. Waste Management Committee, Matthew Deller.
C. Environmental Monitoring, Surveillance and Remediation Committee, Chris Timm.
D. Reports from Ex-Officio Members.
U.S. Environmental Protection Agency—Rich Mayer.
U.S. Department of Energy (DOE)—John Ordaz.
University of California/Los Alamos National Laboratory (LANL)—Ken Hargis.
New Mexico Environment Department (NMED)—James Bearzi.
4 p.m. Discussion with Los Alamos Site Office (LASO) Manager, Ed Wilmot.
5 p.m. Dinner Break.
6 p.m. Public Comment.
6:15 p.m. Consideration of Recommendations.
6:30 p.m. Presentation on Environmental Remediation at Los Alamos National Laboratory.
7:30 p.m. Comments from Ex-Officio Members—DOE/LASO, LANL, NMED.
8 p.m. Comments from Board Members.
8:20 p.m. Recap of Meeting: Issuance of Press Releases, Editorials, etc.
8:30 p.m. Adjourn.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Santistevan at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org*.

Issued at Washington, DC, on December 19, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E5–7788 Filed 12–22–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, January 23, 2006, 1 p.m.–5:15 p.m., Tuesday, January 24, 2006, 8:30 a.m.–4 p.m.

ADDRESSES: Crowne Plaza, 130 Shipyard Drive, Hilton Head Island, SC 29928.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, January 23, 2006.
1 p.m. Combined Committee Session.
5:15 p.m. Adjourn.
Tuesday, January 24, 2006.
8:30 a.m. Approval of Minutes, Agency Updates.
8:45 a.m. Public Comment Session.
9 a.m. Chair and Facilitator Update.
9:30 a.m. Waste Management Committee Report.
11 p.m. Facility Disposition and Site Remediation Committee Report.
11:45 a.m. Public Comment Session.
12 p.m. Lunch Break.
1 p.m. Nuclear Materials Committee Report.
1:30 p.m. Strategic and Legacy Management Committee Report.
2:15 p.m. Administrative Committee Report.
- Bylaws Amendment Proposal.
- Membership Elections.

3:15 p.m. Public Comment Session.
3:30 p.m. Environmental Justice Initiatives.
4 p.m. Adjourn.

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, January 23, 2006.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department

of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC, on December 19, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E5–7789 Filed 12–22–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 11, 2006, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Overview of the 2004 Oak Ridge Reservation Annual Site Environmental Report.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m., Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on December 19, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E5–7790 Filed 12–22–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–24–000]

Notice of Filing

December 15, 2005.

Take notice that on December 7, 2005, the City of Anaheim, California (Anaheim) tendered for filing its third annual revisions to its transmission Revenue Balancing Account Adjustment. Anaheim requests any necessary waivers by the Commission to allow this filing to be effective January 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 6, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7752 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–37–000]

Duke Energy Marketing America, LLC, Duke Energy Trading and Marketing, LLC, Barclays Bank PLC; Notice of Filing

December 15, 2005.

Take notice that on December 8, 2005, Duke Energy Marketing America LLC, Duke Energy Trading and Marketing, LLC and Barclays Bank PLC (collectively, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities in which DEMA and DETM propose to transfer to Barclays various wholesale electric power sales contracts, which transfer is part of an agreement to transfer a significant portion of the trading books of DEMA, DETM and certain of their affiliates. Applicants have requested privileged treatment for commercially sensitive information contained in the Application.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 29, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7751 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–144–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 15, 2005.

Take notice that on December 9, 2005 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing revised tariff sheets, proposed to be effective December 21, 2005.

Eastern Shore states that copies of its filing has been mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7749 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–36–000]

Exelon Corporation, Exelon Ventures Company, LLC, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., PECO Energy Company, Exelon Generation Company, LLC; Notice of Filing

December 15, 2005

Take notice that on December 7, 2005, Exelon Corporation, Exelon Ventures Company, LLC, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc. PECO Energy Company and Exelon Generation Company, LLC (collectively, Applicants) pursuant to section 203 of the Federal Power Act tendered for filing an Application for Authorization of the Acquisition of Securities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 28, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7750 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–252–001]

ISO New England Inc.; Notice of Filing

December 13, 2005.

Take notice that on December 12, 2005, ISO New England, Inc. (the ISO)

filed an additional interim revision to Market Rule 1 to aid the ISO in implementing its Winter 2005/2006 Action Plan.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m., Eastern Time on December 27, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7745 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC06–18–000]

Natural Gas Pipeline Company of America; Notice of Filing

December 13, 2005.

Take notice that on December 8, 2005, Natural Gas Pipeline Company of America (Natural) submitted a request for confirmation that it can continue to capitalize the costs incurred in a onetime rehabilitation project to address stress corrosion cracking on Natural's system.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 27, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7748 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–57–001]

Northern Natural Gas Company; Notice of Compliance Filing

December 13, 2005.

Take notice that on December 6, 2005, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Third Revised Sheet No. 308 and Fourth Revised Sheet No. 309, to be effective on January 6, 2006.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7739 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–512–002]

Northwest Pipeline Corporation; Notice of Compliance Filing

December 13, 2005.

Take notice that on December 7, 2005, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 4, to be effective December 7, 2005.

Northwest states that the purpose of this filing is to comply with the Commission's letter order dated November 30, 2005 in Docket Nos. RP05–512–000 and 001.

Northwest states that a copy of this filing has been served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7746 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–30–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Application

December 13, 2005.

Take notice that Panhandle Eastern Pipe Line Company, LP (Panhandle), P.O. Box 4967, Houston, Texas 77210–4967, filed in Docket No. CP06–30–000 on December 5, 2005, an application pursuant to section 7(b) of the Natural Gas Act (NGA), for authorization to abandon, by sale, to Vectren Energy Delivery of Ohio, Inc. (Vectren) and DPL Energy, LLC (DPLE). Panhandle proposes to abandon certain pipeline facilities known as the Dayton Facilities which includes the Glen Karn Pipeline consisting of 44.1-miles of 16-inch diameter pipe and the Shelby Pipeline consisting of 19.73-miles of 6-inch diameter pipe, located in Darke and Shelby Counties, Ohio, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to William W. Grygar, Vice President of Rates and Regulatory Affairs, 5444 Westheimer Road, Houston, Texas 77056–5306 at (713) 989–7000.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: January 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7742 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–362–022]

Stand Energy Corporation; Notice of Compliance Filing

December 15, 2005.

Take notice that on December 5, 2005, Stand Energy Corporation submitted for filing tariff sheets revising its existing Rate Schedule No. 1, pursuant to the Commission's November 3, 2005 Order in *Alcan Power Marketing, Inc,* 113 FERC ¶ 61,123 (2005).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 27, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7753 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–31–000]

Tennessee Gas Pipeline Company; ANR Pipeline Company; Southern Natural Gas Company; Notice of Abbreviated Joint Application for a Certificate of Public Convenience and Necessity for Authorization To Abandon Transportation and Exchange Services

December 13, 2005.

Take notice that on December 2, 2005, Tennessee Gas Pipeline Company (Tennessee), ANR Pipeline Company (ANR) and Southern Natural Gas Company (Southern) jointly filed an abbreviated application with the Commission for a certificate of public convenience and necessity pursuant to section 7(b) of the Natural Gas Act and part 157 the Commission's Rules and Regulations for authorization to abandon transportation and exchange services performed for Southern under Tennessee Rate Schedule T–110 and ANR Rate Schedule X–96 of their respective Original Volume No. 2, FERC Gas Tariff, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on January 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7743 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–33–000]

Tennessee Gas Pipeline Company, Southern Natural Gas Company; Notice of Abbreviated Joint Application for a Certificate of Public Convenience and Necessity for Authorization To Abandon a Transportation and Exchange Service

December 13, 2005.

Take notice that on December 6, 2005, Tennessee Gas Pipeline Company (Tennessee) and Southern Natural Gas Company (Southern) jointly filed an abbreviated application with the Commission for a certificate of public convenience and necessity pursuant to section 7(b) of the Natural Gas Act and part 157 the Commission's Rules and Regulations for authorization to abandon a certificated transportation and exchange service performed pursuant to Tennessee Rate Schedule T–157 and Southern Rate Schedule X–71 all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m., Eastern time on January 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7744 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–143–000]

Texas Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

December 15, 2005.

Take notice that on December 9, 2005, Texas Gas Transmission, LLC, (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 226, to become effective January 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *http://www.FERCOnlineSupport @ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7755 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–407–002]

Texas Gas Transmission, LLC; Notice of Errata Filing

December 15, 2005.

Take notice that on December 6, 2005, Texas Gas Transmission, LLC (Texas Gas), submitted an errata to correct the effective date on revised tariff sheets originally filed in a compliance filing on November 30, 2005, pursuant to ''Order Granting Abandonment and Issuing Certificate'' issued November 21, 2005, in Docket No. CP05–407–000, et al.

Texas Gas states that the purpose of this filing is to submit substitute tariff sheets with a corrected effective date, and that the requested effective date of December 1, 2005 was correctly stated in the transmittal letter of the November 30, 2005 filing, and in the corresponding negotiated rate filing submitted on the same day. Texas Gas further states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7756 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–33–002]

Wyckoff Gas Storage Company LLC; Notice of Application

December 13, 2005.

On November 22, 2005, Wyckoff Gas Storage Company, LLC, (Wyckoff), Two Warren Place, 6120 Yale Avenue, Suite 700, Tulsa, OK 74136–4216, pursuant to section 7(c) of the Natural Gas Act (NGA) and Parts 157 of the Commission's regulations, filed an abbreviated application to amend its certificates of public convenience and necessity issued on October 6, 2003 (105 FERC ¶ 61,027) to:

(1) Authorize the relocation of certain of the approved facilities at its certificated storage field, located in Steuben County, NY, (2) downsize certain of the approved facilities, (3) permit phasing of the construction of certain of the approved facilities; and (4) confirm the previously approved maximum reservoir pressure for the field, all as more fully set forth in the application. Wyckoff also notified the Commission of its intention to continue in operation certain existing pipeline facilities at the field which were previously intended to be taken out of service. This filing is available for

review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to T.W. Cook, Wyckoff Gas Storage Company, LLC, Two Warren Place, 6120 Yale Avenue, Suite 700, Tulsa, OK 74136, (918) 524–8503.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7740 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–142–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

December 13, 2005.

Take notice that on December 8, 2005, Wyoming Interstate Company (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets to become effective January 9, 2006.

Sixth Revised Sheet No. 42
Fourth Revised Sheet No. 45
Third Revised Sheet No. 82B
Sixth Revised Sheet No. 89
First Revised Sheet No. 96
First Revised Sheet No. 101

WIC states that these tariff sheets are filed to indicate WIC Holdings Inc., as its general partner.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7747 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 13, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER00–2392–003; EL05–111–000.

Applicants: Fresno Cogeneration Partners, L.P.

Description: Fresno Cogeneration Partners, LP submits First Revised Sheet 2, correcting the language contained in section 2(b) of its Market Behavior Rules in compliance with FERC's May 31, 2005 Order.

Filed Date: December 5, 2005.

Accession Number: 20051212–0010.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 27, 2005.

Docket Numbers: ER00–774–003.

Applicants: Nordic Marketing LLC.

Description: Nordic Marketing LLC submits a compliance filing amending the market based rate schedule to incorporate FERC's final market behavior rules.
Filed Date: December 5, 2005.
Accession Number: 20051212–0014.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 27, 2005.

Docket Numbers: ER00–795–002.
Applicants: Nordic Electric, LLC.
Description: Nordic Electric, LLC submits a compliance filing amending the market based rate schedule to incorporate FERC's final market behavior rules.
Filed Date: December 5, 2005.
Accession Number: 20051212–0013.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 27, 2005.

Docket Numbers: ER01–2221–002 -003; EL05–111–002.
Applicants: Energy Transfer—Hanover Ventures, LP.
Description: Request for rehearing of FERC's November 3, 2005 Order of Energy Transfer and a December 6, 2001 notice of cancellation of rate schedule.
Filed Date: December 5, 2005.
Accession Number: 20051208–0064.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 27, 2005.

Docket Numbers: ER01–2224–002.
Applicants: Nordic Energy Barge No.1 and Barge No. 2, L.L.C.
Description: Nordic Energy Barge #1 and Barge #2 LLC submits a compliance filing amending the market based rate scheduled to its FERC's final market behavior rules.
Filed Date: December 5, 2005.
Accession Number: 20051212–0002.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 27, 2005.

Docket Numbers: ER02–2550–002.
Applicants: Tenaska-Oxy Power Services, L.P.
Description: Tenaska-Oxy Power Services LP submits its Triennial Updated Market Analysis and its revised Rate Schedule FERC No. 1, Original Volume No.1.
Filed Date: November 8, 2005.
Accession Number: 20051110–0124.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 21, 2005.

Docket Numbers: ER05–447–006.
Applicants: Midwest ISO Transmission Operators, Inc.
Description: Midwest ISO Transmission Owners Inc submits revisions to Schedule 23 to the Transmission and Energy Markets Tariff of the Midwest Independent Transmission System Operator Inc.
Filed Date: December 2, 2005.
Accession Number: 20051207–0064.
Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER05–1502–000.
Applicants: California Independent System Operator Corporation.
Description: Notice of CA Department of Water Resources State Water Project of Delayed Implementation of Certain Amendment 72 Reporting to the CAISO tariff.
Filed Date: December 2, 2005.
Accession Number: 20051202–5040.
Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER06–205–001.
Applicants: Alcoa Power Generating, Inc.
Description: Alcoa Power Generating Inc amends its November 14, 2005 filing to submit substitute sheets to the open access transmission tariff of its Long Sault Division and provide additional information requested by FERC Staff.
Filed Date: December 2, 2005.
Accession Number: 20051212–0001.
Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER06–275–000.
Applicants: Northeast Utilities Service Company.
Description: Northeast Utilities Service Co's letter of transmittal of transmission tariff revisions (Exhibits NU–1 and NU–2), Direct testimony of David H Boguslawski (Exh Nu–3) & direct testimony of John J Flynn (Exh NU–4) etc.
Filed Date: December 1, 2005.
Accession Number: 20051205–0125.
Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–287–000.
Applicants: New Hampshire Electric Cooperative, Inc.
Description: New Hampshire Electric Cooperative Inc advises FERC that due to amendments of section 201(f) of the Federal Power Act, it is not longer a public utility.
Filed Date: December 5, 2005.
Accession Number: 20051207–0070.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 27, 2005.

Docket Numbers: ER06–288–000.
Applicants: Northeast Utilities Service Company.
Description: Northeast Utilities Service Co, on behalf the Connecticut Light and Power Co et al submits a revised sheet to Schedule 21–NU to Section II of the ISO New England Tariff for Transmission, Markets and Services.
Filed Date: December 5, 2005.
Accession Number: 20051207–0071.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 27, 2005.

Docket Numbers: ER06–289–000; ER04–1166–000.
Applicants: Twelvepole Creek, LLC.
Description: Twelvepole Creek LLC submits a notice cancelling its Rate Schedule No. 2.
Filed Date: December 5, 2005.
Accession Number: 20051207–0072.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 27, 2005.

Docket Numbers: ER06–290–000.
Applicants: Wisconsin Electric Power Co.
Description: Wisconsin Electric Power Co submits its revised Exhibits Nos. 1 and 2 to the Control Area Operations Coordination Agreement with Wisconsin Power & Light Co.
Filed Date: December 5, 2005.
Accession Number: 20051207–0073.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 27, 2005.

Docket Numbers: ER95–72–022; EL05–111–000.
Applicants: Power Exchange Corporation.
Description: Power Exchange Corp submits First Revised Sheet 2, correcting the language contained in section 2(b) of its Market Behavior Rules in compliance with FERC's May 31, 2005 Order.
Filed Date: December 5, 2005.
Accession Number: 20051212–0008.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 27, 2005.

Docket Numbers: ER97–870–014.
Applicants: Sunoco Power Marketing, LLC.
Description: Sunoco Power Marketing, LLC submits a revised version of its market-based rate wholesale power sales tariff.
Filed Date: December 5, 2005.
Accession Number: 20051212–0011.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 27, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://*

www.ferc.gov. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7738 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–413–000]

East Tennessee Natural Gas, L.L.C.; Notice of Availability of the Environmental Assessment for the Proposed Jewell Ridge Lateral Project

December 13, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by East Tennessee Natural Gas, L.L.C. (East Tennessee) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of approximately 30.48 miles of 20-inch-diameter pipeline and related appurtenant facilities in Tazewell and Smyth counties, Virginia. The purpose of the project is to connect the CNX Gas Company LLC's existing Cardinal States Gathering System in Tazewell County, Virginia to the East Tennessee interstate pipeline system in Smyth County, Virginia. The proposed pipeline would have the capacity to carry 235,000 dekatherms of natural gas per day. East Tennessee states that the project would also provide an alternate supply source to southeastern natural gas consumers, provide East Tennessee's existing pipeline system customers in Virginia, Tennessee, North Carolina and Georgia enhanced access to new natural gas supplies from the Appalachian basin, and build upon southwest Virginia's existing energy infrastructure. The new lateral would provide some areas, such as Richlands, Cedar Bluff, and Claypool Hill, Virginia, with access to natural gas for the first time.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 502–8371.

Copies of the EA have been mailed to Federal; state; and local agencies; public interest groups; individuals who have requested the EA; libraries; newspapers; and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 3, PJ11.3;
- Reference Docket No. CP05–413–000; and
- Mail your comments so that they will be received in Washington, DC on or before January 16, 2006.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Sign-up.''

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–7741 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–617–000]

Texas Gas Transmission, LLC; Notice of Technical Conference

December 15, 2005.

Take a notice that the Commission will convene a technical conference on Tuesday, January 10, 2006, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The technical conference will provide a forum to discuss the revised tariff sheet filed on August 31, 2005, by Texas Gas Transmission, LLC (Texas Gas). The tariff sheet and supporting workpapers reflect Texas Gas's annual filing to adjust its Effective Fuel Retention Percentages pursuant to section 16 of the General Terms and Conditions of its FERC Gas Tariff. The Commission directed its staff to convene this technical conference in an October 31, 2005 order establishing a technical conference.[1]

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–208–01659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Michael Krauthamer at (202) 502–6159 or e-mail *michael.krauthamer@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–7754 Filed 12–22–05; 8:45 am]

BILLING CODE 6717–01–P

[1] *Texas Gas Transmission, LLC.,* 113 FERC ¶ 61,104 (2005).

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6670–6]

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 FR dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050415, ERP No. D–FRA–D51028–PA, Pennsylvania High-Speed Maglev Project, Construction between Pittsburgh International Airport (PIA) and Greensburg Area, The Pennsylvania Project of Magnetic Levitation Transportation Technology Deployment Program, Allegheny and Westmoreland Counties, PA

Summary: EPA has environmental concerns about air quality, environmental justice, and the disposal of excavated waste material, and also requests that additional information describing the quality of the habitat that is to be impacted should be provided in the FEIS.

Rating EC2.

EIS No. 20050442, ERP No. D–NOA–D81036–WV, Canaan Valley Institute Office Complex, Proposes to Construct: Offices, Classrooms, Laboratories, 250-Seat Auditorium, Parking Facilities, Outdoor Classrooms and Interpretive Areas, US Army COE Section 404 Permit, Southeast of the Towns of Davis and Thomas, Tucker County, WV

Summary: EPA does not object to the proposed action.

Rating LO.

EIS No. 20050427, ERP No. DB—FTA–L40210–WA, Central Link Light Rail Transit Project (Sound Transit) Construction and Operation of the North Link Light Rail Extension, from Downtown Seattle and Northgate, Updated Information on Refined Design Concepts, Funding, Right-of-Way and US Army COE Section 404 Permits, King County, WA

Summary: EPA does not object to the proposed project.

Rating LO.

Final EISs

EIS No. 20050369, ERP No. F–FHW–D40298–MD, MD–32, Planning Study, Transportation Improvements from MD–108 to Interstate 70, Funding, Howard County, MD

Summary: EPA continues to have environmental concerns about aquatic and terrestrial impacts and the potential problems of induced traffic and secondary development.

EIS No. 20050447, ERP No. F–FHW–F40426–OH, Eastern Corridor Multi-Modal (Tier 1) Project, to Implement a Multi-Modal Transportation Program between the City of Cincinnati and Eastern Suburbs in Hamilton and Clermont Counties, OH

Summary: The FEIS addressed many of EPA's previously stated concerns. However, EPA requests that FHWA provide supporting information for its discussion and conclusions regarding an omitted alternative to widen an existing bridge.

EIS No. 20050470, ERP No. F–NPS–K65275–AZ, Colorado River Management Plan, Analyzing Alternatives for Management of Recreational Use of the Colorado River, Grand Canyon National Park, Coconino County, AZ

Summary: EPA expressed concerns that without appropriate mitigation measures, impacts could result from fuel storage and operations, and other facilities near the river, and recommended the National Park Service commit to working closely with the Hualapai Tribe to develop best management practices to prevent oil spills and discharges of wastes in both Grand Canyon National Park and on the Hualapai Reservation.

EIS No. 20050444, ERP No. FS–FTA–D40289–VA, Norfolk Light Rail Transit System, from the western terminus near Eastern Virginia Medical Center through Downtown Norfolk to an eastern terminus at Newtown Road and Kempsville Road, Funding, US COE Section 404 Permit, USCGD Bridge Permit, City of Norfolk, VA

Summary: EPA does not object to the proposed project.

Dated: December 20, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E5–7772 Filed 12–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6670–5]

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 12/12/2005 Through 12/16/2005.

Pursuant to 40 CFR 1506.9.

EIS No. 20050523, Draft EIS, AFS, PA, West Branch of Tionesta Project, Road Construction and Vegetation Management, State Game Lands No. 29 and Chapman Dam State Park,

Sheffield, Warren County, PA, Comment Period Ends: 02/06/2006, Contact: O'Dell Tucker 814–362–4613–Ext 125.

EIS No. 20050524, Final EIS, BLM, CA, Desert Southwest Transmission Line Project, New Substation/Switching Station Construction, Operation and Maintenance, Issuance of Right-of-Way Grant and U.S. Army COE Section 10 and 404 Permits, North Palm Springs and Blythe, CA, Wait Period Ends: 01/23/2006, Contact: Diane Gomez 760–251–4852.

EIS No. 20050525, Final EIS, NPS, CA, Golden Gate National Recreation Area (GGNRA) Fire Management Plan, Implementation, Muir Woods National Monument, Fort Point National Historic Site, San Mateo, San Francisco and Marin Counties, CA, Wait Period Ends: 01/23/2006, Contact: Alex Naar 415–331–6374.

EIS No. 20050526, Final EIS, NPS, CA, Santa Monica Mountains National Recreation Area, Fire Management Plan, Implementation, Santa Monica Mountains, CA, Wait Period Ends: 01/23/2006, Contact: Marty O'Toole 415–331–6374.

EIS No. 20050527, Final EIS, AFS, OR, Big Butte Springs Timber Sales, To Implementation Management Direction, Roque River-Siskiyou National Forest, Butte Falls Ranger District, Cascade Zone, Jackson County, OR, Wait Period Ends: 01/23/2006, Contact: Joe T. King 541–560–3400.

EIS No. 20050528, Draft EIS, AFS, IN, Tell City Windthrow 2004 Project, Salvage Harvest and Prescribed Burning of Windthrow Timber, Implementation, Hoosier National Forest, Perry, Crawford and Dubois Counties, IN, Comment Period Ends: 02/06/2006, Contact: Ron Ellis 812–275–5987.

EIS No. 20050529, Final EIS, FHW, CA, 1st Street Viaduct and Street Widening Project, To Replace Two Traffic Lanes on the 1st Street Viaduct between Vignes Street and Mission Road, Funding, in the City and County of Los Angeles, CA, Wait Period Ends: 01/23/2006, Contact: Steve Healow 916–498–5849.

EIS No. 20050530, Draft EIS, FHW, ID, ID–75 Timmerman to Ketchum—US–20 to Saddle Road, Increase Roadway and Transportation Safety, Cities of Bellevue, Hailey, Ketchum and the City of Sun Valley, Blaine County, ID, Comment Period Ends: 02/24/2006, Contact: Ed Johnson 208–334–9180.

EIS No. 20050531, Draft EIS, COE, CA, Prado Flood Control Basin Master Plan Project, Construct, Maintain and Operate Recreation Facilities, Santa Ana River Basin, Riverside and San Bernardino Counties, CA, Comment Period Ends: 02/06/2006, Contact: Dr. Nedenia C. Kennedy 213–452–3856.

EIS No. 20050532, Draft EIS, FRC, LA, Creole Trail Liquefied National Gas (LNG) Terminal and Pipeline Project, Construction and Operation, Cameron, Calcasieu, Beauregard, Allen, Jefferson, Davis and Acadia Parishes, LA, Comment Period Ends: 02/21/2006, Contact: Thomas Russo 1–866–208–3372.

EIS No. 20050533, Draft EIS, AFS, WV, Allegheny Wood Product Easement, Proposes to Convey an Easement of Right-of-Way along the Railroad Grade located in the Blackwater Canyon Area, Monongahela National Forest, Tucker County, WV, Comment Period Ends: 02/06/2006, Contact: Bill Shields 304–636–1800 Ext 287.

EIS No. 20050534, Draft EIS, AFS, WA, The Summit at Snoqualmie Master Development Plan (MPD), Proposal to Ensure Long-Term Economic Viability, Mt. Baker-Snoqualmie/Okanogan-Wenatchee National Forests, King County, WA, Comment Period Ends: 02/06/2006, Contact: Larry Donovan 415–744–3403.

EIS No. 20050535, Draft EIS, BIA, AK, Cordova Oil Spill Response Facility, Construct an Oil Spill Response Facility at Shepard Point, NPDES Permit and U.S. Army COE Section 10 and 404 Permits, Cordova, AK, Comment Period Ends: 02/10/2006, Contact: Kristin K'eit 907–586–7423.

EIS No. 20050536, Final EIS, FAA, 00, Horizontal Launch and Reentry of Reentry Vehicles, Facilitate the Issuance of Licenses in United States, Wait Period Ends: 01/23/2006, Contact: Stacey Zee 202–267–9305.

Amended Notices

EIS No. 20050460, Draft Supplement, USN, 00, Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar Systems, Updated and Additional Information, Implementation, Comment Period Ends: 02/10/2006, Contact: J.S. Johnson 703–465–8404.

Revision of Notice Published in FR 11/10/2005: Extending Comment Period from 12/27/2005 to 02/10/2006.

Dated: December 20, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E5–7771 Filed 12–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8014–2]

State Innovation Grant Program, Notice of Availability of Solicitation for Proposals for 2006 Awards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency, National Center for Environmental Innovation (NCEI) is giving notice of the availability of its solicitation for proposals for the 2006 grant program to support innovation by state environmental regulatory agencies—the ''State Innovation Grant Program.''

The solicitation is available at the Agency's State Innovation Grant Web site: *http://www.epa.gov/innovation/stategrants/solicitation2006.pdf,* or may be requested from the Agency by e-mail, telephone, or by mail. Only the principal environmental regulatory agency within each State (generally, where delegated authorities for Federal environmental regulations exist) is eligible to receive these grants.

DATES: State environmental regulatory agencies will have until January 20, 2006 to respond with a pre-proposal, budget, and project summary. The environmental regulatory agencies from the fifty (50) States; Washington, DC, and four (4) territories were notified of the solicitation's availability by fax and e-mail transmittals on December 12, 2005.

ADDRESSES: Copies of the Solicitation can be downloaded from the Agency's Web site at: *http://www.epa.gov/innovation/stategrants* or may be requested by telephone (202–566–2186), or by e-mail (*Innovation_State_Grants@epa.gov*). You can request a solicitation application package be sent to you by fax or by mail by contacting NCEI as indicated below.

Applicants may apply by sending a hardcopy submission of their pre-proposal to EPA or by applying electronically either through *www.grants.gov* as explained in Section 4.4 of the solicitation, or directly by e-mail to: *Innovation_State_Grants@epa.gov.* Applicants must submit the information required below with their application package. Applicants may download individual grant application forms, or electronically request a paper application package and an accompanying computer CD of

information related to applicants/grant recipients roles and responsibilities from EPA's Grants and Debarment Web site at (*http://www.gov/ogd/grants/how_to_apply.htm*). Proposals submitted in response to this solicitation, or questions concerning the solicitation should be sent to: State Innovation Grants Program, National Center for Environmental Innovation, Office of the Administrator, U.S. Environmental Protection Agency (MC 1807T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. (202) 566–2186. (202) 566–2220 FAX. *Innovation_State_Grants@epa.gov.*

For courier delivery only: Sherri Walker, State Innovation Grants Program, U.S. EPA , EPA West Building, Room 4214D, 1301 Constitution Ave., NW., Washington, DC 20005.

Proposal responses or questions may also be sent by fax to (202–566–2220), addressed to the ''State Innovation Grant Program,''or by e-mail to: *Innovation_State_Grants@epa.gov.* We encourage e-mail responses. If you have questions about responding to this notice, please contact EPA at this e-mail address or fax number, or you may call Sherri Walker at 202–566–2186. EPA will acknowledge all responses it receives to this notice.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency (EPA) is soliciting pre-proposals for an assistance agreement program (the ''State Innovation Grant Program'') in an effort to support innovation by State environmental regulatory agencies. In April 2002, EPA issued its plan for future innovation efforts, published as *Innovating for Better Environmental Result: A Strategy to Guide the Next Generation of Innovation at EPA* (EPA 100–R–02–002; *http://www.epa.gov/innovation/pdf/strategy.pdf).* This assistance agreement program strengthens EPA's partnership with the States by assisting State Innovation that supports the Strategy. EPA would like to help States build on previous experience and undertake strategic innovation projects that promote larger-scale models for ''next generation'' environmental protection and promise better environmental results. EPA is interested in funding projects that: (1) Go beyond a single facility experiment to promote change that is ''systems-oriented;'' (2) provide better results from a program, process, or sector-wide innovation; and (3) promote integrated (cross-media) environmental management with high potential for transfer to other States.

''Innovation in permitting'' is the theme for the 2006 solicitation. Under this theme, EPA is interested in pre-proposals that:

(a) Apply the Environmental Results Program model, an alternative to permitting scheme for small business sectors;

(b) Explore the relationship between Environmental Management Systems and permitting; or

(c) Seek to build State support for EPA's National Environmental Performance Track Program or similar State performance-based environmental leadership programs.

EPA interprets ''innovation in permitting'' broadly to include permitting programs, pesticide licensing programs, and other alternatives or supplements to permitting programs. EPA is interested in creative approaches that both (1) achieve mandatory Federal and State standards and (2) encourage performance and address environmental issues above and beyond minimum requirements.

This solicitation begins the fourth State Innovation Grant competition. Of the 22 projects that have been awarded in the prior rounds (including those with pending awards) eleven (11) are for development of Environmental Results Programs, seven (7) relate to Environmental Management Systems and permitting, two (2) are to enhance Performance-Based Environmental Leadership programs, two (2) are for Watershed-based permitting, and one (1) is Information Technology for the application of Geographic Information Systems (GIS) to a permitting process. For information on the prior solicitations and awards, please see highlights of previous awards in Attachment 3 of the solicitation, or see the EPA State Innovation Grants Web site at *http://www.epa.gov/innovation/stategrants.*

Dated: December 8, 2005.

Elizabeth Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. E5–7775 Filed 12–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8013–8]

Environmental Economics Research Strategy

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of a final document.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today announcing the availability of its *Environmental Economics Research Strategy*, EPA/600/R–04/195. The *Environmental Economics Research Strategy* identifies and prioritizes environmental economics and decision science research that will be conducted over the next several years to improve the scientific foundation for EPA's decision-making and policy initiatives.

ADDRESSES: A limited number of copies of the Environmental Economics Research Strategy will be available from the National Service Center for Environmental Publications. Request a copy by telephoning 1–800–490–9198 or 513–489–8190 and providing the title and the EPA number for the document, EPA/600/R–04/195. Internet users may download a copy from the EPA's Office of Research and Development home page at *http://www.epa.gov/ord/htm/documents/econresearch.pdf.* The strategy is also available on EPA's National Center for Environmental Economics home page at *http://yosemite.epa.gov/ee/epa/eed.nsf/webpages/homepage.*

FOR FURTHER INFORMATION CONTACT: Dr. William Wheeler, National Center for Environmental Research (8722F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone: 202–343–9828; facsimile: 202–233–0678; E-mail: *wheeler.william@epa.gov* or Dr. Brian Heninger, National Center for Environmental Economics (1809T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone: 202–566–2270; facsimile: 202–566–2338; E-mail: *heninger.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: The *Environmental Economics Research Strategy* was developed to guide future environmental economics research at the Agency. This research strategy outlines EPA's effort to provide the necessary behavioral science foundation for making decisions and designing environmental policies at the least cost to American businesses and consumers. To be effective the Agency must understand how people and firms make decisions about and affect the environment, and, in turn, how the environment affects Americans' quality of life. The environmental economics research described in this strategy will become a cornerstone of the economic analyses that EPA needs to develop environmental policy.

The *Environmental Economics Research Strategy* was developed by a team from the National Center for Environmental Economics (NCEE) and the National Center for Environmental

Research (NCER) working with EPA program offices, the Office of Research and Development (ORD) laboratories and centers, and EPA regions. NCEE provides research support and economic guidance to EPA programs, and NCER manages an economics and decision sciences research grants program. The strategy identifies priorities and research gaps, evaluates research tools, sets strategic research objectives, and suggests responsibilities and sequences for conducting or sponsoring research. EPA programs, other Federal agencies, academics, states, local governments, and others can consult the strategy to understand what EPA has planned and the results the Agency expects.

The *Environmental Economics Research Strategy* is in two volumes; the first volume is the strategy itself outlined in four chapters, and the second volume contains seven appendices. Chapter 1 explains the background for developing the strategy. Chapter 2 reports the main findings from the needs assessment survey and workshop. Chapter 3 describes how EPA evaluated the remaining gaps in the research literature in priority economic research areas and developed strategic research goals to implement. Chapter 4 describes the research tools or approaches available to implement the strategy and how EPA plans to use these tools to generate and communicate needed research results. The appendices provide more detail on the needs assessment process and results, discuss the relationship of the strategy to other documents, compare the advantages of different research tools available to EPA, and present the external peer review comments and responses.

This *Environmental Economics Research Strategy* was subjected to external peer review by the Environmental Economics Advisory Committee of EPA's Science Advisory Board. The final strategy reflects the comments of both internal and external review.

Dated: December 19, 2005.

George Gray,

Assistant Administrator for Research and Development.

[FR Doc. E5–7780 Filed 12–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. EPA–R04–SFUND–2005–0501; FRL–8014–4]

A&H Sales Superfund Site,Tampa, FL; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for the reimbursement of past response costs with Finishmaster, Inc., concerning the A&H Sales Superfund Site located in Tampa, Florida.

DATES: The Agency will consider public comments on the settlement until January 23, 2006. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the proposed settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2005–0501 or Site name A&H Sales by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *Batchelor.Paula@epa.gov.*
- Fax: 404/562–8842.

Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.'' *Instructions:* Direct your comments to Docket ID No. EPA–R04–SFUND–2005–0501. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m., Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: December 14, 2005.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. E5–7774 Filed 12–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8014–7]

Proposed National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities—Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: On December 1, 2005 (70 FR 72116) EPA noticed the availability of the proposed National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Industrial Activities and requested comments on the draft by January 16, 2006. The purpose of this notice is to extend this comment period to February 16, 2006.

DATES: Comments on the proposed general permit must be postmarked by February 16, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. OW–2005–0007 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *ow-docket@epa.gov.*

Mail: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of three copies.

Hand Delivery: EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OW–2005–0007. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Unit I.B of the **SUPPLEMENTARY INFORMATION** section of the document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Jenny Molloy, Office of Wastewater Management, Office of Water, EPA Headquarters at tel.: 202–564–1939 or e-mail: *molloy.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, 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 claimed as CBI). In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

C. What Action Is Being Taken?

The comment period for the proposed general permit for Stormwater Discharges from Industrial Activities is being extended for 30 days until February 16, 2006, at the request of Waterkeeper Alliance, Natural Resources Defense Council, Friends of Grays Harbor, Amigos Bravos: Friends of Wild Rivers, National Mining Association, Idaho Mining Association, Hecla Mining Company, The Colorado Mining Association, Idaho Association of Commerce & Industry, and Arizona Mining Association. After the close of

the public comment period, EPA will issue a final permit decision. This decision will not be made until after all public comments have been considered and appropriate changes made to the permit. Responses to comments will be included in the final permit decision.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: December 20, 2005.

James Hanlon,

Director, Office of Wastewater Management.

[FR Doc. E5–7778 Filed 12–22–05; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER *Citation of Previous Announcement:* 70 FR 74319, Thursday, December 15, 2005.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Wednesday, December 21, 2005, 9 a.m. (eastern time).

CHANGE IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Acting Executive Officer on (202) 633–4070.

This Notice issued December 20, 2005.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 05–24461 Filed 12–21–05; 11:56 am]

BILLING CODE 6570–06–M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Science and Technology Policy

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

DATES: January 10, 2006, Washington, DC. The meeting will be held in the Washington Room at the Hotel Washington located at 515 15th St., NW., Washington, DC 20004.

Type of Meeting: Open. Further details on the meeting agenda will be posted on the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology is scheduled to meet in open session on Tuesday, January 10, 2005, at approximately 9 a.m. The PCAST is tentatively scheduled to hear a presentation on the Federal Networking and Information Technology Research and Development (NITRD) program. By Executive Order, executed since its last meeting, PCAST is responsible for reviewing and assessing the NITRD program and this presentation will provide background for those activities. The PCAST also is tentatively scheduled to hear presentations relating to its ongoing study of energy technologies. An update of other PCAST topics (*e.g.*, nanotechnology) and a briefing on the U.S.-China S&T Forum are also tentatively scheduled to occur. This session will end at approximately 5 p.m. Additional information and the final agenda will be posted at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

Public Comments: There will be time allocated for the public to speak on the above agenda items. This public comment time is designed for substantive commentary on PCAST's work topics, not for business marketing purposes. Please submit a request for the opportunity to make a public comment five (5) days in advance of the meeting. The time for public comments will be limited to no more than 5 minutes per person. Written comments are also welcome at any time following the meeting. Please notify Celia Merzbacher, PCAST Executive Director, at (202) 456–7116, or fax your request/comments to (202) 456–6021.

FOR FURTHER INFORMATION CONTACT: For information regarding time, place and agenda, please call Celia Merzbacher at (202) 456–7116, prior to 3 p.m. on Friday, January 6, 2006. Information will also be available at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.* Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

Celia Merzbacher,

PCAST Executive Director, Office of Science and Technology Policy.

[FR Doc. E5–7776 Filed 12–22–05; 8:45 am]

BILLING CODE 3170–W4–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 6, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Thomas W. Wilder, III, Slocomb, Alabama, and Thomas W. Wilder, IV, Marianna, Florida; to retain voting shares of BJC Holdings, Inc., Graceville, Florida, and thereby indirectly retain voting shares of Bank of Jackson County, Graceville, Florida.

Board of Governors of the Federal Reserve System, December 19, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–7729 Filed 12–22–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 10, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Jay Elliot Bell, Chicago, Illinois; to acquire voting shares of Rochester State Bankshares, Inc., Rochester, Illinois, and thereby indirectly acquire voting shares of Rochester State Bank, Rochester, Illinois.

Board of Governors of the Federal Reserve System, December 20, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–7762 Filed 12–22–05; 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 Web site 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 January 17, 2006.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Harbor Bank Group, Inc., Charleston, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Harbor National Bank, Charleston, South Carolina (in organization).

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Community Bancshares, Inc., Overland Park, Kansas; to acquire 100 percent of the voting shares of Corning Investment Company, Inc., Centralia, Kansas, and thereby indirectly acquire The Farmers State Bank of Corning, Corning, Kansas.

C. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo and Company, San Francisco, California; to acquire 100 percent of the voting shares of Martinius Corporation, Rogers, Minnesota, and thereby indirectly acquire State Bank of Rogers, Rogers, Minnesota.

Board of Governors of the Federal Reserve System, December 19, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–7730 Filed 12–22–05; 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 Web site 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 January 16, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Iowa State Bank Holding Company, Des Moines, Iowa; for prior approval to hold real estate for the purpose of economic development pursuant to Section 225.28(b)(12)(i)of Regulation Y.

Board of Governors of the Federal Reserve System, December 19, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–7731 Filed 12–22–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[CMS–0015–N]

RIN 0938–ZA62

Consolidated Health Informatics (CHI) Initiative; Health Care and Vocabulary Standards for Use in Federal Health Information Technology Systems

AGENCY: Office of the Secretary (OS), HHS.

ACTION: Notice.

SUMMARY: This notice identifies the 20 messaging and vocabulary standards adopted for use in Federal government health information technology systems. The first set of 5 standards was adopted on March 21, 2003. The second set of 15 standards was adopted on May 6, 2004, thus completing the initial portfolio of

the Consolidated Health Informatics (CHI) initiative.

FOR FURTHER INFORMATION CONTACT: Cheryl Ford, (410) 786–7415.

SUPPLEMENTARY INFORMATION:

I. Background

The Consolidated Health Informatics (CHI) initiative began in October 2001 as one of 24 E-Government initiatives included in the President's Management Agenda (PMA). The CHI initiative is a collaborative effort to adopt Federal government-wide health information interoperability standards to be implemented by Federal agencies in order to enable the Federal government to exchange electronic health information.

On May 6, 2004, the Secretary of the Department of Health and Human Services (HHS) announced the adoption by HHS, the Department of Defense, the Department of Veterans Affairs, the Office of Management and Budget, and other participating Federal partners of 15 healthcare messaging and vocabulary standards recommended by the CHI initiative (*http://www.hhs.gov/news/press/2004pres/20040506.html*). The adoption of these standards supplemented the first 5 standards adopted on March 21, 2003 (*http://www.hhs.gov/news/press/2003pres/20030321a.html*), thereby completing the initial CHI portfolio.

The portfolio of 20 adopted standards will be used by all Federal agencies in implementing new, and to the extent possible, in modifying existing health information technology systems, as well as related business processes.

II. CHI Adopted Standards

As a result of work completed in furtherance of CHI, the 20 clinical standards that have been adopted for use by all Federal agencies as they develop and implement new information technology systems are as follows:

1. Laboratory Results Names. Standard: Logical Observation Identifiers Names and Codes (LOINC®).
2. Messaging Standards. Includes: Scheduling, medical record/image management, patient administration, observation reporting, financial management, public health notification, and patient care. Standard: Health Level Seven® (HL7®) Version 2.3 and greater.
3. Messaging Standards. Includes: Retail pharmacy transactions. Standard: National Council for Prescription Drug Programs (NCPDP) SCRIPT®.
4. Messaging Standards. Includes: Device-device connectivity. Standard: Institute of Electrical and Electronics Engineers, Inc. ™ 1073.
5. Messaging Standards. Includes: Image information to workstations. Standard: Digital Imaging and Communications in Medicine® (DICOM®).
6. Demographics. Standard: HL7® Version 2.4 and greater.
7. Lab Result Contents. Standard: Systematized Nomenclature of Medicine Clinical Terms® (SNOMED CT®).
8. Units of Measure. Standard: HL7® Version 2.X+.
9. Immunizations. Standard: HL7® Version 2.3.1, specifically the Vaccines Administered (CVX) and Manufacturers of Vaccines (MVX) external code sets maintained by the Centers for Disease Control and Prevention's (CDC) National Immunization Program (NIP).
10. Medications. Standards: Federal Drug Terminologies: (Sub-domain: Standard Adopted):
    - *Active Ingredient:* FDA Established Names & Unique Ingredient Identifier (UNII) codes.
    - *Manufactured Dosage Form:* FDA/CDER Data Standards Manual.
    - *Drug Product:* FDA's National Drug Codes (NDC).
    - *Medication Package:* FDA Standards Manual.
    - *Label Section Headers:* LOINC® Clinical Structured Product Labeling (SPL).
    - *Special Populations:* HL7 Version 2.4 and greater.
    - *Drug Classifications:* The Department of Veterans Affairs' National Drug File Reference Terminology (NDF–RT) for mechanism of action and physiologic effect.
    - *Clinical Drug:* the National Library of Medicine's RxNorm.
11. Interventions/Procedures (Part A): Lab Test Order Names. Standard: LOINC®.
12. Interventions/Procedures (Part B): Non-laboratory. Standard: SNOMED CT®.
13. Anatomy. Standards: SNOMED CT® and the National Cancer Institute's (NCI) Thesaurus.
14. Diagnosis/Problem Lists. Standard: SNOMED CT®.
15. Nursing. Standard: SNOMED CT®.
16. Financial/Payment. Standard: HIPAA Transactions and Code Sets.
17. Genes. Standard: Human Genome Nomenclature.
18. Clinical Encounters. Standard: HL7® Version 2.4 and greater.
19. Text-Based Reports. Standards: HL7® and Clinical Document Architecture (CDA) Version 1.0–2000 Chemicals.
20. Chemicals. Standard: Environmental Protection Agency's Substance Registry System.

Specific details of these CHI standards can be obtained from the domain-specific full reports available for download at: *http://www.hhs.gov/healthit/chi.html.*

III. Collection of Information Requirements

This notice does not impose information collection and recordkeeping requirements regulated by the Paperwork Reduction Act of 1995; that is, it does not require obtaining facts or opinions or answers to questions by or for a Federal agency. Consequently, it need not be reviewed by the Office of Management and Budget under 44 U.S.C. 35.

IV. Impact Statement

We have chosen to explain the impact we foresee this notice having on the public as follows: There are indirect impacts for Federal contractors or potential contractors who may be involved in health information technology design, development, or evaluation. The Federal government will require all future health information technology system acquisitions to be based on CHI standards when applicable, whether system development occurs within the Agency or through the use of contractor services.

Authority: The E-Government Act of 2002 (Pub. L. 107–347) (H.R. 2458)

Dated: September 13, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 25, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–24289 Filed 12–22–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10170]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

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:* Retiree Drug Subsidy (RDS) Payment Request and Instructions; *Form Number:* CMS–10170 (OMB#: 0938–0977); *Use:* Under section 1860D–22 of the Social Security Act (Act), added by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, plan sponsors (employers, unions) who offer prescription drug coverage to their qualified covered retirees are eligible to receive a 28 percent tax-free subsidy for allowable drug costs. To receive the subsidy, plan sponsors must submit required prescription cost data. CMS has contracted with an outside vendor (ViPS) to assist in the administration of the retiree drug subsidy (RDS) program; this effort is called the RDS Center. Plan sponsors will request subsidy payments on-line by logging on to the RDS secure Web site. Cost data required for each payment request may be entered into the RDS secure Web site, or uploaded to the RDS Center mainframe. Once the plan sponsor submits the payment request, the RDS Center will process the request to determine if payment is due and the amount of the payment. Frequency: Recordkeeping and Reporting—Monthly, Quarterly and Annually; *Affected Public:* Not-for-profit institutions, Business or other for-profit, Federal Government, State, Local, or Tribal Government; *Number of Respondents:* 6,000; *Total Annual Responses:* 6,000; *Total Annual Hours:* 222,000.

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.

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 February 21, 2006. CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—C, Attention: Bonnie L Harkless, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 13, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–24301 Filed 12–22–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS R–193 and CMS–2567]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

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 function; (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:* Important Message from Medicare Title XVII Section 1866(a)(1)(M), 42 CFR Sections 466.78, 489.20, and 489.27; *Form Number:* CMS–R–193 (OMB#: 0938–0692); *Use:* Hospitals participating in the Medicare program are required to distribute the ''Important Message From Medicare'' to all Medicare beneficiaries (including those enrolled in a Medicare managed care health plan). Hospitals must distribute this notice at or about the same time of a Medicare beneficiary's admission or during the course of his or her hospital stay. Receiving this information will provide all Medicare beneficiaries with some ability to participate and/or initiate discussions concerning actions that may affect their Medicare coverage, payment, and appeal rights in response to a hospital's or Medicare managed care plan's notification that their care will no longer continue; *Frequency:* Recordkeeping and Reporting—Other: Distribution; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions, Federal, State, Local or Tribal Government; *Number of Respondents:* 6,051; *Total Annual Responses:* 12,500,000; *Total Annual Hours:* 208,333.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Statement of Deficiencies and Plan of Correction contained under 42 CFR 488.18, 488.26, and 488.28; *Form Number:* CMS–2567 (OMB#: 0938–0391); *Use:* Section 1864(a) of the Social Security Act requires that the Secretary use State survey agencies to conduct surveys. The surveys are used to determine if health care facilities meet Medicare, Medicaid, and Clinical Laboratory Improvement Amendments (CLIA) participation requirements. The Statement of Deficiencies and Plan of Correction form, is used to record each deficiency discovered during an inspection. Providers, suppliers and CLIA laboratories also utilize this form to outline a corrective action plan for each deficiency. The States and CMS regional offices use this form to document and certify compliance, and to disclose information to the public; *Frequency:* Recordkeeping, Third party disclosure and Reporting—Annually and Biennially; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal, State, Local or Tribal Government; *Number of Respondents:* 60,000; *Total Annual Responses:* 60,000; *Total Annual Hours:* 120,000.

To obtain copies of the supporting statement and any related forms for these 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 by the OMB Desk Officer at the address below, no later than 5 p.m. on January 23, 2006. OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 14, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–24302 Filed 12–22–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9033–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—July Through September 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 July 2005 through September 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, C1–13–04, 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 Bonnie Harkless, 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) 786–5666.

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 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, 2003. (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 ''Cochlear Implantation,'' use CMS—Pub. 100–03, Transmittal No. 42.

(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: December 7, 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.

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)
September 23, 2005 (70 FR 55863)

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

[July through September 2005]

Transmittal No.	Manual/Subject/Publication No.
	Medicare General Information (CMS—Pub. 100–01)
25	Next Generation Desktop Testing Requirements Definitions
	Next Generation Desktop Maintainer Requirements
26	Implement New Medicare Plan ID and Carrier Number for the Single Testing Contractor
	Shared System Testing Requirements for Maintainers, Beta Testers, and Contractors
27	Provider Extract File
28	Conforming Changes for Change Request 3648 to Pub. 100–01
	Hospital Insurance (Part A) for Inpatient Hospital, Hospice, and Skilled Nursing Facility Services—A Brief Description Home Health Services
	Supplementary Medical Insurance (Part B)—A Brief Description
	Discrimination Prohibited
	Role of Part A Intermediaries
	Limitation on Physical Therapy, Occupational Therapy and Speech-Language Pathology Services
	Certification for Hospital Services Covered by the Supplementary Medical Insurance Program
	Content of the Physician's Certification
	Recertifications for Home Health Services
	Physician's Certification and Recertification for Outpatient Physical Therapy Occupational Therapy and Speech-Language Pathology Recertification
	Under Arrangements
	Term of Agreements
	Determining Payment for Services Furnished After Termination, Expiration, or Cancellation
	Home Health Agency Defined
29	2005 Scheduled Release for October Updates to Software Programs and Pricing/Coding Files
	Medicare Benefit Policy (CMS—Pub. 100–02)
37	Conforming Changes for Change Request 3648 to Pub. 100–02
	Medical and Other Health Services Furnished to Inpatients of Participating Hospitals Outpatient Hospital Services
	Distinguishing Outpatient Hospital Services Provided Outside the Hospital Coverage of Outpatient Therapeutic Services
	Medical and Other Health Services Furnished by Home Health Agencies Skilled Services Defined
	Speech-Language Pathology
	Physical Therapy, Speech-Language Pathology, and Occupational Therapy Furnished by the Skilled Nursing Facility or by Others Under Arrangements With the Facility and Under Its Supervision
	Inpatient Physical Therapy, Occupational Therapy, and Speech-Language Pathology Services
	Services Furnished Under Arrangements With Providers
	Supplementary Medical Insurance Provisions
	Services Not Provided Within United States
	Medicare National Coverage Determinations (CMS—Pub. 100–03)
42	Cochlear Implantation
	Cochlear Implantation (Effective April 4, 2005)

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July through September 2005]

Transmittal No.	Manual/Subject/Publication No.
	Medicare Claims Processing (CMS—Pub. 100–04)
601	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 Procedure Coding System
602	Expansion of Various Alpha and Numeric Fields Within the Outpatient Prospective Payment System Outpatient Code Editor
603	Modification to the Appeals Language on the Medicare Summary Notice; Full Replacement of Change Request 3808
	Appeals Section
	Back of Medicare Summary Notice—Carriers and Intermediaries Carrier Spanish Medicare Summary Notices Back Intermediary Spanish Medicare Summary Notices Back
604	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
605	Frequency Instructions for Smoking and Tobacco-Use Cessation Counseling Services
	Remittance Advice Notices
	Medicare Summary Notices
606	Medicare Program-Update to the Hospice Payment Rates, Hospice Cap, Hospice Wage Index, and the Hospice Pricer for FY 2005
	Payment Rates
607	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
608	New Health Professional Shortage Area Modifier
	Zip Code Files
	Provider Education
	Claims Coding Requirements
	Services Eligible for Health Professional Shortage Area and Physician Scarcity Bonus Payments
	Post-payment Review
	Health Professional Shortage Area Incentive Payments for Physician Services Rendered in a Critical Access Hospital
609	Remittance Advice Remark Code and Claim Adjustment Reason Code Update
610	This Transmittal is rescinded and replaced by Transmittal 634
611	Payment Methodology for Rehabilitation Services in Indian Health Service/Tribally Owned and/or Operated Hospitals and Hospital Based Facilities
	Services Paid Under the Physician Fee Schedule
612	Abarelix for Treatment of Prostate Cancer
613	New Healthcare Common Procedure Coding System Codes and Systems Edits for Supplies and Accessories for Ventricular Assist Devices—Full Replacement of CR 3761
614	Medicare Physician Fee Schedule Database 2006 File Layout
615	Revision of Chapter 24, Electronic Data Interchange Support Requirements
	Electronic Data Interchange General Outreach Activities Carrier, Durable Medical Equipment Regional Carrier, and Fiscal Intermediary Analysis of Internal Information
	Systems Information
	Review of Provider Profiles
	Contact with New Providers
	Production and Distribution of Material to Increase Use of Electronic Data Interchange
	Electronic Data Interchange Enrollment
	New Enrollments and Maintenance of Existing Enrollments
	Submitter Number
	Release of Medicare Eligibility Data
	Network Service Vendor Agreement
	Electronic Data Interchange User Guidelines
	Directory of Billing Software Vendors and Clearinghouses
	Technical Requirements—Data, Media, and Telecommunications System Availability
	Media
	Telecommunications and Transmission Protocols
	Toll-Free Service
	Initial Editing
	Translators
	Required Electronic Data Interchange Formats
	General Health Insurance Portability and Accountability Act Electronic Data Interchange Requirements
	Continued Support of Pre-Health Insurance Portability and Accountability Act
	Electronic Data Interchange Formats
	National Council for Prescription Drug Program Claim Requirements
	Crossover Claim Requirements
	Direct Data Entry Screens
	Use of Imaging, External Key Shop, and In-House Keying for Entry of Transaction Data Submitted on Paper
	Electronic Funds Transfer
	Electronic Data Interchange Testing Requirements

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July through September 2005]

Transmittal No.	Manual/Subject/Publication No.
	Shared System and Common Working File Maintainers Internal Testing Requirements
	Carrier, Durable Medical Equipment Regional Carrier, and Intermediary Internal Testing Requirements
	Third-Party Certification Systems and Services
	Electronic Data Interchange Submitter/Receiver Testing by Carriers, Durable Medical Equipment Regional Carriers, and Fiscal Intermediaries
	Testing Accuracy
	Limitation on Testing of Multiple Providers That Use the Same Clearinghouse, Billing Service, or Vendor Software
	Carrier, Durable Medical Equipment Regional Carrier, and Fiscal Intermediary Submitter/Receiver Testing With Legacy Formats During the Health Insurance Portability and Accountability Act Contingency Period
	Discontinuation of Use of Claim Legacy Formats following Successful Health Insurance Portability and Accountability Act Format Testing
	Electronic Data Interchange Receiver Testing by Carriers, Durable Medical Equipment Regional Carriers, and Intermediaries
	Changes in Provider's System or Vendor's Software, and Use of Additional Electronic Data Interchange Formats
	Support of Electronic Data Interchange Trading Partners
	User Guidelines
	Technical Assistance to Electronic Data Interchange Trading Partners
	Training Content and Frequency
	Prohibition Against Requiring Use of Proprietary Software or Direct Data Entry
	Free Claim Submission Software
	Remittance Advice Print Software
	Medicare Remit Easy Print Software for Carrier and Durable Medical Equipment Regional Carrier Provider Use
	Medicare Standard Fiscal Intermediary PC-Print Software
	Newsletters/Bulletin Board/Internet Publication of Electronic Data Interchange Information
	Provider Guidelines for Choosing a Vendor
	Determining Goals/Requirements
	Vendor Selection
	Negotiating With Vendors
	Electronic Data Interchange Edit Requirements
	Carrier, Durable Medical Equipment Regional Carrier, and Fiscal Intermediary X12 Edit Requirements
	Supplemental Fiscal Intermediary-Specific Shared System Edit Requirements
	Fiscal Intermediary Health Insurance and Portability Accountability Act Claim
	Level Implementation Guide Edits
	Supplemental Carrier/Durable Medical Equipment Regional Carrier-Specific Shared System Implementation Guide Edit Requirements
	Keyshop and Image Processing
	Carrier, Durable Medical Equipment Regional Carrier, or Fiscal Intermediary Data Security and Confidentiality Requirements
	Carrier, Durable Medical Equipment Regional Carrier, and Fiscal Intermediary Electronic Data Interchange Audit Trails
	Security-Related Requirements for Carrier, Durable Medical Equipment
	Regional Carrier, or Fiscal Intermediary Arrangements with Clearinghouses And Billing Services
	Mandatory Electronic Submission of Medicare Claims
	Small Providers and Full-Time Equivalent Employee Self-Assessments
	Exceptions
	Unusual Circumstance Waivers
	Unusual Circumstance Waivers Subject to Provider Self-Assessment
	Unusual Circumstance Waivers Subject to Medicare Contractor Approval
	Unusual Circumstance Waivers Subject to Contractor Evaluation and CMS Decision
	Electronic and Paper Claims Implications of Mandatory Electronic Submission Enforcement
	Provider Education
616	Certified Registered Nurse Anesthetist Pass-Through Payments
	Anesthesia and Certified Registered Nurse Anesthetist Services in a Critical Access Hospitals
	Payment for Certified Registered Nurse Anesthetist Pass-Through Services
	Payment for Anesthesia Services by a Certified Registered Nurse Anesthetist (Method II Critical Access Hospital Only)
617	Administration of Drugs and Biologicals in a Method II Critical Access Hospital
	Coding for Administering Drugs in a Method II Critical Access Hospital
	Coding for Low Osmolar Contrast Material
618	Coding for the Administration of Other Drugs and Biologicals
	Clarification for Carriers and Durable Medical Equipment Regional Carriers About Correction and Recoupment of Previously Processed Claims
619	Late IRF–PAI Data Submission Penalty Protocol Within the Inpatient Rehabilitation Facility Prospective Payment System
	Payment Adjustment for Late Transmission of Patient Assessment Data
620	New Fiscal Intermediary (FI) Edit to Identify Potentially Excessive Medicare Payments
	Fiscal Intermediary Edits Affecting Multiple Bill Types
	Threshold Edit for Outpatient and Inpatient Part B Claims
621	Locality Codes for Purchased Diagnostic Tests
622	This Transmittal is rescinded and replaced by Transmittal 668
623	Durable Medical Equipment Regional Carrier Only—Corrections to the Billing Indicator Field for Adjusted Claims
624	This Transmittal is rescinded and replaced by Transmittal 686
625	Competitive Acquisition Program for Part B Drugs—Coding, Testing, and Implementation
626	Common Working File Expansion of Duplicate Claim Edit for Clinical Diagnostic Services
627	New Low Osmolar Contrast Material (LOCM) HCPCS Codes/Payment Criteria/Payment Level

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July through September 2005]

Transmittal No.	Manual/Subject/Publication No.
	Low Osmolar Contrast Media (HCPCS Codes Q9945–Q9951)
	Payment Criteria/Payment Level
628	Radiopharmaceutical Diagnostic Imaging Agents Codes Applicable to Positron Emission Tomography Scan Services Performed on or After January 28, 2005
	Appropriate Common Procedure Terminology Codes Effective for Positron Emission Tomography Scan Services Performed on or After January 28, 2005
	Tracer Codes Required for Positron Emission Tomography Scans
629	Certificate of Medical Necessity Claim Edits Workload Reporting
	Durable Medical Equipment Regional Carrier Systems
630	Medicare Part A Skilled Nursing Facility Prospective Payment System Pricer
	Update and Health Insurance Prospective Payment System Coding Update Effective January 1, 2006
	Health Insurance Prospective Payment System Rate Code
	Skilled Nursing Facility Prospective Payment System Rate Components
	Decision Logic Used by the Pricer on Claims
631	Claim Status Category Code and Claim Status Code Update
632	Billing and Claims Processing Instructions for Claims Subject to Expedited Determinations
	Limitation of Liability Notification and Coordination With Quality
	Improvement Organizations
	Limitation on Liability—Overview
	Hospital Claims Subject to Hospital Issued Notices of Noncoverage
	Scope of Issuance of Hospital Issued Notices of Noncoverage
	General Responsibilities of Quality Improvement Organizations and Fiscal Intermediaries Related to Hospital Issued Notices of Noncoverage
	Billing and Claims Processing Requirements Related to Hospital Issued Notices of Noncoverage
	Skilled Nursing Facility, Home Health Agency, Hospice, and Comprehensive Outpatient Rehabilitation Facility Claims Subject to Expedited Determinations
	Scope of Issuance of Expedited Determination Notices
	General Responsibilities of Quality Improvement Organizations and Fiscal Intermediaries Related to Expedited Determinations
	Billing and Claims Processing Requirements Related to Expedited Determinations
	Coordination With the Quality Improvement Organization
633	Guidelines for Payment of Vaccines (Pneumococcal Pneumonia Virus, Influenza Virus, and Hepatitis B Virus) and Their Administration Provided by Indian Health Service/Tribally-Owned and/or Operated Hospitals and Hospital Based Facilities
	Billing Requirements
	Bills Submitted to Fiscal Intermediaries
	Vaccines and Vaccine Administration
634	Guidelines for Payment of Vaccines (Pneumococcal Pneumonia Virus, Influenza Virus, and Hepatitis B Virus) and Their Administration at Renal Dialysis Facilities
	Vaccines Furnished to End-Stage Renal Disease Patients
	Fiscal Intermediary Payment for Pneumococcal Pneumonia, Influenza Virus, and Hepatitis B Vaccine
	Bills Submitted by Hospices and Payment for Renal Dialysis Facilities
635	Financial Liability for Services Subject to Home Health Consolidated Billing
	Home Health Prospective Payment System Consolidated Billing and Primary
	Home Health Agencies
	Home Health Prospective Payment System Consolidated Billing Beneficiary Notification and Payment Liability Under Home Health Consolidated Billing
	Responsibilities of Home Health Agencies
	Responsibilities of Providers/Suppliers of Services Subject to Consolidated Billing
	Responsibilities of Hospitals Discharging Medicare Beneficiaries to Home Health Care
	Home Health Consolidated Billing Edits in Medicare Systems
	Non-routine Supply Editing
	Therapy Editing
	Other Editing Related to Home Health Consolidated Billing
	Only Request for Anticipated Payment Received and Services Fall Within 60 Days After Request for Anticipated Payment Start Date
	No Request for Anticipated Payment Received and Therapy Services Rendered in the Home
	Health Insurance Eligibility Query to Determine Episode Status
	Other Editing and Changes for Home Health Prospective Payment System Episodes
	Coordination of Home Health Prospective Payment System Claims and Episodes With Inpatient Claim Types
636	Instructions for Implementation of CMS Ruling 05–01; Presbyopia-Correcting Intraocular Lens
637	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
638	New Medicare Summary Notice Messages
	Adjustments
	Ajustes
639	Cessation of Additional $50 Payment for New Technology Intraocular Lenses
	Ambulatory Surgical Center Services on Ambulatory Surgical Center List
	Payment for Intraocular Lens
640	Medicare Part A Skilled Nursing Facility Prospective Payment System Pricer Update FY 2006
641	October 2005 Quarterly Update to Skilled Nursing Facility Consolidated Billing
642	New Waived Tests
643	Nature and Effect of Assignment on Carrier Claims

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July through September 2005]

Transmittal No.	Manual/Subject/Publication No.
644	October 2005 Non-Outpatient Prospective Payment System Code Editor Specifications Version 21
645	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
646	Update to the Inpatient Provider Specific File and the Outpatient Provider
	Specific File to Retain Provider Information
647	The Supplemental Security Income/Medicare Beneficiary Data for Fiscal Year 2004 for Inpatient Prospective Payment System Hospitals
648	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
649	Competitive Acquisition Program for Part B Drugs—Coding, Testing, and Implementation
650	This Transmittal is rescinded and replaced by Transmittal 673
651	Changes to the Laboratory National Coverage Determination Edit Software for October 2005
652	This Transmittal is rescinded and replaced by Transmittal 661
653	October 2005 Quarterly Average Sales Price Medicare Part B Drug Pricing File, Effective October 1, 2005 and Revisions to April 2005 and July 2005 Quarterly Average Sale Price Medicare Part B Drug Pricing File
654	Services Not Provided Within the United States
	Services Received by Medicare Beneficiaries Outside the United States Source of Part B Claims
	Appeals of Denied Charges for Physicians and Ambulance Services in Connection With Foreign Hospitalization
	Services Rendered in Nonparticipating Providers
	Coverage Requirements for Emergency Hospital Services in Foreign Countries
	Services Furnished in a Foreign Hospital Nearest to Beneficiary's U.S. Residence
	Coverage of Physician and Ambulance Services Furnished Outside U.S.
	Payment by the Railroad Retirement Beneficiaries for Services Furnished in Canada to Qualified Railroad Retirement Beneficiaries
	Foreign Religious Nonmedical Health Care Facility Claims
	Elections to Bill for Services Rendered at Nonparticipating Hospitals
	Processing Claims
	Appeals on Claims for Emergency and Foreign Services
	Payment for Services from Foreign Hospitals
	Full Denial—Foreign Claim—Beneficiary Filed
655	This Transmittal is rescinded and replaced by Transmittal 663
656	Full Replacement of Change Request 3607, Payment Edits in Applicable States For Durable Medical Equipment Prosthetics, Orthotics & Supplies
	Provider Billing for Prosthetics and Orthotic Services
657	Quarterly Update to Correct Coding Initiative Edits, Version V11.3, Effective October 1, 2005
658	Billing for Devices Under the Hospital Outpatient Prospective Payment System
	Billing for Devices Under the Outpatient Prospective Payment System
	Requirements that Hospitals Report Device Codes on Claims on Which They Report Specified Procedures
	Edits for Claims on Which Specified Procedures Are To Be Reported With Device Codes
659	Instructions for Downloading the Medicare Zip Code File
660	This Transmittal is rescinded and replaced by Transmittal 664
661	This Transmittal is rescinded and replaced by Transmittal 672
662	This Transmittal is rescinded and replaced by Transmittal 691
663	Update To The Hospice Payment Rates, Hospice Cap, Hospice Wage Index, and the Hospice Pricer for Fiscal Year 2006
664	This Transmittal is rescinded and replaced by Transmittal 683
665	October Quarterly Update for 2005 Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Fees Schedule
666	Updates to the Coordination of Benefits Contractor Detailed Error
	Report File Layout
	Consolidation of the Claims Crossover Process
	Coordination of Benefits Agreement Detailed Error Notification Process
667	Home Care and Domiciliary Care Visits (Codes 99321–99350)
668	Enforcement of Hospital Inpatient Bundling: Carrier Denial of Ambulance Claims During an Inpatient Stay
	Hospital Inpatient Bundling
	General Coverage and Payment Policies
	Common Working File Editing of Ambulance Claims for Inpatients
	Intermediary Guidelines
	Provider/Intermediary Bill Processing Guidelines Effective April 1, 2002, as a Result of Fee Schedule Implementation
669	Schedule for Completing the Calendar Year 2006 Fee Updates and the Participating Physician Enrollment Procedures
670	Realignment of States and Medicare Claims Processing Workload From Durable Medical Equipment Regional Carrier Regions A, B, C, and D to the Durable Medical Equipment Major Ambulatory Jurisdictions A, B, C and D
671	Updated Manual Instructions for the Medicare Claims Processing Manual, Regarding Smoking and Tobacco-Use Cessation Counseling Services
	Healthcare Common Procedure Coding System and Diagnosis Coding
	Carrier Billing Requirements
	Fiscal Intermediary Billing Requirements
	Medicare Summary Notices
672	October Update to the 2005 Medicare Physician Fee Schedule Database
673	Manual Update on Medical Nutrition Therapy Services—Manualization
	Medicare Nutrition Therapy Services
	General Conditions and Limitations on Coverage
	Referrals for Medicare Nutrition Therapy Services
	Dietitians and Nutritionists Performing Medicare Nutrition Therapy Services

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July through September 2005]

Transmittal No.	Manual/Subject/Publication No.
	Payment for Medicare Nutrition Therapy Services
	General Claims Processing Information
	Common Working File Edits
674	This Transmittal is rescinded and replaced by Transmittal 692
675	Changes to Appeals of Claims Decisions: Redeterminations and Reconsiderations (Implementation Date October 1, 2005)
	Workload Data Analysis Program
	Managing Appeals Workloads
	Standard Operating Procedures
	Execution of Workload Prioritization
	Workload Priorities
676	2006 Healthcare Common Procedure Coding System Annual Update Reminder
677	This Transmittal is rescinded and replaced by 687
678	This Transmittal is rescinded and replaced by 688
679	Medicare Redetermination Notice and Effect of the Redetermination Medicare Redetermination Notice (for partly or fully unfavorable redeterminations)
	Medicare Redetermination Notice (for fully favorable redeterminations) Effect of the Redetermination
680	Inpatient Rehabilitation Facility Annual Update: Prospective Payment System Pricer Changes for FY 2006
681	Guidelines For Payment of Vaccines (Pneumococcal Pneumonia Virus, Influenza Virus, And Hepatitis B Virus) and Their Administration Provided by Indian Health Services/Tribally-Owned and/or Operated Hospitals and Hospital Based Facilities
	Billing Requirements
	Bills Submitted to Fiscal Intermediaries
	Vaccines and Vaccine Administration
682	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
683	October 2005 Outpatient Prospective Payment System Code Editor Specifications Version
684	Correction to Chapter 17, Section 80.2.3, MSN/ANSI X12 Denial Messages for Anti-Emetic Drugs
685	Discontinuation of the Skilled Nursing Facility Healthcare Common Procedure Coding System Help File and Notification to Fiscal Intermediaries and Providers of the Redesigned Skilled Nursing Facility Consolidated Billing Annual Update File Posted on CMS Web site
	Services Included in Part A Prospective Payment System Payment Not Billable Separately by the Skilled Nursing Facility
	Services Beyond the Scope of the Part A Skilled Nursing Facility Benefit
	Billing for Medical and Other Health Services
	General Payment Rules and Application of Part B Deductible and Coinsurance
686	Common Working File Unsolicited Response Adjustments for Certain Claims Denied Due to an Open Medicare Secondary Payer Group Health Plan Record Where the Group Health Plan Record Was Subsequently Deleted
687	Appeals of Claims Decisions: Redeterminations and Reconsiderations (Implementation Dates for Fiscal Intermediary Initial Determination Issued On or After May 1, 2005 and Carrier Initial Determinations Issued on or After January 1, 2006)
	Filing a Request for Redetermination
	Appeal Rights for Dismissals
	Dismissal Letters
	Model Dismissal Notices
	Reconsideration—The Second Level of Appeal
	Filing a Request for a Reconsideration
	Time Limit for Filing a Request for a Reconsideration
	Contractor Responsibilities—General
	Qualified Independent Contractor Case File Development
	Qualified Independent Contractor Case File Preparation
	Forwarding Qualified Independent Contractor Case Files
	Qualified Independent Contractor Jurisdictions
	Tracking Cases
	Effectuation of Reconsiderations
688	Appeals of Claims Decisions: Redeterminations and Reconsiderations (Implementation Dates for All Requests for Redetermination Received by Fiscal Intermediary on or After May 1, 2005, and All Requests for Redetermination Received by Carriers on or After January 1, 2006)
	Redetermination—The First Level of Appeal
	The Redetermination
	The Redetermination Decision
	Dismissals
	Vacating a Dismissal
689	One Time Update to the National Council Prescription Drug Programs
	Companion Document Regarding Crossover Claims to Medicaid
690	Fiscal Year (FY) 2006 Payment for Services Furnished in Ambulatory Surgical Centers
691	October 2005 Update of the Hospital Outpatient Prospective Payment System
692	Fiscal Year 2006 Inpatient Prospective Payment System and Long Term Care Hospital Changes
693	Updates to the Inpatient Rehabilitation Facility and Skilled Nursing Facility
	Provider Specific File and Changes in Inpatient Rehabilitation Facility
	Prospective Payment System for FY 2006
	Provider-Specific File
	Case-Mix Groups
	Facility Level Adjustments
	Area Wage Adjustment

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July through September 2005]

Transmittal No.	Manual/Subject/Publication No.
	Rural Adjustment
	Outlier
	Teaching Status Adjustment
	Full Time Equivalent Resident Cap
	Inpatient Rehabilitation Facility Prospective Payment System Pricer Software
694	Update to the Healthcare Provider Taxonomy Codes Version 5.1
	Medicare Secondary Payer (CMS—Pub. 100–05)
31	Full Replacement of Change Request 3770, Expanding the Number of Source Identifiers for Common Working File Medicare Secondary Payer Records
	Change Request 3770 Is Rescinded
	Definition of Medicare Secondary Payer/Common Working File Terms
	Medicare Secondary Payer Delete Transaction
	Identification of Reimbursement Advisory Committee Created Group Health Plan Records
32	Exception for Small Employers in Multi-Employer Group Health Plans Overview and General Responsibilities
	Introduction to the Coordination of Benefits Contractor
	Scope of the Coordination of Benefit Contractor in Relation to Contractors
	Contractors Claim Referrals to the Coordination of Benefit Contractors IRS/SSA/CMS Data Match
	Coordination of Benefit Contractors Discontinues Dissemination of the Right of Recovery Letters to Contractors
	Exception for Small Employers in Multi-Employer Group Health Plans
	Purpose
	Background
	Specific Information
33	Working Aged Exception for Small Employers in Multi-Employer Group Health Plans
34	Manualization: Long-Standing Medicare Secondary Payer Policy in Chapter 1 of the Medicare Secondary Payer Internet Only Manual
	General Provisions
	Working Aged
	End-Stage Renal Disease
	Workers' Compensation
	No-Fault Insurance
	Liability Insurance
	Conditional Primary Medicare Benefits
	When Conditional Primary Medicare Benefits May Be Paid When a Group Health Plan Is a Primary Payer to Medicare
	When Conditional Primary Medicare Benefits May Not Be Paid When a Group Health Plan Is a Primary Payer to Medicare
	When Medicare Secondary Payer Benefits Are Payable and Not Payable
	Multiple Insurers
	Definitions
	Crediting Deductible for Non-Inpatient Psychiatric Services
	Clarification of Current Employment Status for Specific Groups
	Actions Resulting From Group Health Plan or Large Group Health Plan
	Nonconformance
	Federal Government's Right to Sue and Collect Double Damages
35	Updates to the Group Health Plan Identification and Recovery Processes
	General
	IRS/SSA/CMS Data Match (Data Match) Group Health Plan Identified Cases
	Non-Data Match Group Health Plan Identified Cases
	Other Sources of Recovery Actions
	Group Health Plan Acknowledges Specific Debt (42 CFR 411.25)
	Recovery When a State Medicaid Agency Has Also Requested a Refund From the Group Health Plan
	Identification of Group Health Plan Mistaken Primary Payments Via the Recovery Management and Accounting System
	Progression of Recovery Management Accounting System Group Health Plan
	Lead Identification
	Progression of Recovery Management Accounting System History Search
	Contractor Recovery Case Files (Audit Trails)
	Group Health Plan Letters (Used for Recovery Management Accounting
	System/Healthcare Integrated General Ledger Accounting System (ReMAS/HIGLAS) When the Only Debtor Interfaced to Healthcare Integrated General Ledger Accounting System Is the Employer)
	Employer Group Health Plan Letter
	Important Information for Employers
	Insurer Group Health Plan Letter (Used for Recovery Management Accounting System/Healthcare Integrated General Ledger Accounting System When the Only Debtor Interfaced to Healthcare Integrated General Ledger Accounting System Is the Employer)
	Accountability Worksheet (Not Applicable to Recovery Management Accounting System/Healthcare Integrated General Ledger Accounting System Users)
	Summary Data Sheet (Not Applicable to ReMAS/HIGLAS Users)
	Field Description on the Medicare Secondary Payer Summary Data Sheet Payment Record Summary (Used with ReMAS/HIGLAS Users but in a Modified Format)

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July through September 2005]

Transmittal No.	Manual/Subject/Publication No.
	Courtesy Copy of All Medicare Secondary Payer Group Health Plan-Based Recovery Demand Packages to the Employer's Insurer/Third Party Administrator
	Insurer/Third Party Administrator Courtesy Copy Letter
	Recovery Management Accounting System Error Reports
	Mistaken Group Health Plan Primary Payments
	Mistaken Primary Payment Activities and Record Layouts
	Contractor Actions Upon Receipt of the Data Match Cycle Tape or Other Notice of Non-Data Match Group Health Plan Mistaken Payments (for Contractor Not on ReMAS/HIGLAS for GHP Recovery) and Actions to Take for Those Contractors Using Recovery Management Accounting System/Health Integrated General Ledger Accounting System Group Health Plan Functions
	Coordination of Benefits Contractor Responsibility to Obtain Missing Medicare Secondary Payer Information
	Time Limitations for Group Health Plan Recoveries
	Actual Notice
	Contractor History Search
	Aggregate Claims for Recovery
	Documentation of Debt
	Recovery Attempt Audit Trails
	Summary of Medicare Reimbursement
	Claim Facsimiles for Each Claim Mistakenly Paid
	IRS/SSA/CMS Mistaken Payment Recovery Tracking System
	Inpatient, Skilled Nursing Facility, and Religious Non-Medicare Health Care
	Outpatient Mistaken Payment Report Record Layout
	Home Health Agency Mistaken Payment Record Layout
	Communication Receive in Response to Recovery Actions
36	Update to the Healthcare Provider Taxonomy Codes Version 5.1
	Medicare Financial Management (CMS—Pub. 100–06)
71	Notice of New Interest Rate for Medicare Overpayments and Underpayments
72	Claims Accounts Receivable Update
	Intermediary Claims Accounts Receivable
	Financial Reporting for Intermediary Claims Accounts Receivable
73	This Transmittal is rescinded and replaced by Transmittal 75
74	Discovery Code Indication for Recovery Audit Contractor (RAC) Non-MSP Identified Overpayments
75	New Thresholds for 2nd Demand Letter for Physicians/Suppliers
	Part B Overpayment Demand Letters to Physicians/Suppliers
76	Development of New Report to Capture Benefits, Improvement and Protection Act and Medicare Prescription Drug, Improvement, and Modernization Act Appeals Data
	Monthly Statistical Report on Intermediary and Carrier Part A and Part B
	Appeals Activity Form
	Redeterminations
	Qualified Independent Contractor Reconsiderations
	Administrative Law Judge Results
	Department Appeals Board Effectuations
	Clerical Error Reopenings
	Validation of Reports
77	Non-Medicare Secondary Payer Debt Referral and Debt Collection Improvement Act of 1996 Activities
	Background
	Cross Servicing
	Treasury Offset Program
	Definition of Delinquent Debt
	Referral Requirements
	Exemptions to Referral
	Debt to be Referred
	Delinquent Non-Medicare Secondary Payer Fiscal Intermediary Debt, Including Debt on the Provider Overpayment Reporting System
	Delinquent Non-Medicare Secondary Payer Medicare Carrier Debt, Including Debt on the Physician/Supplier Overpayment Reporting System
	Delinquent Non-Medicare Secondary Payer Debt Previously Ineligible for Referral
	Debt Collection Improvement Act Language/Intent to Refer Letter
	Response to ''Intent to Refer'' Letter
	Provider Overpayment Reporting System Updates
	Physician/Supplier Overpayment Reporting System Updates
	Cross Servicing Collection Efforts
	Actions Subsequent to Debt Collection System Input
	Transmission of Debt
	Update to Debt Collection System After Transmission
	Financial Reporting for Debt Referred
	Financial Reporting for Non-Medicare Secondary Payer Debt

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July through September 2005]

Transmittal No.	Manual/Subject/Publication No.
78	Coordination of Benefits Agreement Process for Contractor Financial Staff Notification
	Medicare State Operations Manual (CMS—Pub. 100–07)
09	Revision of Appendix P and Certain Exhibits of the State Operations Manual
10	Revisions—Appendix J—Interpretive Guidelines Intermediate Care Facilities With Mental Retardation
11	Revised Chapter 2—''The Certification Process,'' Sections 2180E thru 2200F, and Appendix B—''Interpretive Guidelines: Home Health Agencies''
	Medicare Program Integrity (CMS—Pub. 100–08)
115	Program Integrity Manual Revision
	Affiliated Contractor/Full Program Safeguard Contractor Communication With the Comprehensive Error Rate Testing Contractor
	Overview of the Comprehensive Error Rate Testing Process
	Providing Sample Information to the Comprehensive Error Rate Testing Contractor
	Providing Review Information to the Comprehensive Error Rate Testing Contractor
	Providing Feedback Information to the Comprehensive Error Rate Testing Contractor
	Disputing/Disagreeing With a Comprehensive Error Rate Testing Decision Handling Overpayments and Underpayments Resulting From the Comprehensive Error Rate Testing Findings
	Handling Appeals Resulting From Comprehensive Error Rate Testing Initiated Denials
	Tracking Overpayments
	Tracking Appeals
	Potential Fraud
	Full Program Safeguard Contractor Requirements Involving Comprehensive Error Rate Testing Information Dissemination
	Full Program Safeguard Contractor Error Rate Reduction Plan
	Contacting Non-Responders
	Late Documentation Received by the Comprehensive Error Rate Testing Contractor
	Voluntary Refunds
	Local Coverage Determination/National Coverage Determination
	Comprehensive Error Rate Testing Review Contractor Review Guidelines
116	Revise the Fiscal Intermediary Shared System to Allow Reporting of Data for the Comprehensive Error Rate Testing Program Resolution File at a Line Level
117	Revise the Medicare Contractor System and the VIPS Medicare System To Allow Update of the Comprehensive Error Rate Testing Program Resolution File Within Five Business Days of a Comprehensive Error Rate Testing Request
118	Various Benefit Integrity Clarifications
	Goal of Medical Review Program
	Overpayment Procedures
	Disposition of the Suspension
	The Medicare Fraud Program
	Program Safeguard Contractor and Medicare Contractor Benefit Integrity Unit
	Organizational Requirements
	Training for Law Enforcement Organizations
	Procedural Requirements
	Requests for Information From Outside Organizations
	Sharing Fraud Referrals Between the Office of Inspector General and the Department of Justice
	Complaint Screening
	Investigations
	Conducting Investigations
	Disposition of Cases
	Reversed Denials by Administrative Law Judges on Open Cases
	Types of Fraud Alerts
	Coordination
	Investigation, Case, and Suspension Entries
	Update Requirements for Cases
	Closing Investigations
	Deleting Investigations, Cases, or Suspensions
	Access
	Harkin Grantees or Senior Medicare Patrol—Complaint Tracking System
	Harkin Grantees or Senior Medicare Patrol Project Description
	Harkin Grantees Tracking System Instructions
	System Access to Metaframe and Data Collection
	Data Dissemination/Aggregate Report
	Referral of Cases to the Office of the Inspector General/Office of Investigations
	Immediate Advisements to the Office of Inspector General/Office of Investigations
	Denial of Payments for Cases Referred to and Accepted by Office of Inspector General/Office of Investigations
	Take Administrative Action on Cases Referred to and Refused by Office of Inspector General /Office of Investigations
	Referral to State Agencies or Other Organizations
	Referral to Quality Improvement Organizations

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July through September 2005]

Transmittal No.	Manual/Subject/Publication No.
	Referral Process to CMS
	Referrals to Office of Inspector General
	Breaches of Assignment Agreement by Physician or Other Supplier
	Annual Deceased-Beneficiary Postpayment Review
	Vulnerability Report
119	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
120	Correction to Change Request (CR) 3222: Local Medical Review Policy/Local Coverage Determination Medicare Summary Notice Message Revision Denials Notices
121	This Transmittal is rescinded and replaced by Transmittal 124
122	Medical Review Collection Number Requirements
	Overview of Prepayment and Postpayment Review for Medical Review Purposes
123	Chapter 3, Medicare Modernization Act Section 935
	Verifying Potential Errors and Setting Priorities
	Determining Whether the Problem Is Widespread or Provider Specific
	Overpayment Procedures
	''Probe'' Reviews
124	Evidence of Medical Necessity: Wheelchair and Power Operated Vehicle Claims
125	Medical Review Additional Documentation Requests
	Additional Documentation Requests During Prepayment or Postpayment
	Medical Review
	Medicare Contractor Beneficiary and Provider Communications (CMS—Pub. 100–09)
12	Next Generation Desktop Testing Requirements
13	Provider Contact Centers Training Program
	Guidelines for Telephone Service
	Staff Development and Training
	Medicare Managed Care (CMS—Pub. 100–16)
66	Beneficiary Enrollment and Disenrollment Requirements for Medicare Advantage Plans
	Changes in Requirements for Periodic Surveys of Current and Former Enrollees, and in the CMS Method for Calculating Interest on Overpayment and Underpayments to Health Maintenance Organizations, Comprehensive Medical Plans and Health Care Prepayment Plans
67	Initial Publication of Chapter 1—General Provisions
	Introduction
	Definitions
	Types of Medical Assistance Plans
	Cost Sharing in Enrollment—Related Costs
68	Revisions to Chapter 12, ''Effect of Change of Ownership,'' and Chapter 14, ''Contract Determination and Appeals''
	Effect of Change of Ownership
	What Constitutes a Change of Ownership
	Address for Sending Notifications to CMS
	When a Novation Agreement Is Required
	Acceptable Novation Agreements
	Contract Determination Notice
	Postponement of the Contract Determination's Effective Date
	Reconsiderations
	Time Frames for Filing a Reconsideration Request
	Parties to the Hearing
	Conduct and Record of a Hearing
	Reopening of Contract Reconsidered Determination or Decision of a Hearing Officer or the Administrator
69	Beneficiary Enrollment and Disenrollment Requirements for Medicare Advantage Plans
70	Deletion of MCM Chapter 19—The Enrollment and Payment User's Guide, and Chapter 20—Managed Care and Medical Assistance Business Requirements
71	Changes in Manual Instructions for Benefits and Beneficiary Protections
	Basic Rules
	Types of Benefits
	Availability and Structure of Plans
	CMS Review and Approval of M+C Benefit—rewritten and relocated to § 20
	Requirements Relating to Medicare Conditions of Participation—renumbered as § 4.10.7
	Provider Networks—renumbered as new § 10.8 and parts of the old § 20, ''Original Medicare Covered Benefits''
	CMS Approval of Proposed Plan MA Benefits—old 10.7 revised and located here
	General Guidelines on Benefit Approval
	Screening Mammography, Influenza Vaccine, and Pneumococcal Vaccine
	Inpatient Hospital Rehabilitation Service
	Value-Added Items and Services
	Prescription Drug Discount Programs

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July through September 2005]

Transmittal No.	Manual/Subject/Publication No.
72	Waiting Periods and Exclusions That Are Not Present in Original Medicare Annual Beneficiary Out-of-Pocket Cap Drug Benefits Drugs That Are Covered Under Original Medicare Mid-Year Benefit Enhancements Multi-Year Benefits Return to Home Skilled Nursing Facility Guidance on Acceptable Cost-Sharing and Deductibles Homemaker Services Caregiver Resource Services Electronic Monitoring Dentures Chiropractic Services Cash Beauty Parlor Transportation Safety Items Travel for Transplants Meals Basic Benefits Cost-sharing Rules for Medical Assistance Regional Plans Supplemental Benefits and Mandatory Supplemental and Optional Supplemental Basic Versus Supplemental Benefits The Annual Deductible General Rule Accessing Plan Contracting Providers Enrollee Information and Disclosure Definitions Factors That Influence Service Area Approval The ''County Integrity Rule'' General Rule Employer Plans Basic Rule Medicare Benefits Secondary to Group Health Plans and Large Group Health Plans Medicare Secondary Payer Rules and State Laws Discrimination Against Beneficiaries Prohibited Disclosure Requirements at Enrollment (and Annually Thereafter) Information Pertaining to a Medical Assistance Organization Changing Their Rules or Provider Network Other Information That Is Disclosable Upon Request Access and Availability Rules for Coordinated Care Plans Emergency and Urgently Needed Services Post-Stabilization Care Services General Description Private Fee-for-Service Plan Terms and Conditions of Participation Provider Types—Direct Contracting, Deemed Contracting, Non-Contracting Access to Services Payments and Balance Billing Advance Notice of Coverage Prompt Payment Requirements Original Medicare vs. Estimated Payment Amounts Table Summarizing Private Fee-for-Service Plan Provider Types and Rules Changes in Manual Instructions for Intermediate Sanctions Types of Intermediate Sanctions General Basis for Imposing Intermediate Sanctions on Medical Assistance Organizations Imposing Sanctions for Specific Medical Assistance Contract Violations Civil Monetary Penalties for Medical Assistance Organizations That Improperly Terminate the Medical Assistance Contract CMS Process for Suspending Marketing, Enrollment, and Payment Contract Termination by CMS
	Medicare Business Partners Systems Security (CMS—Pub. 100–17)
00	None
	Demonstrations (CMS—Pub. 100–19)
26	This Transmittal is rescinded and replaced by Transmittal 27
27	The Medicare Chronic Care Improvement, ''Medicare Health Support,'' Program
28	The Medicare Care Management for High Cost Beneficiaries Demonstration

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July through September 2005]

Transmittal No.	Manual/Subject/Publication No.
	One-Time Notification (CMS—Pub. 100–20)
161	Kansas Blue Cross Blue Shield Carrier Numbering Issue
162	Instructions for Fiscal Intermediary Standard System and Multi-Carrier System Healthcare Integrated General Ledger Accounting System Changes
163	Qualified Independent Contractor Jurisdictions
164	Medicare HIPAA Electronic Claims Report—Third Reporting Timeframe Extension
165	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
166	This Transmittal is rescinded and replaced by Transmittal 173
167	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
168	Shared System Maintainer Hours for Resolution of Problems Detected During Health Insurance Portability and Accountability Act Transaction January 2006 Release Testing
169	Analysis of Systems Improvements to Streamline POS Code Set Updates
170	Updates to the Coordination of Benefits Agreement Insurance File for Use in the National Claims Crossover Program
171	Preliminary system updates in preparation for ending the Medicare contingency plan in October 2005
172	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
173	Overnight Oximetry Testing
174	Fiscal Intermediary Shared System Modification
175	Common Working File Calculation of Next Eligible Date for Preventive Services
176	Change of the CareFirst Part A Plan to Highmark in the State of Maryland and Washington, DC
177	Termination of Existing Crossover Agreements as Trading Partners Transition to the National Coordination of Benefits Agreement Program
178	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
179	Calculation of the Interim Payment of Indirect Medical Education Through the Inpatient Prospective Payment Pricer for Hospitals That Received an Increase to Their Full-Time Equivalent Resident Cap Under Section 422 of the Medicare Modernization Act, P.L. 108–173
180	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
181	National Modifier and Condition Code To Be Used To Identify Disaster Disaster Related Claims

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

[July through September 2005]

Publication date	FR Vol. 70 page number	CFR parts affected	File code	Title of regulation
July 6, 2005	39022	414	CMS–3125–IFC	Medicare Program; Competitive Acquisition of Outpatient Drugs and Biologicals Under Part B.
July 8, 2005	39514		CMS–1288–N	Medicare Program; Meeting of the Advisory Panel on Ambulatory Payment Classification (APC) Groups—August 17, 18, and 19, 2005.
July 12, 2005	40039		CMS–2212–N	Medicaid Program; Meeting of the Medicaid Commission—July 27, 2005.
July 14, 2005	40788	484	CMS–1301–P	Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2006.
July 14, 2005	40709		CMS–1288–CN	Medicare Program; Meeting of the Advisory Panel on Ambulatory Payment Classification (APC) Groups—August 17, 18, and 19, 2005; Correction.
July 22, 2005	42331		CMS–3142–FN	Medicare Program; Evaluation Criteria and Standards for Quality Improvement Program Contracts.
July 22, 2005	42330		CMS–1315–N	Medicare Program; August 22, 2005, Meeting of Practicing Physicians Advisory Council and Request for Nominations.
July 22, 2005	42329		CMS–3153–N	Medicare Program; Meeting of the Medicare Coverage Advisory Committee—October 6, 2005.
July 22, 2005	42328		CMS–4093–N	Medicare Program; Request for Nominations for the Advisory Panel on Medicare Education.
July 22, 2005	42327		CMS–3158–N	Medicare Program; Request for Nominations for Members for the Medicare Coverage Advisory Committee.
July 22, 2005	42276	146	CMS–4094–F3	Amendment to the Interim Final Regulation for Mental Health Parity.
July 25, 2005	42674	419 and 485	CMS–1501–P	Medicare Program; Proposed Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2006 Payment Rates.
August 4, 2005	45130	418	CMS–1286–F	Medicare Program; Hospice Wage Index for Fiscal Year 2006.

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

[July through September 2005]

Publication date	FR Vol. 70 page number	CFR parts affected	File code	Title of regulation
August 4, 2005	45026	409, 411, 424, and 489	CMS–1282–F	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2006.
August 4, 2005	44930		CMS–2220–N	Medicare Program; Meeting of the Medicaid Commission—August 17–18, 2005.
August 4, 2005	44879	402	CMS–6019–P	Medicare Program; Revised Civil Money Penalties, Assessments, Exclusions, and Related Appeals Procedures.
August 8, 2005	45764	405, 410, 411, 413, 414, and 426.	CMS–1502–P	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2006.
August 12, 2005	47278	405, 412, 413, 415, 419, 422, and 485.	CMS–1500–F	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates.
August 15, 2005	47880	412	CMS–1290–F	Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for FY 2006.
August 15, 2005	47759	483	CMS–3198–P	Medicare and Medicaid Programs; Condition of Participation: Immunization Standard for Long Term Care Facilities.
August 26, 2005	50940	410	CMS–3017–IFC	Medicare Program; Conditions for Payment of Power Mobility Devices, including Power Wheelchairs and Power-Operated Vehicles.
August 26, 2005	50680	419 and 485	CMS–1501–CN	Medicare Program; Proposed Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2006 Payment Rates; Correction.
August 26, 2005	50375		CMS–4111–N	Medicare Program; Meeting of the Advisory Panel on Medicare Education, September 27, 2005.
August 26, 2005	50374		CMS–1330–N	Medicare Program; Town Hall Meeting on the Medicare Provider Feedback Group (MPFG)—September 12, 2005.
August 26, 2005	50373		CMS–4106–PN	Medicare Program; Changes in Medicare Advantage Deeming Authority.
August 26, 2005	50372		CMS–1309–NC	Medicare and Medicaid Programs; Announcement of an Application From a Hospital Requesting Waiver for Organ Procurement Service Area.
August 26, 2005	50358		CMS–2209–N	Medicaid Program; Fiscal Disproportionate Share Hospital Allotments and Disproportionate Share Hospital Institutions for Mental Disease Limits.
August 26, 2005	50358		CMS–1486–N	Medicare Program; Announcement of New Members of the Advisory Panel on Ambulatory Payment Classification (APC) Groups.
August 26, 2005	50262	447 and 455	CMS–2198–P	Medicaid Program; Disproportionate Share Hospital Payments.
August 26, 2005	50214	433	CMS–2210–IFC	Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2005.
August 26, 2005	50214	405	CMS–4064–IFC3	Medicare Program; Changes to the Medicare Claims Appeal Procedures: Correcting Amendment to a Correcting Amendment.
August 30, 2005	51321	410	CMS–6024–P	Medicare Program; Prior Determination for Certain Items and Services.
September 1, 2005	52105		CMS–1308–NC	Medicare Program; Withdrawal of Ambulance Fee Schedule Issued in Accordance With Federal District Court Order in Lifestar Ambulance v. United States, No. 4:02–CV–127–1 (M.D. Ga., Jan. 16, 2003)—Medicare Covered Ambulance Services.
September 1, 2005	52056	405, 410, 411, 413, 414, and 426.	CMS–1502–CN	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2006; Correction.
September 1, 2005	52023	422	CMS–4069–F3	Medicare Program; Establishment of the Medicare Advantage Program; Correcting Amendment; Partial Stay of Effectiveness.
September 1, 2005	52019	403	CMS–4063–F	Medicare Program; Medicare Prescription Drug Discount Card; Revision of Marketing Rules for Endorsed Drug Card Sponsors.
September 6, 2005	52930	414	CMS–1325–IFC2	Medicare Program; Competitive Acquisition of Outpatient Drugs and Biologicals Under Part B: Interpretation and Correction.

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

[July through September 2005]

Publication date	FR Vol. 70 page number	CFR parts affected	File code	Title of regulation
September 16, 2005	54751		CMS–5017–N	Medicare Program; Medicare Health Care Quality (MHCQ) Demonstration Programs.
September 23, 2005	55905		CMS–3159–N	Medicare Program; Meeting of the Medicare Coverage Advisory Committee—November 29, 2005.
September 23, 2005	55903		CMS–1269–N5	Medicare Program; Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG) Meeting—October 26, 2005 Through October 28, 2005.
September 23, 2005	55897		CMS–8027–N	Medicare Program; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible for Calendar Year 2006.
September 23, 2005	55896		CMS–8025–N	Medicare Program; Part A Premium for Calendar Year 2006 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement.
September 23, 2005	55887		CMS–1307–GNC	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.
September 23, 2005	55885		CMS–8026–N	Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for Calendar Year 2006.
September 23, 2005	55863		CMS–9032–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances-April Through June 2005.
September 23, 2005	55862		CMS–2227–PN	Medicare and Medicaid Programs; Application by the Accreditation Commission of Healthcare for Deeming Authority for Home Health Agencies.
September 23, 2005	55812	447 and 455	CMS–2198–CN	Medicaid Program; Disproportionate Share Hospital Payments.
September 29, 2005	56901		CMS–2230–FN	State Children's Health Insurance Program (SCHIP); Redistribution of Unexpended SCHIP Funds From the Appropriation for Fiscal Year 2002.
September 30, 2005	57376	505	CMS–1320–P	Medicare Program; Health care Infrastructure Improvement Program; Forgiveness of Indebtness.
September 30, 2005	57368	505	CMS–1287–IFC	Medicare Program; Health Care Infrastructure Improvement Program; Selection Criteria of Loan Program for Qualifying Hospitals Engaged in Cancer-Related Health Care.
September 30, 2005	57300		CMS–1307–CN	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; Correction Notice.
September 30, 2005	57297		CMS–3144–NC	Medicare Program; Calendar Year 2005 Review of Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers (ASCs).
September 30, 2005	57296		CMS–1269–N6	Medicare Program; Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG): Announcement of a New Member.
September 30, 2005	57174	418	CMS–1286–CN	Medicare Program; Hospice Wage Index for Fiscal Year 2006.
September 30, 2005	57166	412	CMS–1290–CN	Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for FY 2006; Correction.
September 30, 2005	57164	411 and 424	CMS–1282–CN	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction.
September 30, 2005	57161	405, 412, 413, 415, 419, 422, and 485.	CMS–1500–CN	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2006 Rates; Correction.

Addendum V—National Coverage Determinations

[July Through September 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

[July Through September 2005]

There were no new NCDs posted during this time period.

Addendum VI—FDA-Approved Category B IDEs

[July Through September 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, July through September 2005.

IDE/Category

G040204
G050005
G050016
G050028
G050035
G050036
G050041
G050044
G050069
G050072
G050082
G050086
G050103
G050107
G050108
G050112
G050113
G050114
G050117
G050119
G050120
G050122
G050123
G050125
G050127
G050129
G050130
G050132
G050133
G050134
G050135
G050136
G050141
G050144
G050145
G050146
G050147
G050148
G050149
G050153
G050155
G050158
G050160
G050161
G050163
G050165
G050166
G050170
G050172
G050174
G050177
G050178
G050180
G050181
G050182
G050183

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 NUMBERS

[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")]

OMB number	Approved CFR sections
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	493.1357, 493.1363, 493.1405, 493.1406, 493.1411, 493.1417, 493.1423, 493.1443, 493.1449, 493.1455, 493.1461, 493.1462, 493.1469, 493.1483, 493.1489, 493.1491
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

OMB CONTROL NUMBERS—Continued

[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")]

OMB number	Approved CFR sections
0938–0246	431.800–431.865
0938–0251	406.7
0938–0266	416.41, 416.47, 416.48, 416.43
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, 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
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, 422 Subpart E 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	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

OMB CONTROL NUMBERS—Continued

[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")]

OMB number	Approved CFR sections
0938–0659	456.700, 456.705, 456.709, 456.711, 456.712
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
0938–0691	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
0938–0713	441.16, 489.66, 489.67
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	484 Subpart E, 484.55, 484.205, 484.245, 484.250
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
0938–0783	422.66, 422.562, 422.564, 422.568, 422.570, 422.572, 422.582, 422.584, 422.586, 422.590, 422.594, 422.602, 422.612, 422.618, 422.619, 422.620, 422.622
0938–0787	406.28, 407.27
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	413.65, 419.42
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

OMB CONTROL NUMBERS—Continued

[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")]

OMB number	Approved CFR sections
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
0938–0954	414.906, 414.908, 414.914, 414.916
0938–0957	Part 423 Subpart R

Addendum VIII—Medicare-Approved Carotid Stent Facilities [July Through September 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.

Effective Date—July 7, 2005

Antelope Valley Hospital, 1600 West Avenue J, Lancaster, CA 93534
Medicare Provider #050056

Baptist St. Anthony's Hospital, 1600 Wallace Boulevard, Amarillo, TX 79106

Medicare Provider #450231

Dayton Heart Hospital, 707 S. Edwin Moses Boulevard, Dayton, OH 45408

Medicare Provider #360253

Duke Health Raleigh Hospital, 3400 Wake Forest Road, Raleigh, NC 27609

Medicare Provider #340073

East Pasco Medical Center, 7050 Gall Boulevard, Zephyrhills, FL 33541–1399

Medicare Provider #100046

FirstHealth Moore Regional Hospital, 1555 Memorial Drive, P.O. Box 3000 Pinehurst, NC 28374

Medicare Provider #340115

The George Washington University Hospital, 900 23rd Street, NW., Washington, DC 20037

Medicare Provider #090001

Heart Hospital of Lafayette, 1105 Kaliste Saloom Road, Lafayette, LA 70508

Medicare Provider #190263

Johns Hopkins Hospital, 600 North Wolfe Street, Baltimore, MD 21287–1629

Medicare Provider #210009

Kingman Regional Medical Center, 3269 Stockton Hill Road, Kingman, AZ 86401

Medicare Provider #030055

Lafayette General Medical Center, 1214 Coolidge Street, P.O. Box 52009, Lafayette, LA 70505

Medicare Provider #190002

Manatee Memorial Hospital and Health Systems, 206 2nd Street East, Bradenton, FL 34208

Medicare Provider #100035

Mercy Health System, 1000 Mineral Point Avenue, P.O. Box 5003, Janesville, WI 53547–5003

Medicare Provider #520066

The Methodist Hospital, 6565 Fannin Street, Houston, TX 77030

Medicare Provider #450358

Mohawk Valley Vascular Center of Faxton, St. Luke's Healthcare, 1656 Champlain Avenue, Utica, NY 13502

Medicare Provider #330044

Northwest Medical Center, 2801 North State Road 7, Margate, FL 33063–9002

Medicare Provider #100189

Oakwood Hospital and Medical Center, 18101 Oakwood Boulevard, P.O. Box 2500, Dearborn, MI 48123–2500

Medicare Provider #230020

Rhode Island Hospital, 593 Eddy Street, Providence, RI 02903

Medicare Provider #041007

Scripps Green Hospital, 10666 North Torrey Pines Road, La Jolla, CA 92037–9100

Medicare Provider #050424

St. Cloud Hospital, 1406 Sixth Avenue North, St. Cloud, MN 56303–1901

Medicare Provider #240036

St. Joseph's Regional Medical Center, 703 Main Street, Paterson, NJ 07530

Medicare Provider #310019

St. Luke's Hospital, 5901 Monclova Road, Maumee, OH 43537–1899

Medicare Provider #360090

St. Vincent Hospital, 835 S. Van Buren Street, P.O. Box 13508, Green Bay, WI 54307–3508

Medicare Provider #520075

St. Vincent's Medical Center, 1800 Barrs Street, Jacksonville, FL 32204

Medicare Provider #100040

Stormont-Vail HealthCare, 1500 S.W. 10th Avenue, Topeka, KS 66604–1353

Medicare Provider #170086

Tomball Regional Hospital, 605 Holderrieth Street, Tomball, TX 77375

Medicare Provider #450670

Trinity Mother Frances Health System, 800 E. Dawson, Tyler, TX 75701

Medicare Provider #450102

Effective Date—July 15, 2005

Allen Memorial Hospital, 1825 Logan Avenue, Waterloo, IA 50703–1999

Medicare Provider #160110

Alta Bates Summit Medical Center, Alta Bates Campus, 2450 Ashby Avenue Berkley, CA 94705

Medicare Provider #050305

Alta Bates Summit Medical Center, Summit Campus, 350 Hawthorne Avenue, Oakland, CA 94609

Medicare Provider #050043

Banner Baywood Heart Hospital, 6750 East Baywood Avenue, Mesa, AZ 85206

Medicare Provider #030105

Battle Creek Health System, 300 North Avenue, Battle Creek, MI 49016

Medicare Provider #230075

Beth Israel Deaconess Medical Center, 330 Brookline Avenue, Boston, MA 02215

Medicare Provider #220086

BryanLGH Medical Center, 1600 South 48th Street, Lincoln, NE 68506–1299

Medicare Provider #280003

Deborah Heart & Lung Center, 200 Trenton Road, Browns Mills, NJ 08015

Medicare Provider #310031

Erie County Medical Center Corporation, 462 Grinder Street, Buffalo, NY 14215

Medicare Provider #330219

Fairview Southdale Hospital, 6401 France Avenue, Edina, MN 55435

Medicare Provider #240078

Gratiot Medical Center, 300 East Warwick Drive, Alma, MI 48801–1096

Medicare Provider #230030

Harbor Hospital, 3001 South Hanover Street, Baltimore, MD 21225–1290

Medicare Provider #210034

Holmes Regional Medical Center, 1350 South Hickory Street, Melbourne, FL 32901

Medicare Provider #100019

Holy Cross Hospital, 4725 North Federal Highway, Fort Lauderdale, FL 33308

Medicare Provider #100073

Marion General Hospital, 1000 McKinley Park Drive, Marion, OH 43301

Medicare Provider #360011

Mease Countryside Hospital, 3231 McMullen Booth Road, Safety Harbor, FL 34695

Medicare Provider #100265

Mercy General Hospital, 4001 J Street, P.O. Box 19245, Sacramento, CA 95819–9990

Medicare Provider #050017

OU Medical Center, 1200 Everett Drive, Oklahoma City, OK 73104

Medicare Provider #370093

Pennsylvania Hospital of the University of Pennsylvania Health System, 800 Spruce Street, Philadelphia, PA 19071–6192

Medicare Provider #390226

Provena Mercy Medical Center, 1325 North Highland Avenue, Aurora, IL 60506

Medicare Provider #140174

Reading Hospital and Medical Center, P.O. Box 16052, Reading, PA 19612–6052

Medicare Provider #390044

Regional Medical Center of Hopkins County, 900 Hospital Drive, Madisonville, KY 42431

Medicare Provider #180093

Sacred Heart Medical Center, 101 West 8th Avenue, P.O. Box 2555, Spokane, WA 99220–2555

Medicare Provider #500054

Scripps Mercy Hospital, 4077 Fifth Avenue, San Diego, CA 92103

Medicare Provider #050077

Sisters of Charity Providence Hospitals, 2435 Forest Drive, Columbia, SC 29204

Medicare Provider #420026

Tucson Medical Center, 5301 East Grant Road, Tucson, AZ 85712

Medicare Provider #030006

UCLA Medical Center, 10833 Le Conte Avenue, Los Angeles, CA 90095–1730

Medicare Provider #050262

University of Colorado Hospital, 4200 East 9th Avenue, Denver, CO 80262

Medicare Provider #060024

Effective Date—July 20, 2005

Christus St. Patrick Hospital, 524 South Ryan Street, Lake Charles, LA 70601

Medicare Provider #190027

Condell Medical Center, 801 South Milwaukee Avenue, Libertyville, IL 60048

Medicare Provider #140202

Florida Hospital Ormond Memorial, 875 Sterthaus Avenue, Ormond Beach, FL 32174

Medicare Provider #100169

Lakewood Hospital, 14519 Detroit Avenue, Lakewood, OH 44107

Medicare Provider #360212

Loma Linda University Medical Center, 11234 Anderson Street, P.O. Box 2000, Loma Linda, CA 92354

Medicare Provider #050327

Miami Valley Hospital, Medical Imaging, One Wyoming Street, Dayton, OH 45409–2793

Medicare Provider #360051

National Park Medical Center, 1910 Malvern Avenue, Hot Springs, AR 71901

Medicare Provider #040078

Newark Beth Israel Medical Center, 201 Lyons Avenue, Newark, NJ 07112

Medicare Provider #310002

Salina Regional Health Center, P.O. Box 5080, Salina, KS 67402–5080

Medicare Provider #170012

Scott and White Memorial Hospital and Scott, Sherwood and Brindley Foundation, 2401 South 31st Street, Temple, TX 76508

Medicare Provider #450054

Sentra Norfolk General Hospital, 600 Gersham Drive, Norfolk, VA 23507

Medicare Provider #490007

Spartanburg Regional Medical Center, 101 East Wood Street, Spartanburg, SC 29303

Medicare Provider #420007

St. Francis Hospital, 3237 South 16th Street, Milwaukee, WI 53215–4592

Medicare Provider #520078

St. Vincent Indianapolis Hospital, 2001 West 86th Street, Indianapolis, IN 46260

Medicare Provider #150084

Tulsa Regional Medical Center, 744 West 9th, Tulsa, OK 74127

Medicare Provider #370078

University Hospital, SUNY Upstate Medical University, 750 East Adams Street, Syracuse, NY 13210

Medicare Provider #330241

UT Southwestern University Hospitals—Zale Lipshy, 5151 Harry Hines Boulevard, Dallas, TX 75390

Medicare Provider #450766

UT Southwestern University Hospitals—St. Paul, 5909 Harry Hines Boulevard, Dallas, TX 75390

Medicare Provider #450044

Effective Date—July 22, 2005

Forrest General Hospital, 6051 Highway 49, Hattiesburg, MS 39401–7243

Medicare Provider #250078

Hamilton Medical Center, P.O. Box 1168, Dalton, GA 30722–1168

Medicare Provider #110001

Heritage Valley Health System, The Medical Center, 100 Dutch Ridge Road, Beaver, PA 15009–9700

Medicare Provider #390036

Northeast Georgia Medical Center, 743 Spring Street, Gainesville, GA 30501

Medicare Provider #110029

Wishard Health Services, 1001 West Tenth Street, Indianapolis, IN 46202

Medicare Provider #150024

Effective Date—July 27, 2005

East Texas Medical Center Athens, 2000 South Palestine, Athens, TX 75751

Medicare Provider #450389

Glendale Adventist Medical Center, 1509 Wilson Terrace, Glendale, CA 91206

Medicare Provider #050239

Lahey Clinic Medical Center, Inc., 41 Mall Road, Burlington, MA 01805

Medicare Provider #220171

Saint Joseph Hospital, One Saint Joseph Drive, Lexington, KY 40504

Medicare Provider #180010

St. Mary's Medical Center, 2900 First Avenue, Huntington, WV 25702

Medicare Provider #510007

Yakima Regional Medical and Cardiac Center, 110 South 9th Avenue, Yakima, WA 98902

Medicare Provider #500012

Effective Date—August 1, 2005

Alegent Health Bergan Mercy Medical Center, 7500 Mercy Rd., Omaha, NE 68124–9832

Medicare Provider #280060

Bon Secours DePaul Medical Center, 150 Kingsley Ln., Norfolk, VA 23505

Medicare Provider #490011

Hendrick Medical Center, 1900 Pine St., Abilene, TX 79601–2316

Medicare Provider #450229

Nebraska Heart Hospital, 7500 S. 91st St., Lincoln, NE 68526

Medicare Provider #280128

Singing River Hospital System, 3109 Bienville Blvd., Ocean Springs, MS 39564

Medicare Provider #250040

St. Peter's Hospital,315 South Manning Blvd., Albany, NY 12208

Medicare Provider #330057

University of California San Francisco Medical Center, 500 Parnassus Ave., San Francisco, CA 94143–0296

Medicare Provider #050454

Effective Date—August 4, 2005

Bowling Green Warren County Community Hospital Corp. d/b/a The Medical Center, 250 Park Street, P.O. Box 90010, Bowling Green, KY 42102–9010

Medicare Provider #180013

Carson-Tahoe Hospital, 775 Fleischmann Way, P.O. Box 2168, Carson City, NV 89702–2168

Medicare Provider #290010

Heart Hospital of Austin, 3801 N. Lamar Boulevard, Austin, TX 78756

Medicare Provider #450824

Indiana Heart Hospital, 8040 Clearvista Parkway, Suite 200, Indianapolis, IN 46256

Medicare Provider #150154

JFK Medical Center, 5301 South Congress Avenue, Atlantis, FL 33462

Medicare Provider #100080

Sierra Vista Regional Medical Center, 1010 Murray Avenue, San Luis Obispo, CA 93405

Medicare Provider #050506

St. Joseph Hospital, 1100 West Stewart Drive, P.O. Box 5600 Orange, CA 92863–5600

Medicare Provider #050069

St. Luke's Cornwall Hospital, 70 Dubois Street, Newburgh, NY 12550

Medicare Provider #330264

UCI Medical Center, 101 The City Drive South, Orange, CA 92868

Medicare Provider #050348

Effective Date—August 8, 2005

Lynchburg General Hospital, 1920 Atherholt Road, Lynchburg, VA 24501–1104

Medicare Provider #490021

Mercy Hospitals Bakersfield, 2215 Truxtun Avenue, P.O. Box 119, Bakersfield, CA 93302

Medicare Provider #050295

Virginia Regional Medical Center, 901 Ninth Street North, Virginia, MN 55792

Medicare Provider #240084

Effective Date—August 9, 2005

Columbia Hospital, 2201 45th Street, West Palm Beach, FL 33407

Medicare Provider #100234

Fairview Hospital, 14519 Detroit Avenue, Fairview, OH 44107

Medicare Provider #360077

Forum Health-Northside Medical Center, Cardiovascular Administration, 500 Gypsy Lane, Youngstown, OH 44501

Medicare Provider #360141

Mercy Hospital, 144 State Street, Portland, ME 04101

Medicare Provider #020008

New Hanover Regional Medical Center, 2131 South 17th Street, P.O. Box 9000, Wilmington, NC 28402–9000

Medicare Provider #340141

Sharp Grossmont Hospital, P.O. Box 158, La Mesa, CA 91944–0158

Medicare Provider #050026

Torrance Memorial Medical Center, 3330 Lomita Boulevard, Torrance, CA 90505–5073

Medicare Provider #050351

Effective Date—August 16, 2005

Englewood Hospital and Medical Center, 350 Engle Street, Englewood, NJ 07631

Medicare Provider #310045

Mobile Infirmary Medical Center, Five Mobile Infirmary Circle, Mobile, AL 36607

Medicare Provider #010113

Ocean Medical Center, 425 Jack Martin Boulevard, Brick, NJ 08724

Medicare Provider #310052

OSF St. Joseph Medical Center, 200 East Washington Street, Bloomington, IL 61701

Medicare Provider #140162

St. Luke's Medical Center, LP, 1800 East Van Buren Street, Phoenix, AZ 85006

Medicare Provider #030037

Effective Date—August 19, 2005

Inova Alexandria Hospital, 4320 Seminary Road, Alexandria, VA 22304

Medicare Provider #490040

Inova Fairfax Hospital, Inova Fairfax Hospital for Children and Inova Heart and Vascular Institute, 3300 Gallows Road, Falls Church, VA 22042–3300

Medicare Provider #490063

Milford Hospital, 300 Seaside Avenue, P.O. Box 3015, Milford, CT 06460–0815

Medicare Provider #070019

Our Lady of the Lakes Regional Medical Center, 5000 Hennessy Boulevard, Baton Rouge, LA 70808

Medicare Provider #190064

Summit Hospital, 17000 Medical Center Drive, Baton Rouge, LA 70816

Medicare Provider #190202

University of Michigan Health System, 1500 E. Medical Center Drive, Ann Arbor, MI 48109–0060

Medicare Provider #230046

Effective Date—August 22, 2005

Baptist Hospital of Miami, 8900 North Kendall Drive, Miami, FL 33176

Medicare Provider #100008

Camden-Clark Memorial Hospital, 800 Garfield Avenue, P.O. Box 718, Parkersburg, WV 26102

Medicare Provider #510058

HCA Dauterive Hospital, 600 North Lewis Avenue, New Iberia, LA 70563

Medicare Provider #190003

Kadlec Medical Center, 888 Swift Boulevard, Richland, WA 99352

Medicare Provider #500058

Lancaster Community Hospital, 43830 10th Street West, Lancaster, CA 93534

Medicare Provider #050204

Mercy Hospital, 4050 Coon Rapids Boulevard, Coon Rapids, MN 55433

Medicare Provider #240115

Montefiore Medical Center, 111 East 210th Street, New York, NY 10467

Medicare Provider #330059

Morristown Memorial Hospital, 100 Madison Avenue, Morristown, NJ 07962–1956

Medicare Provider #310015

Palmetto Health Richland, 5 Richland Medical Park Drive, Columbia, SC 29203–6897

Medicare Provider #420018

Saint Elizabeth Regional Medical Center, 555 South 70th Street, Lincoln, NE 68510

Medicare Provider #280020

Springhill Medical Center, 3710 Dauphine Street, Mobile, AL 36608

Medicare Provider #010144

Unity Hospital, 550 Osborne Road, Fridley, MN 55432

Medicare Provider #240132

Wilson Memorial Regional Medical Center, 33–57 Harrison Street, Johnson City, NY 13790

Medicare Provider #330394

Effective Date—August 23, 2005

Jackson Madison County General Hospital, 708 West Forest Avenue, Jackson, TN 38301–3956

Medicare Provider #044002

Leesburg Regional Medical Center, 600 E. Dixie Avenue, Leesburg, FL 34748

Medicare Provider #100084

Meriter Hospitals, Inc., 202 South Park Street, Madison, WI 53715

Medicare Provider #520089

Poplar Bluff Regional Medical Center, 2620 North Westwood Boulevard, Poplar Bluff, MO 63901

Medicare Provider #260119

Saint Francis Hospital, 241 North Road, Poughkeepsie, NY 12601–1399

Medicare Provider #330067

The Western Pennsylvania Hospital, 4800 Friendship Avenue, Pittsburg, PA 15224

Medicare Provider #390090

Effective Date—August 24, 2005

Halifax Medical Center, 303 N. Clyde Morris

Boulevard, Daytona Beach, FL 32114

Medicare Provider #100017

Jackson Hospital, 1725 Pine Street, Montgomery, AL 36106–1117

Medicare Provider #010024

Marietta Memorial Hospital, 401 Matthew Street, Marietta, OH 45750

Medicare Provider #360147

Meadowcrest Hospital, 2500 Belle Chasse Highway, Gretna, LA 70056

Medicare Provider #190152

Medical Center Hospital, P.O. Box 7239, Odessa, TX 79760–7239

Medicare Provider #450132

REX Healthcare, 4420 Lake Boone Trail, Raleigh, NC 27607

Medicare Provider #340114

St. John's Mercy Medical Center, 615 South New Ballas Road, St. Louis, MO 63141

Medicare Provider #260020

Effective Date—August 26, 2005

Candler Hospital, 5353 Reynolds Street, Savannah, GA 31405

Medicare Provider #110024

CHRISTUS Santa Rosa, 333 North Santa Rosa Street, San Antonio, TX 78207–3198

Medicare Provider #450237

Durham Regional Hospital, 3643 North Roxboro Road, Durham, NC 27704

Medicare Provider #344155

Hillcrest Medical Center, 1120 South Utica Avenue, Tulsa, OK 74104

Medicare Provider #370001

Houston Northwest Medical Center, 710 FM 1960 West, Houston, TX 77090

Medicare Provider #450638

Mercy Hospital, 3663 South Miami Avenue, Miami, FL 33133

Medicare Provider #100061

Saint Barnabas Medical Center, Old Short Hills Road, Livingston, NJ 07039

Medicare Provider #310076

Effective Date—August 31, 2005

Columbia St. Mary's Hospital Milwaukee, Inc., 2323 North Lake Drive, Milwaukee, WI 53211

Medicare Provider #520051

Franklin Square Hospital Center, 9000 Franklin Square Drive, Baltimore, MD 21237–9986

Medicare Provider #210015

The Griffin Hospital, 130 Division Street, Derby, CT 06418

Medicare Provider #070031

Gwinnett Medical Center, 1000 Medical Center Boulevard, Lawrenceville, GA 30045

Medicare Provider #110087

Louis A. Weiss Memorial Hospital, 4646 North Marine Drive, Chicago, IL 60640

Medicare Provider #140082

The North Shore Medical Center, 81 Highland Avenue, Salem, MA 01970

Medicare Provider #220006

South Pointe Hospital, 20000 Harvard Road, Warrensville Hts., OH 44122

Medicare Provider #360144

Southwest Medical Center—Lafayette, 2810 Ambassador Caffery, Lafayette, LA 70506

Medicare Provider #190205

St. Mary's Hospital Ozaukee, Inc., 13111 North Port Washington Road, Mequon, WI 53097

Medicare Provider #520027

St. Tammany Parish Hospital, 1202 South Tyler Street, Covington, LA 70433

Medicare Provider #190045

Trinity Medical Center Terrace Park, 4500 Utica Ridge Road, Bettendorf, IA 52722

Medicare Provider #160104

UAMS Medical Center, 4301 West Markham, Little Rock, AK 72205–7199

Medicare Provider #040016

Valley Baptist Medical Center—Harlingen, P.O. Drawer 2588, 2101 Pease Street, Harlingen, TX 78551

Medicare Provider #450033

Effective Date—September 6, 2005

Carilion Roanoke Memorial Hospital, 1906 Belleview Avenue, Roanoke, VA 24014

Medicare Provider #490024

Midland Memorial Hospital, 2200 West Illinois Avenue, Midland, TX 79701–6499

Medicare Provider #450133

Provena Saint Joseph Medical Center, 333 North Madison Street, Joliet, IL 60435–6595

Medicare Provider #140007

Salinas Valley Memorial Healthcare System, 450 E. Romie Lane, Salinas, CA 93901

Medicare Provider #050334

UHHS Geauga Regional Hospital, 13207 Ravenna Road, Chardon, OH 44024

Medicare Provider #360192

Effective Date—September 8, 2005

Howard Regional Health System, 3500 South Lafountain Street, P.O. Box 9011, Kokomo, IN 46904–9011

Medicare Provider #150007

Luther Hospital, 1221 Whipple Street, P.O. Box 4105, Eau Claire, WI 54702–4105

Medicare Provider #520070

Our Lady of Fatima Hospital, 200 High Service Avenue, No. Providence, RI 02904

Medicare Provider #041005

Pitt County Memorial Hospital, Inc., P.O. Box 6028, Greenville, NC 27835–6028

Medicare Provider #340040

Effective Date—September 12, 2005

Baylor All Saints Medical Center, 1400 Eighth Avenue, Fort Worth, TX 76104

Medicare Provider #450137

St. Vincent's Hospital, Staten Island, 355 Bard Avenue, Staten Island, NY 10310

Medicare Provider #330028

SUNY Stony Brook University Hospital, Nicolls Road, Stony Brook, NY 11794

Medicare Provider #330393

The Washington Hospital, 155 Wilson Avenue, Washington, PA 15301

Medicare Provider #390042

Effective Date—September 15, 2005

Abilene Regional Medical Center, 6250 Highway 83/84, Abilene, TX 79606

Medicare Provider #450558

Bon Secours Cottage Health Services, 468 Cadieux Road, Grosse Pointe, MI 48230

Medicare Provider #230089

HealthOne/HCA Rose Medical Center, 4567 E. 9th Avenue, Denver, CO 80220

Medicare Provider #060032

Providence Health Center, 6901 Medical Parkway, Waco, TX 76712

Medicare Provider #450042

St. Edward Mercy Medical Center, 7301 Rogers Avenue, P.O. Box 17000, Fort Smith, AR 72917–7000

Medicare Provider #040062

St. Joseph's Hospital, 3001 W. Dr. M.L. King Jr. Boulevard, Tampa, FL 33607

Medicare Provider #100075

Effective Date—September 22, 2005

Baylor University Medical Center, Department of Radiology, 3500 Gaston Avenue, Dallas, TX 75246

Medicare Provider #450021

Delray Medical Center, 5352 Linton Boulevard, Delray Beach, FL 33484

Medicare Provider #100258

Desert Springs Hospital, 2075 East Flamingo Road, Las Vegas, NV 89119

Medicare Provider #290022

Ellis Hospital, 1101 Nott Street, Schenectady, NY 12308

Medicare Provider #330153

Ingham Regional Medical Center, 401 West Greenlawn Avenue, Lansing, MI 48910

Medicare Provider #230167

St. Joseph's Hospital, 11705 Mercy Boulevard, Savannah, GA 31419

Medicare Provider #110043

Mercy Hospital of Pittsburgh, 1400 Locust Street, Pittsburgh, PA 15219–5166

Medicare Provider #390028

The Pottsville Hospital and Warne Clinic, 420 South Jackson Street, Pottsville, PA 17901

Medicare Provider #390030

Southwest Mississippi Regional Medical Center, 215 Marion Avenue, McComb, MS 39648

Medicare Provider #250097

Sparks Regional Medical Center, 1311 South

I Street, P.O. Box 17006, Fort Smith, AR 72917–7006

Medicare Provider #040055

Tampa General Hospital, 2 Columbia Drive, Tampa, FL 33606

Medicare Provider #100128

Wesley Medical Center, 550 N. Hillside, Wichita, KS 67214

Medicare Provider #170123

Effective Date—September 28, 2005

Advocate Illinois Masonic Medical Center, 836 W. Wellington Avenue, Chicago, IL 60657–5193

Medicare Provider #140182

East Texas Medical Center-Tyler, 1000 South Beckham, Tyler, TX 75701

Medicare Provider #450083

Maimonides Medical Center, 4802 Tenth Avenue, Brooklyn, NY 11219

Medicare Provider #330914

Mesa General Hospital, 515 North Mesa Drive, Mesa, AZ 85201

Medicare Provider #030017

Opelousas General Health System, 539 E. Prudhomme Street, P.O. Box 1389, Opelousas, LA 70570

Medicare Provider #190017

Southern Ohio Medical Center, 1895 27th Street, Portsmouth, OH 45662

Medicare Provider #360008

St. Joseph Hospital, 2901 Squalicum Parkway, Bellingham, WA 98264

Medicare Provider #500030

St. Lukes Hospital, 801 Ostrum Street, Bethlehem, PA 18015

Medicare Provider #390049

WakeMed Health and Hospitals, 3000 New Bern Avenue, Raleigh, NC 27610

Medicare Provider #340069

Yale-New Haven Hospital, 20 York Street, New Haven, CT 06504,

Medicare Provider #070022

[FR Doc. 05–24023 Filed 12–22–05; 8:45 am]

BILLING CODE 4120–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1289–N]

Medicare Program: Meeting of the Advisory Panel on Ambulatory Payment Classification (APC) Groups—March 1, 2, and 3, 2006

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2), this notice announces the first biannual meeting of the Ambulatory Payment Classification (APC) Panel (the Panel) for 2006.

The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of the Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) concerning the clinical integrity of the APC groups and their associated weights. The advice provided by the Panel will be considered as CMS prepares its annual updates of the hospital Outpatient Prospective Payment System (OPPS) through rulemaking.

DATES: *Meeting Dates:* The first biannual meeting for 2006 is scheduled for the following dates and times:

- Wednesday, March 1, 2006, 1 p.m. to 5 p.m. (e.s.t.).
- Thursday, March 2, 2006, 8 a.m. to 5 p.m. (e.s.t.).
- Friday, March 3, 2006, 8 a.m. to 12 noon (e.s.t.).

Deadlines:

Deadline for Hardcopy Comments/ Suggested Agenda Topics—

5 p.m. (e.s.t.), Wednesday, February 1, 2006.

Deadline for Hardcopy Presentations—

5 p.m. (e.s.t.), Wednesday, February 1, 2006.

Deadline for Attendance Registration—

5 p.m. (e.s.t.), Wednesday, February 8, 2006.

Deadline for Special Accommodations—

5 p.m. (e.s.t.), Wednesday, February 8, 2006.

Submittal of Materials to the Designated Federal Officer (DFO):

Because of staffing and resource limitations, we cannot accept written comments and presentations by FAX, nor can we print written comments and presentations received electronically for dissemination at the meeting.

Only hardcopy comments and presentations will be accepted for placement in the meeting booklets. All hardcopy presentations *must be accompanied by Form CMS–20017*. The form is now available through the CMS Forms Web site. The URL for linking to this form is (*http://www.cms.hhs.gov/forms/cms20017.pdf.*)

We are also requiring electronic versions of the written comments and presentations (in addition to the hardcopies), so we can send them electronically to the Panel members for their review before the meeting.

Consequently, *you must send BOTH electronic and hardcopy versions of your presentations and written comments by the prescribed deadlines.* (Electronic transmission must be sent to the e-mail address below, and hardcopies—accompanied by Form CMS–20017—must be mailed to the Designated Federal Officer [DFO], as specified in the **FOR FURTHER INFORMATION CONTACT:** section of this notice.)

ADDRESSES: The meeting will be held in the Multipurpose Room, 1st Floor, CMS Central Office, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: For inquiries regarding the meeting; meeting registration; and hardcopy submissions of oral presentations, agenda items, and comments, please contact the DFO: Shirl Ackerman-Ross, DFO, CMS, CMM, HAPG, DOC, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244–1850. Phone: (410) 786–4474.

- E-mail Address for comments, presentations, and registration requests is *APCPanel@cms.hhs.gov*
- News media representatives must contact our Public Affairs Office at (202) 690–6145.

Advisory Committees' Information Lines:

The CMS Advisory Committees' Information Line is 1–877–449–5659 (toll free) and (410) 786–9379 (local).

Web Sites:

- For additional information on the APC meeting agenda topics and updates to the Panel's activities, search our Web site at: *http://www.cms.hhs.gov/faca/apc/default.asp*.
- To obtain Charter copies, search our Web site at *http://www.cms.hhs.gov/faca* or e-mail the Panel DFO.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary is required by section 1833(t)(9)(A) of the Act, as amended and redesignated by sections 201(h) and 202(a)(2) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), respectively, to establish and consult with an expert, outside advisory panel on Ambulatory Payment Classification (APC) groups. The APC Panel (the Panel), which was re-chartered by the Secretary on November 1, 2004, meets up to three times annually to review the APC groups and to provide technical advice to the Secretary and the Administrator concerning the clinical integrity of the groups and their associated weights. All members must have technical expertise that shall enable them to participate fully in the

work of the Panel. Such expertise encompasses hospital payment systems, hospital medical-care delivery systems, outpatient payment requirements, APCs, Current Procedural Terminology (CPT) codes, and the use and payment of drugs and medical devices in the outpatient setting, as well as other forms of relevant expertise. However, it is not necessary that any one member be an expert in all of the areas listed above. All members shall have a minimum of 5 years experience in their areas of expertise, and they must be currently employed full-time in their areas of expertise. For purposes of this Panel, consultants or independent contractors are not considered to be full-time employees.

We will consider the technical advice provided by the Panel as we prepare the proposed changes to the OPPS for the next calendar year.

The Panel may consist of a Chair and up to 15 representatives who are full-time employees (not consultants) of Medicare providers, which are subject to the OPPS.

The Administrator selects the Panel membership based upon either self-nominations or nominations submitted by providers or interested organizations. The Panel presently consists of the following members and a Chair:

- Edith Hambrick, M.D., J.D., Chair.
- Marilyn Bedell, M.S., R.N., O.C.N.
- Gloryanne Bryant, B.S., R.H.I.A., R.H.I.T., C.C.S.
- Albert Brooks Einstein, Jr., M.D.
- Hazel Kimmel, R.N., C.C.S., C.P.C.
- Sandra J. Metzler, M.B.A., R.H.I.A., C.P.H.Q.
- Thomas M. Munger, M.D., F.A.C.C.
- Frank G. Opelka, M.D., F.A.C.S.
- Louis Potters, M.D., F.A.C.R.
- James V. Rawson, M.D.
- Lou Ann Schraffenberger, M.B.A., R.H.I.A., C.C.S.–P.
- Judie S. Snipes, R.N., M.B.A., F.A.C.H.E.
- Lynn R. Tomascik, R.N., M.S.N., C.N.A.A.
- Timothy Gene Tyler, Pharm.D.
- Kim Allan Williams, M.D., F.A.C.C., F.A.B.C.
- Robert Matthew Zwolak, M.D., Ph.D., F.A.C.S.

II. Agenda

The agenda for the March 2006 meeting will provide for discussion and comment on the following topics as designated in the Panel's Charter:

- Reconfiguration of APCs (for example, splitting of APCs, moving Healthcare Common Procedure Coding System (HCPCS) codes from one APC to another and moving HCPCS codes from new technology APCs to clinical APCs).
- Evaluation of APC weights.
- Packaging devices and drug costs into APCs: methodology, effect on APCs, and need for reconfiguring APCs based upon device and drug packaging.
- Removal of procedures from the inpatient list for payment under the OPPS.
- Use of single and multiple procedure claims data.
- Packaging of HCPCS codes.
- Other technical issues concerning APC structure.

The subject matter before the Panel shall be limited to these and related topics. Unrelated topics are not subjects for discussion. Unrelated topics include, but are not limited to, the conversion factor, cost compression, pass-through payments for medical devices and drugs, and wage adjustments. These subjects will not be addressed by the Panel.

The Panel may use data collected or developed by entities and organizations, other than DHHS and CMS, in conducting its review.

III. Written Comments and Suggested Agenda Topics

Hardcopy written comments and suggested agenda topics should be sent to the DFO. Such items must be received by the date and time specified in the **DATES** section of this notice.

Additionally, the written comments and suggested agenda topics must fall within the subject categories outlined in the Panel's Charter listed in the Agenda section of this notice.

IV. Oral Presentations

Individuals or organizations wishing to make 5-minute oral presentations must contact the DFO. The DFO must receive hardcopy presentations by the date and time specified in the **DATES** section of this notice in order to be scheduled.

The number of oral presentations may be limited by the time available. Oral presentations should not exceed 5 minutes in length.

The Chair may further limit time allowed for presentations due to the number of oral presentations, if necessary.

V. Presenter and Presentation Criteria

The additional criteria below must be supplied to the DFO by the date specified in the **DATES** section of this notice (along with hardcopies of presentations).

- Required personal information regarding presenter(s):
  + Name of presenter(s);
  + Title(s);
  + Organizational affiliation;
  + Address;
  + E-mail address, and
  + Telephone number(s).
- All presentations must contain, at a minimum, the following supporting information and data:
  + Financial relationship(s) of presenter(s), if any, with any company whose products, services, or procedures that are under consideration;
  + Physicians' CPTs involved;
  + APC(s) affected;
  + Description of the issue(s);
  + Clinical description of the service under discussion (with comparison to other services within the APC);
  + Recommendations and rationale for change;
  + Expected outcome of change; and
  + Potential consequences of not making the change(s).

Note: All presenters must also submit Form CMS–20017.

VI. Oral Comments

In addition to formal oral presentations, there will be opportunity during the meeting for public oral comments, which will be limited to 1 minute for each individual and a total of 5 minutes per organization.

VII. Meeting Attendance

The meeting is open to the public; however, attendance is limited to space available. Attendance will be determined on a first-come, first-served basis.

Persons wishing to attend this meeting, which is located on Federal property, must e-mail the Panel DFO to register by the date and time specified in the **DATES** section of this notice. A confirmation will be sent to the requester(s) via return e-mail.

The following information must be e-mailed or telephoned to the DFO by the date and time above:

- Name(s) of attendee(s),
- Title(s),
- Organization,
- E-mail address(es), and
- Telephone number(s).

VIII. Security, Building, and Parking Guidelines

Persons attending the meeting must present photographic identification to the Federal Protective Service or Guard Service personnel before they will be allowed to enter the building.

Security measures will include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all persons entering the building must pass through a metal detector. All items brought to CMS, including personal items such as desktops, cell phones,

palm pilots, etc., are subject to physical inspection.

Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. (**Note:** Presenters must also be registered for attendance at the meeting.) The public may enter the building 30–45 minutes before when the meeting convenes each day. (The meeting convenes at the date and time specified in the **DATES** section of this notice.)

All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.

Parking permits and instructions are issued upon arrival by the guards at the main entrance.

IX. Special Accommodations

Individuals requiring sign-language interpretation or other special accommodations must send a request for these services to the DFO by the date and time specified in the **DATES** section of this notice.

Authority: Section 1833(t)(9) of the Act (42 U.S.C. 13951(t)). The Panel is governed by the provisions of Pub. L. 92–463, as amended (5 U.S.C. Appendix 2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: November 10, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–24290 Filed 12–22–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1329–N]

Medicare Program; Town Hall Meeting on the Fiscal Year 2007 Applications for New Medical Services and Technologies Add-On Payments Under the Hospital Inpatient Prospective Payment System Scheduled for February 16, 2006

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

ACTION: Notice of meeting.

SUMMARY: This notice, in accordance with section 1886(d)(5)(K)(viii) of the Social Security Act (the Act), announces a Town Hall meeting to discuss fiscal year (FY) 2007 applications for add-on payments for new medical services and technologies under the hospital inpatient prospective payment system (IPPS). Interested parties are invited to this meeting to present their individual comments, recommendations, and data regarding whether the FY 2007 new medical services and technologies applications meet the substantial clinical improvement criteria.

DATES: *Meeting Date:* The Town Hall meeting announced in this notice will be held on Thursday, February 16, 2006 at 9 a.m., and check-in will begin at 8:30 a.m. EST.

Registration Deadline for Presenters: All presenters, whether attending in person or by phone, must register and submit their agenda item(s) by February 8, 2006.

Registration Deadline for All Other Participants: All other participants must register by February 13, 2006.

Comment Deadline: Written comments for discussion at the meeting must be received by February 8, 2006. All other written comments for consideration before publication of the hospital IPPS proposed rule must be received by March 15, 2006.

ADDRESSES: The Town Hall meeting will be held in the Auditorium in the central building of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Agenda Item(s) or Written Comments: Agenda items and written comments regarding whether a FY 2007 application meets the substantial clinical improvement criterion may be sent by mail, fax, or electronically. Agenda items must be received by February 8, 2006. We will accept written questions or other statements, not to exceed three single-spaced, typed pages that are received by March 15, 2006. Send written comments, questions, or other statements to—

Division of Acute Care, Mail stop C4–07–05, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Attention: Meredith Walz or Michael Treitel.

Fax: (410) 786–0169.

Email: *newtech@cms.hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Meredith Walz, (410) 786–9421, *meredith.walz@cms.hhs.gov*. Michael Treitel, (410) 786–4552, *michael.treitel@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1886(d)(5)(K) and (L) of the Social Security Act (the Act) require the Secretary to establish a process of identifying and ensuring adequate payments for new medical services and technologies under Medicare.

Effective for discharges beginning on or after October 1, 2001, section 1886(d)(5)(K)(i) of the Act required the Secretary to establish (after notice and opportunity for public comment) a mechanism to recognize the costs of new services and technologies under the inpatient hospital prospective payment system (IPPS). In addition, section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered ''new'' if it meets criteria established by the Secretary (after notice and opportunity for public comment). (See the FY 2002 proposed rule (66 FR 22693, May 4, 2001) and the FY 2002 final rule (66 FR 46912, September 7, 2001) for a more detailed discussion.) In addition, we have further discussed our application of the newness criteria in the hospital IPPS proposed and final rules for FYs 2003, 2004, 2005, and 2006. (See 67 FR 31427, May 9, 2002; 67 FR 50009, August 1, 2002; 68 FR 27184, May 19, 2003; 68 FR 45385, August 1, 2003; 69 FR 28236, May 18, 2004; 69 FR 49000, August 11, 2004; 70 FR 23353, May 5, 2005; and 70 FR 47341, August 12, 2005 respectively).

In the September 7, 2001 final rule (66 FR 46914), we noted that we evaluate a request for special payment for a new medical service or technology against the following criteria in order to determine if the new technology meets the substantial clinical improvement requirement:

- The device offers a treatment option for a patient population unresponsive to, or ineligible for, currently available treatments.
- The device offers the ability to diagnose a medical condition in a patient population where that medical condition is currently undetectable or offers the ability to diagnose a medical condition earlier in a patient population than allowed by currently available methods. There must also be evidence that use of the device to make a diagnosis affects the management of the patient.
- Use of the device significantly improves clinical outcomes for a patient population as compared to currently available treatments. Some examples of outcomes that are frequently evaluated in studies of medical devices are the following:

++ Reduced mortality rate with use of the device.

++ Reduced rate of device-related complications.

++ Decreased rate of subsequent diagnostic or therapeutic interventions (for example, due to reduced rate of recurrence of the disease process).

++ Decreased number of future hospitalizations or physician visits.

++ More rapid beneficial resolution of the disease process treatment because of the use of the device.

++ Decreased pain, bleeding, or other quantifiable symptoms.

++ Reduced recovery time.

In addition, we indicated that the requester is required to submit evidence that the technology meets one or more of these criteria.

Section 503 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), Pub. L. 108–173, which added section 1886(d)(5)(K)(viii) to the Act, revised the process for evaluating new medical services and technology applications by requiring the Secretary to do the following:

• Before publication of a proposed rule, provide for public input regarding whether a new service or technology represents an advance in medical technology that substantially improves the diagnosis or treatment of Medicare beneficiaries.

• Make public and periodically update a list of all the services and technologies for which an application is pending.

• Accept individual comments, recommendations, and data from the public regarding whether the service or technology represents a substantial improvement.

• Before publication of a proposed rule, provide for a meeting at which organizations representing hospitals, physicians, manufacturers, and any other interested party may present comments, recommendations, and data to the clinical staff of CMS.

The opinions and alternatives provided during this meeting will assist us as we evaluate the new medical services and technology applications for FY 2007. In addition, they will help us to evaluate our policy on the hospital IPPS new technology add-on payment process before the publication of the FY 2007 hospital IPPS proposed rule.

II. Meeting Format

This meeting will allow for a discussion of the substantial clinical improvement criteria to each of the FY 2007 new medical services and technology add-on payment applications. Information regarding the applications can be found on our Web site at *http://www.cms.hhs.gov/providers/hipps/newtech.asp*. In addition, we are interested in individual public comments on our application of the concept of ''substantial similarity''. See the FY 2006 final rule (70 FR 47350–47352, August 12, 2005), for a detailed discussion of this issue. Although we do not expect to have a general discussion of this topic during the timeframe of the town hall meeting, we are inviting individual comments as part of this town hall meeting notice. We will accept comments on our application of the concept of ''substantially similar'' by the deadline stated above so they may be considered in our proposed rule. We will also solicit comments during the rulemaking process.

The majority of the meeting will be reserved for individual comments, recommendations, and data from registered presenters. The time for each presenter's comments will be approximately 10 to 15 minutes and will be based on the number of registered presenters. Presenters will be scheduled to speak in the order in which they register and grouped by new technology applicant. Therefore, individuals who want to be presenters must register and submit their agenda item(s) by Wednesday, February 8, 2006. Once the agenda is completed, it will be posted on the hospital IPPS Web site at *http://www.cms.hhs.gov/providers/hipps/newtech.asp.* Comments from participants will be heard (time permitting) after the completion of the presentations.

For presenters or participants who cannot come to CMS for the meeting, an open toll-free phone line, (877) 357–7851, has been made available. If you are calling in, you will be prompted to enter the conference identification number, 9386196, or the name of the meeting. In addition, written comments will also be accepted and presented at the meeting if they are received by February 8, 2006. Written comments may also be submitted after the meeting. If the comments are to be considered before the publication of the proposed rule, the comments must be received by March 15, 2006.

III. Registration Instructions

The Division of Acute Care in CMS is coordinating the meeting registration. While there is no registration fee, individuals must register to attend. Individuals may present their comments either in person or by phone at the town hall meeting. These individuals must register and submit their agenda item(s) by February 8, 2006. All other participants must register by February 13, 2006. All registrants will receive confirmation with instructions for arrival at the CMS complex (persons who register on-line will receive this confirmation upon completion of the registration process and should print the confirmation and bring it with them to the meeting). Because of limited meeting space and our desire to maintain an accurate count of registrants who plan to come to CMS, we prefer that these persons register on-line. In addition, we would prefer that registrants who plan to participate by phone register by phone or fax.

On-line Registration: Registration may be completed on-line at the following Web address: *http://www.cms.hhs.gov/events/default.asp.* Select the link ''Register to Attend the New Technology Town Hall Meeting'' and then select ''New Technology Town Hall Meeting'' from the drop down menu and follow the instructions. After completing the registration, on-line registrants should print the confirmation page and bring it with them to the meeting.

Registration by Phone or Fax: Registration may be completed by contacting Meredith Walz at (410) 786–9421 or Michael Treitel at (410) 786–4552. Registration may also be completed by fax to the attention of Meredith Walz or Michael Treitel at (410) 786–0169. If registration is completed by phone or fax, please provide your name, address, telephone number, and, if available, e-mail address and fax number.

IV. Security Information

Since this meeting will be held in a Federal government building, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building and grounds, participants must bring a government-issued photo identification and a copy of their confirmation of registration for the meeting. Access may be denied to persons without proper identification. For security reasons, no additional meeting registrations will be accepted after the close of the registration period.

Security measures also include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all persons entering the building must pass through a metal detector. All items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection. Laptops and other computer equipment must be registered with the security desk upon entry. CMS cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation. Participants should e-mail presentations to CMS staff listed above prior to the meeting to ensure that CMS has a back-up copy in the event of

computer problems or lack of software or memory card compatibility. Please note that CMS headquarters is a smoke-free facility.

Authority: Section 503 of Public Law 108–173.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 1, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–24022 Filed 12–22–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4112–N]

Medicare Program; Meeting of the Advisory Panel on Medicare Education, January 26, 2006

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

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a) (Pub. L. 92–463), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on January 26, 2006. The Panel advises and makes recommendations to the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

DATES: The meeting is scheduled for January 26, 2006 from 9 a.m. to 3:30 p.m., e.s.t.

Deadline for Presentations and Comments: January 19, 2006, 12 noon, e.s.t.

ADDRESSES: The meeting will be held at the Wyndham City Center, 1143 New Hampshire Avenue, NW., Washington, DC 20036, (202) 775–0800.

FOR FURTHER INFORMATION CONTACT: Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2–23–05, Baltimore, MD 21244–1850, (410) 786–0090. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/faca/apme/default.asp*) for additional information and updates on committee activities, or contact Ms. Johnson via e-mail at *Lynne.Johnson@cms.hhs.gov.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary of Health and Human Services (the Secretary) the authority to establish an advisory panel for the purpose of advising the Secretary in connection with any of his functions. The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7849) and approved the renewal of the charter on January 14, 2005. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

- To develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- To expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Dr. Drew E. Altman, President and Chief Executive Officer, Henry J. Kaiser Family Foundation; Dr. Jane Delgado, Chief Executive Officer, National Alliance for Hispanic Health; Clayton Fong, President and Chief Executive Officer, National Asian Pacific Center on Aging; Thomas Hall, Chairman and Chief Executive Officer, Cardio-Kinetics, Inc.; The Honorable Bobby Jindal, United States Congress; David Knutson, Director, Health System Studies, Park Nicollet Institute for Research and Education; Dr. David Lansky, Director, Health Program, Markle Foundation; Dr. Frank I. Luntz, President and Chief Executive Officer, Luntz Research Companies; Dr. Daniel Lyons, Senior Vice President, Government Programs, Independence Blue Cross; Dr. Frank B. McArdle, Manager, Hewitt Research Office, Hewitt Associates, Katherine Metzger, Director, Medicare and Medicaid Programs, Fallon Community Health Plan; Dr. Keith Mueller, Professor and Section Head, Health Services Research and Rural Health Policy, University of Nebraska; Lee Partridge, Senior Health Policy Advisor, National Partnership for Women and Families; Dr. Marlon Priest, Professor of Emergency Medicine, University of Alabama at Birmingham; Susan O. Raetzman, Associate Director, Public Policy Institute, AARP; Rebecca Snead, Administrative Manager, National Council of State Pharmacy Association Executives; Catherine Valenti, Chairperson and Chief Executive Officer, Caring Voice Coalition, and Grant Wedner, Manager, Business Development Team, Cosmix Corporation.

The agenda for the January 26, 2006 meeting will include the following:

- Recap of the previous (September 27, 2005) meeting.
- Centers for Medicare & Medicaid Services update.
- Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Pub. L. 108–173): outreach and education strategies.
- Public comment.
- Listening session with CMS leadership.
- Next steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2–23–05, Baltimore, MD 21244–1850 or by e-mail at *Lynne.Johnson@cms.hhs.gov*, no later than 12 noon, e.s.t., January 19, 2006. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Johnson by 12 noon, (e.s.t.), January 19, 2006. The meeting is open to the public, but attendance is limited to the space available.

Special Accommodation: Individuals requiring sign language interpretation or other special accommodations should contact Ms. Johnson at least 15 days before the meeting.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 16, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E5–7757 Filed 12–22–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0484]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting.

DATES: Submit written or electronic comments on the collection of information by February 21, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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.

Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting—21 CFR Part 803 (OMB Control Number 0910–0437)

Section 519(a), (b), and (c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(a), (b), and (c)) requires user facilities, manufacturers, and importers of medical devices to report adverse events involving medical devices to FDA. On December 11, 1995 (60 FR 63578 at 63597), FDA issued part 803 (21 CFR part 803) that implemented section 519 of the act. The regulation was amended to conform to the changes reflected in the FDA Modernization Act of 1997.

Information from these reports will be used to evaluate risks associated with medical devices and to enable FDA to take appropriate regulatory measures to protect the public health.

Respondents to this collection of information are businesses or other for profit and nonprofit organizations including user facilities, manufacturers, and importers of medical devices.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
803.19	55	4	220	3	660
803.30	700	5	3,500	1	3,500
803.33, FDA Form 3419	700	1	700	1	700
803.40	40	17	680	1	680
803.50	1,465	57	83,505	1	83,505
803.55, FDA Form 3417	700	5	3,500	1	3,500
Total					92,545

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
803.17	220	1	220	3.3	726
803.18(c) and (d)	30,000	1	30,000	1.5	45,000
Total					45,726

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Part 803 requires user facilities to report to the device manufacturer, and to FDA in the case of a death, incidents where a medical device caused or contributed to a death or serious injury. Manufacturers of medical devices are required to report to FDA when they become aware of information indicating that one of their devices may have caused or contributed to death or serious injury or has malfunctioned in such a way that should the malfunction recur it would be likely to cause or contribute to a death or serious injury. Device importers report deaths and serious injuries to the manufacturers and FDA. Importers report malfunctions only to the manufacturers, unless they are unknown, then the reports are sent to FDA.

The number of respondents for each CFR section in table 1 of this document is based upon the number of respondents entered into FDA's internal databases. FDA estimates, based on its experience and interaction with the medical device community, that all reporting CFR sections are expected to take 1 hour to complete, with the exception of § 803.19. Section 803.19 is expected to take approximately 3 hours to complete, but is only required for reporting the summarized data quarterly to FDA. By summarizing events, the total time used to report for this section is reduced because the respondents do not submit a full report for each event they report in a quarterly summary report.

The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information to meet the medical device reporting (MDR) requirements as part of their internal quality control system. There are an estimated 30,000 medical device distributors. Although they do not submit MDR reports, they must maintain records of complaints, under § 803.18(d).

The agency has estimated that on average, 220 user facilities, importers, and manufacturers would annually be required to establish new procedures, or revise existing procedures, in order to comply with this provision.

Therefore, FDA estimates the one-time burden to respondents for establishing or revising procedures to be 2,200 hours (220 respondents x 10 hours). For those entities, a one-time burden of 10 hours is estimated for establishing written MDR procedures. The remaining manufacturers, user facilities, and importers, not required to revise their written procedures to comply with this provision, are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered ''usual and customary'' under 5 CFR 1320.3(b)(2).

The annual burden for recordkeeping to respondents follows. Under § 803.17, FDA estimates 220 respondents will spend approximately 3.3 hours to complete the requirements for this section. The number of respondents was estimated by consolidating the total of all new reporting entities together. The 3.3 hours was estimated by FDA, as this section deals with a respondent creating new MDR procedures and is a one-time function. The ''total hours'' for this section equals approximately 726 hours.

Under § 803.18, 30,000 respondents represent distributors, importers, and other respondents to this information collection. FDA estimates that it should take them approximately 1½ hours to complete the recordkeeping requirement for this section. Total hours for this section equal 45,000 hours.

Dated: December 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–7726 Filed 12–22–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–23285]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number 1625–0048

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to seek the approval of OMB for the renewal of an Information Collection Request (ICR). The ICR is 1625–0048, Vessel Reporting Requirements. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before February 21, 2006.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2005–23285] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401

on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Mr. Arthur Requina), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents; or telephone Ms. Renee V. Wright, Program Manager, Docket Operations, 202–493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*; they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number [USCG–2005–23285], indicate the specific section of the document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Information Collection Request

1. *Title:* Vessel Reporting Requirements.

OMB Control Number: 1625–0048.

Summary: The information obtained from these reports will be used by the Coast Guard to determine if the vessel reported on is in distress and if so, to take action to provide needed assistance. These reports (a) increase the likelihood of timely assistance to vessels in distress, especially those that cannot communicate their distress to the vessel's owner or others in a position to help, and (b) to place a burden of responsibility upon the owner, charterer, managing operator or agent for the safety of the vessels. This is of the utmost importance since these persons are often the only ones with knowledge of the vessels' intended movements.

Need: Paragraph (a) of 46 U.S.C. 2306 requires the owner, charterer, managing operator or agent of a vessel of the United States to immediately notify the Coast Guard if there is reason to believe that the vessel may have been lost or imperiled. Further, the owner, charterer, managing operator or agent of a vessel required to report to the United States Flag Merchant Vessel Location Filing System (USMER) must immediately notify the Coast Guard if more than 48 hours have passed since last receiving communication from the vessel. These reports must be followed by written communication submitted to the Coast Guard within 24 hours. Paragraph (c) of 46 U.S.C. 2306 gives the Secretary of Transportation authority to prescribe regulations to carry out 46 U.S.C. 2306. The Secretary has delegated this 46 U.S.C. 2306 responsibility to the Coast Guard in Department of Homeland Security Delegation No. 0170–2(92)(a). The Coast Guard has implemented these reporting requirements for all vessels regulated under Title 46 CFR. The implementing regulations are 46 CFR Part 4.

Respondents: Owners, charterers, managing operators or agents of a vessel of the United States.

Frequency: On occasion.

Burden Estimate: The estimated burden remains 137 hours a year.

Dated: December 19, 2005.

R.T. Hewitt,

Rear Admiral, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E5–7793 Filed 12–22–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–05–016]

RIN 1625–AA01

Anchorage Regulations; Mississippi River Below Baton Rouge, LA, Including South and Southwest Passes

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The United States Coast Guard will meet to discuss the comments received relating to the Notice of Proposed Rulemaking (NPRM) for Kenner Bend Anchorage as published in the **Federal Register**, Vol. 70, No. 80 on Wednesday, April 27, 2005.

DATES: The meeting will be held on Wednesday, January 4, 2006, from 9 a.m. to 12 p.m. This meeting may adjourn early if all business is finished.

ADDRESSES: The meeting will be held in the Basement Conference Room at the Hale Boggs Federal Building, 500 Poydras Street, New Orleans, Louisiana. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Melissa Owens, Waterways Management Division, telephone (504) 846–5923, fax (504) 589–8919.

Background

Runway 1–19 at the Louis Armstrong New Orleans International Airport is positioned in a north-south line running parallel to the Airport Access Road. Aircraft approaching the runway from the south or departing the runway from the north pass over the Lower Kenner Bend Anchorage. Due to the close proximity of Runway 1–19 to Kenner Bend, aircraft occasionally descend and

ascend directly over vessels anchored in the Lower Kenner Bend Anchorage, creating a potentially dangerous situation that is of particular concern during periods of reduced visibility. Aircraft approaching the runway from the south follow a descending glide slope path with a minimum height of 311 feet above mean sea level over the Kenner Bend Anchorage. Certain vessels with cargo handling equipment such as cranes and boom are capable of extending equipment to a height upwards of 300 feet above the waterline. This amendment to the anchorage regulations for the Mississippi River below Baton Rouge, LA, including South and Southwest Passes is proposed to prohibit vessels that are anchored in the Lower Kenner Bend Anchorage from engaging in cargo transfer operations or exercising any shipboard equipment such as cranes and booms while at anchor. This proposed revision is needed to increase safety at Kenner Bend by reducing the potential for collision between aircraft and vessels anchored in the Lower Kenner Bend Anchorage.

Discussion of Issues

The Coast Guard received three negative comments to the NPRM for Kenner Bend Anchorage from the Maritime Navigation Safety Association (MNSA), the Steamship Association of Louisiana (SALA), and the New Orleans and Baton Rouge Port (NOBRA) Pilots. All three organizations contend that the complete prohibition against using cargo-handling equipment is excessive, and argue that some operations should be allowed while at anchor. To better express their concerns, all parties requested a public meeting be held. This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under Addresses as soon as possible.

Dated: December 8, 2005.

R.F. Duncan,

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

[FR Doc. E5–7794 Filed 12–22–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Renewal of the Aviation Security Advisory Committee (ASAC)

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of committee renewal.

SUMMARY: The Transportation Security Administration (TSA) announces that the Aviation Security Advisory Committee (ASAC) was renewed on November 28, 2005. The Secretary of the Department of Homeland Security has determined that renewal of the ASAC is necessary and in the public interest in connection with the performance of duties of TSA. This determination follows consultation with the Committee Management Secretariat, General Services Administration (GSA), who is responsible for monitoring and reporting executive branch compliance with the Federal Advisory Committee Act (FACA).

FOR FURTHER INFORMATION CONTACT: Joseph Corrao, Designated Federal Official, Aviation Security Advisory Committee, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2980, e-mail *joseph.corrao@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Federal Advisory Committee Act

In 1972, the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 5 U.S.C., App) was enacted by Congress. FACA is the legal foundation defining how Federal advisory committees operate. The law has special emphasis on open meetings, chartering, public involvement, and reporting. Its purpose was to ensure that advice rendered to the executive branch by the various advisory committees, task forces, boards, and commissions formed over the years by Congress and the president, be both objective and accessible to the public. The Act not only formalized a process for establishing, operating, overseeing, and terminating these advisory bodies, but also created the Committee Management Secretariat, an organization whose task it is to monitor and report executive branch compliance with the Act. 5 U.S.C. App. 1, section 2(a).

When initially enacted, FACA assigned to the Office of Management and Budget (OMB) responsibility for Government oversight of advisory committees. In 1977, Executive Order 12024 transferred the advisory committee functions, as well as the statutorily mandated Committee Management Secretariat, from OMB to the General Services Administration (GSA). As part of its responsibility under FACA, GSA issues government-wide guidelines and regulations for Federal Advisory Committee Management. GSA's implementation regulations on FACA management may be found in 41 CFR part 102–3.

The Aviation Security Advisory Committee

TSA's Aviation Security Advisory Committee (ASAC) is a ''discretionary'' advisory committee. A discretionary advisory committee is one that is established under the authority of an agency head or authorized by statute. An advisory committee referenced in general (non-specific) authorizing language or Congressional committee report language is discretionary, and its establishment or termination is within the legal discretion of an agency head. Normally, a discretionary advisory committee's charter is terminated upon the expiration of a period not to exceed two years, unless renewed.

ASAC is a standing committee composed of Federal and private sector organizations that was chartered in 1989 by the Federal Aviation Administration in the wake of the crash of Pan American World Airways Flight 103 in 1988 over Lockerbie, Scotland. ASAC's purpose was to ''develop * * * recommendations for the improvement of methods, equipment, and procedures to improve civil aviation security.''

On November 19, 2001, the Aviation and Transportation Security Act (ATSA) was signed into law, which among other things established the Transportation Security Administration (TSA) and transferred to it the responsibility for civil aviation security. Accordingly, sponsorship of ASAC was also transferred to TSA. Since taking on management of ASAC in August 2002, TSA has taken steps to focus the committee's efforts in directions that are relevant and useful to TSA's post-September 11 mission.

In 2003, TSA revised the ASAC charter, organizing ASAC's membership to better assure fair balance in terms of the points of view of those represented and the functions performed by the committee. The charter also standardizes membership renewal dates for public representatives, and continues to encourage participation by other interested government agencies.

The Aviation Security Advisory Committee Renewal

The renewal and use of the Aviation Security Advisory Committee are determined to be in the public interest in connection with the performance of duties imposed on TSA by law as follows:

Name of Committee: Aviation Security Advisory Committee.

Purpose and Objective: The Aviation Security Advisory Committee (ASAC) will examine areas of civil aviation security, as tasked by TSA, with the aim of developing recommendations for the improvement of civil aviation security methods, equipment, and procedures. ASAC recommendations are forwarded to the TSA Administrator for consideration in future rulemaking actions and security program amendments.

Balanced Membership Plans: ASAC is composed of the following organizations representing key constituencies affected by aviation security requirements:

- Victims of Terrorist Acts Against Aviation
- Law Enforcement and Security Experts
- Government Agencies
- Aviation Consumer Advocates
- Airport Tenants and General Aviation
- Airport Operators
- Airline Management
- Airline Labor
- Aircraft Manufacturers
- Air Cargo Representatives

Each private sector organization shall be appointed to membership in one, and no more than one, of the foregoing constituent categories. Apart from Federal Government, there shall be a maximum of three member organizations per membership category.

Duration: The committee's charter is effective November 28, 2005, upon filing, and expires November 28, 2007.

Responsible TSA Officials: Joseph Corrao, Designated Federal Official (DFO), Aviation Security Advisory Committee, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2980, e-mail *joseph.corrao@dhs.gov.*

Issued in Arlington, Virginia, on December 19, 2005.

Mike Restovich,

Assistant Administrator, Transportation Sector Network Management.

[FR Doc. 05–24400 Filed 12–22–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Aviation Security Advisory Committee Meeting

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Aviation Security Advisory Committee (ASAC).

DATES: The meeting will take place on January 11, 2006, from 9 a.m. to 12:30 p.m. or the conclusion of the committee's business.

ADDRESSES: The meeting will be held at Residence Inn by Marriott Pentagon City, 550 Army Navy Drive, Arlington VA 22202.

FOR FURTHER INFORMATION CONTACT: Joseph Corrao, Office of Transportation Sector Network Integration, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone 571–227–2980, e-mail *joseph.corrao@dhs.gov.*

SUPPLEMENTARY INFORMATION: This meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The agenda for the meeting will include—

- Status reports on the actions of the Airport Security Design Guidelines Working Group, the Aviation Security Impact Assessment Working Group, and the Freight Assessment System Working Group;
- A proposal to establish a new working group on Baggage Screening Investment; and
- Other aviation security topics.

This meeting is open to the public but attendance is limited to space available. Members of the public must make advance arrangements to present oral statements at the meeting. Written statements may be presented to the committee by providing copies of them to the person listed under the heading **FOR FURTHER INFORMATION CONTACT** prior to or at the meeting. Anyone in need of assistance or a reasonable accommodation for the meeting should contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Arlington, Virginia, on December 19, 2005.

Mike Restovich,

Assistant Administrator, Transportation Sector Network Management.

[FR Doc. 05–24401 Filed 12–22–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Contracts Concerning Project Speak Out, Form G–1046; OMB Control Number 1615–0074.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 21, 2006.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0074 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of existing information collection.

(2) *Title of the Form/Collection:* Contracts Concerning Project Speak Out.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–1046; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form provides a standardized way of recording the number of individuals contacting the Community Based Organizations concerning the practitioner fraud pilot program. The USCIS will use the information collected on the form to determine how many persons are served by the program and if its public outreach efforts are successful.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 6,000 responses at 42 minutes per response, plus 600 submissions at 10 minutes per submission.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: December 20, 2005.

Stephen Tarragon,

Deputy Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–24397 Filed 12–22–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–51]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

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

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 15, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–24281 Filed 12–22–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Committee.

DATES: January 26, 2006, at 10 a.m.

ADDRESSES: Anchorage Hilton Hotel, 500 West Third Avenue, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska 99501, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The meeting agenda will feature discussions on the restoration synthesis project, status reports on current projects, and review of the proposed invitation for project proposals for fiscal year 2007.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E5–7766 Filed 12–22–05; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for Maxwell National Wildlife Refuge, Maxwell, NM

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that a Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) for the Maxwell National Wildlife Refuge is available for review and comment. This Draft CCP/EA was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee et seq), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d). It describes how the Service intends to manage the refuge over the next 15 years. Compatibility determinations for several existing uses (farming, sport fishing, wildlife observation, photography,

environmental education and interpretation) were re-evaluated, and are included in the draft plan. In addition, draft compatibility determinations for two new proposed uses (grazing and hunting) are also available for review and comment in the Draft CCP/EA.

DATES: Written comments must be received at the address below by February 21, 2006.

ADDRESSES: Send comments to Carol Torrez, Biologist/Natural Resource Planner, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico, 87103–1306, Telephone: (505) 248–6821, Fax: (505) 248–6874. Comments may also be submitted via electronic mail to: *carol_torrez@fws.gov.*

The draft CCP/EA is available on compact diskette or hard copy, and may be obtained by writing, telephoning, faxing, or e-mailing Carol Torrez at the above listed address. The draft CCP/EA will also be available for viewing and downloading online at *http://www.fws.gov/southwest/refuges/plan/index.html.*

FOR FURTHER INFORMATION CONTACT: Carol Torrez, Biologist/Natural Resource Planner, 505–248–6821 or Patty Hoban, Refuge Manager, 505–375–2331.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee et seq) requires the Service to develop a CCP for each National Wildlife Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969.

Background

The Maxwell National Wildlife Refuge was established on August 24, 1965 by the authority of the Migratory Bird Conservation Act (16 U.S.C. 712d) ''* * * for use as an inviolate sanctuary, or any other management purpose, for migratory birds.'' Located in northeast New Mexico, the 3,699 acre Refuge is comprised of 2,300 acres of grassland, 907 acres of lakes (which are leased from Vermejo Conservancy District), 50 acres of wetlands, 39 acres of woodlots, 440 acres of croplands, several miles of irrigation canals, and approximately 10 acres of administrative lands. Most of the area was utilized for grazing and farming prior to acquisition. Current management efforts focus on farming to provide food for migrating and wintering waterfowl, maintaining biological diversity, preserving native grasslands and managing public use.

The Draft CCP/EA addresses a range of topics including habitat and wildlife management, public use opportunities, invasive species control, and administration and staffing for the refuge. Three alternatives for managing the refuge are proposed and evaluated in the EA. Each alternative describes a combination of habitat and public use management actions designed to achieve the refuge purposes, goals, and vision. The Service prefers Alternative B because it best achieves refuge purposes, vision, and goals; contributes to the Refuge System mission; addresses relevant issues and mandates; and is consistent with the principles of sound fish and wildlife management. The alternatives are briefly described below.

Alternative A is 'no action' or continuance of current management. Under this alternative, management efforts would continue to focus on farming, invasive species control, and preservation of native grasslands. The public use program would remain at current levels, with fishing and wildlife observation being the main focus. Environmental education and interpretation would be accommodated on a case-by-case basis. No new recreational/hunting opportunities or facilities would be developed on the refuge. Refuge management programs would continue to be developed and implemented with little baseline biological information.

Alternative B is the proposed action. This alternative would implement a variety of habitat management techniques (prescribed burning, experimental grazing, and mechanical and chemical invasive species control methods) to encourage ecological integrity, promote native prairie restoration, control invasive plant species, and provide/enhance habitat for grassland birds and other resident wildlife. The farming program would continue to be emphasized. Inventory, monitoring, and research would increase. The public use program would increase and/or enhance educational and outreach activities, recreational opportunities (including continued fishing, wildlife observation, photography and consideration of hunting opportunities), community involvement, and facilities.

Alternative C proposes to manage Maxwell NWR as part of a complex with Las Vegas NWR and turn all farming efforts over to cooperative farmers. By transferring all farming activities to cooperative farmers and combining both refuge staffs, more time would potentially be made available for native grassland restoration, invasive species control, and maintenance of natural diversity. The prescribed fire program and comprehensive habitat monitoring and evaluation would be emphasized. The public use program would be similar to Alternative B.

None of the alternatives propose any acquisition or refuge boundary expansion.

Public Involvement

The draft CCP/EA is available for public review and comment for a period of 60 days. Copies of the document can be obtained as indicated in the **ADDRESSES** section. In addition, documents will be available for public inspection during normal business hours (8 a.m.–4:30 p.m.) at the Maxwell NWR Headquarters Office, 2 miles northwest of the town of Maxwell, New Mexico off I–25, and at the following libraries:

Fred Macaron Library, 600 Colbert Avenue, Springer, NM
Cimmaron Public Library, 356D E. 9th St., Cimmaron, NM
City of Raton Library, 244 Cook Avenue, Raton, NM

An open house/public meeting will be held at the Maxwell NWR Headquarters to receive comments on the Draft CCP/EA during the open comment period on January 25, 2006 from 11 a.m.–7 p.m. Special mailings, newspaper articles, and/or other media announcements will be used to inform the public of the date and time of the meeting.

Public comments are requested, considered, and incorporated throughout the planning process. After the review and comment period ends for this draft CCP/EA, comments will be analyzed by the Service and addressed in the Final CCP. All comments

received from individuals, including names and addresses, become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6 (f)], and other Service and Departmental policies and procedures.

Dated: October 11, 2005.

Geoffrey L. Haskett,

Acting Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

[FR Doc. E5–7773 Filed 12–22–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Fee-to-Trust Transfer From the Oneida Indian Nation of New York to the Bureau of Indian Affairs of 17,370 Acres of Land in Oneida and Madison Counties, NY

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), as lead agency, with the cooperation of the Oneida Indian Nation (Nation), intends to gather the information necessary for preparing an Environmental Impact Statement (EIS) for the taking into trust of 17,370 acres of land currently held in fee by the Nation. The purpose of the proposed action is to help ensure the Nation's cultural preservation, self-determination, self-sufficiency and economic independence as a federally recognized Indian tribe by securing the properties into its trust land base. This notice also announces public scoping meetings in Oneida and Madison Counties, New York, to identify potential issues and content for inclusion in the EIS.

DATES: Written comments on the scope of the EIS or implementation of the proposal must arrive by January 23, 2006.

The public scoping meetings will be held January 10, 2006, and January 11, 2006, from 6:30 to 9:30 p.m., or until the last public comment is received.

ADDRESSES: You may mail, hand carry or telefax written comments to Franklin Keel, Regional Director, Eastern Regional Office, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214, Telefax (615) 564–6701. Please include your name, return address and the caption, ''DEIS Scoping Comments, Oneida Indian Nation of New York Trust Acquisition Project,'' on the first page of your written comments.

The January 10, 2006, public scoping meeting will be held in Oneida County at Vernon-Verona-Sherrill High School, 5275 State Route 31, Verona, New York 13478. The January 11, 2006, meeting will be held in Madison County at Oneida High School, 560 Seneca Street, Oneida, New York 13421.

Additional information concerning the trust land application will be available for public review online at *http://www.oneidanationtrust.net* and at the following locations during regular business hours, Monday through Friday, except holidays: Oneida Nation Annex Building, 579A Main Street, Oneida, New York 13421 (business hours: 10 a.m. to 4 p.m.); Oneida City Hall, 109 N. Main Street, Downstairs Basement Room, Oneida, New York 13421; and Town of Verona Town Hall, 6600 Germany Road, Back Conference Room, Durhamville, New York 13054.

FOR FURTHER INFORMATION CONTACT: Kurt G. Chandler, (615) 564–6832.

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of BIA approval of the proposed transfer of 17,370 acres, in several non-contiguous parcels currently held in fee by the Nation in Oneida and Madison Counties, New York, into trust status for the benefit of the Nation. The parcels being considered for the fee-to-trust transfer include gaming and resort properties, including the Turning Stone Casino resort in Verona, New York, housing for Nation members, health care facilities, government offices, commercial enterprises such as marinas, service stations and convenience stores, vacant and undeveloped lands and lands used for traditional Iroquois agriculture, for livestock and for hunting and fishing.

The EIS will analyze all pertinent environmental, social and economic attributes of the affected environment and potential environmental consequences of taking the lands into trust. The BIA has so far identified infrastructure (including schools), socioeconomics (including taxes, employment, income, population and housing) and cumulative effects as key issues for analysis in the EIS. The range of issues may be further expanded, based on comments received in response to this notice and at the public scoping meetings.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at all of the mailing addresses shown in the **ADDRESSES** section (except those for the public meetings) during regular business hours, 8 a.m. to 4:30 p.m. (unless otherwise shown), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: December 16, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E5–7787 Filed 12–22–05; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–1430–ER–CACA–44491]

Notice of Availability of the Final Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Imperial Irrigation District's Desert Southwest Transmission Line Project, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement/ Environmental Impact Report (EIS/EIR).

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321–4347, and 40 CFR Part 1500, the Bureau of Land Management (BLM) announces that the Final EIS/EIR for the Imperial Irrigation District's (IID) Desert Southwest Transmission Line Project is available for a thirty (30) day public review and comment period.

DATES: The public is provided 30 days for review and comment after the date that the Environmental Protection Agency (EPA) publishes its Notice of Availability for this document in the **Federal Register**.

ADDRESSES: If you wish to comment, you may submit your comments by any of several methods. You may mail comments to: Gail Acheson, Field Manager, Bureau of Land Management, Palm Springs—South Coast Field Office, 690 W. Garnet Ave., P.O. Box 581260, North Palm Springs, CA 92258.

You may also comment via the Internet to: *dgomez@ca.blm.gov.* Please include in the subject line: ''Final EIS/EIR, Desert Southwest Transmission Line Project'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact Diane Gomez at (760) 251–4852. You may also hand-deliver comments to: Palm Springs—South Coast Field Office, 690 W. Garnet Avenue, North Palm Springs, CA 92258. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Diane Gomez at (760) 251–4852 or e-mail: *dgomez@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: This Final EIS/EIR assesses the environmental effects of constructing, operating and maintaining a 500 kilovolt (kV) electrical transmission line from an area near Blythe, California, to the Southern California Edison Company's Devers Substation, located several miles north of Palm Springs, California. Four alternatives and several minor variations to these alternatives are also considered. A Record of Decision for the proposed project will be prepared following the review of the final EIS. A copy of the Final EIS/EIR is available for review and comment via the Internet at *http://www.ca.blm.gov/palmsprings.* Electronic (on CD–ROM) and paper copies may also be obtained by contacting Diane Gomez at the aforementioned addresses and phone number.

Dated: September 26, 2005.

Elena Misquez,

Acting Field Manager.

[FR Doc. E5–7761 Filed 12–22–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, UTU76247

December 20, 2005.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of section 371(a) of the Energy Policy Act of 2005, the lessee, Energy Minerals, Inc., timely filed a petition for reinstatement of oil and gas lease UTU76247 in Uintah County, Utah. The lessee paid the required rental accruing from the date of termination, April 1, 2002.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $5 per acre and 16⅔ percent. The lessee paid the $500 administration fee for the reinstatement of the lease and $155 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease per section 31(e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188(e)). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $5 per acre;
- The increased royalty of 16⅔ percent; and
- The $155 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: David H. Murphy, Acting Chief, Branch of Fluid Minerals at (801) 539–4122.

David H. Murphy,

Acting Chief, Branch of Fluid Minerals.

[FR Doc. E5–7760 Filed 12–22–05; 8:45 am]

BILLING CODE 4310–DK–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: State Court Processing Statistics, 2006.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 191, page 57896 on October 4, 2005, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 23, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* New information collection.

(2) *The title of the form/collection:* State Court Processing Statistics, 2006.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: SCPS–06. Bureau of Justice Statistics, Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Not-for-profit institutions. State Trial Courts and Pretrial Agencies. Abstract: The SCPS project is a recurring data collection involving the examination of felony cases processed in 40 large urban counties chosen to be representative of the 75 largest counties in the U.S. Approximately 15,000 felony cases are tracked for up to 1 year with data collected on the pretrial, adjudication, and sentencing phases of the criminal court process.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that information will be collected on a total of 15,000 felony cases from 40 responding counties. Public reporting burden for this collection of information is estimated to average one hour for each data collection form coded manually and half an hour for each data collection form completed through automated downloads.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 13,850 hours.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 20, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. E5–7765 Filed 12–22–05; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 05–176]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, Reports Officer, Office of the Chief Information Officer, Mail Suite JA000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, Reports Officer, Office of the Chief Information Officer, NASA Headquarters, 300 E Street SW., Mail Suite JA000, Washington, DC 20546, (202) 358–1350, *walter.kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Federal Automotive Statistical Tool (FAST) Reporting of Government-Owned Contractor-Operated Vehicles is an information collection required by Executive Order 13149, ''Greening the Government through Federal Fleet and Transportation Efficiency,'' section 505. This order requires Federal agencies to ensure that all Government-owned contractor-operated vehicles comply with all applicable goals and other requirements of this order and that these goals and requirements are incorporated into each contractor's management contract. This order requires the Department of Energy (DOE) to issue guidance to agencies and to establish the data collection and reporting system for collecting annual agency performance data on meeting the goals of the order and other applicable statutes and policies, as stated in section 301(b).

In July 2000, the DOE prepared the Guidance Document for Federal agencies, as required by Executive Order 13149. Section 2–3 requires agencies to report using DOE's Federal Automotive Statistical Tool (FAST). FAST is accessed through *http://fastweb.inel.gov/.*

II. Method of Collection

NASA collects this information electronically through *http://fastweb.inel.gov/.*

III. Data

Title: Federal Automative Statistical Tool (FAST) Reporting of Government-Owned Contractor-Operated Vehicles.

OMB Number: 2700–0106.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal Government and Business or other for-profit.

Estimated Number of Respondents: 93.

Estimated Time Per Response: 15 min/vehicle.

Estimated Total Annual Burden Hours: 425.

Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. E5–7728 Filed 12–22–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[05–173]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, Reports Officer, Office of the Chief Information Officer, Mail Suite JA000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, Reports Officer, Office of the Chief Information Officer, NASA Headquarters, 300 E Street SW., Mail Suite JA000, Washington, DC 20546, (202) 358–1350, *walter.kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA's Destination Tomorrow is an adult science literacy program. The Destination Tomorrow Survey is required to continually modify and improve NASA's Destination Tomorrow™ program. NASA's Destination Tomorrow™ program is an educational resource for elementary teachers. Feedback from educators will help to modify and adjust this resource to meet the needs of educators.

The information is used by NASA Center for Distance Learning to effectively maintain and improve NASA's Destination Tomorrow(tm) program.

II. Method of Collection

NASA collects this information by means of a telephone survey that will be taken of registered station managers that air the show. Completion of this survey will be entirely voluntary.

III. Data

Title: NASA's Destination Tomorrow Survey.

OMB Number: 2700.

Type of Review: New Collection.

Affected Public: State, Local, or Tribal Government, or Not-for-profit institutions.

Estimated Number of Respondents: 946.

Total Annual Responses: 300.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 75.

Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. E5–7732 Filed 12–22–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[05–175]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, Reports Officer, Office of the Chief Information Officer, Mail Suite JA000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, Reports Officer, Office of the Chief Information Officer, NASA Headquarters, 300 E Street SW., Mail Suite JA000, Washington, DC 20546, (202) 358–1350, *walter.kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA Science Files is an educational resource for middle school teachers. Feedback from educators will help the NASA Center for Distance Learning to modify and adjust this resource to meet the needs of educators.

II. Method of Collection

This is an electronic survey that is attached to an e-mail requesting the educator to complete and return the survey.

III. Data

Title: NASA Science Files.

OMB Number: 2700–.

Type of Review: New Collection.

Affected Public: State, Local, or Tribal Government, or Not-for-profit institutions.

Estimated Number of Respondents: 11,525.

Total Annual Responses: 300.

Estimated Time Per Response: .75 hr.

Estimated Total Annual Burden Hours: 225.

Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. E5–7733 Filed 12–22–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[05–171]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to the Desk Officer for NASA, Office of Information and Regulatory Affairs, Room 10236, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, Reports Officer, Office of the Chief Information Officer, NASA Headquarters, 300 E Street, SW., Mail Suite JA000, Washington, DC 20546–0001, 202–358–1350, *walter.kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection is required by NASA SBIR/STTR contractors to complete and submit a recertification of program compliance prior to final payment under the contracts. It is believed that this will hold contractors more accountable to Federal statues and reduce fraud.

II. Method of Collection

Respondents (SBIR/STTR contractors) provide unformatted re-certification information showing compliance to program requirements as required by the NASA FAR Supplement, Section 1852.232–83, Conditions for Final Payment—SBIR and STTR Contracts. The certification can be sent by e-mail or regular post.

III. Data

Title: Small Business Innovative Research/Small Business Technology Transfer Contractor Re-certification of Program Compliance.

OMB Number: 2700–.

Type of Review: New collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 484 (one time re-certification requirement per contractor).

Estimated Time Per Response: 0.5 hour.

Estimated Total Annual Burden Hours: 242.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. E5–7734 Filed 12–22–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 05–172]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, Reports Officer, Office of the Chief Information Officer, Mail Suite JA000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, Reports Officer, Office of the Chief Information Officer, NASA Headquarters, 300 E Street, SW., Mail Suite JA000, Washington, DC 20546, (202) 358–1350, *walter.kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA Connect is an educational resource for middle school teachers. This survey will be used with registered educators for feedback to improve this resource. NASA Connect has three components that are continually being improved: video, web explanations, and hands-on activities.

II. Method of Collection

This is an electronic survey that is sent to a random sample of registered educators yearly. The survey is attached to an e-mail requesting the educator to complete the survey and return it.

III. Data

Title: NASA Connect Survey.

OMB Number: 2700–.

Type of Review: New Collection.

Affected Public: State, Local, or Tribal Government, or Not-for-profit institutions.

Estimated Number of Respondents: 19,815.

Total Annual Responses: 300.

Estimated Time Per Response: .75 hr.

Estimated Total Annual Burden Hours: 225.

Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. E5–7735 Filed 12–22–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 05–174]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, Reports Officer, Office of the Chief Information Officer, Mail Suite JA000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, Reports Officer, Office of the Chief Information Officer, NASA Headquarters, 300 E Street, SW., Mail Suite JA000, Washington, DC 20546, (202) 358–1350, *walter.kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA Live is an interactive, educational videoconferencing program. This is an educational resource for educators of grades K–12. This survey will be used with registered educators for feedback to improve this product.

II. Method of Collection

This is an electronic survey that is attached to an e-mail requesting the educator to complete and return the survey.

III. Data

Title: NASA Live Survey.
OMB Number: 2700.
Type of Review: New Collection.
Affected Public: State, Local, or Tribal Government, or Not-for-profit institutions.
Estimated Number of Respondents: 150.
Total Annual Responses: 30.
Estimated Time Per Response: .17 hr.
Estimated Total Annual Burden Hours: 8.
Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Patricia L. Dunnington,
Chief Information Officer.
[FR Doc. E5–7736 Filed 12–22–05; 8:45 am]
BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Fund for Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of application period.

SUMMARY: The National Credit Union Administration (NCUA) will accept applications for participation in the Community Development Revolving Loan Fund's Loan Program throughout calendar year 2006, subject to availability of funds. Application procedures for qualified low-income credit unions are in NCUA Rules and Regulations.

ADDRESSES: Applications for participation may be obtained from and should be submitted to: NCUA, Office of Small Credit Union Initiatives, 1775 Duke Street, Alexandria, VA 22314–3428.

DATES: Applications may be submitted throughout calendar year 2006.

FOR FURTHER INFORMATION CONTACT: Tawana James, Director, Office of Small Credit Union Initiatives at the above address or telephone (703) 518–6610.

SUPPLEMENTARY INFORMATION: Part 705 of the NCUA Rules and Regulations implements the Community Development Revolving Loan Fund (Fund) for Credit Unions. The purpose of the Fund is to assist officially designated ''low-income'' credit unions in providing basic financial services to residents in their communities that result in increased income, home ownership, and employment. The Fund makes available low interest loans in the aggregate amount of $300,000 to qualified participating ''low-income'' designated credit unions. Interest rates are currently set at one percent. Specific details regarding availability and requirements for technical assistance grants from the Fund will be published in a Letter to Credit Unions and on NCUA's Web site at *http://www.ncua.gov/*. Fund participation is limited to existing credit unions with an official ''low-income'' designation.

This notice is published pursuant to Section 705.9 of the NCUA Rules and Regulations that states NCUA will provide notice in the **Federal Register** when funds in the program are available.

By the National Credit Union Administration Board on December 19, 2005.

Mary F. Rupp,
Secretary, NCUA Board.
[FR Doc. E5–7722 Filed 12–22–05; 8:45 am]
BILLING CODE 7535–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Proposed Collection, Library Workforce Study, Submission for OMB Review

AGENCY: Agency Institute of Museum and Library Services.

ACTION: Notice of requests for new information collection approval.

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 the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 23, 2006. 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 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.

ADDRESSES: Rebecca Danvers, Director of Research and Technology, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC,

20036; telephone 202–653–4680, fax 202–653–4625, e-mail *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. Section 9101 *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 of 2003 includes a strong emphasis on supporting library services through the development of a strong library workforce. This solicitation is a web-based survey to collect information to assist IMLS understand library and information science (LIS) workforce needs, including supply and demand, factors that affect them, and existing workforce projections.

II. Current Action

The core duties of the Institute of Museum and Library Services, as stated in its strategic plan, are to promote excellence in library services and to promote access to museum and library services for a diverse public. This goal will be accomplished in part by promoting improved workforce planning including strategies for recruitment and retention of workers. IMLS is developing specific plans to collect information from libraries, librarians and other information professionals. Information to be collected from libraries includes current and projected employment in terms of numbers of positions (filled and vacant), functional specialization, educational requirements, skill/competency requirements, salaries and benefits, demographics, annual budget/expenditures, constituency or market size. Information to be collected from LIS professionals includes current employment, career path and career progression, professional association/union membership and demographics. These information collections will be based on geographic location (state and locality), type of employing organization and functionality of the work. A great deal of information has been collected on the LIS workforce, e.g. by BLS, NCES and professional societies. The information IMLS collects should build on, but not duplicate, existing or ongoing collections.

Agency: Institute of Museum and Library Services.

Title: National Study on the Future of Librarians in the Workforce.

OMB Number: n/a.

Agency Number: 3137.

Frequency: One time.

Affected Public: Libraries, librarians and other information professionals.

Number of Respondents: 40,000 libraries, 40,000 LIS professionals.

Estimated Time Per Respondent: maximum of 2 hours per library (for the 27,000 central and single the time is up to two hours and for 13,000 branch libraries the time is less than one hour); 15 minutes per librarian/information professional.

Total Burden Hours: 77,000.

Total Annualized Capital/Startup costs: 0.

Total Annual Costs: $166,295.

Contact: Rebecca Danvers, Director of Research and Technology, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC, 20036; telephone 202–653–4680, fax 202–653–4625, e-mail *rdanvers@imls.gov*

Dated: December 20, 2005.

Rebecca Danvers,

Director, Office of Research and Technology.

[FR Doc. 05–24406 Filed 12–22–05; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–009–ESP and ASLBP No. 04–823–03–ESP]

System Energy Resources, Inc.; Notice of Reconstitution

Pursuant to 10 CFR 2.321, the Atomic Safety and Licensing Board in the above captioned proceeding regarding the October 2003 application of System Energy Resources, Inc., (SERI) for a 10 CFR part 52 early site permit (ESP), which would allow SERI to ''bank'' a possible site for the future construction of a new nuclear power generation facility on its Grand Gulf Nuclear Station property, is hereby reconstituted by appointing Administrative Judges Lawrence G. McDade, Chair, Nicholas G. Trikouros, and Richard E. Wardwell in place of Administrative Judges G. Paul Bollwerk, III, Chair, Paul B. Abramson, and Anthony J. Baratta.

In accordance with 10 CFR 2.302, henceforth all correspondence, documents, and other material relating to any matter in this proceeding over which this Licensing Board has jurisdiction should be served on these administrative judges as follows:

Lawrence G. McDade, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Nicholas G. Trikouros, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Richard E. Wardwell, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission,Washington, DC 20555–0001.

Issued at Rockville, Maryland this 15th day of December 2005.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E5–7782 Filed 12–22–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–04544]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (FDA/CDRH) in Rockville, MD

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5040, fax (610) 337–5269; or by e-mail: *exu@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to the Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (FDA/CDRH) for Materials License No. 19–07538–01, to authorize release of its facility at 12709 Twinbrook Parkway, Rockville, Maryland for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to authorize the release of the licensee's 12709 Twinbrook Parkway, Rockville, Maryland facility for unrestricted use. FDA/CDRH was authorized by NRC from 1965 to use radioactive materials for research and development purposes at the site. On August 23, 2005, FDA/CDRH requested that NRC release the facility for unrestricted use. FDA/CDRH has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR Part 20 for unrestricted use.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by FDA/CDRH. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in Subpart E of 10 CFR part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated FDA/CDRH's request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR Part 20. The staff has found that the radiological environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). Additionally, no non-radiological or cumulative impacts were identified. On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed action, and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: Environmental Assessment [ML053480176] and Final Status Survey Report, Food and Drug Administration, Center for Devices and Radiological Health, 12709 Twinbrook Parkway, Rockville, Maryland, August 22, 2005, Final Report [ML052380179]. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Documents related to operations conducted under this license not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia/foia-privacy.html*.

Dated at King of Prussia, Pennsylvania this 14th day of December, 2005.

For the Nuclear Regulatory Commission

John D. Kinneman,

Chief Materials Security & Industrial Branch, Division of Nuclear Materials Safety. Region I.

[FR Doc. E5–7792 Filed 12–22–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on January 19, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of portions that may be closed to discuss General Electric (GE) proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, January 19, 2006—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the analytical methods to be used to evaluate stability scenarios for the ESBWR and will hear the NRC staff's plan to revise Regulatory Guide 1.82, ''Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident.'' The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, their contractors, GE and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (Telephone: 301–415–8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: December 15, 2005.

Michael L. Scott,

Branch Chief, ACRS/ACNW.

[FR Doc. 05–24429 Filed 12–22–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Joint Meeting of the Subcommittees on Human Factors and on Reliability and Probability Risk Assessment; Notice of Meeting

The ACRS Subcommittees on Human Factors and on Reliability and Probability Risk Assessment will hold a joint meeting on January 25, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 25, 2006—8:30 a.m. Until 12:30 p.m.

The Subcommittees will examine current status of NRC's safety management/culture initiatives, and associated approaches to address safety culture in the regulatory oversight process. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this matter. The Subcommittees will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. John H. Flack (telephone 301/415–0426), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: December 15, 2005.

Michael L. Scott,

Branch Chief, ACRS/ACNW.

[FR Doc. E5–7781 Filed 12–22–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Proposed Bulletin for Good Guidance Practices

AGENCY: Office of Management and Budget.

ACTION: Notice of proposed guidelines and request for comments.

SUMMARY: The Office of Management and Budget (OMB) is extending the comment period regarding its draft Bulletin for Good Guidance Practices from December 23, 2005, to January 9, 2006. This Bulletin is intended to increase the quality and transparency of agency guidance practices and the guidance documents produced through them.

DATES: Written comments regarding OMB's Proposed Bulletin for Good Guidance Practices are due by January 9, 2006.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Electronic comments may be submitted to: *OMB_GGP@omb.eop.gov*. Please put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments also may be submitted via facsimile to (202) 395–7245.

FOR FURTHER INFORMATION CONTACT: Lisa Jones, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., New Executive Office Building, Room 10201, Washington, DC, 20503. Telephone (202) 395–5897.

SUPPLEMENTARY INFORMATION: OMB is seeking comments on its Proposed Bulletin for Good Guidance Practices by January 9, 2006. The draft Bulletin for Good Guidance Practices is posted on OMB's Web site, *http://www.whitehouse.gov/omb/inforeg/regpol.html*. This draft Bulletin provides a definition of guidance; describes the legal effect of guidance documents; establishes practices for developing guidance documents and receiving public input; and establishes ways for making guidance documents available to the public.

Dated: December 19, 2005.

Donald R. Arbuckle,

Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 05–24417 Filed 12–22–05; 8:45 am]

BILLING CODE 3110–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; January 12, 2006, Public Hearing

TIME AND DATE: 3 p.m. Thursday, January 12, 2006.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing OPEN to the Public at 3 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Friday, January 6, 2006. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 pm, Friday, January 6, 2006. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

FOR FURTHER INFORMATION CONTACT: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov*.

Dated: December 21, 2005.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 05–24459 Filed 12–21–05; 11:27 am]

BILLING CODE 3210–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; January 12, 2006, Annual Public Hearing

TIME AND DATE: 2 p.m. Wednesday, January 12, 2006.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Wshington, DC.

STATUS: Hearing open to the public at 2 p.m.

PURPOSE: Annual Public Hearing to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Friday, January 6, 2006. The notice must

include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Friday, January 6, 2006. Such statements must be typewritten, double-spaced and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

FOR FURTHER INFORMATION CONTACT: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

SUPPLEMENTARY INFORMATION: OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for environmentally sound projects which confer positive developmental benefits upon the project country while creating employment in the U.S. OPIC is required by section 231A(c) of the Foreign Assistance Act of 1961, as amended (''the Act'') to hold at least one public hearing each year.

Dated: December 20, 2005.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 05–24460 Filed 12–21–05; 11:27 am]

BILLING CODE 3210–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: David Guilford, Center for Leadership and Executive Resources Policy, Division for Strategic Human Resources Policy, 202–606–1391.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between November 1, 2005, and November 30, 2005. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for November 2005.

Schedule B

No Schedule B appointments were approved for November 2005.

Schedule C

The following Schedule C appointments were approved during November 2005.

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS60153 Confidential Assistant to the Associate Director for National Security Programs. Effective November 18, 2005.

Office of National Drug Control Policy

QQGS00035 Policy Analyst and Intergovernmental Affairs Liaison to the Associate Deputy Director, State and Local Affairs. Effective November 1, 2005.

Office of the United States Trade Representative

TNGS00019 Confidential Assistant to the Deputy United States Trade Representative. Effective November 21, 2005.

Section 213.3304 Department of State

DSGS61000 Senior Advisor to the Assistant Secretary for Near Eastern and South Asian Affairs. Effective November 16, 2005.

DSGS61011 Special Assistant to the Assistant Secretary for African Affairs. Effective November 18, 2005.

DSGS61013 Senior Advisor to the Assistant Secretary, Bureau of Nonproliferation. Effective November 21, 2005.

DSGS61014 Assistant Manager, President's Guest House to the Deputy Chief of Protocol. Effective November 21, 2005.

DSGS61018 Foreign Affairs Officer to the Assistant Secretary for Democracy Human Rights and Labor. Effective November 28, 2005.

DSGS61016 Staff Assistant to the Assistant Secretary, Bureau for Education and Cultural Affairs. Effective November 29, 2005

Section 213.3305 Department of the Treasury

DYGS60351 Senior Advisor to the Assistant Secretary (Public Affairs). Effective November 2, 2005.

DYGS00430 Senior Advisor to the Under Secretary for Domestic Finance. Effective November 14, 2005.

Section 213.3306 Department of the Defense

DDGS16892 Confidential Assistant to the Under Secretary of Defense (Comptroller). Effective November 1, 2005.

DDGS16910 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective November 4, 2005.

DDGS16899 Staff Specialist to the Principal Deputy Assistant Secretary of Defense (Legal Affairs). Effective November 9, 2005.

DDGS16897 Director, Department of Defense Office of Legislative Counsel to the Deputy General Counsel, (Legal Counsel). Effective November 10, 2005.

DDGS16905 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective November 22, 2005.

DDGS16911 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs). Effective November 22, 2005.

DDGS16898 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective November 28, 2005.

Section 213.3310 Department of Justice

DJGS00374 Staff Assistant to the Director, Office of Public Affairs. Effective November 10, 2005.

DJGS00398 Media Affairs Specialist to the Director, Office of Public Affairs. Effective November 10, 2005.

DJGS00108 Special Assistant to the Director, Community Oriented Policing Services. Effective November 14, 2005.

DJGS00254 Counselor to the Assistant Attorney General, Civil Rights Division. Effective November 15, 2005.

DJGS00329 Associate Director to the Director, Office of Intergovernmental

and Public Liaison. Effective November 15, 2005.

DJGS00270 Special Assistant to the Assistant Attorney General, Civil Rights Division. Effective November 18, 2005.

DJGS00410 Senior Advisor to the Assistant Attorney General. Effective November 18, 2005.

Section 213.3311 Department of Homeland Security

DMGS00429 Director of Legislative Affairs for the Secretarial Offices to the Assistant Secretary for Legislative Affairs. Effective November 1, 2005.

DMGS00426 Director of Communications for United States Citizenship and Immigration Services to the Director, Bureau of Citizenship and Immigration Services. Effective November 9, 2005.

DMGS00438 Special Assistant to the Assistant Secretary for Information Analysis. Effective November 15, 2005.

DMGS00440 Executive Assistant to the Special Assistant for Private Sector. Effective November 18, 2005.

DMGS00441 Senior Legislative Assistant to the Director of Border Security, Transportation. Effective November 18, 2005.

DMGS00442 Senior Legislative Assistant to the Assistant Secretary for Legislative Affairs. Effective November 18, 2005.

DMGS00443 Scheduler and Protocol Coordinator to the Director of Scheduling and Advance. Effective November 18, 2005.

DMGS00444 Trip Coordinator to the Director of Scheduling and Advance. Effective November 18, 2005.

DMGS00445 Advisor to the Deputy Secretary of Homeland Security. Effective November 21, 2005.

DMGS00446 Senior Advisor for Civil Rights and Civil Liberties to the Officer of Civil Rights and Civil Liberties. Effective November 22, 2005.

DMGS00447 Confidential Assistant to the General Counsel. Effective November 22, 2005.

Section 213.3312 Department of the Interior

DIGS01048 Special Assistant to the Senior Adviser to the Secretary for Alaskan Affairs. Effective November 2, 2005.

DIGS01051 Counselor to the Assistant Secretary—Land and Minerals Management. Effective November 14, 2005.

Section 213.3313 Department of Agriculture

DAGS00834 Deputy White House Liaison to the Secretary. Effective November 8, 2005.

DAGS00835 Confidential Assistant to the Under Secretary for Rural Development. Effective November 18, 2005.

Section 213.3314 Department of Commerce

DCGS00529 Senior Advisor to the Assistant Secretary for Manufacturing and Services. Effective November 1, 2005

DCGS00672 Senior Advisor to the Deputy Secretary. Effective November 4, 2005.

DCGS60136 Special Assistant to the Under Secretary of Commerce for Industry and Security. Effective November 10, 2005.

Section 213.3315 Department of Labor

DLGS60177 Special Assistant to the Assistant Secretary for Employee Benefits Security. Effective November 18, 2005.

Section 213.3316 Department of Health and Human Services

DHGS00632 Special Outreach Coordinator to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy). Effective November 2, 2005.

DHGS60548 Senior Speechwriter to the Assistant Secretary for Public Affairs. Effective November 14, 2005.

DHGS60697 Special Assistant to the Director of Medicare Outreach and Special Advisor to the Secretary. Effective November 16, 2005.

DHGS60524 Confidential Assistant to the Administrator Centers for Medicare and Medicaid Services. Effective November 22, 2005.

Section 213.3317 Department of Education

DBGS00476 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach. Effective November 17, 2005.

DBGS00477 Deputy Secretary's Regional Representative, Region 4 to the Director, Regional Services. Effective November 17, 2005.

DBGS00479 Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective November 17, 2005.

DBGS00484 Special Assistant to the Assistant Secretary, Office of Communications and Outreach. Effective November 18, 2005.

DBGS00485 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach. Effective November 18, 2005.

DBGS00478 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective November 28, 2005.

Section 213.3318 Environmental Protection Agency

EPGS60092 Associate Assistant Administrator to the Assistant Administrator for Air and Radiation. Effective November 21, 2005.

Section 213.3323 Federal Communications Commission

FCGS00196 Director, Office of Legislative Affairs to the Chairman. Effective November 9, 2005.

Section 213.3327 Department of Veterans Affairs

DVGS60069 Special Assistant to the Secretary of Veterans Affairs. Effective November 3, 2005.

DVGS00100 Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs. Effective November 14, 2005.

Section 213.3330 Securities and Exchange Commission

SEOT90006 Confidential Assistant to a Commissioner. Effective November 22, 2005.

Section 213.3339 United States International Trade Commission

TCGS60100 Senior Economist to the Commissioner. Effective November 11, 2005.

TCGS00037 Staff Assistant to a Commissioner. Effective November 18, 2005.

Section 213.3342 Export-Import Bank

EBSL00220 Senior Vice President for Export Finance to the Chairman and President. Effective November 30, 2005.

Section 213.3360 Consumer Product Safety Commission

PSGS60064 Special Assistant (Legal) to a Commissioner. Effective November 3, 2005.

PSGS00066 Supervisory Public Affairs Specialist to the Executive Director. Effective November 15, 2005.

Section 213.3370 Millennium Challenge Corporation

CMOT00001 Executive Assistant to the Chief Executive Officer. Effective November 22, 2005.

Section 213.3373 Trade and Development Agency

TDGS60001 Executive Assistant to the Director. Effective November 22, 2005.

Section 213.3382 National Endowment for the Humanities

NHGS00080 Director of Congressional Affairs to the Chairman. Effective November 28, 2005.

Section 213.3391 Office of Personnel Management

PMGS60026 Scheduler and Special Assistant to the Executive Director and Senior Counselor. Effective November 21, 2005.

Section 213.3394 Department of Transportation

DTGS60139 Confidential Assistant to the Deputy Secretary. Effective November 9, 2005.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. E5–7737 Filed 12–22–05; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings; Notice

FEDERAL REGISTER Citation of Previous Announcement:

[70 FR 74850, December 16, 2005].

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETINGS: Additional Meetings (Week of December 19, 2005).

Closed Meetings have been scheduled for Wednesday, December 21, 2005 at 9 a.m. and Thursday, December 22, 2005 at 9:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries may attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10) permit consideration of the scheduled matter at the Closed Meetings.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meetings in closed sessions and that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Wednesday, December 21, 2005 will be: Institution and settlement of injunctive actions; and Institution and settlement of administrative proceedings of an enforcement matter.

The subject matter of the Closed Meeting scheduled for Thursday, December 22, 2005 will be: Institution of injunctive actions; and Institution and settlement of administrative proceedings of an enforcement matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: December 20, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–24477 Filed 12–21–05; 1:41 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52974; File No. SR–NYSE–2005–88]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Waiver of Initiation Fees Charged to New Lessee Members

December 16, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 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 Exchange. On December 14, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which render the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 301 to waive the initiation fees charged to new lessee members upon lease of an Exchange seat. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com.*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to waive the initiation fees charged to lessee members upon a new lease of an Exchange seat.

Article II, Section 4 of the Exchange's constitution authorizes the Exchange's Board of Directors to impose by rule initiation fees on new lessee members. The Board has established an initiation fee for lessee members by its adoption of Supplementary Material .27 (Payments to be made on day of approval of transfer or lease and payments to be made prior to admission to membership) of Exchange Rule 301. Supplementary Material .27 of Exchange Rule 301 sets initiation fees for leased seats at an amount equal to 5% of the last contracted sale of a seat, subject to minimum and maximum fees of $1,000 and $5,000 respectively. As seat prices

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] *See* Partial Amendment dated December 14, 2005 (''Amendment No. 1''). In Amendment No. 1, the Exchange (i) added information to the purpose section to conform it to the proposed rule text; (ii) made changes to the Exchange's 2005 Price List to conform it to the proposed changes to Exchange Rule 301; (iii) amended the rule text to indicate that the effective date for the waiver is December 13, 2005; and (iv) made technical changes.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

currently exceed $1,000,000, the current initiation fee for lessee members is the $5,000 maximum.

On December 6, 2005, the members of the Exchange and the shareholders of Archipelago Holdings, Inc. (''Archipelago'') voted to approve a merger of the Exchange and Archipelago. It is anticipated that the merger will be consummated in early 2006 upon receipt of approval of the transaction from the Division of Market Regulation. Upon consummation of the merger, the Exchange and Archipelago will each become wholly owned subsidiaries of a new publicly traded company, NYSE Group, Inc., and members of the Exchange will exchange their membership interests for shares of NYSE Group and cash.

The Exchange believes it is appropriate to waive the initiation fees currently charged to lessee members who commence new leases on or after December 13, 2005. The initiation fees were established at a time when it was assumed that most new lessee members would lease a seat for a reasonable period of time and would amortize the cost of the initiation fee over that period. As new leases at this time are likely to have a duration of only a matter of weeks, that will no longer be the case. As such, the Exchange believes that it is equitable to waive the initiation fee at this time.

In addition to amending Exchange Rule 301 in the manner described above, the Exchange is making a corresponding change to page 11 of the Exchange 2005 Price List to indicate that initiation fees will no longer be charged in connection with the commencement of new leases. References in page 11 of the Exchange 2005 Price List to ''transfer fees'' are intended as references to the initiation fees established by Supplementary Material .27 of Exchange Rule 301.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) [6] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[6] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(2) thereunder,[8] because it establishes or changes a due, fee or other charge applicable only to a member.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in further of the purposes of the Act.[10]

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 Number SR–NYSE–2005–88 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–88. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–88 and should be submitted on or before January 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7768 Filed 12–22–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] At the request of the Exchange, the Commission added ''applicable only to a member.'' Telephone conversation between John Carey, Assistant General Counsel, Exchange, and Kim Allen, Special Counsel, Commission, Division of Market Regulation, on December 16, 2005.

[10] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 14, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. *See* 15 U.S.C. 78s(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52969; File No. SR–NYSE–2005–38]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Rules 104 (''Dealings by Specialists'') and 123E (''Specialist Combination Review Policy'') To Change the Exchange's Capital Requirements for Specialist Organizations.

December 16, 2005.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Exchange Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 26, 2005, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

the ''Commission'') a proposed rule change. On November 22, 2005, NYSE amended the proposed rule change, replacing it in its entirety (''Amendment No. 1''). The amended proposed rule change is described in Items I, II, and III below, which have been substantially prepared by the Exchange. 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 New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') hereby proposes amendments to Rules 104 (''Dealings by Specialists'') and 123E (''Specialist Combination Review Policy'') to change the capital requirement of specialist organizations. The text of the proposed rule change is set forth below. Italics indicate additions; brackets indicate deletions.

* * * * *

Rule 104. Dealings by Specialists

(a)–(b) No Change

* * *

Supplementary Material:

Functions of Specialists

.10 through .17 No Change

Capital Requirements of Specialists [(effective June 1, 1971.)]

.20 [Regular s]*S*pecialist[s] *Organizations—Minimum Capital Requirements.—*

[(1) A member registered as a regular specialist at an active post must be able to assume maintain a position of 150 trading units in each common stock in which he is registered.

(2) A member registered as a regular specialist at an active post must be able to assume a position of 30 trading units in each convertible preferred stock, of 1200 shares in each of the 100 share trading unit non-convertible preferred stocks and of 300 shares in each of the 10 share unit non-convertible preferred stocks in which he is registered.

(3) The position which a member registered as a regular specialist at an active post must be able to assume, for each stock in which he is registered that is not included in (1) or (2) above, shall be determined by the Exchange. Such determinations shall be based upon the structure and characteristics of the security and shall be the amount prescribed in (1) or (2) above for the type of stock with the most similar structure and characteristics.

(4) A member registered as a regular specialist at the inactive Post must have, at all times, net liquid assets of at least $150,000.

(5) With respect to any Investment Company Unit (as defined in paragraph 703.16 of the Listed Company Manual) or a Trust Issued Receipt, a member registered as a regular specialist [at an active post] shall maintain net liquid assets equivalent to $500,000 for each such security in which the specialist is registered.]

(1) A specialist organization that is only registered in Exchange Traded Funds shall maintain the greater of $500,000 for each Exchange Traded Fund or $1,000,000.

([6]*2*) [Notwithstanding .30 of this Rule, e] *E*ach [member registered as a regular] specialist *organization* [at an active post] must [be able to] *maintain net liquid assets which shall be the greater of $1,000,000 or the requirements set forth in Rule 104.21, except for those specialist organizations that are only registered in Exchange Traded Funds, as set forth in 104.20(1) above.* [establish that he can meet, with his own net liquid assets, a minimum capital requirement which shall be the greater of $1,000,000 or 25% of the position requirements as set forth in Paragraphs (1), (2) and (3) above, except as determined by the Exchange in unusual circumstances.]

(3) The Division of Member Firm Regulation must be informed immediately by a specialist *organization* [, in each instance, of his inability] *whenever it is unable* to comply with the [provisions] *requirements* set forth in [the above Paragraphs] *Rules 104.20 or .21, as applicable.*

([7]*4*) [For those members registered as a regular specialist subject to the Net Capital Rule (SEA Rule 15c3–1), t] *T*he term ''net liquid assets'' refers to excess net capital computed in accordance with *Rule 15c3–1, promulgated under the Securities Exchange Act of 1934 (the ''Exchange Act'') and* the provisions of *Exchange* Rule 325 (''Capital Requirements'') with the following adjustments:

(i) Additions for haircuts and undue concentration charges *taken pursuant to Section (c)(2)(vi)(M) of Rule 15c3–1* on specialty securities in dealer accounts;

[(ii) Additions for any other haircuts on long positions which are deposited or pledged as collateral for funds borrowed to finance dealer transactions or positions in specialist securities;]

([i]*ii*) Deductions for floor brokerage and/or commissions receivable;

([iv]*iii*) Deductions for clearing organization deposits; and

(*iv*) Deductions for any cash surrender value of life insurance policies allowable under [the Net Capital Rule] *Rule 15c3–1, under the Exchange Act.*

[(8) For members registered as a regular specialist not subject to the Net Capital Rule, ''net liquid assets'' is defined as the excess of cash, net credit balances at clearing broker(s), and readily marketable securities over all liabilities.]

(5) In the event that two or more specialist[s] *organizations* are associated with each other and deal for the same specialist account, the [above] *capital* requirements *enumerated in Rules 104.20 and .21* shall apply to such specialist[s] *organizations* as one unit, rather than to each specialist *organization* individually. *Any joint account must be approved by the Divisions of Market Surveillance and Member Firm Regulation.*

.21 [Concentration Measure] *Specialist Organizations—Additional Capital Requirements.—*

Notwithstanding the provisions of (1) through (5) in Rule 104.20 above, if a regular specialist entity's market share exceeds 5% of any of the following concentration measures:

(1) All listed common stock (current);

(2) The 250 most active listed common stocks (over the previous 12 months);

(3) The total share volume of stock trading on the Exchange (over the previous 12 months); or

(4) The total dollar value of stock trading on the Exchange (over the previous 12 months)

such entity shall maintain net liquid assets equivalent to the following applicable requirements:

(i) $4 million for each specialist security contained in the DJIA;

(ii) $2 million for each specialist security contained in the S&P 100, not contained in (i);

(iii) $1 million for each specialist security contained in the S&P 500, not contained in (i) or (ii);

(iv) $500 thousand for each specialist common stock, excluding bond funds, not contained in (i), (ii) or (iii);

(v) $100 thousand for each specialist security not included in (i) through (iv), excluding warrants.

(vi) $500,000 for each specialist security that is an Investment Company Unit (as defined in paragraph 703.16 of the Listed Company Manual) or a Trust Issued Receipt.]

(1) Each specialist organization subject to Rule 104.21 must maintain minimum net liquid assets equal to:

(i) $1,000,000 for each one tenth of one percent (.1%) of Exchange transaction dollar volume in its

registered securities, exclusive of Exchange Traded Funds, plus $500,000 for each Exchange Traded Fund; and

(ii) A market risk add-on, which shall be calculated as follows:

(a) The specialist organization may use an Exchange-approved value-at-risk (VaR) model to calculate its market risk add-on. The VaR model must have a 99%, one-tailed confidence level with price changes equivalent to a ten business day movement in rates and prices. To calculate the market risk add-on, the specialist organization multiplies the VaR of specialist dealer and related positions by the appropriate multiplication factor, which is set at a minimum of three. The results of quarterly backtesting determine which of the multiplication factors contained in Table 1 of Rule 104.22 a specialist organization must use; or

(b) For those specialist organizations not utilizing VaR or whose models have not been approved by the NYSE, three times the average of the prior twenty business days' securities haircuts on its specialist dealer's positions computed pursuant to Rule 15c3–1(c)(2)(vi), exclusive of paragraph (N), under the Exchange Act.

(2) A specialist organization may apply to the Exchange for authorization to use a VaR model to calculate its market risk add-on, in lieu of calculating the average of the prior twenty business days' capital requirement for securities haircuts under Exchange Act Rule 15c3–1(c)(2)(vi), exclusive of paragraph (N). Once a specialist organization has been granted approval by the Exchange to use a VaR model, it shall continue to compute its net liquid asset market risk add-on using VaR, unless a change is approved upon application to the Exchange. To apply for authorization to use a VaR model pursuant to NYSE Rule 104.21(1)(ii)(a), a specialist must submit in writing the following information to Member Firm Regulation with its application:

(a) A description of the mathematical models to be used to compute its market risk add-on;

(b) A description of the requirements as set forth in Exchange Rule 104.22; and

(c) Any other material the Exchange may request.

(3) Notwithstanding the requirements of Rule 98(b)(vii) (Capital Requirements Met Separately), the specialist organization's net liquid assets needed to meet the requirements in Rules 104.20 and .21 must be dedicated exclusively to specialist dealer activities, and must not be used for any other purpose without the express written consent of the Exchange.

.22 [Combinations of Specialist Entities]*Definitions and Model Approval Process*

[A specialist entity resulting from the merger, consolidation, acquisition, or other combination of specialist assets:

(i) subject to the concentration measure requirements of Rule 104.21, shall maintain net liquid assets in accordance with those provisions, or equivalent to the aggregate net liquid assets of the specialist entities prior to their combination, whichever is greater;

(ii) not subject to the concentration measure requirements of Rule 104.21, shall maintain net liquid assets according to the provisions of Rule 104.20, or equivalent to the aggregate net liquid assets of the specialist entities prior to their combination, whichever is greater.]

(1) For purposes of this Rule 104, specialist organizations must define the term ''Exchange transaction dollar volume'' consistent with the most recent Statistical Data, calculated and provided by the NYSE on a monthly basis.

(2) For a specialist organization's VaR model to be approved, it must meet the following minimum qualitative and quantitative requirements:

(a) Qualitative Requirements.

(i) The VaR model used to calculate the market risk add-on for a position, along with a system of internal risk management controls to assist the specialist organization in managing the risks associated with its business activities, must be integrated into the daily internal risk management system of the specialist organization;

(ii) The VaR model must be reviewed both periodically and annually by qualified independent member organization personnel or a qualified third party; and

(iii) For purposes of computing the market risk add-on, the specialist organization must determine the appropriate multiplication factor as follows:

(A) As soon as possible, but no later than three months after the specialist organization begins using the VaR model to calculate their market risk add-on, the specialist organization must conduct backtesting of the model by comparing its actual daily net trading profit or loss with the corresponding VaR measure generated by the VaR model, using a 99 percent, one-tailed confidence level with price changes equivalent to a one business day movement in rates and prices, for each of the past 250 business days, or other period as may be appropriate for the first year of its use;

(B) On the last business day of each quarter, the specialist organization must identify the number of backtesting exceptions of the VaR model, that is, the number of business days in the past 250 business days, or other period as may be appropriate for the first year of its use, for which the actual net trading loss, if any, exceeds the corresponding VaR measure; and

(C) The specialist organization must use the multiplication factor indicated in Table 1 below in determining its market risk add-on until it obtains the next quarter's backtesting results;

Table 1.—Multiplication Factor Based on the Number of Backtesting Exceptions of the VaR Model

Number of exceptions	Multiplication factor
4 or fewer	3.00
5	3.40
6	3.50
7	3.65
8	3.75
9	3.85
10 or more	4.00

(iv) For purposes of incorporating specific risk into a VaR model, a specialist organization must demonstrate that it has methodologies in place to capture liquidity, event, and default risk adequately for each position. Furthermore, the models used to calculate deductions for specific risk must:

(A) Explain the historical price variation in the portfolio;

(B) Capture concentration (magnitude and changes in composition);

(C) Be robust to an adverse environment; and

(D) Be validated through backtesting.

(b) Quantitative Requirements.

(i) For purposes of determining market risk add-on, the VaR model must use a 99 percent, one-tailed confidence level with price changes equivalent to a ten-business day movement in rates and prices;

(ii) The VaR model must use an effective historical observation period of at least one year. The specialist organization must consider the effects of market stress in its construction of the model. Historical data sets must be updated at least monthly and reassessed whenever market prices or volatilities change significantly; and

(iii) The VaR model must take into account and incorporate all significant, identifiable market risk factors applicable to positions in the accounts of the specialist organization, including:

(A) Risks arising from the non-linear price characteristics of derivatives and the sensitivity of the market value of those positions to changes in the volatility of the derivatives' underlying rates and prices;

(B) Empirical correlations with and across risk factors or, alternatively, risk factors sufficient to cover all the market risk inherent in the positions in the dealer accounts of the specialist organization; and

(C) Specific risk for individual positions.

.23 Maintaining a Fair and Orderly Market.—

Solely for the purpose of maintaining a fair and orderly market, the Exchange may, for a period not to exceed 5 business days, allow a specialist entity to continue to operate despite such specialist entity's non-compliance with the provisions of Rules 104.2[1]*0* [and] *or* 104.2[2]*1*.

.24 Relief specialists.—

(1) The requirements with respect to a member registered as a full time relief specialist, i.e., one who may be called upon to act as a relief specialist for an entire business day, shall be, net liquid assets of $150,000. [or a joint account with the regular specialist in the stock. Any joint account must be approved by Regulation & Surveillance.]

(2) There is no requirement with respect to a member registered as a part-time relief specialist, i.e., one who may be called upon to act as a relief specialist for less than the entire business day, usually for lunch periods, etc. Dealings effected by a part-time relief specialist while relieving the regular specialist must be made for the account of the regular specialist whom he is relieving.

[Specialists may meet the above requirements either with their own capital or by availing themselves of the financing privileges provided by § 220.04(g) of Regulation T or § 221.3(o) of Regulation U of the Board of Directors of the Federal Reserve System ¶ 8121, 8218 which are explained at .30, below.]

[.30 Financing of specialists.—Under § 220.04(g) of Regulation T and § 221.3(o) Regulation U of the Board of Directors of the Federal Reserve System ¶ 8121, 8218, a member may have his transactions as a specialist financed on a basis which is mutually satisfactory to the specialist and the creditor. He may finance such transactions by borrowing from a bank on terms which are mutually agreeable; he may have a member organization finance such transactions in a special account on a margin basis which is mutually satisfactory to the specialist and the carrying organization; or he may have a joint account with the carrying organization for the purpose of having his specialist transactions financed on a margin basis which is mutually satisfactory.]

[Each specialist who makes such an arrangement must inform The Market Surveillance Division of the name of the creditor and the terms of the arrangement. The Market Surveillance Division must be informed immediately by telephone of the intention: (1) To terminate or change an existing financing arrangement (confirmed subsequently in writing); or (2) to issue a margin call. (This Rule does not in any manner alter a member's notification requirements to Regulation & Surveillance.) The specialist is required to submit to that Department on Form SPC (see .40 below) an initial report at such time as the arrangement becomes operative, and monthly reports thereafter.]

[.40 Reports on Form SPC.—Each specialist who arranges to have his specialist transactions carried by a member organization on a margin basis lower than that required by the Board of Directors of the Federal Reserve System for regular margin accounts, must file with The Market Surveillance Division a report of Form SPC, (1) as of the first date that such arrangement becomes operative, i.e., when the margin in the specialist's account first fails to meet the requirements of the Board of Directors of the Federal Reserve System for regular margin accounts, (2) as of the date previous to the first date that the arrangement becomes operative, and (3) monthly thereafter, as of the last ledger date of the month, including the month in which the arrangement first becomes operative.

Similar reports must be filed by each specialist who, for the purpose of financing his transactions as a specialist, arranges with a bank to have a loan value extended to him in an amount greater than that permitted for the financing of his non-specialist transactions.

General Instructions

The report of a joint account may be prepared and forwarded by any participant. Forms may be obtained from Market Surveillance Division. Reports should be filed with that Department as promptly as possible after the ledger date as of which the report is prepared.

Specific Instructions

For specific instruction see the reverse side of Form SPC.]

[.50 Income records.—Each specialist and specialist organization shall submit, for the confidential use of the Exchange, such information relating to his or its specialty business as may be requested by the Exchange.

Each specialist and specialist organization shall keep its records showing the data set forth below so that they will be readily available when the Exchange requests them for its confidential use for the purpose of surveillance and study of specialists' operations:

(i) total ''actual'' commission income earned in all specialty stock;

(ii) share volume executed as agent by specialty stock; and

(iii) dealer profit and loss by specialty stock.

Dealer profit and loss data must reflect, by specialty stock, any gain or loss occurring within an investment account.]

* * *

Rule 123E. Specialist Combination Review Policy

(a)—(e) No Change

(f) [Proponents of a] *A* specialist unit combination subject to review by either the Quality of Markets Committee or the Market Performance Committee under this policy must [agree that] *result in:*

(i) [the] total [amount of] capital [which each unit had separately prior to the proposed combination shall not be reduced, regardless of whether it would exceed the combined unit's new capital requirement] *of the combined unit meeting, at a minimum: (a) the requirements of Rules 104.20–104.21, (b) be acceptable to the Exchange, and (c) the combined unit's capital requirement may be temporarily revised at the discretion of the Exchange;* and

(ii) all required specialist capital be accounted for separately from any other capital, and be used solely for the specialist business.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Exchange specialist organizations must maintain net liquid assets as required by NYSE Rule 104, and in addition, must satisfy the net capital requirements prescribed in Rule 15c3–1,[4] promulgated under the Securities Exchange Act of 1934 (the ''Exchange Act'').[5] NYSE Rule 325 requires members and member organizations to comply with Exchange Act Rule 15c3–1 and also requires notification to the Exchange whenever tentative net capital has declined below defined levels. In addition, Rule 325 gives the Exchange the authority, at any time, to prescribe greater net capital or net worth requirements than those explicitly prescribed by the rule, or to require more stringent treatment of items when computing net capital, net worth and, by implication, net liquid assets. Further, the NYSE can restrict the business activities of specialist organizations consistent with good business practices and its obligation to maintain a fair and orderly market. Such restrictions may include prohibitions against business expansion and business reduction requirements.

The Exchange proposes to amend Rules 104 and 123E to change the capital requirement of specialist organizations. The Exchange believes that if the proposed amendments are adopted, Rule 104 would more accurately address market risks and volatility. Further, the changes to Rule 123E would eliminate the ''marriage penalty'' capital requirement for specialist organization combinations.

(i) Difference Between Net Capital and Net Liquid Assets. According to the Exchange, ''Net capital'' is a regulatory measure of the prudent level of liquid assets required for a broker-dealer.

However, the Exchange contends that the term ''net liquid assets'' refers to liquidity in the form of cash and cash equivalents that is immediately available (or within twenty four hours) to a specialist organization for the continuing purchase and sale of securities in which a specialist is registered, in support of the specialist book, and market maintenance. The Exchange believes that net liquid assets are a shorter-term form of liquidity that is meant to be available to the specialist organization pursuant to its daily activities of maintaining a fair and orderly market on the Exchange.

The Exchange believes that specialist organizations' unique liquidity needs dictate the general form of the net liquid asset requirement. Further, the Exchange believes that it is important for all specialist organizations and market participants to know that specialists have sufficient liquidity to support the specialist book and market maintenance activities. Therefore, the Exchange contends that a specialist organization's net liquid asset requirement functions to ensure that the specialist continues to operate; whereas a broker-dealer's net capital requirement functions to ensure that, if the broker-dealer were liquidated, the broker-dealer's obligations to its customers and creditors would be satisfied.

(ii) *Background. (a) Position-Based Capital Requirements (Rule 104.20).* Exchange Rule 104.20 (''Regular Specialists'') sets position requirements a specialist organization must be able to assume in each stock that it is allocated. For each Investment Company Unit or Trust Issued Receipt for which a specialist organization is registered, it must maintain net liquid assets equivalent to $500,000. The rule also sets a minimum capital requirement, which is the greater of $1,000,000 or 25% of the current position requirements.

(b) *Concentration Requirements (Rule 104.21).* Specialist organizations are also subject to NYSE Rule 104.21 (''Concentration Measure Requirements'') if a specialist organization's market share exceeds 5% of certain ''concentration measures.''[6]

Further, a specialist organization must maintain the following net liquid assets: (i) $4 million for each specialist security contained in the Dow Jones Industrial Average; (ii) $2 million for each specialist security contained in the S&P 100, not contained in (i); (iii) $1 million for each specialist security contained in the S&P 500, not contained in (i) or (ii); (iv) $500,000 for each specialist common stock, Investment Company Unit (including Exchange Traded Funds) or a Trust Issued Receipt, excluding bond funds, not contained in (i), (ii) or (iii); and (v) $100,000 for each specialist security not included in (i) through (iv), excluding warrants.

(c) *Combinations of Specialist Entities (Rule 104.22).* When two or more specialist organizations combine as the result of a merger, consolidation, acquisition or other combination of assets, NYSE Rule 104.22 (''Combinations of Specialists Entities''), commonly referred to as the ''marriage penalty,'' generally requires the maintenance of:

(a) net liquid assets in accordance with Rule 104.21, or equivalent to the aggregate net liquid assets of the respective specialist entities prior to their combination, whichever is greater; or

(b) for those combinations not subject to Rule 104.21, net liquid assets pursuant to Rule 104.20, or the equivalent of the aggregate net liquid assets of the respective specialist entities prior to their combination, whichever is greater.

(d) *Specialist Combination Review Policy (Rule 123E(f)(i)).* Exchange Rule 123E(f) currently requires proponents of a specialist unit combination to agree that: (i) The total amount of capital which each unit had separately prior to the proposed combination shall not be reduced regardless of whether it would exceed the combined unit's new capital requirement; and (ii) all required specialist capital be accounted for separately from any other capital and be used solely for the specialist business.

NYSE Rule 123E(f)(i) applies a ''marriage penalty,'' similar to that set forth in Exchange Rule 104.22, to a combination of specialist organizations by requiring a higher capital requirement of the combined unit, rather than allowing a possible reduction of capital, in line with the new combined specialist organization's capital requirement. Rule 123E(f)(i) does not recognize the benefits derived from such combinations, nor does it compensate for excess capital that may have been in each specialist organization prior to the merger.

(iii) *Issues/Concerns With the Current Capital Requirements.* In mid December 1987—soon after the 1987 major stock market correction—there were 55 specialist organizations on the Floor of the Exchange. By the year 2000, when Exchange Rule 104.22 was adopted, those specialist organizations had merged, consolidated, acquired or combined to reduce that number to 25. By April 2005, further consolidation had reduced the number of specialist organizations to seven.[7]

[4] 17 CFR 240.15c3–1.

[5] 15 U.S.C. 78a *et seq.*

[6] (1) All listed common stock; (2) The 250 most active listed common stocks (over the previous twelve months); (3) Total share volume of stock trading on the Exchange (over the previous twelve months); or (4) Total dollar value of stock trading on the Exchange (over the previous twelve months).

[7] Because of the marriage penalty the capital requirements for the remaining seven specalist organizations represent the combined amount of capital requirements of the 25 specialist organizations that since 2000 were merged, consolidated, acquired or combined. The Exchange believes that the current capital requirement does

Continued

The Exchange believes that the position-based requirement methodology set forth in NYSE Rule 104.20 is no longer appropriate in a marketplace where there are seven specialist organizations with sizeable capital bases and sophisticated risk management systems. The Exchange contends that concentration requirements set forth currently in Exchange Rule 104.21 significantly increase specialist organizations' capital requirements: However, there is no gradual increase in the requirement. Once a specialist organization's market share exceeds 5% of any of the concentration measures they immediately are subject to the rule. The Exchange believes that this creates an unintended disincentive for a specialist organization to increase its market share.

The marriage penalty imposed by Rules 104.22 and 123E(f)(i) effectively subjects specialist organizations that have merged to the combined net liquid asset requirements of the two entities, although the Exchange contends that the incremental risk assumed may not be commensurate with the amount of net liquid assets required to be maintained. The Exchange believes that the current net liquid assets requirement for such specialist organizations is based neither upon the amount of risk a specialist organization is taking, nor upon the dollar value or volatility of its portfolio.

(iv) *Proposed Amendments.* The Exchange is proposing that NYSE Rule 104.20 (to be re-titled ''Specialist Organizations—Minimum Capital Requirements'') be amended to adopt risk-based requirements in lieu of the outdated and irrelevant position requirements, with the exception of Exchange Traded Funds (''ETFs''). For ETFs, the Exchange is proposing to amend Rule 104.20 to clarify that specialist organizations that are registered solely in ETFs maintain the greater of $500,000 for each ETF or $1,000,000.

Proposed amendments to NYSE Rule 104.21 (to be re-titled ''Specialist Organizations—Additional Capital Requirements'') would require a specialist organization to meet, with its own net liquid assets, a minimum capital requirement equal to:

(i) $1,000,000 for each one tenth of one percent (.1%) of Exchange transaction dollar volume in its specialty securities, plus $500,000 for each Exchange Traded Fund; and

(ii) A market risk add-on, which is calculated as either:

(a) An Exchange-approved value-at-risk (VaR) [8] model to calculate its requirement for market risk; or

(b) For those not utilizing VaR or whose models have not been approved by the NYSE, three times the average of the prior twenty business day's securities haircuts on its specialist dealer's positions.

The Exchange believes this proposal utilizes the more generally recognized and, effective risk measurement tools employed by financial services firms, and increasingly by the Commission with particular respect to larger organizations, such as Consolidated Supervised Entities (''CSE''),[9] whose financial impact upon the market is significant.

The Exchange is proposing definitions and guidelines for the model approval process in proposed Rule 104.22 (to be re-titled ''Definitions and Model Approval Process''). The model approval process is designed after the SEC's rules for consolidated supervised entities and includes qualitative and quantitative requirements for a specialist organization's VaR model. Some of these requirements include: (1) the VaR model must be integrated into the specialist organization's internal risk management system; (2) the VaR model must be reviewed both periodically and annually; and (3) methodologies to capture liquidity, event and default risk adequately for each position.

Specialists' internal risk management systems must generally be consistent with standards outlined in the Commission's CSE rules, particularly SEA Rule 15c3–4. Once a specialist organization has been granted approval by the Exchange to use a VaR model, it may continue to compute its net liquid asset requirement using VaR, unless a change is approved upon application to the Exchange. The Exchange will, from time to time, revisit and examine approved net liquid asset models and may, for good cause and consistent with standards set forth in the Commission's CSE rules, increase or decrease the market risk add-on requirement. The Exchange will provide prompt subsequent notice to the Commission of any such adjustments.

The Exchange is proposing to add a section requiring that a specialist organization's net liquid assets needed to meet the requirements in NYSE Rules 104.20 and .21 must be dedicated exclusively to specialist dealer activities, and must not be used for any other purpose without the express written consent of the Exchange. This is currently required under Rule 123(f)(ii) when specialist organizations combine, and the Exchange believes it should be expanded to all specialist organizations' required net liquid assets.

The Exchange is proposing to eliminate the marriage penalty of NYSE Rule 104.22 in its entirety. With a net liquid assets requirement based upon a specialist organization's traded volume on the Floor of the Exchange combined with an add-on for market risk requirement, the Exchange believes that it is not appropriate or necessary to arbitrarily increase a specialist organization's requirement when it combines with another.

The Exchange is also proposing to eliminate the marriage penalty of NYSE Rule 123E(f)(i) by requiring the specialist organization to maintain net liquid assets in accordance with the specialist capital requirements of Exchange Rule 104.20 to .21, and granting the Exchange discretion to temporarily revise the combined unit's requirements.

The Exchange is also proposing to delete specialist organization financing sections 104.30 (''Financing of Specialists''), 104.40 (''Reports on Form SPC'') and 104.50 (''Income Records''). The deletion of Rule 104.30 is proposed to reflect the current reality that net liquid asset requirements must be met from specialists' own books and records and not from an account carried by a third party. The deletion of Rule 104.30 would render Rule 104.40 irrelevant. The recordkeeping requirements of Rule 104.50 have been rendered irrelevant in light of NYSE Rule 440 (''Books and Records'') which incorporates, by reference, Securities and Exchange Act Rules 17a–3 and 17a–4.

Finally, the filing includes several minor technical amendments to the rules for purposes of clarity and consistency.

(v) Discussion. The Exchange believes that current net liquid asset requirements impose excessively high capital requirements on specialists that are not based upon the amount of risk

not recognize the benefits derived from such consolidation.

[8] The Exchange believes that value-at-risk is a generally accepted method of measuring risk for financial organizations and notes that it is primarily used to establish trading limits and to stress test models and limits. It uses standard statistical techniques to design trading strategies and to correlate past risks with future risks to set trading limimts and thereby to minimize potential losses. Value-at-risk models assess market risk based on the probability distribution for a portfolio's market value.

[9] *See* Exchange Act Rule 15c3–1(c)(15) which, as part of the SEC's Consolidated Supervised Entity (''CSE'') rules, establishes a voluntary method of computing net capital for large broker-dealers that are part of a CSE. Eligibility to use the alternative/CSE method is conditioned upon a broker-dealer's compliance with several requirements, including comprehensive internal risk management procedures that address the firm's market, credit, liquidity and operations risk.

a specialist takes or the volatility of its portfolio. As a result, the Exchange believes that the rules impose unjustified costs on existing specialists and discourage new entrants to the market. The Exchange contends that under this proposal, current rules based on classes of allocated securities and capital penalties for mergers among specialists would be replaced by rules that focus on market stress and volatility, and market share measured by total dollar volume traded. The Exchange further contends that the new rules may encourage new specialist organizations to begin operations on the Floor of the Exchange.

(a) Correlation Between Specialist Organization Inventory Positions and the Market. The Exchange contends that changes in specialist organizations' inventory positions are highly correlated to changes in price movements in the broader market. They base their conclusion on data, compiled from September 1998 through October 2004, that compares aggregate long and short specialist position data with market movements, as represented by the S&P 500.[10] The Exchange found that, on average, specialist organizations bought $75 million of securities for each 1% decline in prices and sold $75 million in securities for each 1% increase in prices. The greatest price decline in one day over this six year period was 6.2% on the S&P 500, which occurred on April 14, 2000. Total specialist net liquid assets decreased $16 million as a result of this market move.

(b) Worst-Case Market Risk Scenario for Specialist Organizations. Utilizing the historical worst-case scenario,[11] and assuming specialist organizations open the trading day with a $100 million net long position and incur a non-stop 30% market decline, the Exchange determined that a cumulative loss of $377 million would result (assuming specialist organizations' purchases of $75 million for each 1% decline in the market). Consequently, the Exchange believes that if specialist organizations started with $1.1 billion of net liquid assets, they should have sufficient capital and liquidity during normal markets and be able to withstand worst case market shocks without interruption to their businesses. The Exchange believes that the remaining net liquid assets of $723 million provides buying power[12] of $2.9 billion, which should provide adequate liquidity in a normal market.[13]

(c) Market Risk/Net Liquid Asset Requirements. Therefore, based on the above analysis, the Exchange believes that maintaining a minimum of approximately $1.1 billion of net liquid assets across all specialist organizations would provide a prudent level of capitalization for normal business operations with sufficient reserve in the event of severe shocks to the market. The Exchange intends to reassess this proposed requirement annually based upon market volatility as well as the dollar volume of total shares traded by all specialist organizations to determine its continuing adequacy.

The Exchange contends that this proposal also encompasses a methodology whereby a specialist organization's risk measurement system is considered in determining required capital standards. In order to use a VaR model to calculate the specialist organization's net liquid asset requirement, the specialist must incorporate the VaR methodology into its risk management practices. The Exchange will be required to evaluate those risk management practices at specialist organizations, including a review of each firm's infrastructure for monitoring and controlling market risk, before they will be allowed to utilize VaR model requirements.

As the proposal is based on dollar volumes traded and average inventory positions, as well as average haircuts, the Exchange believes it does not unduly penalize a specialist organization for taking on larger positions in adverse market conditions. The Exchange believes that utilizing value-at-risk modeling as a component of the net liquid asset requirement creates an incentive for specialist organizations to develop state of the art risk measurement systems, as well as hedge their positions, thereby limiting potential losses.

d. Financing of Specialists. Under current Rule 104.30, specialist organizations can finance their transactions pursuant to Regulations T and U of the Federal Reserve System. Pursuant to the section, a specialist organization must notify the Market Surveillance Department of the name of the creditor and the terms of the arrangement. The Exchange proposes to delete the section in its entirety since it is no longer relevant as specialist organizations can currently arrange for credit under other existing Exchange rules.

e. Reports on Form SPC. Under current Rule 104.40, specialist organizations that finance their transactions on a margin basis lower than that required by the Federal Reserve for regular margin accounts, must file Form SPC with the Market Surveillance Department. Similar reports must be filed by specialist organizations that arrange for a bank to have a loan value extended to the non-specialist organization in an amount greater than that permitted for the financing of the non-specialist transactions. The Exchange purposes to delete the section in its entirety as it would no longer be applicable in the absence of Rule 104.30.

f. Income Records. Under current Rule 104.50, specialist organizations must keep and produce, at the request of the Exchange, information on commission income, share volume, and dealer profit and loss. The Exchange proposes to delete the section in its entirety as it is no longer applicable with the adoption of Rule 440 (Books and Records), which incorporates by reference Rules 17a–3 and 17a–4, under the Exchange Act.

2. Statutory Basis

The statutory basis for this proposed rule change is section 6(b)(5)[14] of the Exchange Act. The proposed amendments to Exchange Rules 104 and 123E are consistent with the requirements of section 6(b)(5), which requires that the rules of the Exchange must be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest. The proposed amendments are consistent

[10] The NYSE performed an analysis of specialist risk exposure in volatile trading scenarios over a period of years with its member specialist organizations, including simulations of how specialist capital levels would fare if faced with extremely volatile situations similar to the October 19, 1987 market correction, and other ''worst case'' consecutive day price declines.

[11] A prime example of a worst-case scenario is the consecutive day declines that occurred in October 1987 when the DJIA dropped 31% and the S&P lost 29%. On October 16, 1987, 55 NYSE specialist organizations had net liquid assets totaling $808 million. These assets dropped by $196 million to $612 million at the close on October 19, 1987. Buying power decreased from $2.3 billion to $1.1 billion. One half of this buying power was concentrated in eight specialist organizations. Twenty-three specialist organizations had less than $5 million of buying power and thirteen specialist organizations had no buying power. In comparison, the 1929 crash resulted in a four consecutive day decline in the DJIA of 16%.

[12] Buying power is the total market value of securities in which a specialist is registered that can be purchased and/or sold on margin by the specialist organization, without depositing additional funds into the specialist organization's dealer account carried by another broker-dealer.

[13] In such a scenario, the Exchange would have the flexibility under Exchange Rules 325 and 326 to prescribe greater net capital or net worth requirements, and/or restricting a specialist organization's business activities.

[14] 15 U.S.C. 78f(b)(5).

with the Section in that they encompass a methodology whereby risk management is considered in determining required capital standards—similar to recent Commission amendments to Exchange Act Rule 15c3–1 regarding the alternative method for computing net capital for broker-dealers that are part of a consolidated supervised entity.[15]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange 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 will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–38 on the subject line.

Paper Comments

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. All submissions should refer to File Number SR–NYSE–2005–38.

To help the Commission process and review your comments more efficiently, please use only one method.

The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File Number SR–NYSE–2005–38 and should be submitted on or before January 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7769 Filed 12–22–05; 8:45 am]

BILLING CODE 8010–01–P

[15] *See* Release No. 34–49830 (S7–21–03).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5254]

Culturally Significant Objects Imported for Exhibition Determinations: ''Edvard Munch: The Modern Life of the Soul''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Edvard Munch: The Modern Life of the Soul'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, from on or about February 19, 2006, until on or about May 8, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 18, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E5–7791 Filed 12–22–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charger (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In August 2005, there were 14 applications approved. This notice also includes information on two applications, one approved in April 2005 and the other in July 2005, inadvertently left off the April 2005 and July 2005 notices, respectively. Additionally, 22 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Monroe County Board of Commissioners, Key West, Florida.

Application Number: 05–09–C–00–EYW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $361,645.

Earliest Charge Effective Date: October 1, 2005.

Estimated Charge Expiration Date: November 1, 2005.

Classes of Air Carriers Not Required to Collect PFC's: (1) Air taxi/commercial operators filing FAA Form 1800–31; and (2) commuters or small certificated air carriers filing Department of Transportation Form 298C–T1 or E1.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Key West International Airport (EYW).

Brief Description of Projects Approved for Collection at EYW:

New terminal complex development (phase III).

Runway 9/27 safety area development (phase III).

Brief Description of Projects Approved for Collection EYW and Use at EYW:

PFC application.

Noise improvement program phase 5 design and development.

Security perimeter fencing (phase II).

Approach clearing runway 9/27.

Brief Description of Projects Approved for Collection at EYW and Use at Marathon Airport:

T-Hangar taxilanes (phase II) including taxiway A extension.

Rehabilitate terminal canopy (phase II).

Relocate wind sock/segmented circle.

Generator for rotating beacon.

Decision Date: April 5, 2005.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Orlando Airports District Office, (407) 812–6331.

Public Agency: Missoula County Airport Authority, Missoula, Montana.

Application Number: 05–05–C–00–MSO.

Application Type: Impose and use a PFC.

Total PFC Revenue Approved in This Decision: $2,339,144.

PFC Level: $4.50.

Earliest Charge Effective Date: October 1, 2005.

Estimated Charge Expiration Date: June 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: Air tax/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Missoula International Airport.

Brief Description of Projects Approved for Collection and Use:

Rehabilitation of taxiways D, G, and F.

Passenger loading bridges.

Aircraft rescue and firefighting vehicle.

Extend taxiway A.

Airfield snow removal equipment.

Airport planning study.

Construct access taxiway.

Security enhancements.

Decision Date: July 22, 2005.

FOR FURTHER INFORMATION CONTACT: David S. Stelling, Helena Airports District Office, (406) 449–5271.

Public Agency: Board of Trustees, University of Illinois, Savoy, Illinois.

Application Number: 05–03–C–00–CMI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,135,160.

Earliest Charge Effective Date: October 1, 2005.

Estimated Charge Expiration Date: July 1, 2009.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at University of Illinois—Willard Airport.

Brief Description of Projects Approved for Collection and Use:

Air carrier apron rehabilitation study.

Terminal road access rehabilitation.

Rehabilitate air carrier apron (phase 1).

PFC program development.

Replace visual approach slope indicators with precision approach path indicators.

Acquisition/installation of new terminal doorways.

Replacement loading bridge for regional jets.

Modification of existing loading bridges.

Acquire snow removal rotary broom.

New sand and deicing material cold storage building.

Rehabilitate air carrier apron (phase 2).

Decision Date: August 3, 2005.

FOR FURTHER INFORMATION CONTACT: Gary Wilson, Chicago Airports District Office, (847) 294–7631.

Public Agency: Kenton County Airport Board, Covington, Kentucky.

Application Number: 05–09–C–00–CVG.

Application Type: Impose and use a PFC.

Total PFC Revenue Approved in This Decision: $47,226,928.

PFC Level: $3.00.

Earliest Charge Effective Date: January 1, 2009.

Estimated Charge Expiration Date: October 1, 2010.

Classes of Air Carriers Not Required to Collect PFC's: (1) Part 121 supplemental operators which operate at the airport without an operating agreement and enplane less than 1,500 passengers per year; and (2) Part 135 on-demand air taxis, both fixed wing and rotary.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Cincinnati/Northern Kentucky International Airport.

Brief Description of Projects Approved for Collection and Use: Extend terminal access/service road from Donaldson Road to Hossman Road.

Snow equipment replacements.

Deicing trucks (two).

Crash truck.

Quick response truck.

Kentucky Route 212 interchange improvements—planning/design.

Airport security master plan projects.

Sound insulation of schools and churches.

Upgrade runway 18R and 18L instrument landing system to category II.

Upgrade terminal 3 and concourse A, B, and C paging/sound systems.

Terminal 1 and concourse redevelopment project—planning/design.

Deicing enhancements.

Terminal 2 improvements.

Surface movement guidance and control system.

Driver's training simulator.

Closed circuit television digital recording system upgrade.

Runway 9/27 rehabilitation.

Runway 18R/36L rehabilitation.

Security screening building for concourse C—planning and preliminary design.

Apron/taxi lane pavement rehabilitation.

Identification electronic fingerprinting equipment and required identification department building modifications.

Decision Date: August 3, 2005.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Memphis Airports District Office, (901) 322–8184.

Public Agency: City of Fayetteville, North Carolina.

Application Number: 05–03–C–00–FAY.

Application Type: Impose and use a PFC.

Total PFC Revenue Approved in This Decision: $835,286.

PFC Level: $3.00.

Earliest Charge Effective Date: October 1, 2005.

Estimated Charge Expiration Date: February 1, 2006.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Terminal loop roadway (design/construction).

Obstruction removal (design/construction).

Master plan.

Snow plows.

Handicap lift device.

Fire training facility evaluation/study.

Storm water management evaluation/study.

PFC application (original program).

PFC application (program 2).

Terminal roof replacement.

Runway crack repair and paint.

Pavement condition index study.

Airport beacon replacement.

Jet bridge modifications (gates B–2 and B–4) for regional jets.

Runway 4/22 rehabilitation design.

Generator/vault upgrade.

Aircraft rescue and firefighting expansion.

Runway 4/22 rehabilitation—construction.

Replacement jet bridge for B4.

Rehabilitate airfield lighting.

Pavement rehabilitation (per pavement condition index study).

Pave aircraft rescue and firefighting and surveillance road.

Fire training facility upgrade.

Security cameras system.

Replace aircraft rescue and firefighting vehicle.

PFC program consulting.

Brief Description of Projects Approved for Collection:

Widen taxiway A.

South general aviation ramp overlay/expansion.

Runway 4/22 hold pads.

Brief Description of Projects Disapproved: FAA certification exhibits.

Determination: Project does not meet the definition of eligible planning or development per § 158.15(b).

Airport operations vehicle.

Determination: Project does not meet the requirements of § 158.15(b)(1).

Storm water improvement project.

Determination: The FAA has not made a final environmental determination for this project. Therefore, the project does not meet the requirements of § 158.30(c)(1)(ii).

Runway 10/28 rehabilitation design.

Runway 10/28 rehabilitation—construction.

Determination: The projects do not meet Airport Improvement Program (AIP) eligibility requirements in accordance with paragraph 521(c) of FAA Order 5100.38B, Change 2, AIP Handbook (May 16, 2005). The FAA has determined that the primary runway provides recommended wind coverage and the secondary runway is not required for operational need.

Taxiway A extension.

Determination: The project is not shown on the currently approved airport layout plan. Therefore, the project does not meet the requirements of § 158.30(c)(1)(ii).

North general aviation ramp overlay (lower area).

Determination: The project description is very similar to a project approved in the FAA's 00–01–C–00–FAY Record of Decision. There is not enough information in the notice of intent to determine if this is a different project.

Decision Date: August 9, 2005.

FOR FURTHER INFORMATION CONTACT: Scott L. Seritt, Atlanta Airports District Office, (404) 305–7150.

Public Agency: Bradford Regional Airport Authority, Lewis Run, Pennsylvania.

Application Number: 05–04–U–00–BFD.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue to be Used in This Decision: $46,801.

Charge Effective Date: May 1, 2003.

Estimated Charge Expiration Date: April 1, 2011.

Class of Air Carriers Not Required to Collect PFC'S: No change from previous decision.

Brief Description of Projects Approved for Use:

Rehabilitate access road.

Land acquisition/obstruction removal.

Runway 32 safety area, phase II.

Decision Date: August 9, 2005.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office (717) 730–2835.

Public Agency: Broome County Department of Aviation, Johnson City, New York.

Application Number: 05–08–C–00–BGM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue to be Used in This Decision: $1,078,421.

Earliest Charge Effective Date: December 1, 2005.

Estimated Charge Expiration Date: February 1, 2008.

Class of Air Carriers Not Required to Collect PFC'S: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Greater Binghamton Airport.

Brief Description of Projects Approved for Collection and Use:

Taxiway rehabilitation (construction).

PFC administrative (2006–2010) cost reimbursement.

Purchase snow removal equipment.

Runway 10/28 safety area improvements.

Airport entrance road improvements.

Airport master plan update.

Airport service road improvements.

Decision Date: August 10, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Levine, New York Airports District Office, (516) 227–3807.

Public Agency: Monroe County Board of Commissioners, Key West, Florida.

Application Number: 05–10–C–00–EYW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $48,810,445.

Earliest Charge Effective Date: November 1, 2005.

Estimated Charge Expiration Date: November 1, 2037.

Classes of Air Carriers Not Required to Collect PFC'S: (1) Air taxi/commercial operators filing FAA Form 1800–31; and (2) commuters or small certificated air carriers filing Department of Transportation Form 298C–T1 or E1.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Key West International Airport.

Brief Description of Projects Approved for Collection:

New passenger terminal building.

Terminal roadway and ramps.

Brief Description of Projects Approved for Collection and Use:

Land acquisition, runway protection zone runway 27.

PFC application development.
PFC program administration.
Decision Date: August 12, 2005.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Orlando Airports District Office, (407) 812–6331.

Public Agency: Capital Region Airport Authority, Lansing, Michigan.
Application Number: 05–05–C–00–ALLAN.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $23,838,563.
Earliest Charge Effective Date: July 1, 2008.
Estimated Charge Expiration Date: February 1, 2022.
Class of Air Carriers not Required to Collect PFC'S: Nonscheduled Part 135 and air taxi operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Capital City Airport.
Brief Description of Projects Approved for Collection and Use:
1992 debt service terminal bond debt.
Extend runway 10R/28L to 8,500 feet.
Land/building acquisition.
Mill/resurface.
Expand hold room and construct vestibules.
Acquire/ install/ relocate/ rehabilitate loading bridges.
Runway safety area 6/24 and west service road.
Environmental assessment and preliminary engineering, runway 10R/28L extension.
Construct taxiway and rehabilitate terminal.
Snow removal equipment storage building expansion concepts and design.
Snow removal equipment.
Redirect glycol disposal outlet.
Reconstruct aircraft rescue and firefighting/fuel access road.
Replace lighting system on runway 6/24.
Taxiway G mill and overlay.
Construct taxiway to east ramp.
Pavement management plan update.
Expand freight ramp.
Reconstruct T-Hangar taxi streets.
Decision Date: August 12, 2005.

FOR FURTHER INFORMATION CONTACT: Jason K. Watt, Detroit Airports District Office, (734) 229–2906.

Public Agency: City of Des Moines, Iowa.
Application Number: 050–09–C–00–DSM.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $10,577.162.
Earliest Charge Effective Date: January 1, 2012.
Estimated Charge Expiration Date: August 1, 2015.
Class of air Carriers Not Required to Collect PFC'S: Part 135 air taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Des Moines International Airport.
Brief Description of Projects Approved for Collection and Use:
Airport access control system.
Runway 31 category II centerline lights.
Construct runway 5/23 extension.
Extend taxiway P.
Noise compatibility program.
Runway/taxiway signage.
Terminal apron reconstruction.
South cargo ramp extension.
Southeast service road relocation.
Rehabilitation of runway 13L/31R.
Security gate upgrade.
Land acquisition—runway 13R/31L.
Decision Date: August 16, 2005.

FOR FURTHER INFORMATION CONTACT: Lorna K. Sandridge, Central Region Airports Division, (816) 329–2641.

Public Agency: City of Portland, Maine.
Application Number: 05–04–U–00–PWM.
Application Type: Use PFC revenue.
PFC Level: $3.00.
Total PFC Revenue To Be Used in This Decision: $8,163,503.
Charge Effective Date: February 1, 2004.
Estimated Charge Expiration Date: March 1, 2013.
Class of Air Carriers Not Required To Collect PFC'S: No change from previous decision.
Brief Description of Project Approved For Use: Baggage claim expansion and improvements.
Decision Date: August 17, 2005.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: Metropolitan Washington Airports Authority, Washington, District of Columbia.
Application Number: 05–05–C–00–IAD.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $672,867,049.
Earliest Charge Effective Date: January 1, 2007.
Estimated Charge Expiration Date: May 1, 2017.
Class of Air Carriers Not Required to Collect PFC'S: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Washington Dulles International Airport.
Brief Description of Project Approved for Collection and Use: People mover system, tunnels, and station.
Decision Date: August 17, 2005.

FOR FURTHER INFORMATION CONTACT: Terry Page, Washington Airports District Office, (703) 661–1354.

Public Agency: City of Dayton, Ohio.
Application Number: 05–05–C–00–DAY.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $33,577,115.
Earliest Charge Effective Date: December 1, 2013.
Estimated Charge Expiration Date: February 1, 2018.
Class of Air Carriers Not Required To Collect PFC'S: Air taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Dayton Airport.
Brief Description of Projects Approved for Collection and Use:
Terminal environmental restoration.
In-line baggage make-up facility.
Decision Date: August 19, 2005.

FOR FURTHER INFORMATION CONTACT: Jason Watt, Detroit Airports District Office, (734) 229–2906.

Public Agency: City of Syracuse Department of Aviation, Syracuse, New York.
Application Number: 05–05–C–00–SYR
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $6,119, 197.
Earliest Charge Effective Date: November 1, 2005.
Estimated Charge Expiration Date: February 1, 2007.

Class of Air Carriers Not Required to collect PFC'S: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Syracuse-Hancock International Airport.

Brief Description of Projects Approved for Collection and Use:

Noise mitigation—school sound insulation.

Runway 15 obstruction removal.

Perimeter security road.

Airport master plan.

Snow removal equipment.

Aircraft rescue and firefighting vehicle.

Overlay taxiways B and M.

General aviation area safety improvement.

Construct snow removal equipment building.

Runway 10/28 overlay.

Runway 33 safety area improvements.

Rehabilitate airfield drainage—phase II.

Snow removal equipment.

Rehabilitate general aviation apron and taxiways Y and N.

Prepare PFC application.

Rehabilitate taxiways K, M, and S.

Decision Date: August 22, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Levine, New York Airports District Office, (516) 227–3807.

Public Agency: Charlottesville-Albemarle Airport Authority, Charlottesville, Virginia.

Application Number: 05–17–C–00–CHO

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,871,360.

Earliest Charge Effective Date: February 1, 2006.

Estimated Charge Expiration Date: June 1, 2010.

Class of Air Carriers Not Required to Collect PFC'S: All air taxi/commercial operators filing or requested to file FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Charlottesville-Albermarle Airport.

Brief Description of Projects Approved for Collection and Use:

Air carrier terminal building modifications.

Acquire aircraft rescue and firefighting equipment.

T-Hangar taxilane and site preparation.

Acquire snow removal vehicle.

Brief Description of Projects Approved for Collection:

Terminal building modifications.

Extend runway 21.

Rehabilitate airfield lighting vault (design).

Decision Date: August 22, 2005.

FOR FURTHER INFORMATION CONTACT: Luis Loarte, Washington Airports District Office (703) 661–1365.

Public Agency: City of Kearney, Nebraska.

Application Number: 05–01–C–00–EAR

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $150,000.

Earliest Charge Effective Date: November 1, 2005.

Estimated Charge Expiration Date: March 1, 2010.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Design and build terminal expansion.

Decision Date: August 25, 2005.

FOR FURTHER INFORMATION CONTACT: Lorna K. Sandridge, Central Region Airports Division, (816) 329–2641.

AMENDMENTS TO PFC APPROVALS

Amendment no. city, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
92–01–I–02–BTR, Baton Rouge, LA.	1/20/05	$8,982,260	$2,065,057	12/01/98	11/01/94
93–02–U–01–BTR, Baton Rouge, LA.	1/20/05	NA	NA	12/01/98	11/01/94
*97–04–C–02–BTR, Baton Rouge, LA.	1/20/05	19,069,316	37,570,400	8/01/16	10/01/19
00–05–C–01–BTR, Baton Rouge, LA	1/20/05	6,504,390	4,363,572	1/01/22	11/01/21
02–09–C–03–MCO, Orlando, FL.	4/28/05	225,137,998	163,040,998	11/01/17	4/01/16
01–12–C–01–BDL, Windsor Locks, CT.	7/19/05	231,947,428	257,534,407	3/01/15	3/01/16
01–03–C–03–LIT, Little Rock, AR.	7/25/05	18,850,300	20,988,973	10/01/05	5/01/06
01–03–C–03–LYH, Lynchburg, VA.	7/28/05	705,654	699,770	5/01/05	5/01/05
02–02–C–04–BFD, Bradford, PA.	7/29/05	277,225	242,438	7/01/13	7/01/13
03–02–C–01–ACY, Atlantic City, NJ.	8/01/05	1,573,274	1,362,274	6/01/06	4/01/06
95–02–C–06–BGM, Binghamton, NY.	08/1/05	1,063,924	1,063,500	1/01/22	9/01/98
99–04–C–05–BGM, Binghamton, NY.	8/01/05	1,204,917	1,204,917	4/01/02	4/01/02
01–02–C–03–HRL, Harlingen, TX.	8/01/05	5,456,858	5,436,858	12/01/07	12/01/07
00–01–C–02–FAY, Fayetteville, NC.	8/08/05	1,026,513	1,233,106	11/01/05	10/01/05
02–02–U–01–FAY, Fayetteville, NC	8/08/05	NA	NA	11/01/05	10/01/05
02–02–C–03–BFD, Bradford, PA.	8/09/05	329,504	277,225	7/01/13	7/01/13
03–02–C–02–ACY, Atlantic City, NJ.	8/16/05	1,362,274	1,363,575	4/01/06	4/01/06
01–01–C–02–MCN, Macon, GA.	8/23/05	508,897	1,052,392	10/01/06	5/01/11
03–04–C–01–SGF, Springfield, MO.	8/23/05	1,847,000	2,168,000	8/01/05	8/01/05
99–04–C–03–ILE, Killeen, TX.	8/23/05	2,663,726	3,157,543	8/01/05	12/01/05
01–05–C–01–ILE, Killeen, TX.	8/23/05	30,000	30,000	1/01/06	1/01/06
*93–01–C–03–YUM, Yuma, AZ.	8/26/05	11,285,444	2,390,423	12/01/27	1/01/07

NOTE: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Yuma, AZ and Baton Rouge, LA, this change is effective on October 1, 2005.

Issued in Washington, DC, on December 20, 2005.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 05–24434 Filed 12–22–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 2005, there were nine applications approved. This notice also includes information on four applications, one approved in January 2005, two approved in May 2005, and one approved in June 2005, inadvertently left off the January 2005, May 2005 and June 2005 notices, respectively. Additionally, 16 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Allegheny County Airport Authority, Pittsburgh, Pennsylvania.

Application Number: 04–04–C–00–PIT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $250,136,744.

Earliest Charge Effective Date: October 1, 2006.

Estimated Charge Expiration Date: October 1, 2017.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled, on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Pittsburgh International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Airfield signage.
Airfield pavement rehabilitation/extension/relocation.
Deicing sub-projects.
New aircraft rescue and firefighting facilities.
Residential sound insulation program (phases III and IV).
Upgrade runway 10R to category III and in-pavement lighting.
Midfield terminal upgrades.
Aircraft rescue and firefighting equipment.
Wastewater/contaminated storm water treatment facility environmental mitigation, phase 1 environmental/design.
Taxiways B2, C, N, and R pavement rehabilitation.
Airfield/terminal security upgrades.
Improve runways 32 and 29R runway safety areas; and improve runway 14 runway safety area—environmental/design.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Snow removal equipment storage building, phase 1 environmental/design.
Regional fire training facility.
Cargo/hangar/tower service area road and access.
Wetland mitigation.
Roadway signage.
Continuous master planning/Part 150 study (1997–1999).
Snow removal equipment maintenance complex, phase 1.
Snow removal equipment.

Decision Date: January 7, 2005.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: Lexington-Fayette Urban County Airport Board, Lexington, Kentucky.

Application Agency: Lexington-Fayette Urban County Airport Board, Lexington, Kentucky.

Application Number: 05–06–U–00–LEX.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue To Be Used in This Decision: $45,695,766.

Charge Effective Date: December 1, 2003.

Estimated Charge Expiration Date: August 1, 2022.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use:

Runway safety area improvements.
Terminal interior modifications.
Concourse gate addition.

Decision Date: May 2, 2005.

FOR FURTHER INFORMATION CONTACT: Tommy L. Dupree, Memphis Airports District Office, (901) 322–8185.

Public Agency: Metropolitan Airports Commission, Minneapolis, Minnesota.

Application Number: 05–08–C–00–MSP.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $191,380,173.

Earliest Charge Effective Date: January 1, 2017.

Estimated Charge Expiration Date: December 1, 2018.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Minneapolis-St. Paul International Airport.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC level:

Pavement rehabilitation—aprons.
Runway 7/35 runway protection zones restoration.

Brief Description of Project Partially Approved for Collection and Use at a $3.00 PFC Level: Glycol management facility.

Determination: The office, conference room, and drivers' room in the glycol management facility, the storage building for vacuum trucks, and storage tanks for the processed glycol are not PFC eligible. Site preparation, paved roadways, and vehicle parking associated with the above items is also not PFC eligible.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Runway 17/35 south and construction.
Runway 17/35 land acquisition.
Taxiway M construction.
Environmental mitigation.
School sound insulation.
Pavement rehabilitation—runway 12R/30L, segment 2.
Miscellaneous construction.
Navy building relocation.
Category II system installation—airport lighting electrical center modifications.
Fire truck.

Brief Description of Withdrawn Projects:

Runway 17/35 communications.
Taxiway C/D complex.
Runway 30R safety area improvements.
Maintenance building addition.
Relocate air traffic control tower.

Determination: These projects were withdrawn by the public agency by letter dated March 15, 2005.

Decision Date: May 5, 2005.

FOR FURTHER INFORMATION CONTACT: Gordon Nelson, Minneapolis Airports District Office, (612) 713–4358.

Public Agency: City of Springfield, Missouri.

Application Number: 05–05–C–00–SGF.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $900.00.

Earliest Charge Effective Date: September 1, 2005.

Estimated Charge Expiration Date: March 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled Part 135 and air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Springfield-Branson Regional Airport.

Brief Description of Project Approved for Collection and Use: Acquire land for midfield terminal.

Decision Date: June 29, 2005.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

Public Agency: Broward County Aviation Department, Fort Lauderdale, Florida.

Application Number: 05–07–C–00–FLL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $270,817,368.

Earliest Charge Effective Date: October 1, 2005.

Estimated Charge Expiration Date: September 1, 2013.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Fort Lauderdale—Hollywood International Airport.

Brief Description of Project Partially Approved for Collection and Use at a $4.50 PFC level: Noise mitigation bank.

Determination: Any costs associated with compensation for lost property value attributable to airport noise is not eligible.

Brief Description of Projects Approved for Collection at a $4.50 PFC Level:

Taxiway C improvements west of runway 13/31.
Taxiway C phase II—design.

Brief Description of Projects Approved for Collection at a $4.50 PFC Level:

Concourse B terminal.
Concourse B—apron.
Inner terminal taxilanes—design.
Inner terminal taxilanes—construction.
Taxiway B extension.
International terminal—federal inspection station—(terminal 4) design.
Master plan update (runway implementation plan initiative).
Terminal 4.

Brief Description of Projects Approved for Collection at a $3.00 PFC Level:

Pedestrian walkways.
Exit roadways—pre-design.
Exit roadways—final design/construction.
Fiber optic backbone.
Concourse E, F, and H restrooms.
Pedestrian canopies.
Curbside queuing lanes.
Westside road relocation.
Passenger loading bridge utilities infrastructure.
Communications center equipment.
Concourse A pre-design.
Concourse A apron pre-design.
Automated people mover pre-design planning and programming.

Decision Date: July 5, 2005.

FOR FURTHER INFORMATION CONTACT: Miguel Martinez, Orlando Airports District Office, (407) 812–6331, extension 123.

Public Agency: Meridian Airport Authority, Meridian, Mississippi.

Application Number: 05–07–C–00–MEI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $489,473.

Earliest Charge Effective Date: October 1, 2005.

Estimated Charge Expiration Date: April 1, 2008.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Build terminal building.
Survey and clear runway approaches.
Rehabilitate and improve drainage.

Decision Date: July 11, 2005.

FOR FURTHER INFORMATION CONTACT: David Shumate, Jackson Airports District Office, (601) 664–9882.

Public Agency: Grater Orlando Aviation Authority, Orlando, Florida.

Application Number: 05–10–C–00–MCO.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $232,818,000.

Earliest Charge Effective Date: July 1, 2014.

Estimated Charge Expiration Date: November 1, 2020.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection at Orlando International Airport (MCO) and Use at MCO:

Runway 18L/18R runway safety area improvements.
East airfield nominations.
West airfield taxiway improvements.
Airfield pavement rehabilitation.
Implement sound insulation and property acquisition program.
High mast lighting rehabilitation.
Taxiways E and F rehabilitation.
Airsides 1 and 3 rehabilitation.
Airside terminal 2 expansion.
Extension of taxiways G1 and H2.
Airsides 2 and ramp rehabilitation.
New large aircraft modifications at west airfield.
Mitigation management/environmental costs.
Reimbursement of mitigation management/environmental costs.
Airport exit road improvements.
Roadway rehabilitation.
Cargo road extension.
Widening of south access road.
Enplane/deplane drive expansion joints and lighting rehabilitation.
Landside terminal emergency electrical system improvements.
Security improvements.
Explosion detection system.
Terminal improvement program.

Brief Description of Projects Approved for Collection at MCO and Use at Orlando Executive Airport:

Runways 25 and 31 holding bays.
Runways 7/25 rehabilitation.
Runway 7, runway protection zone land acquisition.
West ramp rehabilitation.
Drainage improvements—design and construction.
Airfield lighting—design and construction.
Navigational aid improvements.
East and west quadrant ramp improvements.

Decision Date: July 12, 2005.

FOR FURTHER INFORMATION CONTACT: Vernon P., Rupinta, Orlando Airports District Office, (407) 812–6331, extension 124.

Public Agency: City of Cleveland, Ohio.

Application Number: 05–10–C–00–CLE.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $53,448,000.

Earliest Charge Effective Date: November 1, 2007.

Estimated Charge Expiration Date: October 1, 2010.

Class of Air Carriers Not Required To Collect PFC's: Air taxi.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Cleveland Hopkins International Airport.

Brief Description of Projects Approved for Collection and Use:

Runway 6R/24L uncoupling.
Runway 28 safety improvements.
Midfield deicing pad.
Taxiway M improvements.

Decision Date: July 14, 2005.

FOR FURTHER INFORMATION CONTACT: Jason K. Watt, Detroit Airports District Office, (734) 229–2906.

Public Agency: Flathead Municipal Airport Authority, Kalispell, Montana.

Application Number: 05–03–C–00–FCA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $833,138.

Earliest Charge Effective Date: July 1, 2016.

Estimated Charge Expiration Date: November 1, 2017.

Class of Air Carriers Not Required To Collect PFC's: Nonscheduled/on demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Glacier Park International Airport.

Brief Description of Projects Approved for Collection and Use:

Master plan update.
Runway 02 extension.
Snow removal equipment.

Decision Date: July 15, 2005.

FOR FURTHER INFORMATION CONTACT: David Stelling, Helena Airports District Office, (406) 449–5271.

Public Agency: City of Des Moines, Iowa.

Application Number: 05–08–C–00–DSM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,750,000.

Earliest Charge Effective Date: April 1, 2009.

Estimated Charge Expiration Date: January 1, 2012.

Class of Air Carriers Not Required To Collect PFC's: Part 135 air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Des Moines International Airport.

Brief Description of Projects Approved for Collection and Use:

Outbound baggage make-up belts.
Full depth replacement of signature front aprons.
Americans with Disabilities Act transition project.
Automated access control system field equipment upgrade.

Brief Description of Withdrawn Project: Terminal area security improvements.

Determination: This project was withdrawn by the public agency by letter dated April 13, 2005.

Decision Date: July 19, 2005.

FOR FURTHER INFORMATION CONTACT: Lorna K. Sanridge, Central Region Airports Division, (816) 329–2641.

Public Agency: City of Billings Aviation and Transit Department, Billings, Montana.

Application Number: 05–04–C–00–BIL.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $3,300,000.

Earliest Charge Effective Date: May 1, 2006.

Estimated Charge Expiration Date: September 1, 2009.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Project Approved for Collection and Use: Acquisition of terminal building passenger loading bridges.

Decision Date: July 19, 2005.

FOR FURTHER INFORMATION CONTACT: David S. Stelling, Helena Airports District Office, (406) 449–5271.

Public Agency: Williamson County Airport Authority, Marion, Illinois.

Application Number: 05–01–C–00–MWA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $509,499.

Earliest Charge Effective Date: September 1, 2005.

Estimated Charge Expiration Date: March 1, 2016.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled, on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Williamson County Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Master plan update.
Construct aircraft rescue and firefighting station.
Install airfield signage, electrical vault, terminal apron.
Land acquisition, parcel 34A.
Porous friction course for runway 2/20.
Land acquisition, parcel 34B.
Construct snow removal equipment building.
Land acquisition, parcel 34C.
Install perimeter fence and replace drainage pipe.
Update Exhibit A property line map.
Land acquisition, parcel 34D.
Expand terminal apron, overlay general aviation apron.
Land Acquisition, parcel 28A.
Widen terminal apron/porous friction course.
Land acquisition.
Install automated weather observation system.
Porous friction course runway 11/29, taxiway B.
Airport layout plan update (phase 1).
Land acquisition.
Construct maintenance building.
Land acquisition, parcel 29.
Airport layout plan update (phase 2).
Snow removal equipment building modification.
Runway 2/20 obstruction removal.
Update environmental assessment for runway 2/20.
Rehabilitate high intensity runway lighting—runway 2/20.
Runway 2/20 extension, grading and drainage (phase 1).
Runway 2/20 extension, relocate automate weather observation system.
Security enhancements.
Land acquisition, parcel 34E.

Decision Date: July 25, 2005.

FOR FURTHER INFORMATION CONTACT: Gary Wilson, Chicago Airports District Office, (847) 294–7631.

Public Agency: Yakima Air Terminal Board, Yakima, Washington.

Application Number: 05–10–C–00–YKM.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved In This Decision: $701,494.

Earliest Charge Effective Date: August 1, 2006.

Estimated Charge Expiration Date: January 1, 2010.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operator.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Yakima Air Terminal—McAllister Field.

Brief Description of Project Approved for Collection and Use: Reconstruct taxiway C including new stub taxiway and ramp.

Decision Date: January 7, 2005.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: City of San Angelo, Texas.

Application Number: 05–06–C–00–SJT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $200,000.

Earliest Charge Effective Date: January 1, 2006.

Estimated Charge Expiration Date: November 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled, on-demand air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at San Angelo Regional Airport/Mathis Field.

Brief Description of Project Approved for Collection and Use: Terminal concourse addition.

Decision Date: July 28, 2005.

FOR FURTHER INFORMATION CONTACT: Mike Nicely, Southwest Region Airports Division, (817) 222–5650.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
98–05–C–02–COS, Colorado Springs, CO	12/07/04	$10,353,578	$8,106,238	01/01/01	01/01/01
01–02–C–02–HRL, Harlingen, TX	04/29/05	6,025,961	5,456,858	06/01/07	12/01/07
01–02–C–01–HVN, New Haven, CT	06/21/05	1,963,265	226,181	11/01/07	07/01/05
02–05–C–05–BGM, Binghamton, NY	06/27/05	4,635,407	4,646,145	07/01/05	07/01/05
03–06–C–02–BGM, Binghamton, NY	06/27/05	7,996	7,996	08/01/05	08/01/05
94–01–C–03–BUR, Burbank, CA	07/01/05	33,330,107	33,330,107	10/01/01	10/01/01
96–02–U–02–BUR, Burbank, CA	07/01/05	([1])	([1])	10/01/01	10/01/01
97–02–C–02–FCA, Kalispell, MT	07/08/05	8,217,803	9,970,526	06/01/20	07/01/16
99–03–C–02–CLL, College Station, TX	07/11/05	951,400	1,274,069	09/01/02	01/01/07
98–02–C–01–ASE, Aspen, CO	07/12/05	1,020,000	874,117	10/01/00	02/01/00
99–03–C–01–ASE, Aspen, CO	07/12/05	1,354,000	1,380,097	05/01/03	05/01/03
04–07–C–01–BGM, Binghamton, NY	07/12/05	237,624	337,624	10/01/05	12/01/05
93–01–C–03–MFR, Medford, OR	07/12/05	847,592	397,015	11/01/95	01/01/95
98–03–C–02–HDN, Hayden, CO	07/14/05	1,130,176	1,039,754	06/01/02	06/01/02
01–04–C–02–HDN, Hayden, CO	07/18/05	150,833	163,604	11/01/02	11/01/02
96–03–C–02–CLM, Port Angeles, WA	07/19/05	104,798	77,984	08/01/98	01/01/98

[1] Not applicable.

Issued in Washington, DC on December 19, 2005.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 05–24438 Filed 12–22–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2005–23112]

Motorcyclist Advisory Council to the Federal Highway Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to form an advisory committee.

SUMMARY: Pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), the Secretary of Transportation, acting through the Administrator of the Federal Highway Administration, is establishing a Council to coordinate with and advise the Administrator on infrastructure issues of concern to motorcyclists. The purpose of this notice is to invite interested parties to submit comments on the issues that should be discussed by the Motorcyclist Advisory Council to the Federal Highway Administration, and the organizations and participants to be considered for representation on the council.

DATES: Comments and/or applications for membership or nominations for membership on the Council must be received on or before January 23, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. John Baxter, Director, Office of Safety Design, 202–366–9198 (*John.Baxter@fhwa.dot.gov*); or Ms. Alla Shaw, Office of the Chief Counsel, (202) 366–1042; 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit*. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in a **Federal Register** published on April 11, 2000 (70 FR 19477), or you may visit *http://dms.dot.gov*.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments and we recommend that you periodically check the Docket for new material.

Background

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144). Section 1914 of SAFETEA–LU mandates the establishment of a Motorcyclist Advisory Council.

The Secretary, acting through the Administrator of the Federal Highway Administration, in consultation with the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, shall appoint a Motorcyclist Advisory Council to coordinate with and advise the Administrator on infrastructure issues of concern to motorcyclists.

A. Notice of Intent To Establish an Advisory Committee and Request for Comment

In accordance with the requirements of the Federal Advisory Committee Act (5 U.S.C. App. II), an agency of the Federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. The purpose of this notice is to indicate the FHWA's intent to create a Federal advisory committee, to identify highway infrastructure issues of concern to motorcyclists and to identify potential organizations and participants who will adequately represent interests regarding these infrastructure issues.

B. Name of Committee

Motorcyclist Advisory Council to the Federal Highway Administration.

C. Purpose and Objective

Motorcyclist Advisory Council to the Federal Highway Administration (MAC–FHWA), coordinates and advises the Secretary of the Department of Transportation, acting through the Administrator of the Federal Highway Administration, on infrastructure issues of concern to motorcyclists, including:

(1) Barrier design;

(2) Road design, construction, and maintenance practices; and

(3) The architecture and implementation of intelligent transportation system technologies.

The MAC–FHWA does not exercise program management or regulatory development responsibilities, and makes no decisions directly affecting the programs on which it provides advice. The MAC–FHWA provides a forum for the development, consideration, and communication of information from a knowledgeable and independent perspective.

D. Balanced Membership Plans

According to section 1914 of SAFETEA–LU, the Council shall consist of not more than 10 members of the motorcycling community with professional expertise in national motorcyclist safety advocacy, including:

(1) At least:

(A) One member recommended by a national motorcyclist association;

(B) One member recommended by a national motorcycle riders foundation;

(C) One representative of the National Association of State Motorcycle Safety Administrators;

(D) Two members of State motorcyclists' organizations;

(E) One member recommended by a national organization that represents the builders of highway infrastructure;

(F) One member recommended by a national association that represents the traffic safety systems industry; and

(G) One member of a national safety organization; and

(2) At least one, and not more than two, motorcyclists who are traffic system design engineers or State transportation department officials.

This document gives notice of this process to potential participants and affords them the opportunity to request representation on the MAC–FHWA. The procedure for requesting such representation is set out below. In addition, we invite comments and suggestions for potential participants.

The FHWA is aware that there are many more potential organizations and participants than there are membership slots on the council. Organizations and participants should be prepared to support their participation on the council.

It is very important to recognize that interested parties who are not selected to membership on the Council can make valuable contributions to the work of the MAC–FHWA in any of several ways. For example, the person or organization could request to be placed on the council mailing list, submitting written comments, as appropriate.

Any member of the public is welcome to attend the Council meetings, and, as provided in FACA, speak to the council. Time will be set aside during each meeting for this purpose, consistent with the council's need for sufficient time to complete its deliberations.

E. Applications for Membership

Each application for membership or nomination to the Council should include:

(1) The name of the applicant or nominee and the interest(s) identified in section 1914 of SAFETEA–LU such person would represent;

(2) Evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent; and

(3) A written commitment that the applicant or nominee would participate in good faith.

Every effort is made to select Council members who are objective. A balance is needed and weight is given to a variety of factors including but not limited to geographical distribution, gender, minority status, organization, and expertise.

F. Duration

Continuing.

G. Notice of Establishment

After evaluating comments received as a result of this Notice, the Department will issue a notice announcing the establishment and composition of the Council.

(Authority: Section 1914 of Pub. L. 109–59)

Issued on: December 16, 2005.

J. Richard Capka,

Acting Federal Highway Administrator.

[FR Doc. E5–7795 Filed 12–22–05; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Intent To Prepare an Environmental Impact Statement: Milwaukee, Racine and Kenosha Counties, WI, and Lake County, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed roadway corridor project in Milwaukee, Racine and Kenosha Counties, Wisconsin extending into Lake County, Illinois by the Wisconsin Department of Transportation (WisDOT) in Conformance with 40 CFR part 1500 and the FHWA regulations.

FOR FURTHER INFORMATION CONTACT: David Scott, FHWA, 567 D'Onofrio Drive, Suite 100, Madison, WI 53719–2844; Telephone: (608) 829–7522.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWH), in cooperation with the Wisconsin Department of Transportation (WisDOT), will prepare an Environmental Impact Statement (EIS) on a proposal to improve the I–94 corridor in Milwaukee, Racine and Kenosha Counties, WI, and Lake County, IL; approximately 34 miles in length. This freeway corridor has emerging pavement needs, safety issues and design deficiencies. The proposed project may require full reconstruction and redesign of I–94 as well as potential new interchanges within the project limits of Howard Avenue on the north, 35th street on the west (I–894) and south to the I–94/USH 41 interchange in Lake County, IL. The study will also include the Mitchell Airport Spur/STH 119 from I–94 to STH 38 (Howell Avenue) on the east. The Environmental Impact Statement (EIS) will evaluate the I–94 freeway mainline for the entire corridor as well as the Mitchell Interchange (I–94 and I–894) and service interchanges in Milwaukee County. Those interchanges include Howard Avenue, 27th Street (interchange with I–894), Layton Avenue/CTH Y, Mitchell Airport Spur/STH 119, College Avenue/CTH ZZ, Rawson Avenue/CTH BB, and Ryan Road/STH 100 Interchanges.

The service interchanges with I–94 in Racine and Kenosha Counties were previously evaluated in a 1996 Environmental Assessment (EA); FHWA approve the EA with a Finding of No Significant Impact (FONSI) on December 18, 1996. Those interchanges are: STH 165, CTH C, STH 50, STH 158, STH 142, and CTH E in Kenosha County; CTH KR at the Kenosha-Racine County line; and STH 11, STH 20, CTH K, CTH G, 7 Mile Road, and 27th Street/STH 241 in Racine County. The 1996 EA/FONSI will be reevaluated, in a separate document from the EIS, to reflect any changes that have occurred at those interchanges since it was written.

The proposed I–94 North-South Corridor project is intended to make necessary safety improvements and to accommodate projected future traffic volumes. Alternatives to be considered include: (1) No build; (2) limited safety improvements; (3) full design and safety improvements; and (4) full design, safety improvements and capacity expansion.

Public involvement will be solicited throughout this process including involvement from minority and low-income populations in the corridor to ensure that the construction of the corridor does not create disproportionately high and adverse environmental and health impacts to these communities. Several public workshops are scheduled in January 2006, and the first of a series of public information meetings in May 2006. WisDOT and FHWA will coordinate with appropriate state and federal contacts during the study. Public notice will be given as to the time and place of all workshops and public information meetings. In addition, a public hearing will be held after the draft EIS has been prepared. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: December 15, 2005.

Tracey McKenney,

Program Operations Engineer, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. 05–24342 Filed 12–12–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 5) (2006–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the first quarter 2006 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter 2006 RCAF (Unadjusted) is 1.177. The first quarter 2006 RCAF (Adjusted) is 0.564. The first quarter 2006 RCAF–5 is 0.541.

EFFECTIVE DATE: January 1, 2006.

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: December 19, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E5–7770 Filed 12–22–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34800]

Indiana & Ohio Railway Company—Trackage Rights Exemption—Fulton Railway Co., Ltd.

Fulton Railroad Co., Ltd. (Fulton) has agreed to grant local and overhead trackage rights to Indiana & Ohio Railway Company (IORY), a Class III rail carrier, over Fulton's line of railroad from milepost 0.0 and continuing for 4,800 feet to the end of the track in the city of Cincinnati, Millcreek Township, Hamilton County, OH, a distance of 4,800 feet.

The transaction was scheduled to be consummated on or shortly after December 14, 2005. The purpose of the trackage rights is to enable IORY to enhance service.

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 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.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34800, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer Esq., Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Decided: December 16, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–24380 Filed 12–22–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee January 2006 Public Meeting

Summary: Pursuant to United States Code, Title 31, section 5135(b)(8)(c), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting and Public Forum scheduled for January 24, 2006.

Date: January 24, 2006.

Time: 9:30 a.m. to 2: 30 p.m.

Location: The United States Mint; 801 Ninth Street, NW.; Washington, DC; Second floor.

Subject: Review of the designs for the 2007 commemorative quarter-dollar coins in the United States Mint's 50 State Quarters® Program and for the Jamestown 400th Anniversary Commemorative Coin Program; and other business.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

The CCAC was established to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advise the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Brendan Adams, United States Mint Liaison to the CCAC; 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration or addressing the CCAC at the Public Forum is invited to submit request and/or materials by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: December 5, 2005.

David A. Lebryk,

Acting Director, United States Mint.

[FR Doc. 05–24411 Filed 12–22–05; 8:45am]

BILLING CODE 4810–37–M

Corrections

Federal Register

Vol. 70, No. 246

Friday, December 23, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Belarus

Correction

In notice document 05–24176 appearing on page 75155 in the issue of Monday, December 19, 2005, in the second column, the table is corrected to read as follows:

Category	Twelve-month restraint limit [1]
448	39,265 dozen.
622	11,349,484 square meters of which not more than 1,870,794 square meters shall be in Category 622-L [2] and not more than 699,661 square meters shall be in Category 622-N [3].

[1] The limits have not been adjusted to account for any imports exported after December 31, 2004.

[2] Category 622-L: only HTS numbers 7019.51.9010, 7019.52.4010, 7019.52.9010, 7019.59.4010, and 7019.59.9010.

[3] Category 622-N: only HTS numbers 7019.52.40.21, 7019.52.90.21, 7019.59.40.21, 7019.59.90.21.

[FR Doc. C5–24176 Filed 12–22–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
December 23, 2005

Part II

Environmental Protection Agency

Fifty-Seventh Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2005–0062; FRL–7751–8]

Fifty-Seventh Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its Fifty-Seventh Report to the Administrator of EPA on November 22, 2005. In the 57th ITC Report, which is included with this notice, there are no changes to the TSCA section 4(e) *Priority Testing List* published in the 56th ITC Report in the **Federal Register** of October 24, 2005. As stated in the 56th ITC Report, it was the ITC's intention to provide in this 57th ITC Report a data-availability study of the high production volume (HPV) chemicals in the 2002 Inventory Update Rule (IUR). The study of the HPV chemicals in the 2002 IUR may be made available after the ITC has had an opportunity to review comments received on the study of the HPV chemicals described in the 56th ITC Report. In addition, the ITC needs additional time to review information submitted from the International Tungsten Industry Association, the Indium Corporation of America, and the Vanadium Producers and Reclaimers Association, as well as data on tungsten, indium, and vanadium compounds submitted in response to TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rules.

DATES: Comments must be received on or before January 23, 2006.

ADDRESSES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2005–0062, 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 (7408M), Office of Pollution Prevention and Toxics, 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 notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in 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 EPA–HQ–OPPT–2005–0062. 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/*. You may also access additional information about the ITC at *http://www.epa.gov/opptintr/itc/* or through the web site for the Office of Prevention, Pesticides and Toxic Substances (OPPTS) at *http://www.epa.gov/opptsfrs/home/opptsim.htm/*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

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 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 EPA–HQ–OPPT–2005–0062. 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 EPA–HQ–OPPT–2005–0062. 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), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2005–0062. 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 person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views and comments on the 57th ITC Report. 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 notice.
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.

II. Background

TSCA (15 U.S.C. 260l *et seq.*) authorizes the Administrator of EPA to promulgate regulations under TSCA section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

A. The ITC's 57th Report

In this 57th ITC Report to the Administrator of EPA, there are no changes to the TSCA section 4(e) *Priority Testing List* published in the 56th ITC Report in the **Federal Register** of October 24, 2005 (70 FR 61520) (FRL–7739–9) (*http://www.epa.gov/fedrgstr/EPA-TOX/2005/October/Day-24/t21197.htm*). As stated in the 56th ITC Report, it was the ITC's intention to

provide in this 57th ITC Report a data-availability study of HPV chemicals in the 2002 IUR. The study of the HPV chemicals in the 2002 IUR may be made available after the ITC has had an opportunity to review comments received on the study of the HPV chemicals described in the 56th ITC Report. In addition, the ITC needs additional time to review information submitted from the International Tungsten Industry Association, the Indium Corporation of America, and the Vanadium Producers and Reclaimers Association, as well as data on tungsten, indium, and vanadium compounds submitted in response to TSCA section 8(a) PAIR rules.

B. Status of the Priority Testing List

There are no changes to the TSCA section 4(e) *Priority Testing List* published in the 56th ITC Report.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: December 16, 2005.

Wendy C. Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

Fifty-Seventh Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

In this 57th Interagency Testing Committee (ITC) Report to the Administrator of EPA, there are no changes to the Toxic Substances Control Act (TSCA) section 4(e) *Priority Testing List* published in the 56th ITC Report in the **Federal Register** of October 24, 2005 (70 FR 61520) (FRL–7739–9) (*http://www.epa.gov/fedrgstr/EPA-TOX/2005/October/Day-24/t21197.htm*). As stated in the 56th ITC Report, it was the ITC's intention to provide in this 57th ITC Report a data-availability study of the high production volume (HPV) chemicals in the 2002 Inventory Update Rule (IUR). The study of the HPV chemicals in the 2002 IUR may be made available after the ITC has had an opportunity to review comments received on the study of the HPV chemicals described in the 56th ITC Report. In addition, the ITC needs additional time to review information submitted from the International Tungsten Industry Association, the Indium Corporation of America, and the Vanadium Producers and Reclaimers Association, as well as data on tungsten, indium, and vanadium compounds submitted in response to TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rules.

[FR Doc. 05–24410 Filed 12–22–05; 8:45 am]

BILLING CODE 6560–50–S

Federal Register

Friday,
December 23, 2005

Part III

Department of Housing and Urban Development

24 CFR Part 570

Prohibition on Use of Community Development Block Grant Assistance for Job-Pirating Activities; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4556–I–02; HUD–2005–0076]

RIN 2506–AC04

Prohibition on Use of Community Development Block Grant Assistance for Job-Pirating Activities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: The interim rule implements certain statutory changes by revising HUD's regulations for the Community Development Block Grant (CDBG) program. Specifically, this interim rule prohibits state and local governments from using CDBG funds for ''job pirating'' activities that are likely to result in significant job loss. The rule also applies to section 108 loan guarantees, and the use of Brownfields Economic Development Initiative and Economic Development Initiative funds with section 108 loan guarantees and CDBG funding. This rule follows publication of an October 24, 2000, proposed rule and takes into consideration the public comments received on the proposed rule. The interim rule also provides the public with an additional opportunity to comment on the regulatory job pirating provisions.

DATES: *Effective Date:* February 21, 2006.

Comment Due Date: February 21, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at *http://www.regulations.gov*; or
- The HUD electronic Web site at *http://www.epa.gov/feddocket*. Follow the link entitled ''View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without change, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies are also available for inspection and downloading at *http://www.epa.gov/feddocket*.

FOR FURTHER INFORMATION CONTACT: Richard Kennedy, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410–7000, telephone (202) 708–3587 (this is not a toll-free number).

In addition, program participants may contact their respective program offices by calling the applicable telephone number listed below (these telephone numbers are not toll-free).

For State CDBG, HUD-administered Small Cities, and Insular recipients: Michael Sowell, Community Planning and Development Specialist, State and Small Cities Division, (202) 708–1322.

For Entitlement Communities: Stan Gimont, Director, Entitlement Communities Division, (202) 708–1577.

For Section 108 program participants: Paul Webster, Director, Financial Management Division, (202) 708–1871.

For Economic Development Initiative (EDI) and Brownfields Economic Development Initiative (BEDI) program participants: William Seedyke, EDI and BEDI Program Coordinator, Grants Management Division, (202) 708–3484.

Hearing- or speech-impaired individuals may access any of the telephone numbers listed in this section by calling the Federal Information Relay Service toll-free at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320) (1974 HCD Act) establishes the statutory framework for the Community Development Block Grant (CDBG) Program. HUD's regulations implementing the CDBG program are located at 24 CFR part 570 (entitled ''Community Development Block Grants''). As used in this rule, the term ''CDBG funding'' or reference to CDBG programs means, in addition to the Entitlement and State CDBG programs, those programs covered by the part 570 regulations (*e.g.*, section 108 loan guarantees, Economic Development Initiative, Brownfields Economic Development Initiative, HUD-administered Small Cities, and Insular CDBG program). This rule does not apply to the Indian CDBG program.

Section 105 of the 1974 HCD Act (42 U.S.C. 5305) was amended by section 588 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Title V of the Fiscal Year 1999 HUD Appropriations Act, Public Law 105–276, approved October 21, 1998). Specifically, section 105 was amended to add a subsection (h) entitled ''Prohibition on Use of Assistance for Employment Relocation Activities.'' This subsection prohibits the use of CDBG funds to facilitate the relocation of for-profit businesses from one labor market area to another if the relocation is likely to result in a significant job loss.

Subsection 105(h) provides as follows:

> (h) Prohibition on Use of Assistance for Employment Relocation Activities.—Notwithstanding any other provision of law, no amount from a grant under section 106 made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from [one] area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

II. The October 24, 2000, Proposed Rule

On October 24, 2000 (65 FR 63756), HUD published a proposed rule to implement section 588 of QHWRA. The October 24, 2000, proposed rule proposed to prohibit state and local governments from using CDBG funds for job pirating activities. Job pirating was defined as the act of one community luring a business, and the jobs that would accompany it, from another community that could have significant impact on the economic viability of the latter community.

The statute sought to ensure that CDBG funds would not be used to the detriment of one community for the prosperity of another. However, the statute did not define clearly what was meant by significant job loss, or what was considered a labor market area for entitlement and non-entitlement areas.

HUD received 32 public comments on the October 24, 2000, proposed rule. Several commenters expressed a concern with respect to the issue of how the statute would be implemented particularly in non-entitlement areas. The objections raised regarding the non-entitlement portion of the proposed rule have been addressed in this interim rule without fundamentally changing the conceptual approach of the October 24, 2000, proposed rule. There were no substantial objections raised by commenters regarding HUD's implementation of the non-entitlement provision in the Entitlement CDBG

program. The changes made in this rule for the Entitlement program are principally to ensure consistency of application between the Entitlement and State CDBG programs. HUD believes this rule implements the statutory prohibition while maintaining the local flexibility of the CDBG program.

III. Significant Differences Between this Interim Rule and HUD's October 24, 2000, Proposed Rule

This interim rule follows publication of the October 24, 2000, proposed rule and takes into consideration the public comments received on the proposed rule. In response to the public comments, HUD has made the following changes to the proposed rule. The rationale for these revisions is more fully explained in section IV of this preamble.

1. *''De minimis'' job loss*. This interim rule provides that a loss of 25 or fewer jobs as a result of a single activity does not constitute a significant job loss for purpose of the anti-pirating provisions.

2. *State designation of applicable Labor Market Area (LMA)*. The interim rule permits each state to combine LMAs in non-metropolitan areas to determine its LMAs for purposes of the anti-pirating requirements. States will be required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. States can obtain LMA designations at the following Bureau of Labor Standards Web site: *http://www.bls.gov/lau/lmadir.pdf*.

3. *Time limit on anti-piracy requirements*. This interim rule establishes a time limit on the applicability of the anti-piracy requirements. In general, a job will be considered to be relocated if positions are eliminated at an existing operation within three years after the provision of CDBG assistance for the new operation.

4. *Streamlined reporting requirements*. In place of the detailed information required under the proposed rule, this interim rule requires that the assisted business submit a certification that neither it nor any of its subsidiaries has plans to relocate jobs that will result in a significant job loss for a specific area. This certification will be part of the agreement committing CDBG assistance to the business.

5. *Definition of ''directly assist.''* This interim rule further defines ''directly assist.'' The provision of CDBG funds for activities pursuant to public facilities and indirect assistance that will provide benefit to multiple businesses does not fall under the definition of ''directly assist,'' unless it includes the provision of infrastructure to aid a specific business.

IV. Discussion of Public Comments on the October 24, 2000, Proposed Rule

Twenty-one of the 32 comments came from states, with many of the remaining comments coming from organizations that represent non-entitlement areas. The states and organizations that represent non-entitlement areas wrote that the proposed rule was flawed as labor market areas did not relate to the true commuting patterns in rural areas, and that there needed to be a *de minimis* number of jobs that would not trigger the operation of this rule. As a result of the comments from states and organizations representing non-entitlement areas, this rule makes the following changes to the proposed rule.

A. *Significant Loss of Jobs*. Many commenters raised questions or concerns regarding the definition of ''significant job loss'' contained in the October 24, 2000, proposed rule. Under the proposed rule, a loss of jobs would be considered significant if the number of jobs lost is equal to or greater than one-tenth of one percent (0.1%) of the total number of jobs in the labor force. However, in all cases a loss of 500 or more jobs is considered significant.

Several commenters wrote that the percentage used to calculate significant job loss would adversely affect smaller, rural areas. For example, under the proposed rule, a loss of 10 jobs in a labor market area containing 10,000 jobs would have triggered the application of the rule. The commenters recommended several alternatives to address this concern. Several commenters, for example, suggested that HUD not use a percentage to calculate significant job loss and instead simply rely on the second component of the definition (i.e., a loss of 500 or more jobs). Other commenters suggested raising the percentage used to determine whether job loss is significant. Several commenters suggested that HUD establish a de minimis number of lost jobs that would not trigger the operation of the anti-pirating provisions.

HUD continues to believe that a percentage-based calculation is useful for determining significant job loss, since such a calculation may be uniformly applied to varying sized labor forces. However, HUD also recognizes that a percentage-based test may be difficult to apply to small communities where the loss of a handful of jobs may be sufficient to trigger the anti-pirating provisions. After considering the public comments on this issue, HUD has modified the proposed rule to provide that a loss of 25 or fewer jobs as a result of a single activity will not constitute a significant job loss.

According to the Office of Advocacy of the U.S. Small Business Administration, there are approximately 4.4 million firms in the U.S. that employ 25 employees or fewer out of a total of nearly 5.5 million firms nationwide. There are only 470,356 firms that employ between 25 and 500 employees. Approximately 80 percent of firms in the U.S. employ fewer than 25 workers. HUD believes the potential impact of any single business relocating from one labor market to another would be minimal on the employment rate in that given labor market area. Furthermore, while HUD has taken every measure to minimize the burden of compliance with this rule on businesses in general, HUD believes that it would be overly burdensome to impose such requirements on businesses that employ 25 or fewer employees.

B. *Problems with the Definition of LMAs in Rural Areas*. Several commenters objected to the use of LMAs defined by the U.S. Department of Labor for purposes of determining significant job loss. The commenters wrote that the size and composition of LMAs vary throughout the country, thus limiting their usefulness in consistently and uniformly measuring job loss. The majority of the commenters on this issue wrote that the LMAs do not accurately reflect commuter patterns in rural areas. These commenters wrote that the U.S. Department of Labor LMA definition did not work for rural areas, as the LMA definition was for a single county, when the real commuting area is a multicounty area.

The commenters suggested various ways to remedy the perceived difficulties with use of LMAs. Some commenters suggested that HUD replace the use of LMAs with use of the relevant jurisdiction, such as the city or county. Other commenters recommended that HUD permit jurisdictions to voluntarily combine and designate themselves as an LMA for purposes of the anti-pirating provisions.

Since publication of the October 24, 2000, proposed rule, the Office of Management and Budget has issued a revised definition of LMA that HUD believes lessens the prevalence of the concerns raised by the commenters. Specifically, under the revised definition of LMA, all non-metropolitan areas in each state are grouped into small LMAs usually consisting of one or more counties. To further address the concerns raised by the commenters, the interim rule permits each state to

combine LMAs in non-metropolitan areas to determine its LMAs for purposes of the anti-pirating requirements.

States are required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. Under this interim rule, metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. The area defined by the state must also be coterminous. HUD will revisit this issue in the future if there is evidence of abuse by states in configuring LMAs.

In those situations where a particular state decides not to define its LMAs in non-metropolitan areas, then the area(s) defined by the U.S. Department of Labor for that particular non-metropolitan area shall be used. It should be noted that the state losing one or more net jobs is the state with the responsibility for defining the LMAs.

C. *Time Limit on Anti-Piracy Requirements.* Many commenters from non-entitlement areas suggested that a limit should be set on the length of time during which changes in employment may be considered to be as a result of CDBG assistance. HUD agrees and has established a time limit on the applicability of the anti-piracy requirements. A job will be considered to be relocated if positions are eliminated at an existing operation within three years after the provision of CDBG assistance for the new operation. HUD has determined that three years is an appropriate time period to define relocating existing operations. Most states allow no more than three years for a project to be completed and expect the majority, if not all, of the jobs to be created in this time frame. However, if the contractual agreement between the recipient (entitlement grantee, state, or state grant recipient) and the assisted business allows a time period longer than three years for the business to create jobs, then the provisions of this rule will apply for the duration of that agreement.

D. *Provision of Infrastructure Assistance Should Not be Subject to the Rule.* The majority of commenters wrote that infrastructure assistance should not be covered by the rule as it is not a deciding factor on whether a business will relocate to an area. Several of these commenters wrote that assistance for infrastructure development is indirect assistance and, therefore, outside the scope of the statutory anti-pirating prohibition, which applies solely to direct assistance. A minority of commenters, however, thought infrastructure assistance should be covered by the rule. HUD continues to believe that the rule should cover infrastructure assistance when a grantee, participating unit of general local government, subrecipient, Community-Based Development Organization (CBDO), or a nonprofit organization serving the development needs of communities in non-entitlement areas, directly assists in the relocation of a business. The Department does not consider infrastructure assistance to be indirect assistance in such cases, since there is no difference between providing infrastructure assistance and making a loan to a business when there is a written agreement in which a business commits to create jobs. However, if CDBG funds are provided to assist infrastructure to aid a specific business that is the subject of an agreement with the specific assisted business, those funds would fall under the definition of ''directly assist.'' The interim rule clarifies the definition of ''directly assist'' to include this distinction.

E. *Recordkeeping Requirements.* Many commenters stated that the recordkeeping requirements of the proposed rule were onerous and would discourage economic development projects. HUD agrees that the proposed information collection requirements would have imposed an undue burden on certain businesses. For example, requiring information on all of a business' facilities with the number of jobs at each facility would prevent the provision of assistance to national retail operations, as provision of this information would be onerous for corporations such as Target or McDonald's, for example, to complete. As a result, HUD has streamlined the proposed reporting requirements. In place of the detailed information required under the proposed rule, this interim rule requires that the assisted business submit a certification that neither it nor any of its subsidiaries has plans to relocate jobs that will result in a significant job loss. This certification will be part of the agreement committing CDBG assistance to the business.

F. *Applicability to nonprofits.* Several commenters wrote in support of the exemption of non-profit organizations from the anti-pirating requirements. Other commenters, however, questioned the non-profit exemption. Most of these commenters agreed that there is little likelihood of nonprofit group use of CDBG assistance for job relocation purposes. However, the commenters wrote that the relocation of some large nonprofit organizations could potentially result in a significant job loss. These commenters also wrote that the statutory anti-pirating requirements do not specifically single out for-profit businesses.

HUD has not revised the rule in response to these comments. As the commenters acknowledge, the potential that CDBG assistance will result in a nonprofit group relocating is limited. However, as some commenters questioned the non-profit exemption, HUD is inviting specific comments on examples of situations where relocations of nonprofit organizations have resulted in significant job losses.

V. This Interim Rule

This interim rule follows publication of and takes into consideration the public comments received on HUD's October 24, 2000, proposed rule. As noted above, this interim rule makes several changes to the proposed rule in response to the public comments. HUD has decided to issue this rule as an interim rule to afford the public with another opportunity to comment, and specifically to the changes made to the rule based on earlier comments. All comments received in response to this interim rule will be considered during development of the final rule.

This interim rule would implement section 105(h) of the 1974 HCD Act by revising HUD's CDBG program regulations at 24 CFR part 570. For the Entitlement CDBG program, the interim rule would establish a new § 570.210 (entitled ''Prohibition of use of assistance for employment relocation activities''), which would describe the CDBG job pirating prohibitions. Other related sections of the Entitlement regulations would be revised. For the State CDBG program, the interim rule would revise § 570.482 (entitled ''Eligible activities'') to describe the job pirating provisions for the state-administered CDBG program.

In situations where a natural disaster has occurred and the President has declared the area a disaster under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, grantees can request suspension of certain statutory provisions.

A. Significant Features of the Interim Rule

1. *Direct assistance to for-profit businesses.* Section 105 of the 1974 HCD Act authorizes the provision of direct CDBG assistance to for-profit businesses. Specifically, section 105(a)(17) authorizes CDBG recipients to provide direct assistance to for-profit businesses for economic development activities. Additionally, section

105(a)(15) authorizes recipients to provide CDBG funds to Community-Based Development Organizations (CBDOs) and other nonprofit entities for economic development activities that increase economic opportunities, or that stimulate or retain businesses or permanent jobs. CBDOs and other nonprofit entities may implement economic development activities directly or they may assist for-profit businesses similar to the way CDBG recipients assist for-profit businesses.

Section 105(h) targets CDBG assistance to for-profit businesses. Pursuant to section 105(h), this interim rule would prohibit the provision of CDBG assistance to for-profit businesses (including business expansions) under sections 105(a)(15) and 105(a)(17) of the 1974 HCD Act, if:

(i) The funding will assist in the relocation of a plant, facility, or operation; and

(ii) The relocation is likely to result in a significant loss of jobs in the area from which the relocation occurs.

As noted, HUD will apply the job pirating prohibition rule to those business expansions that result in the relocation of all or a portion of an operation to the expansion site, if the relocation would result in a significant loss in the number of jobs at the current facility. This rule is not intended to apply to situations in which a business starts a new operation in a new location, which is unrelated to existing operations, and later decides to reduce or eliminate the existing operation. For example, a business presently manufactures lawnmowers in city A, and decides to diversify its operations by opening a plant (with CDBG assistance) to assemble computer circuit boards in city B, which is in a different LMA. Two years later, because of changes in the industry, the business decides to get out of the lawnmower business and to focus exclusively on computer circuit boards; it closes the lawnmower factory or sells the factory to a competitor. This scenario would not constitute job pirating, because the circuit board plant constitutes a completely different operation with very different job positions from the lawnmower factory. The firm's decision to exit the lawnmower business was unrelated to the decision to enter the computer circuit board business. However, a company that plans to open a new plant outside its current LMA, with the express intent to consolidate its production of ''goods'' at that location, and then shuts down an older facility elsewhere up to three years later, would trigger the anti-pirating provision if there was a significant loss of jobs.

HUD also decided that the rule should not cover the business activities of nonprofit entities. HUD will revisit this issue in the future if there is evidence of abuse from job pirating involving nonprofit entities.

2. *Infrastructure improvements.* The October 24, 2000, proposed rule considered how section 105(h) applies to CDBG recipients that provide assistance *indirectly* to for-profit businesses. The proposed rule stated that indirect assistance may take the form of buildable sites, rail spurs, and other amenities in industrial parks. CDBG recipients may carry out these activities under section 105(a)(14) of the 1974 HCD Act, as well as sections 105(a)(1), (2), (4), or (7), which govern the use of CDBG funds for acquisition of real property, public facilities improvements, clearance, demolition, and disposition of real property. After reviewing the comments on the October 24, 2000, proposed rule, the Department believes that using CDBG funding for these activities assists directly in the relocation of a business when a CDBG recipient, participating unit of general local government, subrecipient, or CBDO enters into a written agreement to provide the assistance as a condition of the business relocating to the recipient's jurisdiction. Under such circumstances, the Department discerns no difference between providing infrastructure assistance and making a loan to a business. The Department does not consider infrastructure assistance to be indirect assistance in such cases, since there is no difference between providing infrastructure assistance and making a loan to a business when there is a written agreement in which a business commits to create jobs.

3. *Definition of ''Operation.''* Section 105(h) prohibits the use of CDBG assistance with respect to the relocation of any industrial or commercial plant, facility, or ''operation'' from one area to another. This interim rule defines the term ''operation'' to include, but not be limited to, any equipment, position, employment opportunity, production capacity, or product line.

4. *Definition of ''Area.''* Section 105(h) prohibits the relocation of any industrial or commercial plant, facility, or operation, from ''one area to another,'' if the relocation is likely to result in significant job loss. For metropolitan areas, HUD defines the term ''area'' as synonymous with the term ''Labor Market Area (LMA),'' as defined by the U.S. Bureau of Labor Statistics (BLS) (*http://www.bls.gov/lau/laugeo.htm*). The BLS defines an LMA as:

> [a]n economically integrated area within which individuals can reside and find employment within a reasonable distance or can readily change jobs without changing their place of residence. In addition, LMAs are nonoverlapping and geographically exhaustive.

LMAs include metropolitan statistical areas (MSAs) and Metropolitan Divisions, defined by the Office of Management and Budget (OMB), and small LMAs. Metropolitan Division is a new OMB term that has replaced Primary Metropolitan Statistical Areas (PMSAs). A Metropolitan Division consists of a county or a group of counties within a Core Based Statistical Area that has a core population of at least 2.5 million. A Metropolitan Division consists of one or more main/secondary counties that represent an employment center or centers, plus adjacent counties associated with the main county or counties through commuting ties. A Micropolitan Statistical Area is viewed as an area with urban clusters of at least 10,000 population, but less than a population of 50,000. The Micropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting.

HUD received multiple comments in response to the October 24, 2000, proposed rule that indicated the BLS definition of LMA does not work in rural areas for the purposes of this rule. Some commenters stated that in many states rural LMAs tended to be single-county entities while the true commuting area is a multicounty area. Using the BLS definitions could give a distorted view of the distances an employee could commute in order to maintain employment in a job that has moved to a new location. In response to these comments, HUD has determined that in non-metropolitan areas, a state may choose to use the BLS definition of LMA, or it may combine LMAs if that gives a more accurate definition of the true commuting area for a portion of a state. States would be required to define their LMAs and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. It should be noted that metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. Combined LMAs will still be referred to as LMAs. Also, a state can be more restrictive in its definitions (*e.g.*, a state can forbid units of general local government from using State CDBG

funds to fund *any* business relocation if the state so chooses).

HUD believes that the BLS definition of a LMA is the most logical one to use for metropolitan jurisdictions, for two reasons:

(i) It ensures consistency of definitions and data across the country; and

(ii) It enhances consistency of approach among federal programs.

The interim rule would be applicable to business relocations from one LMA to another, regardless of the type of area (*e.g.*, from a MSA to a Metropolitan Division, or from a MSA to a small LMA, etc.) or the type of CDBG grantee providing assistance (*e.g.*, entitlement city or state grant recipient). As a result, the rule defines LMAs for both entitlement and non-entitlement areas in both the entitlement and State CDBG regulations. The only exception is that the rule will not be applicable to moves to Indian reservations; however, the statute is applicable to moves to reservations.

For instance, moving a business from the City of Denver (located in the Denver-Aurora, CO, MSA) to Adams County, CO (also located in the Denver-Aurora, CO, MSA) would not be subject to the anti-pirating provisions of this interim rule since both Denver and Adams County are located in the same LMA.

5. *Determining ''significant job loss.''* As noted above, section 105(h) prohibits CDBG assistance for business relocation activities that ''will result in a significant loss of employment'' in the LMA from which the relocation occurs. This interim rule requires that a CDBG entitlement, small city, insular grantee, or a unit of general local government receiving funding from a state, in determining whether a significant job loss would occur, collect labor force statistics for the LMA where the business is located *before* the relocation occurs. As stated in this rule, the CDBG grantee also would be required to document the number of jobs that the business plans to relocate to the new LMA.

The example in the chart below illustrates the factors that a CDBG grantee would be required to consider in determining whether the relocation of a business would result in a significant job loss. In the example, a city has proposed funding a business that plans to relocate from any of the following areas. The business plans on relocating on July 1, and the move would result in the relocation of 50 jobs.

EXAMPLE OF CALCULATING SIGNIFICANT JOB LOSS

CDBG grantee/name of LMA Area where business is currently located (A)	Number of persons in labor force in area where business is currently located (April 2003 for Chattanooga and Jefferson County, 2002 average for Logan) (B)	One-tenth percent of labor force Multiply column (B) by .001 (C)	Number of jobs leaving the area Must be fewer than number in column (C) to be eligible for assistance (D)
Chattanooga, TN	234,900	234,900 × .001 = 234	50
Chattanooga, TN-GA MSA			NOT PROHIBITED
Logan, NE	18,250	18,250 × .001 = 18.250	50
Lincoln-Logan-McPherson SLMA			PROHIBITED
Jefferson County, CO	1,238,600	1,238,600 × .001 = 1,238.6	50
Denver, CO, Metropolitan Division			NOT PROHIBITED

(MSA)
(SLMA: Small LMA)

Labor force statistics are provided monthly and annually for each LMA. Labor force data may be obtained from the BLS Web site at *http://www.bls.gov/lau/home.htm*. CDBG grantees also may write to their state employment statistics contact person to receive local employment data. A list of state employment statistics contact names is provided on the Internet at *http://www.bls.gov/bls/ofolist.htm*. To obtain a list of LMAs or for questions regarding local area unemployment statistics, contact the BLS Local Area Unemployment Statistics Division by calling (202) 691–6392 (this is not a toll-free number) or e-mail the Division at *lausinfo@bls.gov*.

In large LMAs, one-tenth of a percent job loss of the total labor market may constitute a large number of employees. Therefore, this interim rule provides that in all cases a loss of 500 or more jobs will be considered to constitute a significant job loss. To prevent the rule from having an effect in situations where the relocation of a business causes an insignificant loss of jobs, the interim rule provides that a loss of 25 or fewer jobs from an area, as a result of a CDBG-funded economic development project, does not constitute a significant loss of jobs. In summary:

(1) A loss of 25 or fewer jobs as a result of a single activity will not constitute a significant job loss,

(2) Any loss greater than 500 will continue to be counted as significant,

(3) Job losses between 25–500 must be less than 0.1 percent of the areas labor force to avoid being counted as significant.

B. Activities and Businesses Exempt From the Job Piracy Prohibition

1. *General*. This interim rule will not apply to any of the following:

(a) Relocation assistance required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655) (implemented at 24 CFR part 42) (URA) and with respect to the CDBG regulations, at 24 CFR 570.488 and 570.606;

(b) Microenterprises; and

(c) Assistance to businesses that buy equipment and/or inventory in arms-length transactions and move the equipment and/or inventory to another area.

2. *Relocation assistance*. HUD will exclude relocation assistance required to be provided to a business under the URA. Businesses that receive such assistance and are required to relocate generally are not voluntarily relocating. In addition, optional relocation assistance under section 105(a)(11), as implemented at 570.201(i) and 570.606(d), should be excluded for the same reasons. HUD does not believe that the anti-pirating provisions were intended to prevent businesses that are forced to relocate as a result of a government action covered by the URA from relocating to another area.

3. *Microenterprises*. HUD considered whether microenterprises should be subject to the job pirating restrictions, but has determined that this type of business was not the intended target of the statutory prohibition. Microenterprises generally have five or fewer employees and typically do not seek resources to relocate jobs to other areas.

4. *CDBG-assisted arms-length transactions*. The exemption for businesses that buy equipment, inventory, or other physical assets in arms-length transactions is meant to protect assisted businesses that simply purchase equipment and inventory that are located in one area and move them to a new location. The job piracy prohibition targets businesses that move *existing* operations from one labor market area to another.

This interim rule applies to CDBG assistance to a business that: (1) Shuts down or downsizes a facility and sells the equipment in a non-arms-length transaction (an example of a non-arms-length transaction is a firm selling equipment to a subsidiary); or (2) sells, in an arms-length transaction, an interest in an existing business, product line, customer base, or the entire stock-in-trade and goodwill of an existing business.

This interim rule does not apply to assistance to a business that only purchases used equipment in an arms-length transaction. HUD believes that the sale and purchase of equipment, inventories, or other business assets on the open market were not intended to be included under the business relocation provisions of section 105(h).

The examples below illustrate the applicability of this interim rule to the sale of business equipment and inventory.

Example 1: A city provides CDBG assistance to a business for the purchase of equipment. The business will purchase the equipment through a used equipment broker. The equipment is currently owned by a firm that is downsizing. Upon purchase of the equipment, the new owner will move the equipment to another state from where the equipment is currently located.

Example 2: A city provides CDBG assistance to a firm that intends to buy the product line of a business and to relocate the operations of the entire product line to another area.

In both cases, HUD would examine:

(1) Will the CDBG assistance directly assist in the relocation of the business?; and

(2) Will the relocation result in significant job loss?

In Example 1, the CDBG assistance did not trigger the relocation of the equipment, nor was the relocation of the equipment related to any loss of jobs. The current equipment owner's decision to downsize, regardless of another business' subsequent purchase of equipment and inventory, was the reason for the job loss in this example. The use of CDBG funds to purchase equipment in an arms-length transaction such as this is not prohibited under this interim rule.

In Example 2, the CDBG assistance would directly assist the move of an operation from one LMA to another. The interim rule prohibits this assistance if the relocation of the product line is likely to result in significant job loss in the LMA from which the proposed relocation would occur.

C. Documentation Requirements for CDBG Recipients and Businesses

This interim rule would require that, for each CDBG assisted business covered by this interim rule, the recipient's (entitlement, small city, insular grantee, state, or the state grant recipient) CDBG project file must document: Whether the business has a plant, facility, or operation in an area outside of the recipient's area; and, if the business has one or more plants, facilities, or operations located in other LMAs, whether the business plans to relocate jobs from other locations to the site being assisted with CDBG funds. Prior to a decision to provide CDBG assistance to a business that has a plant, location, or facility in other LMAs, the recipient shall document whether the number of jobs relocated by the business at each of the locations that are losing jobs to the new facility would constitute a significant job loss as defined in this rule. If the recipient decides to commit CDBG assistance to a business, then it must require and obtain, as a condition for assistance, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule. The business must provide this certification to the recipient as a part of the agreement committing CDBG assistance to the business. Further, the agreement must provide that, in the event the CDBG assistance results in a business relocation subject to this interim rule, the business will reimburse the CDBG recipient for any assistance provided to, or expended on behalf of, the business.

The purpose of this certification is to prohibit businesses, especially those with similar facilities/operations in other LMAs, from using CDBG assistance to establish a new facility with the intent of subsequently relocating existing operations to the new facility within a three-year period (or the length of time for creating jobs in the agreement between the business and the recipient if it is longer than three years) from the date of the certification. If the business plans to relocate jobs, then it would be required to certify as to the number of jobs at the current facility that would be lost, and the number of those positions that would be relocated once the CDBG-assisted facility was fully operational. If the number of jobs to be relocated exceeds the threshold for significant job loss, CDBG assistance cannot be provided.

States are required to define and certify their LMAs and retain records to substantiate such areas prior to any business relocation that is impacted by this rule. It should be noted that metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. In those situations where a particular state decides not to define its LMAs in non-metropolitan areas, then the area(s) defined by the U.S. Department of Labor for that particular non-metropolitan area shall be used.

VI. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The current OMB control number for the CDBG Entitlement program is 2506–0077. The current OMB control number for the State CDBG program is 2506–0085. These information collection numbers will be revised to include the information collection requirements contained in this interim rule.

The burden of the information collections in this interim rule is estimated below:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 570.200(e) and § 570.506(c) (Maintenance of Required Documentation):				
Local	337	1	.333	112
§ 570.210(c) (Statement):				
Local	337	1	2	674
§ 570.482(h)(3) (Statement):				
Local	50	1	2	100

Total Local Reporting and Recordkeeping Burden (Hours): 886.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the required collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the required collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must be received within 60 days from the date of this interim rule. Comments must refer to the interim rule by name and docket number (FR–4556) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Fax number: (202) 395–6974 (this is not a toll-free number.)

and

Shelia Jones, Reports Liaison Officer, Office of the Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410–7000.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage and is applicable to this interim rule in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are no anticompetitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities. Nevertheless, HUD is sensitive to the fact that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on small businesses. HUD did not receive any comments on this issue in its October 24, 2000, proposed rule. HUD is again soliciting alternatives for compliance from small entities as to how these small entities might comply in a way that is less burdensome to them. The *de minimis* threshold (25 jobs) for applicability of this rule will, by itself, minimize any burden on small businesses. Therefore, the undersigned certifies that this interim rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described by this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This interim rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

Executive Order 12866, Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled, ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket by calling the Regulations Division at (202)

708–3055 (this is not a toll-free number).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program numbers for the programs covered by this interim rule are as follows:

—Community Development Block Grant entitlement program—14.218;

—State CDBG program—14.228;

—HUD Small Cities CDBG program—14.219;

—Economic Development Initiative and Brownfields Economic Development Initiative programs—14.246;

—Section 108 Loan Guarantee program—14.248; and

—Insular Areas—14.225.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

■ Accordingly, for the reasons discussed in the preamble, HUD amends 24 CFR part 570 to read as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

■ 2. Revise § 570.200(e) to read as follows:

§ 570.200 General policies.

* * * * *

(e) *Recipient determinations required as a condition of eligibility.* In several instances under this subpart, the eligibility of an activity depends on a special local determination. Recipients shall maintain documentation of all such determinations. A written determination is required for any activity carried out under the authority of §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, 570.210, and 570.309.

* * * * *

■ 3. Add § 570.210 to read as follows:

§ 570.210 Prohibition on use of assistance for employment relocation activities.

(a) *Prohibition.* CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one LMA to another LMA if the relocation is likely to result in a significant loss of jobs in the LMA from which the relocation occurs.

(b) *Definitions.* The following definitions apply to this section:

(1) *Directly assist.* Directly assist means the provision of CDBG funds for activities pursuant to:

(i) § 570.203(b); or

(ii) §§ 570.201(a)—(d), 570.201(l), 570.203(a), or § 570.204 when the grantee, subrecipient, or, in the case of an activity carried out pursuant to § 570.204, a Community Based Development Organization (CDBO) enters into an agreement with a business to undertake one or more of these activities as a condition of the business relocating a facility, plant, or operation to the grantee's LMA. Provision of public facilities and indirect assistance that will provide benefit to multiple businesses does not fall under the definition of ''directly assist,'' unless it includes the provision of infrastructure to aid a specific business that is the subject of an agreement with the specific assisted business.

(2) *Labor market area (LMA).* For metropolitan areas, an LMA is an area defined as such by the BLS. An LMA is an economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence. In addition, LMAs are nonoverlapping and geographically exhaustive. For metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the affected business is currently located and from which current jobs may be lost. For non-metropolitan areas, an LMA is either an area defined by the BLS as an LMA, or a state may choose to combine non-metropolitan LMAs. States are required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. Metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. For the HUD-administered Small Cities Program, each of the three participating counties in Hawaii will be considered to be its own LMA. Recipients of Fiscal Year 1999 Small Cities Program funding in New York will follow the requirements for State CDBG recipients.

(3) *Operation.* A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity or product line of the business.

(4) *Significant loss of jobs.* (i) A loss of jobs is significant if: The number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that LMA; or in all cases, a loss of 500 or more jobs. Notwithstanding the aforementioned, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.

(ii) A job is considered to be lost due to the provision of CDBG assistance if the job is relocated within three years of the provision of assistance to the business; or the time period within which jobs are to be created as specified by the agreement between the business and the recipient if it is longer than three years.

(c) *Written agreement.* Before directly assisting a business with CDBG funds, the recipient, subrecipient, or a CDBO (in the case of an activity carried out pursuant to § 570.204) shall sign a written agreement with the assisted business. The written agreement shall include:

(1) *Statement.* A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another, and, if so, the number of jobs that will be relocated from each LMA;

(2) *Required information.* If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule; and

(3) *Reimbursement of assistance.* The agreement shall provide for reimbursement of any assistance provided to, or expended on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

(d) *Assistance not covered by this section.* This section does not apply to:

(1) *Relocation assistance.* Relocation assistance required by the Uniform Assistance and Real Property Acquisition Policies Act of 1970, (URA) (42 U.S.C. 4601–4655);

(2) *Microenterprises.* Assistance to microenterprises as defined by Section 102(a)(22) of the Housing and

Community Development Act of 1974; and

(3) *Arms-length transactions.* Assistance to a business that purchases business equipment, inventory, or other physical assets in an arms-length transaction, including the assets of an existing business, provided that the purchase does not result in the relocation of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one LMA to another LMA and does not produce a significant loss of jobs in the LMA from which the relocation occurs.

■ 4. Add § 570.482(h) to read as follows:

§ 570.482 Eligible activities.

* * * * *

(h) *Prohibition on use of assistance for employment relocation activities.* (1) *Prohibition.* CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one labor market area (LMA) to another LMA if the relocation is likely to result in a significant loss of jobs in the LMA from which the relocation occurs.

(2) *Definitions.* The following definitions apply to the section:

(i) *Directly assist.* Directly assist means the provision of CDBG funds to a business pursuant to section 105(a)(15) or (17) of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq*). Direct assistance also includes assistance under section 105(a)(1), (2), (4), (7), and (14) of the Housing and Community Development Act of 1974, when the state's grantee, subrecipient, or nonprofit entity eligible under section 105(a)(15) enters into an agreement with a business to undertake one or more of these activities as a condition of the business relocating a facility, plant, or operation to the LMA. Provision of public facilities and indirect assistance that will provide benefit to multiple businesses does not fall under the definition of ''directly assist,'' unless it includes the provision of infrastructure to aid a specific business that is the subject of an agreement with the specific assisted business.

(ii) *Labor market area (LMA).* For metropolitan areas, an LMA is an area defined as such by the U.S. Bureau of Labor Statistics (BLS). An LMA is an economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence. In addition, LMAs are nonoverlapping and geographically exhaustive. For metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the affected business is currently located and from which current jobs may be lost. For non-metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the assisted business is currently located and from which current jobs may be lost. For non-metropolitan areas, a LMA is either an area defined by the BLS as an LMA, or a state may choose to combine non-metropolitan LMAs. States are required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. Metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. For the Insular Areas, each jurisdiction will be considered to be an LMA. For the HUD-administered Small Cities Program, each of the three participating counties in Hawaii will be considered to be its own LMA. Recipients of Fiscal Year 1999 Small Cities Program funding in New York will follow the requirements for State CDBG recipients.

(iii) *Operation.* A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity, or product line of the business.

(iv) *Significant loss of jobs.* (A) A loss of jobs is significant if: The number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that LMA; or in all cases, a loss of 500 or more jobs. Notwithstanding the aforementioned, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.

(B) A job is considered to be lost due to the provision of CDBG assistance if the job is relocated within three years from the date the assistance is provided to the business or the time period within which jobs are to be created as specified by the agreement among the business, the recipient, and the state (as applicable) if it is longer than three years.

(3) *Written agreement.* Before directly assisting a business with CDBG funds, the recipient, subrecipient, or (in the case of any activity carried out pursuant to 105(a)(15)) nonprofit entity shall sign a written agreement with the assisted business. The written agreement shall include:

(i) *Statement.* A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another and, if so, the number of jobs that will be relocated from each LMA;

(ii) *Required certification.* If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule; and

(iii) *Reimbursement of assistance.* The agreement shall provide for reimbursement to the recipient of any assistance provided to, or expended on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

(4) *Assistance not covered by this paragraph.* This paragraph does not apply to:

(i) *Relocation assistance.* Relocation assistance required by the Uniform Assistance and Real Property Acquisition Policies Act of 1970 (URA), (42 U.S.C. 4601–4655); optional relocation assistance under section 105(a)(11), as implemented at 570.606(d);

(ii) *Microenterprises.* Assistance to microenterprises as defined by section 102(a)(22) of the Housing and Community Development Act of 1974; and

(iii) *Arms-length transactions.* Assistance to a business that purchases business equipment, inventory, or other physical assets in an arms-length transaction, including the assets of an existing business, provided that the purchase does not result in the relocation of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one LMA to another LMA and does not produce a significant loss of jobs in the LMA from which the relocation occurs.

■ 5. Revise § 570.506(c) to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(c) Records that demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, 570.210, and 570.309.

* * * * *

Dated: November 30, 2005.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 05–24428 Filed 12–22–05; 8:45 am]

BILLING CODE 4210–29–P

Federal Register

Friday,
December 23, 2005

Part IV

The President

Memorandum of December 20, 2005—Designation of Officers of the Office of the Director of National Intelligence To Act as Director of National Intelligence

Federal Register
Vol. 70, No. 246
Friday, December 23, 2005

Presidential Documents

Title 3—

The President

Memorandum of December 20, 2005

Designation of Officers of the Office of the Director of National Intelligence To Act as Director of National Intelligence

Memorandum for the Director of National Intelligence

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345, *et seq.*, it is hereby ordered that:

Section 1. Subject to the provisions of sections 3 and 4 of this memorandum, the officers of the Office of the Director of National Intelligence named in section 2, in the order listed, shall act as and perform the functions and duties of the office of the Director of National Intelligence (DNI), during any period in which the DNI and the Principal Deputy Director of National Intelligence have died, resigned, or otherwise become unable to perform the functions and duties of the office of the DNI, until such time as at least one of the officers listed in this section is able to perform the functions and duties of the DNI.

Sec. 2. Order of Succession.

(a) Deputy Director of National Intelligence for Management;

(b) Deputy Director of National Intelligence for Collection;

(c) Deputy Director of National Intelligence for Analysis;

(d) Deputy Director of National Intelligence for Customer Outcomes;

(e) Chief of Staff, Office of the Director of National Intelligence;

(f) General Counsel, Office of the Director of National Intelligence; and

(g) Chief Information Officer, Office of the Director of National Intelligence.

Sec. 3. National Security Act of 1947. This memorandum shall not supercede the authority of the Principal Deputy Director of National Intelligence to act for, and exercise the powers of, the Director of National Intelligence during the absence or disability of the Director of National Intelligence or during a vacancy in the position of Director of National Intelligence, (National Security Act of 1947, as amended, 50 U.S.C. 403–3a).

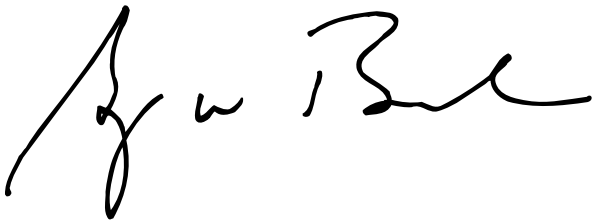
Sec. 4. Exceptions.

(a) No individual who is serving in an office listed in section 2 in an acting capacity shall act as the DNI pursuant to this section.

(b) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting DNI.

Sec. 5. Publication.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, December 20, 2005.

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