AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

8–7–06 Monday
Vol. 71 No. 151 August 7, 2006

Pages 44551–44882

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

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

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

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

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

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

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 71 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

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: Tuesday, August 8, 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

Printed on recycled paper.

Contents

Federal Register

Vol. 71, No. 151

Monday, August 7, 2006

Agricultural Marketing Service
RULES
Blueberry promotion, research, and information order; U.S. Highbush Blueberry Council; establishment and membership, 44553–44555
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44605–44607
Grade standards:
Summer squash, 44607–44608
Grants and cooperative agreements; availability, etc.:
Organic Certification Cost-Share Program, 44608

Agriculture Department
See Agricultural Marketing Service
See Federal Crop Insurance Corporation
See Food and Nutrition Service
See Forest Service
See Rural Utilities Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44605

Census Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44611–44612

Centers for Disease Control and Prevention
NOTICES
Inventions, Government-owned; availability for licensing, 44698
Meetings:
Exotic animal importation, sale, and distribution, discussions, 44698–44699
National Institute for Occupational Safety and Health—Radiation and Worker Health Advisory Board; correction, 44700

Coast Guard
RULES
Drawbridge operations:
Florida, 44586–44587

Commerce Department
See Census Bureau
See Industry and Security Bureau
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44611

Customs and Border Protection Bureau
RULES
Andean Trade Promotion and Drug Eradication Act; implementation, 44564–44584

Defense Department
PROPOSED RULES
Privacy Act; implementation, 44602–44604
NOTICES
Arms sales notification; transmittal letter, etc., 44618–44667
Privacy Act; systems of records, 44667–44670

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44670–44671
Grants and cooperative agreements; availability, etc.:
Discretionary grant programs, 44671–44673
Meetings:
Safe and Drug-Free Schools and Communities Advisory Committee, 44673
Reports and guidance documents; availability, etc.:
Maintaining, collecting, and reporting data on race and ethnicity, 44866–44871

Employment and Training Administration
NOTICES
Adjustment assistance; applications, determinations, etc.:
American and Elfird, Inc.; correction, 44711
Arcona Leather Technologies, LLC; correction, 44711
Atlas Spring Manufacturing Corp.; correction, 44711
Ceramo Co., Inc.; correction, 44712
CFM Home Products; correction, 44712
Clover Yarn, Inc.; correction, 44712
Dana Corp.; correction, 44712
Miller Desk, Inc.; correction, 44713
Perlos, Inc.; correction, 44713
Point Technologies; correction, 44713
Agency information collection activities; proposals, submissions, and approvals, 44713–44714

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Global Nuclear Energy Partnership Program:
Advanced burner reactor construction; expressions of interest request, 44673–44676
Consolidated fuel treatment center construction; expressions of interest request, 44676–44679
Meetings:
Multimedia Environmental Modeling Federal Interagency Steering Committee, 44679

Energy Information Administration
NOTICES
Reports and guidance documents; availability, etc.:
Domestic crude oil first purchase and monthly foreign crude oil acquisition reports; forms continuation, 44679–44680

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Nevada, 44587–44590
NOTICES
Committees; establishment, renewal, termination, etc.:
Clean Air Scientific Advisory Committee, 44695–44696
Meetings:
Clean Air Compliance Analysis Advisory Council, 44696–44697

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 44697

Federal Aviation Administration
RULES
Standard instrument approach procedures, 44560–44564

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 44697–44698

Federal Crop Insurance Corporation
NOTICES
Grants and cooperative agreements; availability, etc.:
Crop Insurance Education in Targeted States Program, 44608

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Central New York Oil & Gas Co., L.L.C, 44681–44682
Idaho Power Co., 44682–44683
Environmental statements; notice of intent:
Puget Sound Energy, Inc., 44683–44685
Southeast Supply Header, LLC, 44685–44687
Hydroelectric applications, 44687–44695
Applications, hearings, determinations, etc.:
Cameron LNG, LLC, 44680–44681
Egan Hub Storage, LLC, 44681
Northern Natural Gas Co., 44681

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 44698

Federal Reserve System
RULES
Equal opportunity rules:
Non-citizen employees; sensitive information access requirements, 44555–44560

Financial Management Service
See Fiscal Service

Fiscal Service
RULES
Financial Management Service:
Federal agency disbursements management—
Victims of disasters and emergencies; Federal payments delivery; facilitation, 44584–44585
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44766–44767

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Izembek National Wildlife Refuge, AK; King Cove Access Project; closure to off-road vehicles, 44700

Food and Nutrition Service
PROPOSED RULES
Child nutrition programs:
Women, infants, and children; special supplemental nutrition program—
Food packages; revisions, 44784–44855

Forest Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44608–44609
Land and resource management plans, etc.:
Bitterroot, Flathead, and Lolo National Forests, MT, 44609–44610
Meetings:
Resource Advisory Committees—
Custer County, 44610

Health and Human Services Department
See Centers for Disease Control and Prevention

Homeland Security Department
See Coast Guard
See Customs and Border Protection Bureau
See Transportation Security Administration

Housing and Urban Development Department
PROPOSED RULES
Community development block grants:
Insular Areas Program; timeliness expenditure standards, 44860–44864

Indian Affairs Bureau
NOTICES
Liquor and tobacco sale or distribution ordinance:
Tonkawa Tribe of Indians of Oklahoma, 44700–44706

Industry and Security Bureau
NOTICES
Export privileges, actions affecting:
Karni, Asher, et al., 44612–44614

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See National Park Service

Internal Revenue Service
PROPOSED RULES
Income taxes:
Capital asset exclusion for accounts and notes receivable, 44600–44602
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44767–44779

International Trade Commission
NOTICES
Import investigations:
Uranium from—
Russia, 44707
Meetings; Sunshine Act, 44707–44708

Justice Department
See Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44708

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44708–44709
Privacy Act; systems of records, 44709–44711

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
NOTICES
Reports and guidance documents; availability, etc.:
Departmental Strategic Plan (2006-20011 FY); comment request, 44858

Libraries and Information Science, National Commission
See National Commission on Libraries and Information Science

National Commission on Libraries and Information Science

NOTICES
Meetings, 44716

National Institute for Literacy
NOTICES
Grants and cooperative agreements; availability, etc.:
Literacy Information and Communication Resource Collections, 44716–44720

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—Northern rockfish, 44591
West Coast States and Western Pacific fisheries—Pacific Coast groundfish, 44590–44591
NOTICES
Endangered and threatened species:
Findings on petitions, etc.—Cook Inlet beluga whale, 44614–44615
Endangered and threatened species permit applications, determinations, etc., 44614
Scientific research permit applications, determinations, etc., 44615–44618

National Park Service
NOTICES
Environmental statements; notice of intent:
Everglades National Park, FL; general management plan, 44706–44707

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Christian, Lawrence T., et al.; denied, 44593–44599
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44720–44721
Applications, hearings, determinations, etc.:
Duke Power Co. LLC, 44721
Nuclear Management Co., LLC, 44721–44722

Occupational Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44714–44715

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
PROPOSED RULES
Health benefits, Federal employees:
Continued coverage during retirement; requirements waiver, 44592–44593
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44724
Excepted service; positions placed or revoked, 44724–44727

Presidential Documents
ADMINISTRATIVE ORDERS
Export control regulations; continuation of emergency (Notice of August 3), 44551

Public Debt Bureau
See Fiscal Service

Railroad Retirement Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44727

Rural Utilities Service
NOTICES
Environmental statements; availability, etc.:
Highwood Generating Station, MT, 44610–44611

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44727–44729
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 44729–44734
NASDAQ Stock Market LLC, 44734–44740
National Association of Securities Dealers, Inc., 44740–44751
New York Stock Exchange LLC, 44751–44752
NYSE Arca, Inc., 44752–44766

Small Business Administration
NOTICES
Disaster loan areas:
New York, 44766

State Department
NOTICES
Culturally significant objects imported for exhibition:
Avery Preesman, 44766

Thrift Supervision Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 44779–44781

Trade Representative, Office of United States
NOTICES
Bahrain-United States Free Trade Agreement:
Discriminatory purchasing requirements; waiver determination, 44722–44723
World Trade Organization:
Dispute settlement panel proceedings—India; customs bond directive for merchandise subject to antidumping/countervailing duties, 44723–44724

Transportation Department
See Federal Aviation Administration

Transportation Security Administration
RULES
Maritime and land transportation security:
Drivers licensed by Canada or Mexico transporting hazardous materials to and within U.S., 44874–44881

Treasury Department
See Fiscal Service
See Internal Revenue Service
See Thrift Supervision Office
RULES
Andean Trade Promotion and Drug Eradication Act; implementation, 44564–44584

Separate Parts In This Issue

Part II
Agriculture Department, Food and Nutrition Service, 44784–44855

Part III
Labor Department, 44858

Part IV
Housing and Urban Development Department, 44860–44864

Part V
Education Department, 44866–44871

Part VI
Homeland Security Department, Transportation Security Administration, 44874–44881

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

13222 (See Notice of August 3, 2006) 44551

Administrative Orders:

Notices:

Notice of August 3, 2006 44551

5 CFR

Proposed Rules:

890.....44592

7 CFR

1218.....44553

Proposed Rules:

246.....44784

10 CFR

Proposed Rules:

50.....44593

12 CFR

268.....44555

14 CFR

97 (2 documents) 44560, 44562

19 CFR

10.....44564

163.....44564

178.....44564

24 CFR

Proposed Rules:

91.....44860

570.....44860

26 CFR

Proposed Rules:

1.....44600

31 CFR

208.....44584

32 CFR

Proposed Rules:

312.....44602

318.....44603

33 CFR

117.....44586

40 CFR

52.....44587

49 CFR

1572.....44874

50 CFR

660.....44590

679.....44591

Federal Register
Vol. 71, No. 151
Monday, August 7, 2006

Presidential Documents

Title 3—

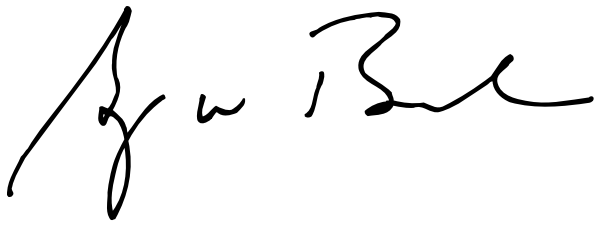
The President

Notice of August 3, 2006

Continuation of Emergency Regarding Export Control Regulations

On August 17, 2001, consistent with the authority provided me under the International Emergency Economic Powers Act (50 U.S.C. 170l *et seq.*), I issued Executive Order 13222. In that order, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*). Because the Export Administration Act has not been renewed by the Congress, the national emergency declared on August 17, 2001, must continue in effect beyond August 17, 2006. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13222.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
August 3, 2006.

[FR Doc. 06–6767
Filed 8–4–06; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 71, No. 151
Monday, August 7, 2006

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[Doc. No. FV–03–701–FR]

Blueberry Promotion, Research, and Information Order; Amendment No. 2 To Change the Name of the U.S.A. Cultivated Blueberry Council and Increase Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the title of the U.S.A. Cultivated Blueberry Council to the ''U.S. Highbush Blueberry Council'' (Council). The purpose of this change is to avoid any confusion in the industry regarding the specific type of blueberry and industry segment represented by the Council. Additionally, this change makes the name of the Council consistent with industry nomenclature, and adds one member and alternate to the Council to represent the state of Washington—the sixth largest highbush blueberry producing state.

DATES: *Effective Date:* September 6, 2006.

FOR FURTHER INFORMATION CONTACT: Daniel Rafael Manzoni, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–S, Washington, DC 20250–0244, telephone (202) 720–5951, fax (202) 205–2800, or e-mail *daniel.manzoni@usda.gov.*

SUPPLEMENTARY INFORMATION: *Legal authority.* The Blueberry Promotion, Research, and Consumer Information Order (Order) [7 CFR Part 1218] became effective on August 16, 2000 [65 FR 43961, July 17, 2000]. It was issued under the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7401–7425].

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under E.O.12988, Civil Justice Reform. The rule is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and may request a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], AMS has examined the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

There are approximately 2,000 producers, 200 first handlers, 50 importers, and 4 exporters of blueberries subject to the program. Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. Most importers and first handlers would not be classified as small businesses, and, while most exporters are large, the U.S. Department of Agriculture (USDA) assumes that some are small. The SBA defines small agricultural handlers as those whose annual receipts are less than $6.5 million, and small agricultural producers are defined as those having annual receipts of not more than $750,000 annually.

This rule amends the Order to change the title of the U.S.A. Cultivated Blueberry Council to the ''U.S. Highbush Blueberry Council'' (Council), and to add one member and alternate to the Council to represent the state of Washington.

The amendments are not considered to be substantial and do not significantly impact the blueberry industry. The title change will help avoid confusion regarding the specific type of blueberry and industry segment represented by the Council. Adding a producer and alternate member representing the state of Washington means that four additional producers are required to submit background forms to USDA in order to be considered for appointment to the Council. This is because two names must be submitted to the Secretary for consideration for each position on the Council. However, serving on the Council is optional. Taking into account alternatives, these changes accomplish the purpose of these amendments.

There are no relevant federal rules that duplicate, overlap, or conflict with the final rule.

In accordance with the OMB regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35], the background form, which represents the information collection and recordkeeping requirements imposed by this rule, has been approved by OMB under OMB Number 0505–0001.

The public reporting burden for this collection of information is estimated to average 0.5 hours per response for each producer of the 4 respondents.

The estimated annual cost of providing the information by the four producers is $6.00 or $1.50 per producer.

This additional burden will be included in the existing information collections approved for use under OMB Number 0505–0001.

Background

During the rulemaking process to implement the Order in 2000, members of the wild blueberry industry in Maine raised objections to the original name of the U.S.A. Blueberry Council. While USDA did not change the name at that time, the wild blueberry industry continued to have concerns regarding the generic name of the Council. Therefore, USDA issued a proposed rule to change the name of the Council to the U.S.A. Cultivated Blueberry Council on September 21, 2000 [65 FR 57104]. The new name became effective on August 16, 2001, with the publication of a final rule published in the **Federal Register** on July 17, 2001 [66 FR 37117].

Subsequently, the Council was appointed and decided that the term ''cultivated'' in its name should be changed to ''highbush'' because cultivated blueberries are commonly called highbush blueberries. Additionally, horticultural publications use the nomenclature of highbush and lowbush for blueberries. Using the terms highbush and lowbush provides a simple means for the consumer to differentiate between these two types of blueberries and for industry members to determine whether or not they owe assessments to the Council.

The Council voted unanimously on October 5, 2002, to change the Council's name to the U.S. Highbush Blueberry Council. At the same meeting, the Council voted unanimously to add one member and alternate to the Council to represent the state of Washington.

The Council currently consists of nine producers, one importer, one exporter from a foreign production area, one handler, and one public member. Each member has an alternate. The nine producer members are allocated as follows: one producer member for each of the top five producing states and one producer member from each of the four regions. The states of Georgia, Michigan, New Jersey, North Carolina, and Oregon currently have representation on the Council.

In recent years, highbush blueberry production in the state of Washington has increased. In 2001, Washington represented 8 percent of U.S. production, and the estimated production for that state in 2002 is 12.5 million pounds of highbush blueberries. In addition, the five additional states producing highbush blueberries (Alabama, Arkansas, Florida, Indiana, and New York) together represent only 7 percent of U.S. production, and the seventh highest producing state—Indiana—is expected to produce a total of 3 million pounds. Therefore, the Council determined that it was appropriate for Washington producers to have a member and alternate on the Council.

As requested by the Council, USDA issued a proposed rule to change the name of the U.S.A. Cultivated Blueberry Council and to increase membership on March 12, 2003 [68 FR 11756]. The deadline for comments was May 12, 2003.

In response to the proposed rule, USDA received five comments. A summary of the comments and USDA's responses follow.

One commenter from the wild blueberry industry supported the proposals to change the name of the U.S.A. Cultivated Blueberry Council to the U.S. Highbush Blueberry Council and to increase membership. However, the commenter objected to the term ''lowbush'' to identify wild blueberries. The commenter indicated that the term ''wild blueberries'' is universally recognized by the trade and consumer markets. As this rule does not affect the wild blueberry industry, the wild blueberry industry can continue use the term wild to identify their products. Accordingly, no changes to the rule are made as a result of this comment.

Four comments were received that strongly supported the name change to the U.S. Highbush Blueberry Council. These comments were from the Executive Director of the U.S.A. Cultivated Blueberry Council, an officer of the Washington Blueberry Commission, the President of the North American Blueberry Council, and a blueberry grower. Two of these commenters also supported adding one producer and alternate members from the state of Washington to the Council.

Accordingly, this final rule changes all references in the Blueberry Promotion, Research, and Consumer Information Order from the U.S.A. Cultivated Blueberry Council to the U.S. Highbush Blueberry Council, and changes all references to the ''USACBC'' with the ''Council.'' In addition, this rule revises § 1218.40(a)(2) to specify that there will be one producer member and alternate from each of the top six (rather than five) blueberry producing states. The Council will have 14 members and alternates as a result of this final rule. Therefore, a change is made in § 1218.40(a) to remove the Council member limit of 13. USDA has also removed obsolete language from §§ 1218.40 and 1218.41.

After consideration of all relevant material presented, including comments, the Council's recommendation, and other information, it is determined that this final rule is consistent with and will effectuate the purpose of the Act.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Blueberries, Consumer information, Marketing agreements, Blueberry promotion, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 1218 is amended as follows:

■ 1. The authority citation for part 1218 continues to read as follows:

Authority: 7 U.S.C. 7401–7425.

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION

Subpart A—Blueberry Promotion, Research, and Information Order

■ 2. In § 1218.3, the words ''U.S.A. Cultivated Blueberry Council'' are removed and the words ''U.S. Highbush Blueberry Council'' are added in their place, and ''USACBC'' is removed, and the word ''Council'' is added in its place.

■ 3. Revise § 1218.23 to read as follows:

§ 1218.23 U.S. Highbush Blueberry Council.

U.S. Highbush Blueberry Council or the *Council* means the administrative body established pursuant to § 1218.40.

■ 4. The undesignated center heading preceding § 1218.40 is revised to read as follows:

U.S. Highbush Blueberry Council

■ 5. In § 1218.40, the introductory text of paragraph (a) and paragraphs (a)(2) and (b) are revised to read as follows:

§ 1218.40 Establishment and membership.

(a) *Establishment of the U.S. Highbush Blueberry Council.* There is hereby established a U.S. Highbush Blueberry Council, hereinafter called the Council, composed of no more than 14 members and alternates, appointed by the Secretary from nominations as follows:

* * * * *

(2) One producer member and alternate from each of the top six blueberry producing states, based upon the average of the total tons produced over the previous three years. Average tonnage will be based upon production

and assessment figures generated by the Council.

* * * * *

(b) *Adjustment of membership.* At least once every five years, the Council will review the geographical distribution of United States production of blueberries and the quantity of imports. The review will be conducted through an audit of state crop production figures and Council assessment records. If warranted, the Council will recommend to the Secretary that the membership on the Council be altered to reflect any changes in the geographical distribution of domestic blueberry production and the quantity of imports. If the level of imports increases, importer members and alternates may be added to the Council.

■ 6. Section 1218.41 is revised to read as follows:

§ 1218.41 Nominations and appointments.

(a) Voting for regional and state representatives will be made by mail ballot.

(b) When a state has a state blueberry commission or marketing order in place, the state commission or committee will nominate members to serve on the Council. At least two nominees shall be submitted to the Secretary for each member and each alternate.

(c) Nomination and election of regional and state representatives where no commission or order is in place will be handled by the Council staff. The Council staff will seek nominations for members and alternates from the specific states and/or regions. Nominations will be returned to the Council office and placed on a ballot which will then be sent to producers in the state and/or region for a vote. The final nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the final nominee for alternate. The persons with the third and fourth highest number of votes cast will be designated as additional nominees for consideration by the Secretary.

(d) Nominations for the importer, exporter, first handler, and public member positions will be made by the Council. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

(e) From the nominations, the Secretary shall select the members and alternate members of the Council.

§§ 1218.42, 1218.43, 1218.44, 1218.45, 1218.46, 1218.47, 1218.48, 1218.50, 1218.51, 1218.52, 1218.53, 1218.54, 1218.55, 1218.56, 1218.60, 1218.62, 1218.70, 1218.73, 1218.75, and 1218.77 [Nomenclature Change]

■ 7. In §§ 1218.42, 1218.43, 1218.44, 1218.45, 1218.46, 1218.47, 1218.48, 1218.50, 1218.51, 1218.52, 1218.53, 1218.54, 1218.55, 1218.56, 1218.60, 1218.62, 1218.70, 1218.73, 1218.75, and 1218.77, ''USCABC'' is removed and the word ''Council'' is added in its place.

Dated: August 1, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–12760 Filed 8–4–06; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 268

[Docket No. OP–1264]

Rules Regarding Equal Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comments.

SUMMARY: The Board of Governors of the Federal Reserve System (the Board) is soliciting comments on a new interim rule that would amend the section of its Rules Regarding Equal Opportunity (EEO Rules) which governs the employment of persons who are not United States citizens consistent with the Board's requirements for the security of its information. The amendment revises an earlier interim rule that clarified the limitations on access to sensitive information by non-citizen employees to Federal Open Market Committee (FOMC) information.

The amendment, which concerns the internal management of the Board, is issued as an immediately effective interim rule, with opportunity for public comment, to ensure that hiring decisions facing the Board can be made as soon as possible.

DATES: *Effective Date:* This interim rule is effective August 7, 2006.

Applicability Date: This interim rule is applicable to all decisions on access to Sensitive Information of the Board as of August 7, 2006.

Comment Date: Submit comments on or before October 6, 2006.

ADDRESSES: You may submit comments, identified by Docket No. OP–1264, by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Alicia S. Foster, Senior Counsel (202–452–5289), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf (''TDD'') only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Board proposes to amend § 268.205 of its Rules Regarding Equal Opportunity (12 CFR 268.205), governing the employment of persons who are not United States citizens in accordance with the Board's security requirements. The amendments are effective immediately, subject to revision based on public comment.

On November 7, 2005, by an immediately effective interim rule, the Board amended § 268.205 to permit the Board to hire certain Non-Citizens into positions requiring access to information of the Federal Open Market Committee (FOMC), subject to certain conditions and a preference for U.S. citizens over equally qualified non-citizens. The Board received no comments on the November 2005 interim rule. After the Board published the November 2005 interim rule and before the Board published the rule in final form, however, it became apparent that the hiring needs that exist with respect to FOMC Information that prompted the need to change the rules also exist with respect to Confidential Supervisory Information, a second category of Sensitive Information.

Therefore, this new interim rule extends the hiring requirements that apply to FOMC Information to Confidential Supervisory Information and makes some additional modifications that apply to access to FOMC and Confidential Supervisory Information. Similar to the November 2005 interim rule, however, this interim rule does not change the rules for access to National Security Classified Information as access to that information is governed by the applicable executive orders.

Confidential Supervisory Information, which generally consists of information regarding the Board's examination and supervision of entities subject to its jurisdiction, is one of three types of information defined as ''Sensitive Information'' under § 268.205. The other two types of ''Sensitive Information'' are information of the FOMC and National Security Classified Information. The Board is proposing to amend the rules governing who may be hired as an employee into a position requiring access to Confidential Supervisory Information for the same business reasons that it changed the hiring rules applicable to positions requiring access to FOMC Information. As discussed in the November 2005 interim rule, in recent years, the Board, like employers throughout the United States, has been having greater difficulty identifying qualified U.S. citizens, U.S. nationals, and non-citizens who are eligible to obtain and do, in fact, seek U.S. citizenship (the three categories of persons that the rule refers to as ''Protected Individuals'') as candidates for positions in a number of important job families. In particular, the pool of graduates who have a Ph.D. in economics or finance, who possess the skills needed for the particular position and who are also Protected Individuals has diminished significantly over the past two decades.

Currently, the Board's rules limit access to Confidential Supervisory Information to Protected Individuals. To address the diminishing number of available U.S. citizens who are graduates with Ph.Ds in economics or finance and who also possess the other skills needed for the position, the Board proposes to revise its policy regarding hiring for positions that require access to Confidential Supervisory Information. The Board proposes to amend its rule to allow it to hire individuals who are not Protected Individuals and who do not intend to become U.S. citizens (''Non-Citizens'') into positions that require access to Confidential Supervisory Information using the same parameters that apply to FOMC Information. The interim rule retains the Board's preference for U.S. citizens and U.S. nationals over equally qualified persons who are not U.S. citizens or U.S. nationals.

The proposed exception for hiring, which is the same as that for FOMC Information, limits hiring in positions that require access to Confidential Supervisory Information to those positions where the Board determines that hiring a Non-Citizen is appropriate. At present, the Board has extended this exception only to positions requiring a Ph.D. in economics or finance. For ease of reference, this interim rule uses the term ''Eligible Position'' to describe a position or job family that requires access to Sensitive Information that is covered by this exception. The Board has determined, however, that it is not appropriate to hire a Non-Citizen as an Examiner with a standard credential (meaning a position whose primary responsibility is to participate regularly in examinations or inspections of institutions for which the Federal Reserve serves as the primary federal regulator). Accordingly, this position is not an Eligible Position and only a Protected Individual may be appointed as an Examiner with a standard credential.

This interim rule also parallels the country of origin requirements that were adopted for access to FOMC Information. Thus, as with the FOMC provisions, for purposes of hiring an individual into an Eligible Position that requires access to Confidential Supervisory Information, the interim rule distinguishes between Non-Citizens who are from a country on the Country List and those Non-Citizens that are from a country that is not on the Country List. The Country List, which is contained in the annual appropriations' laws, specifies those countries that are exempt from the ban on the use of appropriated funds and the categories of individuals who are eligible for hire as federal employees using appropriated funds.[1]

Further, similar to the provisions for access to FOMC Information, the level of access to Confidential Supervisory Information also is determined based on the sensitivity of the information. Confidential Supervisory Information is designated internally into one of three security designations: Internal Federal Reserve (FR), Restricted FR, and Restricted-Controlled FR, with Restricted-Controlled FR as the most sensitive. These designations correspond to the designations for FOMC Information as follows: Internal FR to FOMC Class III; Restricted FR to FOMC Class II; and, Restricted-Controlled FR to FOMC Class I. Under this interim rule, the Board may hire a Non-Citizen from a country that is on the Country List as an Employee into a position that requires access to Confidential Supervisory Information classified as Internal FR or Restricted FR. In addition, if he or she meets the three conditions set forth in the rule, which, are the same conditions that apply to FOMC Information, that person may be granted access to Restricted Controlled-FR information. Those conditions are: (1) The Employee's Division Director recommends the employee be given access to Restricted-Controlled FR information; (2) the Employee has resided in the United States for at least six years and has been employed for at least two years with the Board and/or with one or more of the Reserve Banks; and (3) the Employee has passed a background investigation acceptable to the Board. If the Country List changes so that the Employee's country is no longer on the Country List, the Employee's access or eligibility for access to Confidential Supervisory Information would not be affected by the change in the Country List so long as the Employee continues to meet the remaining conditions outlined above for Employees from a country on the Country List.

Under the interim rule, the Board may hire a person who is a Non-Citizen from a country that is not on the Country List into a position that requires access to Internal FR information. Upon meeting the three conditions discussed above, a Non-Citizen from such a country may also be granted access to Restricted FR information. However, the Board would not employ a Non-Citizen from a country that is not on the Country List in a position that requires access to Restricted-Controlled FR information.

While this rule focuses on Board employment, the Board's rule also affects Federal Reserve Banks because the Reserve Banks perform activities under authority delegated by the Board and because those activities involve access to Board information. This interim rule clarifies that Reserve Bank staff who seek access to Confidential Supervisory Information must meet the same conditions as apply to Board

[1] The appropriations' ban that contains the Country List is codified at 5 U.S.C. 3101 *note*. Because the Board's funds are not appropriated, the Board is not subject to this limitation on hiring. However, Congress periodically affirms that other government agencies may use appropriated funds to hire non-citizens from countries on the Country List. The rule uses the term ''Country List'' as a common point of reference.

staff.[2] Specifically, the interim rule adds a new paragraph (c)(4) to address access by Reserve Bank employees to FOMC and Confidential Supervisory Information. Under this provision, to have access to Confidential Supervisory Information, a Reserve Bank employee must be a Protected Individual or a Non-Citizen who is hired into an Eligible Position and meets the requirements for access by Non-Citizens. This means that, to receive access to the corresponding next higher level of Confidential Supervisory Information (i.e., for non-Country List—Internal FR to Restricted FR and for Country List—Restricted FR to Restricted-Controlled FR), the Employee must meet the residency and other requirements applicable to similarly situated Board employees. Once the Employee meets the residency and other requirements, the Reserve Bank's officer in charge of the supervision department may recommend that the Employee receive the next higher level of access. For access to Confidential Supervisory Information, the Board's Division of Banking Supervision and Regulation (BS&R) must concur with the recommendation. Upon the Employee's satisfactory completion of the background investigation, the Board's Director of BS&R could approve the Employee's access to the next higher level of information, subject to the limits on access applicable to the Employee's country of citizenship.

Beyond the changes discussed previously, the interim rule includes a number of technical changes. It includes a more comprehensive definition of ''Confidential Supervisory Information'' that describes the three internal security designations that apply to this information. In addition, the interim rule clarifies that its focus is employees and thus, in paragraph (b)(3), which discusses access to Sensitive Information, the phrase ''hire a person to a position'' was changed to ''hire a person as an Employee.''

Moreover, because the existing definition of ''Non-Citizen,'' which was based on the term's general usage in law, was not consistent with its more limited use under this rule, a Non-Citizen for purposes of this rule is now defined as ''any person who is not a Protected Individual.'' As a result of this change to the term ''Non-Citizen,'' changes have also been made to other parts of the rule that use the same term. Specifically, in the definition of ''Country List,'' the term ''Non-Citizen'' is replaced with ''person.'' In addition, in the paragraph setting forth the Board's preference for U.S. citizens and U.S. nationals, the term ''Non-Citizen'' is replaced with the phrase ''who is not a citizen or National of the United States.''

In an attempt to clarify the rule further, the definition of ''Country List'' is also revised to more accurately reflect that the Country List is not a separate list but rather is part of a broader listing of persons and countries exempted from the federal appropriations' ban. In this same vein, paragraph (c)(1) of the rule is changed to provide that access to any level of Sensitive Information includes access to the lower levels of that type of information. Thus, for example, a person granted access to Restricted-Controlled Information also has access to Restricted FR and Internal FR information. Similarly, a person granted access to Class I FOMC Information also has access to Class II and Class III FOMC Information.

Further, the interim rule includes a revised definition of ''Protected Individual'' that provides an additional means by which a person may be considered a Protected Individual. The change is meant to allow an existing Federal Reserve employee who is a lawfully admitted permanent resident alien, refugee, or a person granted asylum to qualify as a Protected Individual for purposes of the Board's rule even if the person filed for citizenship beyond the six month period set forth in 8 U.S.C. 1324(b)(3)(B)(i). To qualify, the Employee must have been employed by the Federal Reserve as of January 1, 2006, must have filed for U.S. citizenship, and must obtain such citizenship within two years of applying for it. In addition, paragraph (c)(4)(ii) provides that the rule does not affect access that was granted to a Reserve Bank employee to Confidential Supervisory Information if that access was granted before the effective date of this rule. The Board believes these two limited exceptions are necessary and appropriate to accommodate individuals who are existing System employees.

Finally, to keep the provisions for FOMC Information substantively the same as those for Confidential Supervisory Information, paragraphs (c)(2)(i) and (ii) are changed to parallel the language in the corresponding paragraphs covering Confidential Supervisory Information. Further, paragraph (c) is renumbered to accommodate the addition of the new paragraph (c)(4). In addition, to improve the structure of paragraph (c), paragraph (c)(3) on Classified National Security Information is moved to paragraph (c)(5) while paragraph (c)(4) on Confidential Supervisory Information is moved to paragraph (c)(3).

This rule relates solely to matters of agency management or personnel, and, therefore, is not subject to the public notice and comment provisions of the Administrative Procedures Act, 5 U.S.C. 553(a)(2). However, the Board has in the past found public comment on such matters to be helpful and invites comment on this rule. While allowing comment, the Board has determined that it is unnecessary, and would be impracticable, to defer the effective date of this action until after notice and after public comments have been received and considered (5 U.S.C. 553(d)(3)). Issuance of this rule as an interim rule is appropriate, in any event, because the rule concerns only the internal management and personnel of the Board and is not subject to statutory delay. In addition, the Board is facing immediate hiring decisions that would be subject to this rule. The Board believes that issuance of the regulation as an interim rule is necessary for the Board to conduct its internal management in an expeditious and efficient manner. The Board will consider all public comments received and make changes in its procedures based on those comments where appropriate. On these bases, the Board has determined that good cause exists to make this action effective immediately. As this rule concerns only agency management or personnel, it is not a rule subject to the Congressional Review Act (CRA), 5 U.S.C. 804(3)(B), and therefore an analysis under the CRA is not required.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Board believes that this rule will not have a significant economic impact on a substantial number of small entities. This rule governs the Board's dealings with its employees and applicants for employment, and would not affect small entities as defined for purposes of the Regulatory Flexibility Act. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR 1320 appendix A.1), the Board reviewed the proposal under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in this proposal.

[2] For FOMC Information, Reserve Bank employees seeking access to FOMC Information must comply with the rules of the FOMC, which are the same as the Board's rules.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires each federal banking agency to use plain language in all rules published after January 1, 2000. In light of this requirement, the Board has sought to present the interim rule in a simple and straightforward manner. The Board invites comment on whether the Board could take additional steps to make the rule easier to understand.

12 CFR Chapter II

List of Subjects in 12 CFR Part 268

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Federal buildings and facilities, Federal Reserve System, Government employees, Individuals with disabilities, Religious discrimination, Sex discrimination, Wages.

Authority and Issuance

■ For the reasons set out in the preamble, the Board amends 12 CFR part 268 as follows:

PART 268—RULES REGARDING EQUAL OPPORTUNITY

■ 1. The authority citation for part 268 continues to read as follows:

Authority: 12 U.S.C. 244 and 248(i), (k), and (l).

■ 2. Revise § 268.205 to read as follows:

§ 268.205 Employment of aliens; Access to sensitive information.

(a) *Definitions.* The definitions contained in this paragraph (a) apply only to this section:

(1) *Classified Information* means information that is classified for national security purposes under Executive Order No. 12958, entitled ''Classified National Security Information,'' including any amendments or superseding orders that the President of the United States may issue from time to time.

(2) *Confidential Supervisory Information* means confidential supervisory information of the Board, as defined in 12 CFR 261.2(c). Three internal security designations, which are subject to change by the Board, apply to Confidential Supervisory Information. Those designations are:

(i) *Restricted-Controlled FR* generally applies to information that, if disclosed to or modified by unauthorized individuals, might result in the risk of serious monetary loss, serious productivity loss or serious embarrassment to the Federal Reserve System. Examples of Confidential Supervisory Information designated as Restricted-Controlled FR include, but are not limited to, certain significant lists of financial institution supervisory ratings and nonpublic advance information regarding bank mergers or failures.

(ii) *Restricted FR* covers information that is less sensitive than Restricted-Controlled FR information and, in general, is the largest category of Confidential Supervisory Information. This information, if disclosed to or modified by unauthorized individuals, might result in the risk of significant monetary loss, significant productivity loss, or significant embarrassment to the Federal Reserve System. Examples of Confidential Supervisory Information designated as Restricted FR include, but are not limited to, single supervisory ratings (e.g., CAMELS, BOPEC, etc.), Federal Reserve examination and inspection reports and workpapers, Interagency Country Exposure Review Committee (ICERC) country exposure determinations, and shared national credit data or listings.

(iii) *Internal FR* covers information that is less sensitive than Restricted FR or Restricted-Controlled FR and generally applies to information that, if disclosed to or modified by unauthorized individuals, might result in the risk of some monetary loss, some productivity loss, or some embarrassment to the Federal Reserve System. Examples of Confidential Supervisory Information designated as Internal FR include, but are not limited to, foreign banking organization country studies and Federal Reserve risk assessments.

(3) *Country List* refers to the list contained in the annual federal appropriations' laws of specific countries, including a general category of ''countries allied with the United States in a current defense effort,'' from which particular categories of persons who are exempt from a ban on the use of appropriated funds are eligible to be hired as Federal employees in the excepted service or in the senior executive service. The appropriations' ban is codified at 5 U.S.C. 3101 note. The list of eligible countries and persons is subject to legislative and other change.

(4) *Eligible Position* refers to a position or job family requiring access to Sensitive Information for which the Board determines that hiring a Non-Citizen is appropriate.

(5) *Employee* means an individual who works full-time or part-time and is appointed into Board service for a period of more than 90 days. The term ''Employee'' does not include members of the Board.

(6) *FOMC Information* means confidential information of the Federal Open Market Committee (FOMC) regardless of the form or format in which it is created, conveyed, or maintained. FOMC Information includes information derived from confidential FOMC materials. Three internal security designations, which are subject to change by the FOMC, apply to FOMC Information as follows:

(i) *Class I FOMC* generally applies to materials containing policymaker input, such as that related to monetary policy decisions at meetings, views expressed by policy makers on future policy, and identification of meeting participants who express particular views. Examples of Class I FOMC Information include, but are not limited to, the ''Bluebook,'' drafts of meeting minutes, unreleased meeting transcripts, documents reflecting the preparation of semi-annual forecasts and related testimony, and certain sensitive internal memorandums and reports.

(ii) *Class II FOMC* covers information that is less sensitive than Class I FOMC. This designation generally applies to staff forecasts prepared for the FOMC and to information about open market operations. Examples of Class II FOMC Information include, but are not limited to, Part I of the ''Greenbook,'' reports of the Manager on domestic and foreign open market operations, and other materials on economic and financial developments.

(iii) *Class III FOMC* covers information that is less sensitive than either Class II or Class I. This designation generally applies to background information supporting policy discussions and includes, but is not limited to, Part II of the Greenbook.

(7) *National* refers to any individual who meets the requirements described in 8 U.S.C. 1408.

(8) *Non-Citizen* refers to any individual who is not a Protected Individual.

(9) *Protected Individual* means—

(i) A citizen or National of the United States,

(ii) An alien who:

(A) Meets the conditions set forth in 8 U.S.C. 1324b(a)(3)(B), as amended, and

(B) Has filed with the Board or the appropriate Federal Reserve Bank a declaration of intention to become a citizen of the United States, or

(iii) An alien who:

(A) Is lawfully admitted for permanent residence, is admitted for temporary residence under 8 U.S.C. 1160(a) or section 1255a(a)(1), is admitted as a refugee under 8 U.S.C.

1157, or is granted asylum under 8 U.S.C. 1158;

(B) Was an Employee of the Board or a Federal Reserve Bank on January 1, 2006;

(C) Before requesting access to Sensitive Information filed an application for U.S. citizenship; and

(D) Has had his or her application for citizenship pending for two years or less, unless in the case of an application pending for a longer period, the alien can establish that the alien is actively pursuing naturalization. Time consumed by the Department of Homeland Security, Citizenship and Immigration Services (or its predecessor or successor agency) in processing the application shall not be counted toward the 2-year period.

(10) *Sensitive Information* means FOMC Information, Classified Information, and Confidential Supervisory Information.

(b) *Hiring and access*—(1) *Prohibition against hiring unauthorized aliens.* An individual is eligible for employment with the Board only if he or she satisfies the requirements of Section 101 of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324a.

(2) *Preference.* Consistent with applicable law, where two applicants for employment at the Board are equally qualified for a position, the Board shall prefer the citizen or National of the United States over the equally qualified person who is not a citizen or National of the United States.

(3) *Protected Individuals' access to Sensitive Information.* The Board may hire a person as an Employee into a position that requires access to Sensitive Information if the person is a Protected Individual.

(4) *Non-Citizens' access to Sensitive Information.* The Board shall not hire a Non-Citizen into a position that requires access to Sensitive Information unless the Non-Citizen:

(i) Is in an Eligible Position; and

(ii) Meets the requirements of paragraph (c) of this section allowing access to Sensitive Information.

(c) *Access to Sensitive Information*—(1) *Generally.* The Board will grant access to Sensitive Information only in accordance with the Board's rules and policies regarding access to Sensitive Information and, if applicable, the rules and policies of the FOMC. Access to any level of Sensitive Information includes access to all lower levels of that type of Sensitive Information. An Employee who is not a Protected Individual may not have access to FOMC Information or Confidential Supervisory Information unless otherwise permitted by this paragraph (c).

(2) *FOMC Information*—(i) *Access by a Non-Citizen from a country on the Country List.* An Employee in an Eligible Position who is a Non-Citizen from a country that, on the date the Employee begins employment with the Federal Reserve System or on the date access is granted, is on the Country List shall be granted access to Class I FOMC Information only if the Employee:

(A) Has been recommended for such access by the Employee's Division Director;

(B) Has been resident in the United States for at least six years, at least two of which include satisfactory employment with the Board and/or one or more of the Federal Reserve Banks; and

(C) Has completed a background investigation acceptable to the Board.

(ii) *Access by a Non-Citizen from a country not on the Country List.* An Employee in an Eligible Position who is a Non-Citizen from a country that, on the date the Employee begins employment with the Federal Reserve System and on the date access is granted, is not on the Country List:

(A) Shall not be granted access to Class I FOMC Information, and

(B) Shall be granted access to Class II FOMC Information only upon:

(*1*) The recommendation of the Employee's Division Director;

(*2*) Six years of residence in the United States, at least two of which include satisfactory employment by the Board and/or one or more of the Federal Reserve Banks; and

(*3*) Completion of a background investigation acceptable to the Board.

(iii) *Changes to the Country List.* If the Employee's country is deleted from the Country List after the date the Employee begins employment with the Federal Reserve System, the Employee's existing access to Class I or Class II FOMC information will not be affected by the change in the Country List. Similarly, the Employee would continue to be eligible for access to Class I information and may be granted such access if he or she meets the remaining conditions outlined in paragraph (c)(2)(i) for employees from a country on the Country List.

(3) *Confidential Supervisory Information*—(i) *Access by a Non-Citizen from a country on the Country List.* An Employee in an Eligible Position who is a Non-Citizen from a country that, on the date the Employee begins employment with the Federal Reserve System or on the date access is granted, is on the Country List shall be granted access to Confidential Supervisory Information designated as Restricted-Controlled FR only if the Employee:

(A) Has been recommended for such access by the Employee's Division Director;

(B) Has been resident in the United States for at least six years, at least two of which include satisfactory employment with the Board and/or one or more of the Federal Reserve Banks; and

(C) Has completed a background investigation acceptable to the Board.

(ii) *Access by a Non-Citizen from a country not on the Country List.* An Employee in an Eligible Position who is a Non-Citizen from a country that, on the date the Employee begins employment with the Federal Reserve System and on the date access is granted, is not on the Country List:

(A) Shall not be granted access to Confidential Supervisory Information designated as Restricted-Controlled FR; and

(B) Shall be granted access to Confidential Supervisory Information designated as Restricted FR only upon:

(*1*) The recommendation of the Employee's Division Director;

(*2*) Six years of residence in the United States, at least two of which include satisfactory employment by the Board and/or one or more of the Federal Reserve Banks; and

(*3*) Completion of a background investigation acceptable to the Board.

(iii) *Changes to the Country List.* If the Employee's country is deleted from the Country List after the date the Employee begins employment with the Federal Reserve System, the Employee's existing access to Confidential Supervisory Information designated as Restricted FR or Restricted-Controlled FR will not be affected by the change in the Country List. Similarly, the Employee would continue to be eligible for access to Confidential Supervisory Information designated as Restricted-Controlled FR information and may be granted such access if he or she meets the remaining conditions outlined in paragraph (c)(3)(i) for employees from a country on the Country List.

(4) *Access to Sensitive Information by Reserve Bank employees*—(i) *FOMC Information.* A Reserve Bank employee will be granted access to FOMC Information in accordance with the rules of the FOMC.

(ii) *Confidential Supervisory Information.* A Reserve Bank employee will be granted access to Confidential Supervisory Information only to the extent the employee meets all of the requirements for access to Confidential Supervisory Information provided in this paragraph (c) and the employee has

received approval for such access from the Board's Director for Banking Supervision and Regulation. Notwithstanding the foregoing, this rule does not affect access that has been granted to employees hired before the effective date of this rule.

(5) *Classified Information.* Access to Classified Information is limited to those persons who are permitted access to Classified Information pursuant to the applicable executive orders and any subsequent amendments or superseding orders that the President of the United States may issue from time to time.

By order of the Board of Governors of the Federal Reserve System, August 1, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–12732 Filed 8–4–06; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30506 Amdt. No. 3178]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 7, 2006. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 7, 2006.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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.*

For Purchase—Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs and Weather Takeoff Minimums mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs and/or Weather Takeoff Minimums but refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

Conclusion

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. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on July 28, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 31 August 2006*

Louisville, KY, Louisville Intl-Standiford Field, Takeoff Minimums and Textual DP, Amdt 4
Boston, MA, General Edward Lawrence Logan Intl, VOR/DME RNAV RWY 4R, Amdt 1A, CANCELLED
Binghamton, NY, Greater Binghamton/Edwin A. Link Field, NDB RWY 34, Amdt 18, CANCELLED
Tulsa, OK, Tulsa Intl, ILS OR LOC RWY 18L, Amdt 15
Berkeley Springs, WV, Potomac Airpark, VOR/DME RNAV–A, Amdt 2, CANCELLED

** * * Effective 28 September 2006*

Little Rock, AR, Adams Field, ILS OR LOC RWY 4R, Amdt 2
Arcata/Eureka, CA, Arcata, RNAV (GPS) RWY 1, Orig
Arcata/Eureka, CA, Arcata, RNAV (GPS) RWY 14, Orig
Arcata/Eureka, CA, Arcata, GPS RWY 2, Orig–A, CANCELLED
Arcata/Eureka, CA, Arcata, GPS RWY 14, Orig, CANCELLED
Keokuk, IA, Keokuk Muni, RNAV (GPS) RWY 8, Orig
Keokuk, IA, Keokuk Muni, RNAV (GPS) RWY 14, Orig
Keokuk, IA, Keokuk Muni, RNAV (GPS) RWY 26, Orig
Keokuk, IA, Keokuk Muni, RNAV (GPS) RWY 32, Orig
Keokuk, IA, Keokuk Muni, NDB RWY 14, Amdt 12
Keokuk, IA, Keokuk Muni, NDB RWY 26, Amdt 1
Keokuk, IA, Keokuk Muni, Takeoff Minimums and Textual DP, Orig
Fort Wayne, IN, Fort Wayne International, NDB RWY 32, Amdt 26, CANCELLED
Paducah, KY, Barkley Regional, RNAV (GPS) RWY 4, Orig
Paducah, KY, Barkley Regional, RNAV (GPS) RWY 22, Orig
Paducah, KY, Barkley Regional, ILS OR LOC RWY 4, Amdt 9
Paducah, KY, Barkley Regional, VOR RWY 4, Amdt 18
Paducah, KY, Barkley Regional, NDB OR GPS RWY 22, Amdt 3, CANCELLED
Paducah, KY, Barkley Regional, Takeoff Minimums and Textual DP, Amdt 3
Prestonsburg, KY, Big Sandy Regional, RNAV (GPS) RWY 21, Amdt 1
Prestonsburg, KY, Big Sandy Regional, Takeoff Minimums and Textual DP, Amdt 1
New Iberia, LA, Acadiana Regional, RNAV (GPS) RWY 16, Orig
New Iberia, LA, Acadiana Regional, RNAV (GPS) RWY 34, Orig
New Iberia, LA, Acadiana Regional, VOR OR TACAN RWY 16, Amdt 1
New Iberia, LA, Acadiana Regional, Takeoff Minimums and Textual DP, Orig
Sikeston, MO, Sikeston Meml Muni, RNAV (GPS) RWY 2, Orig
Sikeston, MO, Sikeston Meml Muni, RNAV (GPS) RWY 20, Orig
Sikeston, MO, Sikeston Meml Muni, VOR/DME RWY 2, Amdt 2
Sikeston, MO, Sikeston Meml Muni, GPS RWY 20, Orig-B, CANCELLED
Sikeston, MO, Sikeston Meml Muni, Takeoff Minimums and Textual DP, Orig
Bismarck, ND, Bismarck Muni, NDB RWY 31, Amdt 31, CANCELLED
Plattsmouth, NE, Plattsmouth Muni, RNAV (GPS) RWY 16, Orig
Plattsmouth, NE, Plattsmouth Muni, RNAV (GPS) RWY 34, Orig
Plattsmouth, NE, Plattsmouth Muni, GPS RWY 16, Orig-A, CANCELLED
Plattsmouth, NE, Plattsmouth Muni, GPS RWY 34, Orig-B, CANCELLED
Plattsmouth, NE, Plattsmouth Muni, Takeoff Minimums and Textual DP, Orig
New York, NY, John F. Kennedy, Takeoff Minimums and Textual DP, Amdt 7
Bowling Green, OH, Wood County, VOR/DME RNAV RWY 28, Amdt 1A, CANCELLED
Chillicothe, OH, Ross County, NDB RWY 23, Amdt 7A, CANCELLED
Coshocton, OH, Richard Downing, VOR/DME RNAV RWY 22, Amdt 4, CANCELLED
Portland, OR, Portland-Hillsboro, RNAV (GPS) RWY 12, Orig
Anderson, SC, Anderson Regional, NDB OR GPS RWY 35, Amdt 1A, CANCELLED
Sumter, SC, Sumter Muni, RADAR–1, Amdt 7A, CANCELLED
Edinburg, TX, Edinburg Intl, RNAV (GPS) RWY 14, Orig
Edinburg, TX, Edinburg Intl, RNAV (GPS) RWY 32, Orig
Edinburg, TX, Edinburg Intl, Takeoff Minimums and Textual DP, Orig
Galveston, TX, Scholes Intl at Galveston, RNAV (GPS) RWY 17, Amdt 1
Galveston, TX, Scholes Intl at Galveston, RNAV (GPS) RWY 31, Orig
Galveston, TX, Scholes Intl at Galveston, RNAV (GPS) RWY 35, Orig
Mc Allen, TX, Mc Allen Miller Intl, RNAV (GPS) RWY 13, Orig
Mc Allen, TX, Mc Allen Miller Intl, RNAV (GPS) RWY 31, Orig
Mc Allen, TX, Mc Allen Miller Intl, GPS RWY 13, Orig-A, CANCELLED
Mc Allen, TX, Mc Allen Miller Intl, GPS RWY 31, Orig-A, CANCELLED
Mesquite, TX, Mesquite Metro, RNAV (GPS) RWY 17, Orig
Mesquite, TX, Mesquite Metro, RNAV (GPS) RWY 35, Orig
Plainview, TX, Hale County, RNAV (GPS) RWY 4, Orig
Plainview, TX, Hale County, RNAV (GPS) RWY 22, Orig
Plainview, TX, Hale County, GPS RWY 4, Orig-B, CANCELLED
Plainview, TX, Hale County, GPS RWY 22, Orig-A, CANCELLED
Temple, TX, Draughon-Miller Central Texas Regional, RNAV (GPS) RWY 2, Orig
Temple, TX, Draughon-Miller Central Texas Regional, RNAV (GPS) RWY 15, Amdt 1
Temple, TX, Draughon-Miller Central Texas Regional, RNAV (GPS) RWY 33, Amdt 1
Temple, TX, Draughon-Miller Central Texas Regional, Takeoff Minimums and Textual DP, Amdt 3
Charlottesville, VA, Charlottesville-Albemarle, RNAV (GPS) Y RWY 21, Amdt 1
Charlottesville, VA, Charlottesville-Albemarle, RNAV (GPS) Z RWY 21, Orig
Roanoke, VA, Roanoke Regional/Woodrum Field, LDA RWY 6, Amdt 9
Olympia, WA, Olympia, ILS OR LOC RWY 17, Amdt 10
Seattle, WA, Seattle-Tacoma Intl, RNAV (GPS) RWY 16C, Orig-D
Seattle, WA, Seattle-Tacoma Intl, RNAV (GPS) RWY 34C, Orig-C
Seattle, WA, Seattle-Tacoma Intl, ILS OR LOC RWY 34C, Orig-D
Seattle, WA, Seattle-Tacoma Intl, ILS OR LOC RWY 16C, Amdt 12F, ILS RWY 16C (CAT II) ILS RWY 16C (CAT III)
Seattle, WA, Seattle-Tacoma Intl, VOR RWY 16L/C, Amdt 13C
Seattle, WA, Seattle-Tacoma Intl, VOR RWY 34C/R, Amdt 9C
Mosinee, WI, Central Wisconsin, ILS OR LOC RWY 8, Amdt 12
Rice Lake, WI, Rice Lake Regional-Carl's Field, NDB RWY 1, Orig, CANCELLED

Afton, WY, Afton Muni, RNAV (GPS) RWY 16, Amdt 2
Afton, WY, Afton Muni, RNAV (GPS) RWY 34, Amdt 2
Afton, WY, Afton Muni, Takeoff Minimums and Textual DP, Amdt 1

The FAA published an Amendment in Docket No. *30504*, Amdt No. *3176* to Part 97 of the Federal Aviation Regulations (Vol *71* FR No. *140* Page *41353*; Dated Friday, July 21, 2006) under section 97.33 effective 28 September 2006, which is hereby amended as follows:

Andalusia/Opp, AL, Andalusia-Opp, RNAV (GPS) RWY 11, Amdt 1
Andalusia/Opp, AL, Andalusia-Opp, Takeoff Minimums and Textual DP, Amdt 1

[FR Doc. E6–12666 Filed 8–4–06; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30507; Amdt. No. 3179]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 7, 2006. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 7, 2006.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Ave., SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) amends Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260, as modifiedby the the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), which is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Code of Federal Regulations. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on July 28, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC State	State	City	Airport	FDC No.	Subject
07/14/06	WV	Huntington	Tri-State/Milton J. Ferguson Field	6/0208	Radar-1 Rwy 3, Amdt 5. This Notam Replaces FDC 6/9123 Published In TL06–17.
06/22/06	NY	Niagara Falls	Niagara Falls Intl	6/0607	ILS Rwy 28R, Amdt 22A.
06/22/06	NY	Niagara Falls	Niagara Falls Intl	6/0608	RNAV (GPS) Rwy 10L, Orig.
06/22/06	NY	Niagara Falls	Niagara Falls Intl	6/0609	NDB or GPS Rwy 28R, Amdt 16A.
07/13/06	HI	Lihue	Lihue	6/2517	RNAV (GPS) Rwy 35, Orig-B.
07/14/06	OR	Bend	Bend Muni	6/2654	RNAV (GPS) Rwy 16, Orig.
07/14/06	OR	Bend	Bend Muni	6/2655	VOR/DME Rwy 16, Amdt 8.
07/14/06	WA	Pullman/Moscow	Pullman/Moscow Regional	6/2656	VOR Rwy 5, Amdt 8.
07/14/06	WA	Pullman/Moscow	Pullman/Moscow Regional	6/2657	VOR/DME A, Amdt 1.
07/14/06	WA	Pullman/ Moscow	Pullman/ Moscow Regional	6/2658	RNAV (GPS) Rwy 23, Orig.
07/17/06	CA	South Lake Tahoe	Lake Tahoe	6/2659	VOR/DME or GPS–A, Amdt 3B.
07/19/06	MN	Minneapolis	Airlake	6/3229	ILS Rwy 30, Orig-A.
07/21/06	ME	Presque Isle	Northern Maine Regional Arpt at Presque Isle.	6/3315	ILS Rwy 1, Amdt 5A.
07/20/06	CO	Pueblo	Pueblo Memorial	6/3379	GPS Rwy 8L, Ori.
07/21/06	UT	Milford	Milford Muni/Ben & Judy Briscoe Field	6/3462	VOR or GPS–A, Amdt 3A.
07/24/06	VA	Culpeper	Culpeper Regional	6/3682	VOR/DME RNAV or GPS Rwy 22, Amdt 1A.
07/24/06	NH	Rochester	Skyhaven	6/3683	NDB Rwy 33, Amdt 4A.
07/24/06	GA	Macon	Middle Georgia Regional	6/3690	RNAV (GPS) Rwy 31, Orig.
07/24/06	MD	Westminster	Carroll County Regnl/Jack B Poage Field.	6/3694	VOR Rwy 34, Amdt 4A.
07/24/06	MD	Westminster	Carroll County Regnl/Jack B Poage Field.	6/3695	RNAV (GPS) Rwy 34, Orig-A.
07/24/06	MS	Greenville	Mid Delta Regional	6/3697	ILS Rwy 18L, Amdt 9A.
07/25/06	MN	Austin	Austin Muni	6/3734	VOR or GPS Rwy 36, Amdt 1.
07/25/06	MN	Austin	Austin Muni	6/3735	VOR or GPS Rwy 18, Amdt 1.
07/25/06	CA	Carlsbad	McClellan-Palomar	6/3736	VOR–A, Amdt 7A.
07/25/06	CA	Ontario	Ontario Intl	6/3737	RNAV (GPS) Rwy 26R, Orig-B
07/25/06	CA	Ontario	Ontario Intl	6/3739	RNAV (GPS) Rwy 8L, Orig-B
07/25/06	CA	Ontario	Ontario Intl	6/3740	RNAV (GPS) Rwy 26L, Orig-A
07/25/06	CA	Carlsbad	McClellan-Palomar	6/3830	ILS or LOC Rwy 24, Amdt 8B.
07/26/06	NC	Hickory	Hickory Regional	6/3897	ILS Rwy 24, Amdt 7.
07/26/07	GA	Macon	Middle Georgia Regional	6/3919	ILS or LOC/DME Rwy 5, Orig.
07/26/07	FL	Brooksville	Hernando County	6/3951	RNAV (GPS) Rwy 9, Orig.
06/07/06	MT	Havre	Havre City-County	6/8985	VOR or GPS Rwy 25, Amdt 8B.

[FR Doc. E6–12659 Filed 8–4–06; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 163 and 178

[CBP Dec. 06–21]

RIN 1505–AB37

Implementation of the Andean Trade Promotion and Drug Eradication Act

AGENCY: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, interim amendments to the Customs and Border Protection (CBP) Regulations which were published in the **Federal Register** on March 25, 2003, as T.D. 03–16, to implement the trade benefit provisions for Andean countries contained in Title XXXI of the Trade Act of 2002. The trade benefits under Title XXXI, also referred to as the Andean Trade Promotion and Drug Eradication Act (the ATPDEA), apply to Andean countries specifically designated by the President for ATPDEA purposes. The ATPDEA trade benefits involve the entry of specific apparel and other textile articles free of duty and free of any quantitative restrictions, limitations, or consultation levels; the extension of duty-free treatment to specified non-textile articles normally excluded from duty-free treatment under the Andean Trade Preference Act (ATPA) program if the President finds those articles to be not import-sensitive in the context of the ATPDEA; and the entry of certain imports of tuna free of duty and free of any quantitative restrictions. The regulatory amendments adopted as a final rule in this document reflect and clarify the statutory standards for the trade benefits under the ATPDEA and also include specific documentary, procedural and other related requirements that must be met in order to obtain those benefits.

DATES: This final rule is effective on September 6, 2006.

FOR FURTHER INFORMATION CONTACT: Operational issues regarding textiles: Robert Abels, Office of Field Operations (202–344–1959).

Other operational issues: Lori Whitehurst, Office of Field Operations (202–344–2722). Legal issues: Cynthia Reese, Office of Regulations and Rulings (202–572–8812).

SUPPLEMENTARY INFORMATION:

Background

Andean Trade Promotion and Drug Eradication Act

On August 6, 2002, the President signed into law the Trade Act of 2002 (the ''Act''), Public Law 107–210, 116 Stat. 933. Title XXXI of the Act concerns trade benefits for Andean countries, is referred to in the Act as the ''Andean Trade Promotion and Drug Eradication Act'' (the ''ATPDEA''), and consists of sections 3101 through 3108. This document specifically concerns the trade benefit provisions of section 3103 of the Act which is headed ''articles eligible for preferential treatment.''

Subsection (a) of section 3103 of the Act amends section 204 of the Andean Trade Preference Act (the ATPA, codified at 19 U.S.C. 3201–3206). The ATPA is a duty preference program that applies to exports from those Andean region countries that have been designated by the President as program beneficiaries. The origin and related rules for eligibility for duty-free treatment under the ATPA are similar to those under the older Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI statute, codified at 19 U.S.C. 2701–2707). As in the case of the CBI, all articles are eligible for duty-free treatment under the ATPA (that is, they do not have to be specially designated as eligible by the President) except those articles that are specifically excluded under the statute.

The changes to section 204 of the ATPA made by subsection (a) of section 3103 of the Act involve the following: (1) The removal of section 204(c) which provided for the application of reduced duty rates (rather than duty-free treatment) for certain handbags, luggage, flat goods, work gloves, and leather wearing apparel, with a consequential redesignation of subsections (d) through (g) as (c) through (f), respectively; and (2) a revision of section 204(b). Prior to the amendment effected by subsection (a) of section 3103 of the Act, section 204(b) of the ATPA was headed ''exceptions to duty-free treatment'' and consisted only of a list of eight specific products or groups of products excluded from ATPA duty-free treatment.

As a result of the amendment made by subsection (a) of section 3103 of the Act, section 204(b) of the ATPA now is headed ''exceptions and special rules'' and consists of six principal paragraphs. These six paragraphs are discussed below.

Paragraphs (1) and (2): Articles That Are Not Import-Sensitive and Excluded Articles

Paragraph (1) of amended section 204(b) is headed ''certain articles that are not import-sensitive'' and provides that the President may proclaim duty-free treatment under the ATPA for any article described in subparagraph (A), (B), (C), or (D) that is the growth, product, or manufacture of an ATPDEA beneficiary country, that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country, and that meets the requirements of section 204, if the President determines that the article is not import-sensitive in the context of imports from ATPDEA beneficiary countries. Subparagraphs (A), (B), (C), and (D) cover, respectively:

1. Footwear not designated at the time of the effective date of the ATPA (that is, December 4, 1991) as eligible articles for the purpose of the Generalized System of Preferences (the GSP, Title V of the Trade Act of 1974, codified at 19 U.S.C. 2461–2467);
2. Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the Harmonized Tariff Schedule of the United States (HTSUS);
3. Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and
4. Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the GSP.

Paragraph (2) of amended section 204(b) is headed ''exclusions'' and provides that, subject to paragraph (3), duty-free treatment under the ATPA may not be extended to the following:

1. Textile and apparel articles which were not eligible articles for purposes of the ATPA on January 1, 1994, as the ATPA was in effect on that date;
2. Rum and tafia classified in subheading 2208.40 of the HTSUS;
3. Sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; and
4. Tuna prepared or preserved in any manner in airtight containers, except as provided in paragraph (4).

The effect of paragraphs (1) and (2) is to divide the former section 204(b) list of eight types of products excluded from ATPA duty-free treatment into two groups of four each. The four types of products covered by paragraph (1) would no longer be excluded from ATPA duty-free treatment but rather would be eligible for that treatment, provided that the President makes the appropriate negative import sensitivity determination. For these products (which include the handbags, luggage, flat goods, work gloves, and leather wearing apparel to which reduced duty rates previously applied under removed section 204(c)), the country of origin and value-content and related requirements under section 204(a) of the ATPA and the regulations thereunder would apply. The four types of products covered by paragraph (2) would remain as exclusions from duty-free treatment except as otherwise provided in paragraph (3) in the case of certain apparel and textile articles and paragraph (4) in the case of certain tuna products, and the exclusion in the case of sugar and sugar products has been reworded to refer to tariff-rate quota applicability rather than HTSUS classification. Paragraphs (3) through (6) of amended section 204(b), as discussed below, are entirely new provisions.

Paragraph (3): Preferential Treatment of Textile Articles

Paragraph (3) of amended section 204(b) is headed ''apparel articles and certain textile articles.'' Paragraph (3)(A) provides that apparel articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels, but only if those articles are described in subparagraph (B), which states that the apparel articles referred to in subparagraph (A) are the following:

1. Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or the United States, or both, exclusively from any one or any combination of the following [clause (i)]:

a. Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States). Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States [subclause (I)];

b. Fabrics or fabric components formed or components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, or vicuña [subclause (II)];

c. Fabrics or yarns, to the extent that apparel articles of those fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the North American Free Trade Agreement (NAFTA) [subclause (III)]; and

d. Fabrics or yarns, to the extent that the President has determined that the fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the treatment provided under clause (i)(III) [clause (ii)];

2. Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape in one or more ATPDEA beneficiary countries from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i)). For these articles, preferential treatment starts on October 1, 2002, and extends for each of the four succeeding 1-year periods, subject to the application of annual quantitative limits expressed in square meter equivalents and with an equal percentage increase in the limit for each succeeding year [clause (iii)];

3. A handloomed, handmade, or folklore textile or apparel article of an ATPDEA beneficiary country that the President and representatives of the ATPDEA beneficiary country concerned mutually agree upon as being a handloomed, handmade, or folklore good of a kind described in section 2.3(a), (b), or (c) or Appendix 3.1.B.11 of Annex 300–B of the NAFTA and that is certified as such by the competent authority of the beneficiary country [clause (iv)]; and

4. Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or one or more ATPDEA beneficiary countries, or both, but excluding articles entered under clause (i), (ii), (iii), or (iv) [clause (v)(I)]. However, during each of four 1-year periods starting on October 1, 2003, the articles in question are eligible for preferential treatment under paragraph (3) only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of a producer or an entity controlling production that are entered and eligible under clause (v)(I) during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under clause (v)(I) during the preceding 1-year period [clause (v)(II)]; the 75 percent standard rises to 85 percent for a producer or entity controlling production whose articles are found by Customs and Border Protection (CBP) to have not met the clause (v)(II) 75 percent standard in the preceding year [clause (v)(III)].

In addition to the articles described above, paragraph (3)(B) provides for preferential treatment of the following non-apparel textile articles:

1. Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS [clause (vii)(I)]; and

2. Textile luggage assembled from fabric cut in an ATPDEA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States [clause (vii)(II)].

Clause (vi) under paragraph (3) sets forth special rules that apply for purposes of determining the eligibility of articles for preferential treatment under paragraph (3). These special rules are as follows:

1. Clause (vi)(I) sets forth a rule regarding the treatment of findings and

trimmings. It provides that an article otherwise eligible for preferential treatment under paragraph (3) will not be ineligible for that treatment because the article contains findings or trimmings of foreign origin, if those findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. This provision specifies the following as examples of findings and trimmings: sewing thread, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips, zippers (including zipper tapes), and labels.

2. Clause (vi)(II) sets forth a rule regarding the treatment of specific interlinings, that is, a chest type plate, ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments. Under this rule, an article otherwise eligible for preferential treatment under paragraph (3) will not be ineligible for that treatment because the article contains interlinings of foreign origin, if the value of those interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. This provision also provides for the termination of this treatment of interlinings if the President makes a determination that United States manufacturers are producing those interlinings in the United States in commercial quantities.

3. Clause (vi)(III) sets forth a *de minimis* rule which provides that an article that would otherwise be ineligible for preferential treatment under paragraph (3) because the article contains yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries will not be ineligible for that treatment if the total weight of all those yarns is not more than 7 percent of the total weight of the good.

4. Finally, clause (vi)(IV) sets forth a special origin rule that provides that an article otherwise eligible for preferential treatment under clause (i) or clause (iii) will not be ineligible for that treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

Paragraph (4): Preferential Treatment of Tuna

Paragraph (4) of amended section 204(b) concerns the preferential treatment of tuna. Paragraph (4)(A) provides for the entry in the United States, free of duty and free of any quantitative restrictions, of tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each, and that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country. Paragraph (4)(B)(i) has been amended by the Miscellaneous Trade and Technical Corrections Act of 2004 to define a ''United States vessel'' for purposes of paragraph (4)(A) as a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code [paragraph (4)(B)(i)(I)] or in the case of a vessel without a fishery endorsement, a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988 [paragraph (4)(B)(i)(II)]. Paragraph (4)(B)(ii) defines an ''ATPDEA vessel'' for purposes of paragraph (4)(A) as a vessel (1) which is registered or recorded in an ATPDEA beneficiary country, (2) which sails under the flag of an ATPDEA beneficiary country, (3) which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of those boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country, (4) of which the master and officers are nationals of an ATPDEA beneficiary country, and (5) of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

Paragraph (5): Customs Procedures

Paragraph (5) of amended section 204(b) is entitled ''Customs procedures'' and sets forth regulatory standards for purposes of preferential treatment under paragraph (1), (3), or (4). It includes provisions relating to import procedures, prescribes a specific factual determination that the President must make regarding the implementation of certain procedures and requirements by each ATPDEA beneficiary country, and sets forth the responsibility of CBP regarding the study of, and reporting to Congress on, cooperative and other actions taken by each ATPDEA beneficiary country to prevent transshipment and circumvention in the case of textile and apparel goods. The specific provisions under paragraph (5) that require regulatory treatment in this document are the following:

1. Paragraph (5)(A)(i) provides that any importer that claims preferential treatment under paragraph (1), (3), or (4) must comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury. The NAFTA provision referred to in paragraph (5)(A)(i) concerns the use of a Certificate of Origin and specifically requires that the importer (1) make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originating good, (2) have the Certificate in its possession at the time the declaration is made, (3) provide the Certificate to CBP on request, and (4) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

2. Paragraph (5)(B) provides that the Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (5)(A)(i) will not be required in the case of an article imported under paragraph (1), (3), or (4) if that Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico. Article 503 of the NAFTA sets forth, with one general exception, three specific circumstances in which a NAFTA country may not require a Certificate of Origin.

Paragraph (6): Definitions

Paragraph (6) of amended section 204(b) sets forth a number of definitions that apply for purposes of section 204(b). These definitions include, in paragraph (6)(B), a definition of ''ATPDEA beneficiary country'' as any ''beneficiary country,'' as defined in section 203(a)(1) of the ATPA, which the President designates as an ATPDEA beneficiary country, taking into account the criteria contained in sections 203(c)

and (d) and other appropriate criteria, including those specified under new paragraph (6)(B) of amended section 204(b).

On October 31, 2002, the President signed Proclamation 7616 (published in the **Federal Register** at 67 FR 67283 on November 5, 2002) to implement the new trade benefit provisions of section 3103 of the Act. The Annex to that Proclamation set forth a number of modifications to the HTSUS to accommodate the ATPDEA program, and those HTSUS changes were also the subject of a technical corrections document prepared by the Office of the United States Trade Representative and published in the **Federal Register** (67 FR 79954) on December 31, 2002.

Interim Regulatory Amendments in T.D. 03–16

On March 25, 2003, CBP published in the **Federal Register** (68 FR 14478) as T.D. 03–16 (corrected at 68 FR 67338 on December 1, 2003), an interim rule document setting forth amendments to the CBP Regulations that implement the trade benefit provisions for Andean countries. The regulatory changes in T.D. 03–16 implemented the new trade benefit provisions and conformed the ATPA implementing regulations to those statutory changes and involved, among other things, the following: (1) The addition of §§ 10.241 through 10.248 to implement those apparel and other textile article preferential treatment provisions within paragraphs (3), (5) and (6) of amended section 204(b) of the ATPA statute that relate to U.S. import procedures; (2) the addition of §§ 10.251 through 10.257 to implement those non-textile preferential treatment provisions within paragraphs (1), (4), (5) and (6) of amended section 204(b) of the ATPA statute that relate to U.S. import procedures; (3) the removal of the reference to § 10.208 in the introductory text of § 10.202; (4) the revision of § 10.201 to reflect the removal of that reduced-duty provision and to refer to §§ 10.241–10.248 and 10.251–10.257; (5) the amendment of paragraph (b) of § 10.202 to recast the list of articles excluded from the ATPA to reflect the terms of paragraph (2) of amended section 204(b); and (6) the amendment of Part 163 of the CBP Regulations (19 CFR Part 163) by adding to the list of entry records in the Appendix (the interim ''(a)(1)(A) list'') references to the ATPDEA Textile Certificate of Origin prescribed under § 10.246, the ATPDEA Declaration of Compliance for brassieres prescribed under § 10.248, and the ATPDEA Certificate of Origin for tuna and other non-textile articles prescribed under § 10.256. For a complete section-by-section discussion of each regulatory change, see T.D. 03–16. Please note that on December 1, 2003, two correction documents pertaining to T.D. 03–16 were published in the **Federal Register** (68 FR 67338).

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on March 25, 2003, T.D. 03–16 nevertheless provided for the submission of public comments which would be considered before adoption of the interim regulations as a final rule. The prescribed public comment period closed on May 27, 2003. A discussion of the comments received by CBP is set forth below.

Discussion of Comments

A total of 6 commenters responded to the solicitation of public comments in the March 25, 2003, interim rule document referred to above. All of the comments received involved the regulatory provisions for the preferential treatment of apparel and other textile articles.

Finishing Processes

Comment

One commenter agrees with the decision to have a single provision in the regulations, § 10.243(b), address dyeing and finishing requirements contained in the ATPDEA. Further, the commenter agrees that ''the restrictions (requiring the operations be performed in the United States) only apply to the dyeing, printing, and finishing of knit or woven U.S. fabrics, or the U.S. fabric components formed from those fabrics, of garments described only in § 10.243(a)(1) or (a)(2).'' Based on the language in the provision, the commenter also believes that U.S. knit-to-shape components are not subject to the dyeing, printing, and finishing restriction which is consistent with CBP's position that knit-to-shape components are not fabrics.

The commenter disagrees, however, with CBP's conclusion that U.S. knit or woven fabrics or fabric components made from such U.S. fabrics that are used in apparel provided for in § 10.243(a)(7) are also subject to the requirement that the knit or woven fabric, or components made from such fabric be dyed, printed or finished in the United States. The commenter believes ''that such U.S. fabrics or components, used in conjunction with (a)(7) DO NOT face a dyeing, printing and finishing restriction.'' The commenter believes CBP has misread the statute and reached an erroneous conclusion.

In making the argument that CBP has misread the statute, the commenter refers to a ''hybrid provision'' in the statute, cites to the language in § 204(b)(3)(B)(iii)(I), and states the provision ''permits the inclusion of 'fabrics, fabric components formed, or components knit to shape described in clause (i).' '' The commenter maintains that the requirement in subclause (i)(I) that U.S. knit or woven fabric and fabric components from such fabric be dyed, printed, or finished in the United States applies only with regard to apparel articles qualifying under subclause (i)(I). The commenter argues that the dyeing, printing, and finishing requirement does not apply to U.S. knit and woven fabric or fabric components when these inputs are used in apparel which qualifies for preferential treatment under another provision of the ATPDEA, namely apparel described in § 10.243(a)(7).

The commenter points to ''common commercial practice'' to argue that this dyeing, printing, and finishing requirement would not apply to U.S. inputs when used in conjunction with regional inputs as ''the dyeing, printing, and finishing operations all need to occur in the same location to ensure consistency for all the components of the garment.'' The commenter argues that CBP's interpretation which applies the dyeing, printing and finishing requirement to knit and woven U.S. fabric and fabric components will result in apparel companies choosing not to buy U.S. inputs for hybrid U.S./regional garments.

CBP's Response

The commenter is correct that CBP does not view the dyeing, printing, and finishing requirement to extend to knit-to-shape components as such components are not considered ''fabric'' but are components created directly from yarn. CBP disagrees with the commenter's reading of the statute to limit the dyeing, printing, and finishing requirement contained in subclause (i)(I) to apparel articles qualifying for preferential treatment under that subclause only. CBP views the dyeing, printing, and finishing requirement contained in subclause (i)(I) as part of the description of the fabric, and fabric components formed from such fabric, provided for under that subclause. Consequently, the language in subclause (iii)(I) which allows for the use of fabrics, fabric components formed, or components knit-to-shape described in clause (i) is interpreted by CBP to include the dyeing, printing, and finishing requirement contained in subclause (i)(I) with regard to fabrics or fabric components wholly formed from

fabric which are described in that subclause. In the Conference Report to the Trade Act of 2002, Report No. 107–624, at page 251, it is clearly stated with regard to the dyeing, finishing and printing requirement: ''Apparel made of U.S. knit or woven fabric assembled in an Andean beneficiary country qualifies for benefits only if the U.S. knit or woven fabric is dyed and finished in the United States.'' CBP's interpretation of the dyeing, printing and finishing requirement as part of the descriptive of the ''inputs'' provided for in subclause (i)(I) carries out the intent of Congress to ensure that U.S.-formed fabric and fabric components are finished in the United States. To interpret the provision, as suggested by the commenter (to apply the requirement only in the case when all the fabric and fabric components in an apparel article are wholly formed in the United States of yarns wholly formed in the United States or one or more ATPDEA beneficiary countries) would mean that the introduction of any other fabric or fabric component within the apparel article (provided the fabric or fabric component is described within one of the other provisions of the ATPDEA) would negate the requirement regarding U.S. finishing so specifically stated by Congress in this Act and obstruct their intent as stated in the Conference Report previously cited.

As to the commenter's argument that ''common commercial practice'' dictates that the requirement to dye, print, and finish U.S.-formed fabric (and fabric components from such fabric) in the United States does not apply when U.S. ''inputs'' are combined with regional fabrics, we disagree. We agree that normally fabric for apparel production is dyed by lot and a manufacturer wants to use fabric from the same dye lot in the production of an apparel article, assuming the apparel article is constructed of one fabric. However, if fabrics from the United States and the region are being combined in the production of apparel, it is likely the fabrics will not be exactly the same. Dyes, inks and finishes will affect different fabrics of different constructions and different fiber compositions differently. Therefore, CBP rejects the proposition that ''common commercial practice'' dictates an interpretation of the dyeing, printing, and finishing requirement for U.S.-formed fabric which is contrary to the stated intent of Congress.

Comment

A commenter noted that the interim regulations do not provide a definition of the terms ''dyeing,'' ''printing,'' and ''finishing.'' The commenter would like CBP to publish definitions of these terms so as to clarify the requirements with regard to these processes.

CBP's Response

As technological advances may occur with regard to dyeing, printing and finishing processes, CBP will not attempt to provide a finite definition of these terms because the definition may not encompass such unforeseen advances. It is prudent to rely on the common and commercial meanings of these terms which may change over time with scientific and technological advances. Questions of whether a particular process constitutes a dyeing, printing, or finishing process will continue to be addressed on a case-by-case basis.

Interlinings

Comment

There is no clear translation into Spanish of the terms ''chest type plate,'' ''hymo piece,'' and ''sleeve header.'' Assistance in this regard is requested. In addition, the same commenter requests that CBP not object to the use of other interlinings originating in third countries since the type of products exported by Peru use a minimum amount of such interlinings. Finally, the commenter asks if the use of interlinings originating in a country other than the United States or a beneficiary country and that is not one of the three types mentioned above, will preclude preferential treatment under the ATPDEA even though such interlinings, along with other accessories, represent less than 25% of the cost of the garment.

CBP's Response

CBP does not have the authority to allow the use of foreign (third country) interlinings beyond the three named and described in the ATPDEA. The use of other foreign interlinings in apparel articles, regardless of the amount, will preclude preferential treatment under the ATPDEA.

With regard to the lack of a clear translation into Spanish for the terms ''chest type plate,'' ''hymo piece,'' and ''sleeve header,'' CBP is able to offer some descriptive information about these interlinings, which are used in the production of suit and suit-type jackets, which may be helpful when translated into Spanish.

A ''sleeve header,'' which may also be referred to as a ''sleevehead interlining,'' is an interlining piece sewn between the shell fabric and lining fabric along the outside shoulder seam where the sleeve joins the body of the garment. This interlining provides fullness along the seam and enhances the appearance of a jacket at the point where the sleeve meets the shoulder. See Headquarters Ruling Letter (HQ) 559552, dated February 14, 1996, and HQ 966510, dated August 27, 2003.

A ''chest type plate'' may also be referred to as a ''chest piece.'' This interlining piece is placed in the chest area of a jacket for strength and shape. It serves to stabilize the jacket, enhancing its appearance. See HQ 966510; *http://www.actk.nl/*; and *http://www.resil.com/dictionary*.

The term ''hymo'' is defined as ''Fabric of mohair and linen, used in tailoring to reinforce body of a coat.'' See *A Dictionary of Costume and Fashion, Historic and Modern*, by Mary Brooks Picken, at 181 (Dover Publications, Inc., 1985). Similarly, from *Fairchild's Dictionary of Textiles*, edited by Dr. Isabel B. Wingate, at 289, ''hymo'' is defined as ''A fabric made of mohair and linen. Used in tailoring to reinforce the body section of a coat.'' (Fairchild Publications, Inc., 1970). Based on these definitions, a ''hymo piece'' may be considered a type of ''chest piece'' or ''chest type plate.'' The distinction between these two types of interlinings is that the ''hymo piece'' is constructed specifically of fabric of mohair and linen.

Short Supply

Comment

With regard to the designation of additional short supply fabrics and yarns, the commenter asks what criteria will be used by the President to determine that a fabric or yarn is scarce in the U.S. market, and when such determinations will be published in the **Federal Register**.

CBP's Response

Congress authorized the President to proclaim additional fabrics and yarns as eligible for preferential treatment under clause (i)(III) of section 3103(b)(3)(B) of the ATPDEA. This authority, provided in section 3103(b)(3)(B)(ii), has been delegated to the Committee for the Implementation of Textile Agreements (CITA). See ''Notice of Redelegation of Authority and Further Assignment of Functions'' which was published on December 2, 2002 (67 FR 71606). Questions regarding designations of fabrics or yarns as commercially unavailable, such as the criteria for making such determinations and the procedures involved, should be directed to the Chairman, Committee for the Implementation of Textile Agreements, Room H3100, U.S. Department of

Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Information on ''commercial availability'' requests under the ATPDEA may be found at the Web site for the Office of Textiles and Apparel, Department of Commerce, at *http://www.otexa.ita.doc.gov*.

Comment

A commenter notes with appreciation a Textile Book Transmittal (TBT) publication by CBP (which is available on the CBP Web site), TBT–03–013 ''List of Short Supply Fabrics for Trade Agreements,'' and the use of the term ''short supply'' by CBP; the commenter believes CBP's use of the term ''reflects both an accurate description of this provision and the way the trade views this process.'' However, the commenter takes issue with the language included in the TBT describing the general treatment for apparel produced from short supply fabrics or yarns designated by the Committee for the Implementation of Textile Agreements (CITA). The language at issue indicates that apparel incorporating short supply fabrics designated by CITA must use fabrics wholly formed in the United States from yarns wholly formed in the United States for all other fabric components in the garment for which the short supply fabric is not used.

The commenter cites to the language in the Conference Report for the Trade Act of 2002 (H. Rept 107–624) which clarifies congressional intent regarding the treatment of short supply inputs in apparel qualifying for preferential treatment under the trade program. The commenter refers to this report language to assert that when the short supply fabric determines the essential character of an apparel article, the remaining fabrics used in the apparel article may originate from anywhere; and, when the short supply fabric does not impart the essential character of an apparel article, it will not disqualify the apparel article from qualifying for preferential treatment under the ATPDEA. The use of the same short supply provision in the AGOA and CBTPA leads the commenter to conclude that designated short supply fabrics and yarns should be extended the same treatment, *i.e.*, consideration of only the fabric or yarn that determines the essential character of the apparel article.

The commenter notes that the interim regulations on the ATPDEA are silent on how CBP ''expects to treat garments entered claiming a short supply fabric or yarn designated by CITA.''

CBP's Response

In Section 3103(b)(3)(B)(ii) of the ATPDEA, the President is authorized to designate additional fabrics and yarns as in ''short supply'' and thus allowable in the construction of apparel articles under the ATPDEA regardless of the origin of the fabrics or yarns. This authority to designate additional fabrics and yarns has been delegated to CITA pursuant to Executive Order No. 13277 (67 FR 70305) and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions (67 FR 71606).

The tariff provision which implements this provision of the ATPDEA is subheading 9821.11.10, HTSUS, which provides for: ''Apparel articles sewn or otherwise assembled in one or more such countries, or the United States, or both, exclusively from any of the following: Fabrics or yarns designated by the appropriate U.S. government authority in the **Federal Register** as fabrics or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner, under any terms as such authority may provide.''

The interim regulations were silent on how CBP will treat apparel articles under § 10.243(a)(1)(iv) of the regulations which pertains to apparel articles provided for in subheading 9821.11.10, HTSUS, because the authority to designate the fabrics or yarns allowed under this provision and the authority to designate any terms or requirements to be applied to the allowance of these fabrics or yarns in eligible apparel resides with CITA, pursuant to the language of the tariff. CBP will follow the language of the designation notices issued by CITA (which will appear in the **Federal Register**) in applying this provision to apparel articles as CITA is the designated U.S. government authority to make such determinations.

Comment

A commenter objects to the exclusion of brassieres from eligibility for preferential treatment under § 10.243(a)(1)(iii). The commenter claims that in the CBTPA changes contained in section 3107 of the Trade Act of 2002 and provisions of the ATPDEA, Congress included language that specifically envisions brassieres being imported under the respective short supply provisions in each of those two trade preference programs. This statutory language stands in sharp contrast to CBP's view that brassieres are not eligible for short supply treatment in those trade programs.

CBP's Response

The commenter argues that in both CBTPA and ATPDEA legislative changes made by Congress, specifically listing exceptions for certain provisions, Congress clearly envisioned brassieres being imported under these respective provisions, including the short supply provisions. In CBP's opinion, the specific exception language added to both the ATPDEA in section 3103(b)(3)(B)(v)(I) and the CBTPA in section 3107(a)(5)(iv) does not indicate that brasseries should therefore, be eligible under any or all of these excepted provisions. This clarifying language merely states that in determining eligibility requirements under the cited provisions, any brassieres classified in one of the exceptions would not be included in determining the eligibility under section 3103(b)(3)(B)(v)(I) and section 3107(a)(5)(iv). In fact, one of the exceptions listed in both section 3103(b)(3)(B)(v)(I) of the ATPDEA and section 3107(a)(5)(iv) of the CBTPA is a provision covering ''Handloomed, Handmade, and Folklore Articles''. CBP is not aware of any brassieres that could be claimed under this provision and yet this is one of the exceptions listed. CBP believes that the Congress did not intend the listing of these exceptions to mean that brassieres would be classifiable in all these provisions.

Brassieres

Comment

A commenter is concerned that § 10.243(b)(2) requires brassieres to be produced and entered during the same year in order to qualify for inclusion in the calculations of a year's shipments in order to determine eligibility of brassieres for preferential treatment in the following year. The commenter points to Example 6 in the interim regulations as illustrating this point. The commenter strongly disagrees with requiring brassieres to be produced and entered in the same year for the purpose of determining eligibility and asserts that the language adopted by Congress in drafting this provision of the ATPDEA requires that the calculation to determine eligibility be performed on brassieres '' 'that are entered and eligible during the preceding 1-year period,' regardless of when those actual brassieres are produced.''

CBP's Response

The commenter has misread Example 6 in the interim regulations. A proper reading of the example reveals that it actually supports the view of the commenter that in determining the

brassieres to be included in calculating the aggregate value of the fabric formed in the United States which is present in brassieres in a 1-year period (October 1 to September 30) for the purpose of determining eligibility of brassieres for preferential treatment under this provision of the ATPDEA in the subsequent 1-year period, one includes brassieres which are entered and eligible during the preceding 1-year period and the year of production is not a determinative factor. In Example 6, brassieres not meeting the minimum 75 percent fabric standard are shipped to the United States in February. A second shipment of brassieres, meeting the 75 percent fabric standard and actually exceeding the 85 percent standard, is shipped in June. If these two shipments are entered in the same 1-year period year, the aggregate value would meet the 75 percent standard. However, the February shipment is entered for consumption on March 1 of the same calendar year; the June shipment is not entered for consumption until November 1 of that calendar year. Although entered for consumption in the same calendar year, these shipments were entered for consumption in different eligibility years which run from October 1 to September 30. Therefore, a valid declaration of compliance cannot be prepared for the shipment entered in March as it failed to meet the 75 percent standard; however, a valid declaration may be prepared for the shipment entered in November since it exceeded the 85 percent standard which would be applicable for brassieres entered in that year because of the failure to meet the 75 percent standard in the preceding year. The year of production of the brassieres is not a consideration in the example.

Scope of the Term ''Elastic Strips''

Comment

Three commenters submitted observations concerning the scope of the term ''elastic strips'' in the list of examples of ''findings and trimmings'' set forth in § 10.243(c)(1)(A). [The ATPDEA includes a special rule that permits the use of foreign findings and trimmings in producing eligible textile and apparel articles, provided the value of those findings and trimmings does not exceed 25% of the cost of the components of the assembled article.] The commenters noted that the term ''elastic strips'' is not defined in the interim regulations and therefore the regulations provide manufacturers and importers little guidance regarding the scope of the term. All three commenters urged CBP to narrowly construe the term so that it excludes most, if not all, narrow elastic fabrics. The commenters made the following specific points in support of their position:

1. The exception for foreign findings and trimmings under the ATPDEA ''was necessarily intended to be of a restrictive nature, as the intent of the statute was to ensure that all fabric components be formed [in the] U.S. or ATPDEA region.''

2. If the exception for foreign ''elastic strips'' is interpreted as including narrow elastic fabrics, an entire segment of the U.S. textile industry (the weavers and knitters of narrow elastic fabric) will be adversely affected as it will receive absolutely no benefit from the fabric origin requirements of the ATPDEA. In passing this statute, Congress did not intend to exclude from its benefits all U.S. producers of narrow elastic fabrics.

3. In the textile industry, the word ''strip'' is used to describe cut (slit) pieces of flat rubber or other elastic material of a rubber-like consistency throughout. Narrow elastic fabrics that are essential components are not normally considered elastic strips.

4. CBP rulings support the view that most fabric components ''that serve a purpose'' are not findings. *See* HQ 559522 dated February 14, 1996. In addition, CBP rulings have generally not considered fabric components to be trimmings.

5. It is noted that the ATPDEA did not replicate language in the Caribbean Basin Trade Partnership Act (CBTPA) limiting ''elastic strips'' in the findings and trimmings exception to elastic strips of less than one-inch in width and used in the production of brassieres. By omitting this language in the ATPDEA, Congress intended to exclude elastic fabric brassiere straps from the findings and trimmings exception. This is consistent with the belief that Congress intended to exclude from the findings and trimmings exception fabric components, such as waistbands, leg gatherings and brassiere straps, that are essential to the garment and are not primarily decorative.

CBP's Response

Section 10.243(c)(1)(A) essentially repeats the language found in the statute (amended section 402(b)(B)(vi)(I) of the ATPA) relating to the exception for findings and trimmings and the examples set forth therein. Therefore, CBP acknowledges that the regulation provides no guidance as to what is meant by ''elastic strips'' in the findings and trimmings rule. However, as further explained below, CBP believes that, generally speaking, determinations regarding the scope of that term should be made on a case-by-case basis through the CBP rulings process.

CBP agrees with the assertion by one commenter that the exception for foreign findings and trimmings in the ATPDEA was necessarily intended to be of a restrictive nature. With few exceptions, the preferential treatment accorded to textile and apparel articles under the ATPDEA, like the treatment accorded to similar articles under the AGOA and CBTPA, is based upon the requirement that all fabric components be formed in the United States or the ATPDEA region. Therefore, CBP believes that the scope of the term ''findings and trimmings'' should be limited to the specific items set forth as examples in the statute as well as items that are closely analogous to the cited examples.

In response to the argument that Congress did not intend to exclude an entire segment of the U.S. textile industry (producers of narrow elastic fabric) from benefiting from the ATPDEA, CBP notes that it attempts to discern Congressional intent from the specific wording in the statute as well as the legislative history. In regard to the use of the term ''elastic strips'' in the ATPDEA, the statute's legislative history sheds no light on how the term should be defined. However, as one commenter pointed out, Congress did not include language limiting the scope of the term ''elastic strips'' in the ''findings and trimmings'' rule to elastic strips that are ''each less than 1 inch in width and used in the production of brassieres,'' as it did in the AGOA and CBTPA statutes.

One seemingly inescapable conclusion that can be drawn from the above omission in the ATPDEA is that Congress did not intend that the term ''elastic strips'' would be subject to the ''less than 1 inch in width'' brassiere strip limitation. Therefore, in future considerations of whether particular items qualify as ''elastic strips'' under the ''findings and trimmings'' exception in the ATPDEA, CBP will not disqualify an item solely because it is an inch or more in width and used in the production of garments other than brassieres.

However, CBP agrees with the assertion by one commenter that, by failing to limit the term ''elastic strips'' in the ATPDEA to certain narrow elastic brassiere strips, Congress intended to exclude elastic fabric brassiere straps from being considered findings and trimmings under this statute. HQ 562018 dated March 22, 2002, concerned whether the use of foreign-origin ½ inch wide polyurethane strips

in the construction of brassieres would disqualify the brassieres from receiving preferential treatment under the CBTPA. CBP concluded initially that the polyurethane strips are outside the scope of the exception for ''elastic strips'' because the language limiting that exception to certain narrow elastic strips used in the production of brassieres related only to elastic fabric strips. CBP then determined in HQ 562018 that the polyurethane strip is not a ''finding or trimming'' inasmuch as it is not a ''supplementary element used to construct the garment, but, rather, is a brassiere strap, a major component of the brassiere.'' Because the polyurethane strip was neither a textile component nor a ''finding or trimming,'' CBP concluded that the strip's presence in the brassiere would not preclude the article from receiving preferential treatment under the CBTPA. Consistent with HQ 562018, CBP believes that brassiere straps, whether made of fabric or a non-textile material, do not qualify as ''findings or trimmings'' for purposes of the ATPDEA.

Concerning whether the term ''elastic strips'' should be construed as encompassing narrow elastic fabrics or only non-textile rubber strips, or both, it is noted that in rulings interpreting ''elastic strips'' as that term appears in the AGOA and CBTPA, CBP determined that the term encompassed only ''narrow elastic fabric less than one inch in width used in the production of brassieres.'' (Emphasis added.) *See, for example,* HQs 965909 dated January 7, 2003, 562018 dated July 10, 2001, and 966495 dated July 3, 2003. However, the basis for this conclusion was a statement in the legislative history of the CBTPA indicating that that program was to be administered in a manner consistent with the ''Special Access Program'' (SAP). A directive issued in connection with the SAP stated that ''the foreign origin exception for elastic strips is clarified as limited to narrow elastic fabric less than one inch in width used in the production of brassieres only.'' (Emphasis added.) As previously indicated, the term ''elastic strips'' in the ATPDEA ''findings and trimmings'' rule is not limited to strips less than 1 inch in width used in the production of brassieres. Moreover, there is no similar reference in the ATPDEA's legislative history to the SAP. As a result, CBP concludes that the above rulings relating to the AGOA and CBTPA are not controlling with respect to this issue and that ''elastic strips'' in the ATPDEA should not be construed as encompassing only narrow elastic fabric strips.

By the same token, CBP cannot agree with the contention that the term ''elastic strips'' should be construed as encompassing only non-textile (*e.g.*, rubber) strips as CBP is not aware of any evidence indicating that Congress intended such a construction. Rather, CBP believes that, in determining whether certain items qualify as ''elastic strips'' under the ATPDEA, consideration should be given to items consisting of elastic fabric material as well as items consisting of non-textile elastic material.

CBP also does not agree with the argument that elastic fabric strips used in waistbands and leg gatherings are automatically excluded from the ''findings and trimmings'' exception under the ATPDEA. Previous CBP rulings on the scope of the ''findings and trimmings'' exception under other preference programs and provisions have defined ''findings'' as ''sewing essentials used in textile goods'' and ''trimmings'' as ''decoration or ornamental parts.'' Rubber tape used to provide secure fittings in the leg and arm openings of garments, such as bathing suits, underwear and sweatpants, have been held to qualify as ''findings'' under the CBTPA and subheading 9802.00.90, HTSUS. *See* HQs 966239 dated May 16, 2003, 966317 dated June 9, 2003, and 561868 dated July 10, 2001. By analogy, elastic fabric strips serving the same functions would also qualify as findings under the ATPDEA. Whether elastic fabric strip used in waistbands would also qualify as findings will be determined pursuant to the CBP rulings process.

Comment

A commenter commends CBP for the inclusion in § 10.243(b)(2) of language ''that clarifies that a series of post-assembly finishing operations will not disqualify a garment entered under specific provisions.''

CBP's Response

CBP appreciates the comment.

Certificate of Origin

Comment

A commenter believes the Certificate of Origin may be further simplified into one form to serve the AGOA, the CBTPA and the ATPDEA as the requirements for all three programs are the same. The commenter also requests that ''available upon request'' be permitted with regard to information requested on the certificate for thread, fabric and yarn names and addresses.

CBP's Response

We would certainly be open to any suggestions concerning the simplification of the certificate of origin. However, developing one form to accommodate AGOA, CBTPA and ATPDEA would make the form more complex, especially for the exporter or producer who is required to complete the form and is responsible for ensuring that the information is accurate. A combining of the form could include groupings or requirements that would be in place for AGOA, *e.g.* knit to shape with 50 percent by more of weight of fine wool that do not exist for CBTPA or ATPDEA.

However with regard to the commenter's second point, CBP will not accept ''available upon request'' where information is needed on the name and address of the yarn, fabric and thread suppliers. The certificate of origin is not a document that is required for entry purposes. The importer must have it in their possession when making the claim. When CBP requests the certificate of origin all information must be on that form to assist CBP in confirming the accuracy of the claim. CBP does not want to make a second request to see what should have been available when a request was made to see the certificate of origin on the first request.

Comment

A commenter inquired about reproduction of the Certificates of Origin shown in the **Federal Register** notice.

CBP's Response

The Textile Certificate of Origin shown in the interim regulations is shown to illustrate the format in which the information should be presented; it is not a form. This format may be reproduced locally.

Handloomed, Hand-Made and Folklore Articles

Comment

A commenter raises questions with regard to the provision of the ATPDEA which provides for handloomed, hand-made, and folklore articles. Specifically, the commenter wants to know how and when certification of such goods will be effectuated, particularly in light of the fact that Peru already has a system in place for the authorization of export invoices under the ''Administrative Agreement of Authorization and Certification of Textile Products'' which includes handloomed, hand-made and folklore articles. The commenter inquires as to whether a separate certification is necessary when there

already is a certification process in place and whether textile articles other than garments, such as pillows, carpets, covers, and tablecloths will also enjoy preferential treatment.

CBP's Response

CBP does not have the authority to answer these questions concerning the administration of the ''Handloomed, Handmade, and Folklore Articles'' provisions under the ATPDEA. These authorities and functions, which were granted to the President under the ATPDEA, were delegated in an Executive Order 13277 to USTR, including the authority to redelegate these authorities and functions. In a notice published in the **Federal Register** on Monday, December 2, 2002, such authorities and functions were assigned to the Secretary of State, the Secretary of the Treasury, the Secretary of Labor, the Secretary of Commerce, and the United States Trade Representative Office. The responsibility to administer this provision lies with the Committee for the Implementation of Textile Agreements (CITA). It is suggested that you contact them directly by writing to the Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, ITA/TD/OTEXA, Room H–3100, 14th and Constitution Avenue, NW., Washington, DC 20230.

Changes to the Regulations

While there are no changes to the interim regulations made in connection with the public comments, CBP in this final rule document has made a number of other changes to the interim regulatory texts for editorial and clarification purposes. These changes are as follows:

1. In § 10.242, CBP has determined that the definition of ''foreign'' as set forth in the interim regulations could cause some confusion and might lead to anomalous and unintended results in certain circumstances. That definition (which has relevance only in the context of the findings and trimmings and interlinings provisions of § 10.243(c)) in the interim texts simply read ''of a country other than the United States or an ATPDEA beneficiary country.'' However, because the various textile and apparel articles to which preferential treatment applies are described in § 10.243(a) with reference to specific production processes in the case of yarns, fabrics and components that must take place in the United States or in an ATPDEA beneficiary country or both, more is required than that the yarn or fabric or component be ''of'' (that is, have its origin in) the United States or an ATPDEA beneficiary country. For example, § 10.243(a)(1) refers to articles ''assembled'' in one or more ATPDEA beneficiary countries from ''fabric wholly formed and cut'' in the United States from ''yarns wholly formed'' in the United States. A fabric that was wholly formed in the United States but from yarns formed outside the United States would not meet the § 10.243(a)(1) standard and also would not be considered ''foreign'' under the interim definition because it is ''of'' (that is, it has its origin in) the United States by virtue of its having been formed in the United States. Therefore, that fabric could not be present in the article under the findings or trimmings or interlinings rule exception; consequently, even if all of the other fabric in the article was wholly formed and cut in the United States from yarns wholly formed in the United States and the article was assembled in an ATPDEA beneficiary country, the assembled article would not qualify for preferential treatment. On the other hand, a fabric formed outside the United States or the ATPDEA region, if used as a finding or trimming or interlining within the 25 percent limit, would not disqualify the article. Thus, under the interim definition of ''foreign,'' U.S. and ATPDEA beneficiary country textile materials could be at a disadvantage vis-a-vis materials from outside the United States and the ATPDEA region, contrary to the overall thrust of the ATPDEA program as discussed in the comment discussion set forth above in this document. CBP believes that the interim definition was appropriate in the case of non-textile findings and trimmings. However, in the case of textile findings and trimmings and interlinings the concept of ''foreign'' logically only has relevance in the context of an exception to the production standards that apply to articles eligible for preferential treatment. Accordingly, the definition of ''foreign'' has been replaced by a definition of ''foreign origin'' to address these concerns.

2. In § 10.242, CBP has added a new definition for the term ''self start edge'' and modified the definition of ''knit-to-shape components'' by adding the phrase ''that is, the shape or form of the component as it is used in the apparel article, containing at least one self start edge'' after the words ''specific shape.''

3. In § 10.243(b)(1)(i), CBP has added the words ''or in one or more ATPDEA beneficiary countries, as described in paragraph (a)(1)(i) of this section'' after the phrase ''from yarns wholly formed in the United States''. This change is being made because of the inadvertent omission of this statutory language in section 3103(b)(3)(B)(i)(I) of the ATPDEA which limits the dyeing, printing, and finishing requirement to certain fabrics.

4. With reference to the findings, trimmings and interlinings provisions under § 10.243(c)(1)(ii), CBP has used an f.o.b. port of exportation basis for determining the ''cost'' of the components and the ''value'' of the findings and trimmings and interlinings. However, CBP now believes that the use of an ex-factory standard in lieu of the f.o.b. port of exportation standard would be more accurate because it eliminates transportation costs from the comparison between the ''value'' of foreign findings and trimmings and/or foreign interlinings and the ''cost'' of the components of the assembled article. Therefore, CBP has revised § 10.243(c)(1)(ii) in this final rule to incorporate an ex-factory standard in lieu of the f.o.b. port of exportation standard.

5. With regard to who may sign the textile Certificate of Origin, §§ 10.244(a), 10.244(c)(12), 10.246(b)(2), and 10.254 refer to the exporter (and the exporter's authorized agent in the latter two provisions), but none of these provisions mentions the producer in this specific context. CBP has determined that the producer or the producer's authorized agent having knowledge of the relevant facts should be permitted to sign the Certificate of Origin in addition to the exporter or the exporter's authorized agent. The producer clearly is in the best position to attest to the accuracy of the information set forth in the Certificate. Therefore, §§ 10.244(a), 10.244(c)(12), 10.246(b)(2), 10.254, and 10.256(b)(2) have been changed to provide that the Certificate of Origin must be signed by the exporter or producer or by the exporter's or producer's authorized agent having knowledge of the relevant facts. CBP notes that this change is consistent with changes to the implementing regulations under the Caribbean Basin Trade Partnership Act (CBTPA) and the African Growth and Opportunity Act (AGOA) relating to the textile Certificate of Origin and thus brings uniformity to the three programs in this regard.

6. In § 10.248(b)(2)(ii), Example 5 has been changed to clarify that elastic strips used as brassiere straps are not considered findings or trimmings.

7. In § 10.248(c)(3)(i), CBP has amended blocks 4–6 of the declaration of compliance for brassieres by adding exclusion language regarding findings and trimmings after each reference to fabric(s) for purposes of calculating whether the minimum 75 or 85 percent

standard was met. This change is being made because of the inadvertent omission of this language in the interim rule.

8. In addition to those changes already noted above, references to the U.S. Customs Service within the regulatory text in §§ 10.244, 10.245, 10.246, 10.247 and 10.248 have been changed to CBP.

9. In § 10.252, the definition of the term ''United States vessel'' has been amended to reflect a change made by the Miscellaneous Trade and Technical Corrections Act of 2004 (MTTCA). The MTTCA added to the definition of a ''United States vessel'' to include the case of a vessel without a fishery endorsement that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988. Accordingly, in § 10.252, the definition of the term ''United States vessel'' has been amended by adding the phrase ''or in the case of a vessel without a fishery endorsement, a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988'' at the end of the sentence.

Conclusion

Based on the analysis of comments and the discussion above regarding CBP's further consideration of the interim rule, CBP is adopting as final some of the interim regulations published in T.D. 03–16 and amending certain of those interim provisions.

Concerning §§ 10.241 through 10.248 (provisions concerning textile articles), the following sections have been amended:

1. In § 10.242, the definition of ''foreign'' has been replaced by a definition of ''foreign origin''; a new definition for the term ''self start edge'' has been added; and the definition of ''knit-to-shape components'' has been amended;

2. § 10.243(b)(1)(i) is revised by adding the words ''or in one or more ATPDEA beneficiary countries, as described in paragraph (a)(1)(i) of this section'' after the phrase ''from yarns wholly formed in the United States'';

2. § 10.243(c)(1)(ii) is revised to incorporate an ex-factory standard in lieu of the f.o.b. port of exportation standard;

3. §§ 10.244(a), 10.244(c)(12), and 10.246(b)(2) have been changed to provide that the Certificate of Origin must be signed by the exporter or producer or by the exporter's or producer's authorized agent having knowledge of the relevant facts;

4. In § 10.248(b)(2)(ii), Example 5 has been changed to clarify that the scope of findings and trimmings with regard to elastic strips does not include elastic strips used as brassiere straps;

5. In § 10.248(c)(3)(ii), blocks 4–6 of the declaration of compliance for brassieres have been amended by adding exclusion language regarding findings and trimmings after each reference to fabric(s); and

6. §§ 10.244, 10.245, 10.246, 10.247 and 10.248 have been amended to change U.S. Customs Service to CBP.

Except as discussed above, interim §§ 10.241 through 10.248 are adopted as final. In view of the multiple changes throughout the textile and apparel regulatory provisions contained in §§ 10.241 through 10.248, those provisions are set forth in their entirety in this final rule document.

Concerning §§ 10.251 through 10.257 (provisions concerning non-textile articles), the following sections have been amended:

1. In § 10.252, the definition of the term ''United States vessel'' has been amended; and

2. §§ 10.254 and 10.256(b)(2) have been changed to provide that the Certificate of Origin must be signed by the exporter or producer or by the exporter's or producer's authorized agent having knowledge of the relevant facts;

Except as discussed above, interim §§ 10.251 through 10.257 as published in T.D. 03–16 are adopted as final.

In addition, the following interim provisions published in T.D. 03–16 are adopted as final without change:

1. Interim §§ 10.201 and 10.202; and

2. The interim amendments to the Appendix to part 163.

Signing Authority

The amendments set forth in this document are being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations relating to certain CBP revenue functions.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

The regulations to implement the trade benefit provisions for Andean countries were previously published as interim regulations and provide trade benefits to the importing public. Pursuant to the provisions of 5 U.S.C. 553(b)(B), CBP issued the regulations as interim rules because it had determined that prior public notice and comment procedures on these regulations were unnecessary and contrary to the public interest. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0091. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in these final regulations is in §§ 10.244, 10.245, 10.246, 10.248, 10.254, 10.255, and 10.256. This information conforms to requirements in 19 U.S.C. 3203 and is used by CBP to determine whether textile and apparel articles and other products imported from designated beneficiary countries are entitled to preferential treatment under the Andean Trade Promotion and Drug Eradication Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 4 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Customs and Border Protection, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Part 178 of the regulations (19 CFR part 178), containing the list of approved information collections, is revised to reflect this additional information collection.

List of Subjects

19 CFR Part 10

Andean Trade Preference, Assembly, Bonds, Customs duties and inspection,

Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, the interim rule amending parts 10 and 163, Customs and Border Protection Regulations (19 CFR parts 10 and 163), which was published at 68 FR 14478–14500 on March 25, 2003, and corrected at 68 FR 67338 on December 1, 2003, is adopted as a final rule with the following changes.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for part 10 and the specific authority citation for §§ 10.241 through 10.248 and §§ 10.251 through 258 continue to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.241 through 10.248 and §§ 10.251 through 10.257 also issued under 19 U.S.C. 3203.

■ 2. Sections 10.241 through 10.248 are revised to read as follows:

§ 10.241 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to countries that are designated as beneficiary countries under the ATPA. Section 204(b)(3) of the ATPA (19 U.S.C. 3203(b)(3)) provides for the preferential treatment of certain apparel and other textile articles from those ATPA beneficiary countries which the President designates as ATPDEA beneficiary countries. The provisions of §§ 10.241 through 10.248 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA section 204(b)(3) and Subchapter XXI, Chapter 98, HTSUS.

§ 10.242 Definitions.

When used in §§ 10.241 through 10.248, the following terms have the meanings indicated:

Apparel articles. ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99.15 and 6505.90 of the HTSUS.

Assembled or sewn or otherwise assembled in one or more ATPDEA beneficiary countries. ''Assembled'' and ''sewn or otherwise assembled'' when used in the context of production of an apparel or other textile article in one or more ATPDEA beneficiary countries has reference to a joining together of two or more components that occurred in one or more ATPDEA beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

ATPA. ''ATPA'' means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

ATPDEA beneficiary country. ''ATPDEA beneficiary country'' means a ''beneficiary country'' as defined in § 10.202(a) for purposes of the ATPA which the President also has designated as a beneficiary country for purposes of preferential treatment of apparel and other textile articles under 19 U.S.C. 3203(b)(3) and which has been the subject of a determination by the President or his designee, published in the **Federal Register**, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

Chief value. ''Chief value'' when used with reference to llama, alpaca, and vicuña means that the value of those materials exceeds the value of any other single textile material in the fabric or component under consideration, with the value in each case determined by application of the principles set forth in § 10.243(c)(1)(ii).

Cut in one or more ATPDEA beneficiary countries. ''Cut'' when used in the context of production of textile luggage in one or more ATPDEA beneficiary countries means that all fabric components used in the assembly of the article were cut from fabric in one or more ATPDEA beneficiary countries, or were cut from fabric in the United States and used in a partial assembly operation in the United States prior to cutting of fabric and assembly of the article in one or more ATPDEA beneficiary countries, or both.

Foreign origin. ''Foreign origin'' means, in the case of a finding or trimming of non-textile materials, that the finding or trimming is a product of a country other than the United States or a ATPDEA beneficiary country and, in the case of a finding, trimming, or interlining of textile materials, that the finding, trimming, or interlining does not meet all of the U.S. and ATPDEA beneficiary country production requirements for yarns, fabrics, and/or components specified under § 10.243(a) for the article in which it is incorporated.

HTSUS. ''HTSUS''means the Harmonized Tariff Schedule of the United States.

Knit-to-Shape Components. ''Knit-to-shape,'' when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape, that is, the shape or form of the component as it is used in the apparel article, containing at least one self-start edge. Minor cutting or trimming will not affect the determination of whether a component is ''knit-to-shape.''

Luggage. ''Luggage'' means travel goods (such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel) and brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (for example, physicians' cases, sample cases), and like containers and cases designed to be carried with the person. The term ''luggage'' does not include handbags (that is, pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls). The term ''luggage'' also does not include flat goods (that is, small flatware designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change cases, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles).

NAFTA. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential treatment. ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative

restrictions, limitations, or consultation levels as provided in 19 U.S.C. 3203(b)(3).

Self-start edge. ''Self-start edge'' when used with reference to knit-to-shape components means a finished edge which is finished as the component comes off the knitting machine. Several components with finished edges may be linked by yarn or thread as they are produced from the knitting machine.

Wholly formed fabric components. ''Wholly formed,'' when used with reference to fabric components, means that all of the production processes, starting with the production of wholly formed fabric and ending with a component that is ready for incorporation into an apparel article, took place in a single country.

Wholly formed fabrics. ''Wholly formed,'' when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

Wholly formed yarns. ''Wholly formed,'' when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a yarn or plied yarn, took place in the United States or in one or more ATPDEA beneficiary countries.

§ 10.243 Articles eligible for preferential treatment.

(a) *General.* Subject to paragraphs (b) and (c) of this section, preferential treatment applies to the following apparel and other textile articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from any one of the following:

(i) Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States), provided that, if the apparel article is assembled from knitted or crocheted or woven wholly formed fabrics or from knitted or crocheted or woven wholly formed fabric components produced from fabric, all dyeing, printing, and finishing of that knitted or crocheted or woven fabric or component was carried out in the United States;

(ii) Fabrics or fabric components formed, or components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, and/or vicuña;

(iii) Fabrics or yarns, provided that apparel articles (except articles classifiable under subheading 6212.10 of the HTSUS) of those fabrics or yarns would be considered an originating good under General Note 12(t), HTSUS, if the apparel articles had been imported directly from Canada or Mexico; or

(iv) Fabrics or yarns that the President or his designee has designated in the **Federal Register** as fabrics or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(2) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from a combination of fabrics, fabric components, knit-to-shape components or yarns described in two or more of paragraphs (a)(1)(i) through (a)(1)(iv) of this section;

(3) A handloomed, handmade, or folklore apparel or other textile article of an ATPDEA beneficiary country that the President or his designee and representatives of the ATPDEA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a handloomed, handmade, or folklore article by the competent authority of the ATPDEA beneficiary country;

(4) Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or in one or more ATPDEA beneficiary countries, or in both, other than articles entered as articles described in paragraphs (a)(1) through (a)(3) and (a)(7) of this section, and provided that any applicable additional requirements set forth in § 10.248 are met;

(5) Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(6) Textile luggage assembled in one or more ATPDEA beneficiary countries from fabric cut in one or more ATPDEA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States; and

(7) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed, or from components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), including apparel articles sewn or otherwise assembled in part but not exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1) of this section.

(b) *Dyeing, printing, finishing and other operations*—(1) *Dyeing, printing and finishing operations.* Dyeing, printing, and finishing operations may be performed on any yarn, fabric, or knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country and subject to the following additional conditions:

(i) In the case of an article described in paragraph (a)(1), (a)(2), or (a)(7) of this section that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries, as described in paragraph (a)(1)(i) of this section, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States; and

(ii) In the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country only if that operation is incidental to the assembly process within the meaning of § 10.16.

(2) *Other operations.* An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be

disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country. However, in the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process within the meaning of § 10.16.

(c) *Special rules for certain component materials*—(1) *Foreign findings, trimmings, interlinings, and yarns*—(i) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains:

(A) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''findings and trimmings'' include, but are not limited to, sewing thread, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips, zippers (including zipper tapes), and labels;

(B) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''interlinings'' include only a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(C) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(D) Yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries if the total weight of all those yarns is not more than 7 percent of the total weight of the article.

(ii) *''Cost'' and ''value'' defined.* The ''cost'' of components and the ''value'' of findings and trimmings or interlinings referred to in paragraph (c)(1)(i) of this section means:

(A) The ex-factory price of the components, findings and trimmings, or interlinings as set out in the invoice or other commercial documents, or, if the price is other than ex-factory, the price as set out in the invoice or other commercial documents adjusted to arrive at an ex-factory price; or

(B) If the price cannot be determined under paragraph (c)(1)(ii)(A) of this section or if CBP finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit.

(iii) *Treatment of yarns as findings or trimmings.* If any yarns not wholly formed in the United States or one or more ATPDEA beneficiary countries are used in an article as a finding or trimming described in paragraph (c)(1)(i)(A) of this section, the yarns will be considered to be a finding or trimming for purposes of paragraph (c)(1)(i) of this section.

(2) *Special rule for nylon filament yarn.* An article otherwise described under paragraph (a)(1)(i) through (iii), (a)(2), or (a)(7) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable in subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS and that is entered free of duty from Canada, Mexico, or Israel.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.244 Certificate of Origin.

(a) *General.* A Certificate of Origin must be employed to certify that an apparel or other textile article being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.241. The Certificate of Origin must be prepared in the ATPDEA beneficiary country by the producer or exporter or by the producer's or exporter's authorized agent in the format specified in paragraph (b) of this section. If the person preparing the Certificate of Origin is not the producer of the article, the person may complete and sign a Certificate of Origin on the basis of:

(1) The person's reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the person by the producer.

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT TEXTILE CERTIFICATE OF ORIGIN

1. Exporter Name & Address:

2. Producer Name & Address:

ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT TEXTILE CERTIFICATE OF ORIGIN—Continued

3. Importer Name & Address:

4. Description of Article:

5. Preference Group:

Group ..	Each Description Below Is Only a Summary of the Cited CFR Provision.	19 CFR
A	Apparel assembled from U.S. formed, dyed, printed and finished fabrics or fabric components, or U.S. formed knit-to-shape components from U.S. or Andean yarns.	10.243(a)(1)(i).
B	Apparel assembled from Andean chief value llama, alpaca or vicuña fabrics, fabric components, or knit-to-shape components, from Andean yarns.	10.243(a)(1)(ii).
C	Apparel assembled from fabrics or yarns considered as being in short supply in the NAFTA	10.243(a)(1)(iii).
D	Apparel assembled from fabrics or yarns designated as not available in commercial quantities in the United States.	10.243(a)(1)(iv).
E	Apparel assembled from a combination of two or more yarns, fabrics, fabric components, or knit-to-shape components described in preference groups A though D.	10.243(a)(2).
F	Handloomed, handmade, or folklore textile and apparel goods	10.243(a)(3).
G	Brassieres assembled in the U.S. and/or one or more Andean beneficiary countries	10.243(a)(4).
H	Textile luggage assembled from U.S. formed fabrics from U.S. yarns	10.243(a)(5)&(6).
I	Apparel assembled from Andean formed fabrics, fabric components, or knit-to-shape components from U.S. or Andean yarns, whether or not also assembled, in part, from yarns, fabrics and fabric components described in preference groups A through D.	10.243(a)(7).

6. U.S./Andean Fabric Producer Name & Address:

7. U.S./Andean Yarn Producer Name & Address:

8. Handloomed, Handmade, or Folklore Article:

9. Name of Short Supply Fabric or Yarn:

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.

10. Authorized Signature:

11. Company:

12. Name: (Print or Type)

13. Title:

14. Date: (DD/MM/YY)

15. Blanket Period:
From:
To:

16. Telephone:
Facsimile:

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to Customs and Border Protection (CBP) upon request'' in block 2. If the producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 9 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the name of the folklore article or should state that the article is handloomed or handmade of handloomed fabric;

(11) Block 9 should be completed if the article described in block 4 incorporates a fabric or yarn described in preference group C or D and should state the name of the fabric or yarn that has been considered as being in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States. Block 9 also should be completed if preference group E or I applies to the article described in block 4 and the article incorporates a fabric or yarn described in preference group C or D;

(12) Block 10 must contain the signature of the producer or exporter or the producer's or exporter's authorized agent having knowledge of the relevant facts;

(13) Block 14 should reflect the date on which the Certificate was completed and signed;

(14) Block 15 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see § 10.246(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 14). The ''to'' date is the date on which the blanket period expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§ 10.245 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for an apparel or other textile article described in § 10.243, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.246(d)(1), the declaration required under this paragraph must be based on a Certificate of Origin that has been completed and properly executed in accordance with § 10.244, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the CBP port where the declaration was originally filed.

§ 10.246 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.245 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include a copy of the Certificate of Origin referred to in § 10.245(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on an apparel or other textile article under § 10.245(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to CBP under this paragraph:

(1) Must be in writing or must be transmitted electronically through any electronic data interchange system authorized by CBP for that purpose;

(2) If in writing, must be signed by the producer or exporter or the producer's or exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to CBP upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.244(c)(14), ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the ATPDEA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

_____

Name

_____

Title

_____

Address

_____

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under

§§ 10.244 through 10.246, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.247 Verification and justification of claim for preferential treatment.

(a) *Verification by CBP.* A claim for preferential treatment made under § 10.245, including any statements or other information contained on a Certificate of Origin submitted to CBP under § 10.246, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to CBP by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.245, the importer:

(1) Must have records that explain how the importer came to the conclusion that the apparel or other textile article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.243(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States or in an ATPDEA beneficiary country, the importer must have records that identify the producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.244(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.243(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from CBP, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

§ 10.248 Additional requirements for preferential treatment of brassieres.

(a) *Definitions.* When used in this section, the following terms have the meanings indicated:

(1) *Producer.* ''Producer'' means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in an ATPDEA beneficiary country.

(2) *Entity controlling production.* ''Entity controlling production'' means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in an ATPDEA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabrics formed in the United States.* ''Fabrics formed in the United States'' means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) *Cost.* ''Cost'' when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if CBP finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) *Declared customs value.* ''Declared customs value'' when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if CBP finds that cost to be

unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and dyeing, printing, and finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, and less the freight, insurance, packing, and other costs incurred in transporting the fabric components to the place of production if included in that price; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if CBP finds that cost to be unreasonable: All reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of materials (which does not include the cost of recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials, and excluding expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) *Year.* ''Year'' means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2002.

(7) *Entered.* ''Entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) *Limitations on preferential treatment*—(1) *General.* During the year that begins on October 1, 2003, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in § 10.243(a)(4) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under § 10.245, the importer records on the entry summary or warehouse withdrawal for consumption (CBP Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by CBP to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General.* For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified in § 10.243(a)(4) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in § 10.243(a)(4) are not to be considered in determining compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in § 10.243(a)(4) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2003, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard

specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A new producer or new entity controlling production, that is, a producer or entity controlling production who did not produce or control production of articles that were entered as articles described in § 10.243(a)(4) during the immediately preceding year, must first establish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer would not prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) *Examples.* The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. An ATPDEA beneficiary country producer of articles that meet the production standards specified in § 10.243(a)(4) in the first year sends 50 percent of that production to ATPDEA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the ATPDEA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

Example 2. A producer sends to the United States in the first year three shipments of articles that meet the description in § 10.243(a)(4); one of those shipments is entered under the HTSUS subheading that covers articles described in § 10.243(a)(4), the second shipment is entered under the HTSUS subheading that covers articles described in § 10.243(a)(7), and the third shipment is entered under subheading 9802.00.80, HTSUS. In determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under the HTSUS subheading that covers articles described in § 10.243(a)(4) during the following (that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

Example 3. A producer in the second year begins production of articles that conform to the production standards specified in § 10.243(a)(4); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in § 10.243(a)(4) because the 75 percent standard had not been met in the preceding (that is, first) year. In this case the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether that 85 percent standard has been met. If the 85 percent was met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in § 10.243(a)(4).

Example 4. An entity controlling production of articles that meet the description in § 10.243(a)(4) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

Example 5. Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year all of the front subassemblies are shipped to an ATPDEA beneficiary country where they are assembled with elastic strips for use as brassiere straps and labels produced in an Asian country and other fabrics, components or materials produced in the ATPDEA beneficiary country to form articles that meet the production standards specified in § 10.243(a)(4) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the labels is to be disregarded entirely because the labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the production of articles that were entered in the same year.

Example 6. An ATPDEA beneficiary country producer's entire production of articles that meet the description in § 10.243(a)(4) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a CBP bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The ATPDEA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the ATPDEA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

Example 7. A producer in the second year begins production of articles exclusively for the U.S. market that meet the production standards specified in § 10.243(a)(4), but the entered articles do not meet the requisite 85 percent standard until the third year. The producer's articles may not receive preferential treatment during the second year because there was no production (and thus there were no entered articles) in the immediately preceding (that is, first) year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer's articles are eligible for preferential treatment during the fourth year based on

compliance with the 85 percent standard in the immediately preceding (that is, third) year.

Example 8. An entity controlling production (Entity A) uses five ATPDEA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in § 10.243(a)(4); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation*—(1) *Initial declaration of compliance.* In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with CBP, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, CBP will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with CBP at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance.* If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the CBP office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the CBP office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance*—(i) *Form.* The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT DECLARATION OF COMPLIANCE FOR BRASSIERES

[19 CFR 10.243(a)(4) and 10.248]

1. Year beginning date: October 1, _____ Year ending date: September 30, _____	Official U.S. CBP Use Only Assigned number: _____ Assignment date: _____
2. Identity of preparer (producer or entity controlling production): Full name and address:	Telephone number: _____ Facsimile number: _____ Importer identification number: _____
3. If the preparer is an entity controlling production, provide the following for each producer:	
Full name and address: _____	Telephone number: _____ Facsimile number: _____
4. Aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of brassieres that were entered during the year: _____	
5. Aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in brassieres that were entered during the year: _____	
6. I declare that the aggregate cost of fabric (exclusive of all findings and trimmings) formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.248(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year.	
7. Authorized signature: _____	8. Name and title (print or type): _____
Date:	

(ii) *Preparation.* The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see § 24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the ATPDEA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance.* The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to CBP upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, Customs and Border Protection, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance*—(1) *Verification procedure.* A declaration of compliance filed under this section will be subject to whatever verification CBP deems necessary. In the event that CBP for any reason is prevented from verifying the statements made on a declaration of compliance, CBP may deny any claim for preferential treatment made under § 10.245 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to CBP by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in § 10.243(a)(4) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under § 10.245. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the accounting period and the inventory closing balance.

(2) *Notice of determination.* If, based on a verification of a declaration of compliance filed under this section, CBP determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, CBP will publish a notice of that determination in the **Federal Register**.

■ 3. Section 10.252 is amended by revising the definition of the term ''United States vessel'' to read as follows:

§ 10.252 Definitions.

* * * * *

United States vessel. ''United States vessel'' means either: a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code; or a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988.

■ 4. Section 10.254 is revised to read as follows:

§ 10.254 Certificate of Origin.

A Certificate of Origin as specified in § 10.256 must be employed to certify that an article described in § 10.253(a) being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.251. The Certificate of Origin must be prepared in the ATPDEA beneficiary country by the producer or exporter or by the producer's or exporter's authorized agent. If the person preparing the Certificate of Origin is not the producer of the article, the person may complete and sign a Certificate on the basis of:

(a) The person's reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(b) A completed and signed Certificate of Origin for the article voluntarily provided to the person by the producer.

■ 5. Paragraph (b)(2) of § 10.256 is revised to read as follows:

§ 10.256 Maintenance of records and submission of Certificate by importer.

* * * * *

(b) * * *

(2) Must be signed by the producer or exporter or by the producer's or exporter's authorized agent having knowledge of the relevant facts;

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

■ 1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

■ 2. Section 178.2 is amended by adding a new listing in the table in appropriate numerical order to read as follows:

19 CFR section	Description	OMB control No.
*	*	*
§§ 10.244, 10.245, 10.246, 10.248, 10.254, 10.255, and 10.256.	Claim for duty-free entry entry of eligible articles under the Andean Trade Promotion and Drug Eradication Act.	1651–0091
*	*	*

Jayson P. Ahern,

Acting Commissioner, Bureau of Customs and Border Protection.

Approved: August 2, 2006.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 06–6741 Filed 8–4–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 208

RIN 1510–AB07

Management of Federal Agency Disbursements

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim final rule with request for comment.

SUMMARY: The Financial Management Service (FMS) is publishing an interim final rule amending 31 CFR part 208 (part 208) to facilitate the delivery of Federal payments to victims of disasters and emergencies. Part 208 implements the provisions of 31 U.S.C. 3332, which generally requires that Federal payments be made by electronic funds transfer (EFT). Under 31 U.S.C. 3332, the Secretary of the Treasury (Secretary) must ensure that any individual required to receive a Federal payment by EFT have access to an account at a financial institution at a reasonable cost and with certain consumer protections. This amendment implements 31 U.S.C. 3332 by providing that the Department of the Treasury may establish and administer accounts for disaster victims in order to allow for the delivery of Federal payments by EFT. We are proceeding with this amendment in the form of an interim final rule that is effective without delay.

DATES: This interim final rule is effective August 7, 2006. Comments on the interim final rule are due on or before September 6, 2006.

ADDRESSES: This rule is available on the Financial Management Service's Web site at the following address: *http://www.fms.treas.gov/eft.* You may also inspect and copy this rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment. You may submit comments on the rule by going to the Government-wide rulemaking Web site, *http://www.regulations.gov*, and following the instructions for sending your comments electronically. Alternatively, you may email your comments to FMS at *208comments@fms.treas.gov.* You may also mail your comments to: Sally Phillips, Director, EFT Strategy Division, Financial Management Service, 401 14th Street, SW., Room 420, Washington, DC 20227. Comments received may be made publicly available.

FOR FURTHER INFORMATION CONTACT: Sally Phillips, Director, EFT Strategy Division, at (202) 874–7106 or *sally.phillips@fms.treas.gov*; or Natalie H. Diana, Senior Counsel, at (202) 874–6680 or *natalie.diana@fms.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

Treasury is amending part 208 in order to facilitate the delivery of Federal benefit and assistance payments to victims of emergencies and disasters. During the aftermath of Hurricane Katrina in 2005, many individuals who had been displaced from their homes were in immediate need of financial assistance. Treasury worked with Federal agencies to develop ways to provide Hurricane Katrina evacuees with fast, convenient, and secure access to assistance and benefit payments. Mindful of the possibility that a future emergency or disaster could disrupt the delivery of Federal payments through conventional methods such as direct deposit and check, we are amending part 208 to provide for the establishment of accounts at a financial institution for disaster or emergency victims in order to allow for the delivery by EFT of Federal payments.

Authority and Purpose

31 U.S.C. 3332 generally requires that all non-tax Federal payments be made by EFT, unless waived by the Secretary. The Secretary must ensure that individuals required to receive Federal payments electronically have access to an account at a financial institution at a reasonable cost and with the same consumer protections as other accountholders. *See* 31 U.S.C. 3332(f), (i)(2).

Part 208 implements the requirements of 31 U.S.C. 3332. Part 208 sets forth requirements for accounts to which Federal payments may be sent by EFT; provides that any individual who receives a Federal benefit, wage, salary, or retirement payment is eligible to open an Electronic Transfer Account (ETA) at a financial institution that offers such accounts; and establishes the responsibilities of Federal agencies and recipients under the regulation. Part 208 also sets forth a number of waivers to the general requirement that Federal payments be delivered by EFT. Thus, part 208 contemplates that an individual entitled to a Federal payment either has access to a bank account to which the payment can be delivered electronically, or that the individual can receive and make use of a check payment.

In the extraordinary circumstances of a disaster or emergency, however, many individuals may not have access to their bank accounts and may not be able to readily establish new bank accounts. Such individuals would have no way to receive an electronic Federal assistance or benefit payment. Moreover, as Hurricane Katrina illustrated, in disaster or emergency situations, the postal delivery of checks may be delayed or disrupted at the very time when the expeditious delivery of Federal assistance and benefit payments is

critical in assisting people in disaster situations who urgently need funds in order to pay for food, clothing and shelter. Even where Treasury checks can be expeditiously delivered to disaster victims, individuals who have been displaced from their homes may be unable to establish their identities due to lost or inaccessible documentation. As a result, financial institutions may be unwilling to cash Treasury checks for these individuals, because they cannot determine the identity of the individual or whether a Treasury check that an individual is seeking to cash has been stolen and fraudulently endorsed. Finally, check payments may raise security concerns in disaster situations, since individuals who cash checks will typically be carrying significant amounts of cash in order to make purchases.

The interim final rule gives Treasury the authority to quickly establish accounts for disaster and emergency victims, as well as the flexibility to determine what features such accounts should have in order to meet the needs of payment recipients.

Amendment of Part 208

We are amending 31 CFR part 208 by adding a new § 208.11 that provides that Treasury may establish accounts at financial institutions for victims of a disaster or emergency in order to allow for the electronic delivery of Federal payments. New § 208.11 gives the Secretary flexibility to determine what features such accounts should have in light of the particular nature of the disaster or emergency. Sections 208.4, 208.6, 208.7 and 210.5 of title 31 CFR do not apply to the establishment of accounts or issuance of payments pursuant to this section. For example, the waivers set forth in § 208.4 are not applicable in situations where Treasury is establishing accounts for the express purpose of allowing for the delivery by EFT of Federal payments to disaster victims. The requirement in §§ 208.6 and 210.5 that a Federal non-vendor electronic payment be deposited to a deposit account in the name of the recipient does not apply to accounts established pursuant to § 208.11, nor are agencies required to notify check recipients and newly-eligible payment recipients of options available to them, as is normally required under § 208.7. Further, Treasury will be able to deliver payments to accounts established pursuant to § 208.11, notwithstanding any other instructions from the payment recipient.

Regulatory Analyses

Request for Comment. We invite comment on all aspects of the interim final rule.

Request for Comment on Plain Language. On June 1, 1998, the President issued a memorandum directing each agency in the Executive branch to write its rules in plain language. This directive is effective for all new proposed and final rulemaking documents issued on or after January 1, 1999. We invite comment on how to make this interim final rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of this interim final rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

Notice and Comment; Effective Date. We are proceeding without notice and comment on this rulemaking because of the need to be prepared to deliver Federal assistance and benefit payments during the current hurricane season, which is already underway. Obtaining prior notice and comment would delay implementation of this rule and could cause hardship to individuals who might be urgently in need of food, clothing and shelter in the event a hurricane, disaster or other emergency occurs. Accordingly, under the provisions of the Administrative Procedure Act at 5 U.S.C. 553(b)(B) and 553(d)(3), we find good cause that prior notice and comment on this rule and a 30-day delay in its effective date is impracticable and contrary to the public interest.

Although the rule will take effect without prior notice and comment, we are inviting comment and will consider the comments received.

Executive Order 12866. It has been determined that this interim final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act do not apply.

List of Subjects in 31 CFR Part 208

Accounting, Automated Clearing House, Banks, Banking, Electronic funds transfer, Financial institutions, Government payments.

Authority and Issuance

■ For the reasons set out in the preamble, 31 CFR part 208 is amended as follows:

PART 208—MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 90, 265, 266, 1767, 1789a; 31 U.S.C. 321, 3122, 3301, 3302, 3303, 3321, 3325, 3327, 3328, 3332, 3335, 3336, 6503; Public Law 104–208, 110 Stat. 3009.

■ 2. Add a new § 208.11 to read as follows:

§ 208.11 Accounts for disaster victims.

Treasury may establish and administer accounts at any financial institution designated as a financial agent for disaster victims in order to allow for the delivery by electronic funds transfer of one or more Federal payments. Such accounts may be established upon terms and conditions that the Secretary considers appropriate or necessary in light of the circumstances. Treasury may deliver payments to these accounts notwithstanding any other payment instructions from the recipient and without regard to the requirements of §§ 208.4, 208.6, and 208.7 of this part and 31 CFR 210.5. For purposes of this section, ''disaster victim'' means an individual or entity located within an emergency area, or an individual or entity that has relocated or been displaced from an emergency area as a result of a major disaster or emergency. ''Emergency area'' means a geographical area in which there exists an emergency or disaster declared by the President pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.) or the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). The maintenance of accounts and the provision of account-related services under this section shall constitute reasonable duties of a financial agent of the United States.

Dated: July 31, 2006.

Kenneth R. Papaj,

Commissioner.

[FR Doc. E6–12689 Filed 8–4–06; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–06–073]

RIN 1625–AA09

Drawbridge Operation Regulations; Pinellas Bayway Structure ''E'' (SR 679) Bridge, Gulf Intracoastal Waterway, Mile 113, St. Petersburg Beach, Pinellas County, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the operation of the Pinellas Bayway Structure ''E'' (SR 679) Bridge, Gulf Intracoastal Waterway mile 113, St. Petersburg Beach, Pinellas County, Florida. This rule is needed to provide vehicular traffic relief during heavy vehicular traffic periods flowing into a nearby county park, as well as meeting the reasonable needs of mariners. This bridge will open on signal, except that from 9 a.m. to 7 p.m. the draw need open only on the hour and 30 minutes past the hour until October 29, 2006.

DATES: This rule is effective from August 7, 2006 until 7 p.m. on October 29, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD07–06–073 and are available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM was impracticable and contrary to the public interest, because the rule is needed to provide for vehicular traffic relief and provides provisions for vessels to transit through the area twice per hour.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after **Federal Register** publication. This rule provides for scheduled bridge openings for vessels to transit through the bridge.

Background and Purpose

The Pinellas Bayway ''E'' (SR 679) Bridge, Gulf Intracoastal Waterway mile 113, St. Petersburg Beach, Pinellas County, Florida, currently opens on signal; except that, from 9 a.m. to 7 p.m. the draw need only open on the hour, 20 minutes after the hour, and 40 minutes after the hour. The bridge provides vehicular access into and out of a popular county park.

On June 23, 2006, the Coast Guard published a temporary final rule (71 FR 36010) at the request of Florida State Representative Rice's office, on behalf of the local citizens, that stated the bridge will be required to only open on the hour and half-hour Fridays from 2 p.m. until 6 p.m. and Saturdays, Sundays and Federal holidays from 9 a.m. until 7 p.m. Public vessels of the United States, tugs with tows and vessels in distress shall be passed as necessary. However, after this temporary final rule was published, Florida State Representative Rice's office, at the request of the local citizens revised their request for the opening of the bridge. The bridge shall open on signal, except that from 9 a.m. to 7 p.m. the draw need open only on the hour and 30 minutes past the hour.

Discussion of Rule

The regulation was requested by Florida Representative Rice's office on behalf of the residents of St. Petersburg Beach and will provide temporary relief for vehicular traffic during periods of heavy traffic traveling into and out of a nearby county park, while continuing to provide for the reasonable needs of navigation. The bridge will be required to open on signal, except that from 9 a.m. to 7 p.m. the draw need open only on the hour and 30 minutes past the hour.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary, because the rule will allow for timed bridge openings.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities, because the regulations provide for bridge openings, and the reasonable needs of navigation.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order, because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. From August 7, 2006 through 7 p.m. on October 29, 2006, § 117.287(d)(3) is suspended and (d)(5) is added to read as follows:

* * * * *

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(d) * * *

(5) Pinellas Bayway Structure ''E'' (SR 679) bridge, mile 113 at St. Petersburg Beach. The draw shall open on signal, except that from 9 a.m. to 7 p.m. the draw need open only on the hour and 30 minutes past the hour.

* * * * *

Dated: July 17, 2006.

D.W. Kunkel,

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

[FR Doc. E6–12528 Filed 8–4–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0322; FRL–8190–2]

Approval and Promulgation of Implementation Plans; Las Vegas Valley Carbon Monoxide Attainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revised attainment plan, as modified to withdraw the motor vehicle emissions budget for 2030, for the Las Vegas Valley carbon monoxide nonattainment area as a revision to the Nevada state implementation plan. The revised attainment plan, as modified, includes revised base year and future year emissions inventories and a revised demonstration of continued attainment of the carbon monoxide national ambient air quality standard in Las Vegas Valley through 2020 based on the most recent emissions models and planning assumptions and establishes new motor vehicle emissions budgets. EPA is acting under section 110(k) of the Clean Air Act, which obligates the Agency to take action on State submittals of revisions to state implementation plans. The intended effect of this approval action is to update the carbon monoxide motor vehicle emissions budgets in the Las Vegas area and thereby make them available for the purposes of transportation conformity.

DATES: This rule is effective on September 6, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2006–0322. All documents in the docket are listed on the *http://www.regulations.gov* Web site. 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 information, 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 EPA Region IX, 75 Hawthorne Street, San Francisco, California. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, EPA Region IX, telephone number: (775) 833–1276; fax number: (775) 833–1276; e-mail address: *oconnor.karina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. What Action Did EPA Propose?
II. Is the Background for This Rule?
III. What Comments Did We Receive on the Proposed Action?
IV. What Is Our Final Action?
V. Statutory and Executive Order Reviews

I. What Action Did EPA Propose?

On May 9, 2006 (71 FR 26910), under section 110(k) of the Clean Air Act (CAA or ''Act''), we proposed to approve the *Carbon Monoxide State Implementation Plan Revision, Las Vegas Valley Nonattainment Area, Clark County, Nevada* (October 2005), which was adopted by the Clark County Board of Commissioners on October 4, 2005 and submitted to EPA by NDEP on February 14, 2006, as a revision to the Nevada SIP on the condition that Clark County and the State of Nevada withdraw the 2030 motor vehicle emission budget, or, in the alternative, we propose to disapprove the plan. Specifically, we proposed to approve the plan's revised base year and projected emission inventories and modeling demonstration of continued attainment of the CO standard through 2020. Our proposed disapproval was based on our finding that the plan does not demonstrate continued attainment in year 2030 because it lacks micro-scale modeling analysis for the environs of the County's airports in that year.

Furthermore, we found that, with the exception of the 2030 budget, the new motor vehicle emissions budgets established in the plan are also consistent with continued attainment of the CO NAAQS in Las Vegas Valley. Thus, we proposed to approve the motor vehicle emissions budgets from the 2005 CO plan for 2006, 2010, 2015, and 2020 as meeting the purposes of section 176(c)(1) and the transportation conformity rule at 40 CFR 93, subpart A contingent upon the withdrawal of the 2030 budget by Clark County and the State of Nevada, and to disapprove the submitted budgets in the 2005 CO plan, in the alternative, if no such withdrawal was made.

As discussed below, the State of Nevada has submitted a second SIP revision that withdraws the 2030 budget, and we received no comments on our proposal, and thus, we are taking final action to approve the 2005 CO plan, as amended, and to approve the related motor vehicle emissions budgets for 2006, 2010, 2015, and 2020.

II. What Is the Background for This Rule?

Based on monitoring data from the mid-1970's, EPA designated Las Vegas Valley [1] as a carbon monoxide (CO) nonattainment area under the Clean Air Act (CAA or ''Act''), as amended in 1977. See 43 FR 8962, 9012 (March 3, 1978). In response, Clark County and the State of Nevada adopted and implemented various air quality plans and programs, including a vehicle inspection and maintenance (I/M) program, to reduce CO levels in Las Vegas Valley, but the CO national ambient air quality standards (NAAQS) were not attained by the then-applicable 1987 attainment date. [EPA approved these plans and programs at various times as revisions to the Nevada state implementation plan (SIP).]

The CAA was significantly amended by Congress in 1990 to establish new attainment dates and planning and control requirements for areas that had failed to attain the NAAQS under the 1977 Amendments. Under the 1990 Amended Act, Las Vegas Valley was initially classified as a ''moderate'' nonattainment area for CO but was later reclassified as a ''serious'' CO nonattainment area after having missed the attainment date for moderate areas.

In response to the ''moderate'', and then ''serious,'' nonattainment classification and related CAA requirements, Clark County and the State of Nevada adopted and implemented new air quality plans and programs, including a ''serious'' area attainment plan, the *Carbon Monoxide State Implementation Plan, Las Vegas Valley Nonattainment Area, Clark County, Nevada* (August 2000) (''2000 CO plan''). In 2004, we approved the 2000 CO plan and related motor vehicle emissions budgets for years 2000, 2010 and 2020. See 69 FR 56351, September 21, 2004.

In response to changes in the EPA-approved motor vehicle emission factor model and higher-than-forecast increases in population growth in Las Vegas Valley, the Clark County Department of Air Quality and Environmental Management (DAQEM), in consultation with the Regional Transportation Commission of Southern Nevada (RTC), undertook a comprehensive air quality planning effort to review and update the 2000 CO plan and the associated motor vehicle emission budgets to maintain consistency for future transportation conformity findings. The planning efforts culminated in the preparation of the *Carbon Monoxide State Implementation Plan Revision, Las Vegas Valley Nonattainment Area, Clark County, Nevada* (October 2005) (''2005 CO plan''). The Clark County Board of Commissioners adopted the 2005 CO plan on October 4, 2005, and the Nevada Division of Environmental Protection (NDEP) submitted the plan to EPA as a revision to the Nevada SIP on February 14, 2006.

The 2005 CO plan, as adopted on October 4, 2005 and submitted on February 14, 2006, includes revised base year and future year emissions inventories and a revised demonstration of continued attainment of the CO NAAQS in Las Vegas Valley through 2030 based on the most recent emissions models and planning assumptions and establishes new motor vehicle emissions budgets. The inventories and modeling demonstration included in the 2005 CO plan relate to analysis years 1996, 2006, 2010, 2015, 2020 and 2030. The plan allocates almost all of the estimated safety margins [2] in years 2006, 2010, 2015, 2020, and 2030 to the on-road motor vehicle emissions category. Based on our review and evaluation of NDEP's February 14, 2006 SIP revision submittal, we proposed to approve the 2005 CO plan on the condition that

[1] The boundaries of the Las Vegas Valley CO nonattainment area are defined by reference to State hydrographic area #212, which covers the central portion of Clark County. See 40 CFR 81.329.

[2] The term ''safety margin'' refers to the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment or maintenance. See 40 CFR 93.101. The 2005 CO plan also allocates a small portion of the safety margins to certain point sources.

Clark County and the State of Nevada withdraw the 2030 motor vehicle emission budget, or, in the alternative, to disapprove the plan. See 71 FR 26910 (May 9, 2006).

As stated in our proposed rule published on May 9, 2006, our objection to the 2030 budget was premised on our finding that the plan lacks micro-scale modeling analysis for the environs of the County's airports in that year. In response, on May 2, 2006, Clark County adopted a revision to the 2005 CO plan that involved withdrawal of the 2030 budget and revision and replacement of the specific section of the plan (section 7.3, page 7–2, ''Mobile Source Emissions Budget'') that identifies the emissions budgets. On May 12, 2006, NDEP submitted the amended page of the plan to EPA as a SIP revision together with evidence of adoption of this amendment by the Clark County Board of Commissioners. We have reviewed the May 12, 2006 submittal, and find that it meets the condition we placed on the proposed approval of the 2005 CO plan, and thus we are taking final action today to approve the plan, as amended.

Please see the proposed rule at 71 FR 26910 (May 9, 2006) for more information about the background leading up to the submittal of the 2005 CO plan and our review and evaluation of the plan.

III. What Comments Did We Receive on the Proposed Action?

EPA provided a 30-day review and comment period on the proposal published in the **Federal Register** on May 9, 2006 (71 FR 26910). We received no comments on our proposed rulemaking.

IV. What Is Our Final Action?

Pursuant to section 110(k) of the Act and for the reasons set forth above and in the proposed rule, we are approving the *Carbon Monoxide State Implementation Plan Revision, Las Vegas Valley Nonattainment Area, Clark County, Nevada* (October 2005), as adopted on October 4, 2005 by the Clark County Board of Commissioners and submitted by NDEP on February 14, 2006, and as amended by the board on May 2, 2006 and submitted by NDEP on May 12, 2006, as a revision to the Nevada SIP.

Our approval is based on our evaluation of the plan submittals and determination that the plan's revised base year and projected emission inventories and modeling demonstration of continued attainment of the CO standard through 2020 reflect acceptable methods and the most recent models and planning assumptions.

Furthermore, we find that the new motor vehicle emissions budgets established in the plan and reflecting scaled inventories are also consistent with continued attainment of the CO NAAQS in Las Vegas Valley. Thus, we are approving the following motor vehicle emissions budgets from the 2005 CO plan, as modified by the withdrawal of the 2030 budget as set forth in NDEP's February 12, 2006 submittal, as meeting the purposes of section 176(c)(1) and the transportation conformity rule at 40 CFR part 93, subpart A:

CO MOTOR VEHICLE EMISSIONS BUDGET

[December weekday]

Year	Tons per day
2006	623
2010	690
2015	768
2020	817

Our action today in approving the above budgets has the effect of replacing the previously-approved CO motor vehicle emissions budgets from the Las Vegas Valley 2000 CO plan for the purposes of transportation conformity.

V. Statutory and Executive Order Reviews

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 an air quality plan as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. 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 tribal implications because it will 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). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state plan implementing a Federal standard 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, ''Protection of Children from Environmental Health Risks and Safety Risks'' (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. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule

cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 6, 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 20, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is 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 DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraphs (c)(57) and (c)(58) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(57) The following plan revision was submitted on February 14, 2006, by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Department of Air Quality and Environmental Management.

(1) Carbon Monoxide State Implementation Plan Revision, Las Vegas Valley Nonattainment Area, Clark County, Nevada, adopted on October 4, 2005 by the Clark County Board of Commissioners (with the exception of section 7.3 (page 7–2), ''Mobile Source Emissions Budget'').

(58) The following plan revision was submitted on May 12, 2006, by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Department of Air Quality and Environmental Management.

(1) Section 7.3 (page 7–2), ''Mobile Source Emissions Budget'' of the Carbon Monoxide State Implementation Plan Revision, Las Vegas Valley Nonattainment Area, Clark County, Nevada, adopted on May 2, 2006 by the Clark County Board of Commissioners.

[FR Doc. E6–12761 Filed 8–4–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 051014263–6028–03; I.D. 080106A]

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; End of the Pacific Whiting Primary Season for the Shore-based Sector and the Resumption of Trip Limits

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

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS announces the end of the 2006 primary season for the Pacific whiting (whiting) shore-based sector at 6 p.m. local time (l.t.) August 2, 2006, because the allocation is projected to be reached. This action is intended to keep the harvest of whiting at the 2006 allocation levels.

DATES: Effective from 6 p.m. l.t. August 2, 2006, until January 1, 2007.

Comments will be accepted through August 22, 2006.

ADDRESSES: You may submit comments, identified by [docket number and/or RIN number], by any of the following methods:

- E-mail:. *WhitingSBclosure2006.nwr@noaa.gov* Include [docket number and/or RIN number] in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736, Attn: Becky Renko.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Becky Renko.

FOR FURTHER INFORMATION CONTACT: Becky Renko at 206–526–6110.

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California.

The regulations at 50 CFR 660.323(a) establish separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. For 2006, the 232,069 mt commercial harvest guideline for whiting is divided with the catcher/processor sector receiving 78,903 mt (34 percent); the mothership sector receiving 55,696 mt (24 percent); and the shore-based sector receiving 97,469 mt (42 percent).

Regulations at 50 CFR 660.373(b) describe the primary season for each sector. The primary season for the shore-based sector is the period(s) when the large-scale target fishery is conducted, and when ''per trip'' limits are not in effect. Before and after the primary season, per-trip limits are in effect for whiting.

The best available information on July 31, 2006, indicates that 81,159 mt had been taken through July 27, 2006, 2006, and that the 97,469 mt shore-based allocation will be reached by August 2, 2006. This **Federal Register** document announces that the primary season for the shore-based sector ends on August 2, 2006, and a 10,000–lb (4,536–kg) trip limit is imposed. Per-trip limits are for vessels using large or small footrope trawl gear and are intended to accommodate small bait and fresh fish markets, and bycatch in other fisheries. To minimize incidental catch of Chinook salmon by vessels fishing shoreward of the 100–fm (183–m) contour in the Eureka area, at any time during a fishing trip, a limit of 10,000 lb (4,536 kg) of whiting is in effect year-round, except when landings of whiting are prohibited.

NMFS Action

For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(b)(3), NMFS herein announces:

Effective 6 p.m. l.t. August 2, 2006, no more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed or landed by any vessel participating in the shore-based sector of the whiting fishery, unless otherwise announced in the **Federal Register**. If a vessel fishes shoreward of the 100–fm (183–m) contour in the Eureka area (43° - 40°30′ N. lat.) at any time during a fishing trip, the 10,000–lb (4,536–kg)

trip limit applies, as announced in the annual management measures at paragraph IV, B (3)(c)(ii), except when the whiting fishery is closed.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The Assistant Administrator for fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity would be impracticable. It would be impracticable because if this closure were delayed in order to provide notice and comment, the fishery would be expected to greatly exceed the sector allocation. This would either result in the entire whiting optimum yield being exceeded, or in the allocations for the other sectors being reduced. Therefore, good cause also exists to waive the 30–day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3). The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours.

This action is taken under the authority of 50 CFR 660.323(b)(3) and is exempt from review under Executive Order 12866.

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

Dated: August 1, 2006.

James P. Burgess,

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

[FR Doc. 06–6737 Filed 8–2–06; 12:58 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 080206A]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; prohibition of retention.

SUMMARY: NMFS is prohibiting retention of northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of northern rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the 2006 total allowable catch (TAC) of northern rockfish in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 3, 2006, until 2400 hrs, A.l.t., December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

The 2006 TAC of northern rockfish in the Central Regulatory Area of the GOA is 3,608 metric tons as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the northern rockfish TAC in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of northern rockfish in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of northern rockfish in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 27, 2006.

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

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

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

Dated: August 2, 2006.

James P. Burgess,

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

[FR Doc. 06–6736 Filed 8–2–06; 12:58 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 151
Monday, August 7, 2006

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AI62

Waiver of Requirements for Continued Coverage During Retirement

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: Under current Federal Employees Health Benefits (FEHB) Program regulations, the Office of Personnel Management (OPM) may waive the eligibility requirements for health benefits coverage as an annuitant for an individual when, in its sole discretion, it determines that it would be against equity and good conscience not to allow a person to be enrolled in the FEHB Program as an annuitant. The regulations state that an individual's failure to satisfy eligibility requirements must be due to exceptional circumstances. They also list specific situations where a waiver will not be granted by OPM such as when an individual's retirement is based on a disability or an involuntary separation, or when an individual was misadvised by his/her employing office. This proposed regulation eliminates these specific situations from the regulation. This proposed regulation will provide OPM with more flexibility when granting waivers.

DATES: Comments must be received on or before October 6, 2006.

ADDRESSES: This document is available for viewing at the U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. Send all comments to Anne Easton, Manager, Insurance Policy, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3400, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Michael Kaszynski, Policy Analyst, at 202.606.0004.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 8905(b), OPM may waive the eligibility requirements for health benefits coverage as an annuitant for an individual when, in its sole discretion, it determines that it would be against equity and good conscience not to allow a person to be enrolled in the FEHB Program as an annuitant. Under 5 CFR 890.108, an individual's failure to satisfy eligibility requirements must be due to exceptional circumstances. An individual requesting a waiver must provide OPM with evidence that (1) the individual intended to have FEHB coverage as an annuitant (retiree); (2) the circumstances that prevented the individual from meeting the requirements of 5 U.S.C. 8905(b) were beyond the individual's control; and (3) the individual acted reasonably to protect his or her right to continue coverage into retirement.

Section 890.108 lists specific situations where a waiver will not be granted by OPM such as when an individual's retirement is based on a disability or an involuntary separation, or an individual was misadvised by his/her employing office. This regulation eliminates these specific situations from 5 CFR 890.108 to provide more flexibility to the waiver process.

Collection of Information Requirement

The proposed rule does not impose information collection and recordkeeping requirements that meet the definition of the Paperwork Reduction Act of 1995's term ''collection of information'' which means obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States; or answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (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 with revenues of $11.5 million or less in any one year. This rulemaking affects FEHB Program health insurance eligibility requirements which do not impact the dollar threshold. Therefore, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Regulatory Impact Analysis

We have examined the impact of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the RFA (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995, (Pub. L. 104–4), and Executive Order 13132. Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more in any one year). This rule is not considered a major rule, as defined in section 804(2) of title 5, United States Code, because we estimate its impact will only affect federal government employment offices. Any resulting economic impact would not be expected to exceed the dollar threshold.

Executive Order 12866, Regulatory Review

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

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Iraq, Kuwait, Lebanon, Military Personnel,

Reporting and recordkeeping requirements, Retirement.

Linda M. Springer,

Director, Office of Personnel Management.

For the reasons set forth in the preamble, OPM proposes to amend 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061, unless otherwise noted.

2. Section 890.108 is revised to read as follows:

§ 890.108 Will OPM waive requirements for continued coverage during retirement?

(a) Under 5 U.S.C. 8905(b), OPM may waive the eligibility requirements for health benefits coverage as an annuitant for an individual when, in its sole discretion, it determines that due to exceptional circumstances it would be against equity and good conscience not to allow a person to be enrolled in the FEHB Program as an annuitant.

(b) The individual's failure to satisfy the eligibility requirements must be due to exceptional circumstances. An individual requesting a waiver must provide OPM with evidence that:

(1) The individual intended to have FEHB coverage as an annuitant (retiree);

(2) The circumstances that prevented the individual from meeting the requirements of 5 U.S.C. 8905(b) were beyond the individual's control; and

(3) The individual acted reasonably to protect his or her right to continue coverage into retirement.

[FR Doc. E6–12782 Filed 8–4–06; 8:45 am]

BILLING CODE 6329–39–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–79]

Mr. Lawrence T. Christian, et al.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is republishing its December 19, 2005 notice (70 FR 75085) denying a petition for rulemaking submitted by Mr. Lawrence T. Christian and 3,000 co-signers on September 4, 2002, to correct errors and clarify the NRC's regulatory position. These changes do not affect the Commission's denial of the petition. The petition was docketed by the NRC on September 23, 2002, and was assigned Docket No. PRM–50–79. The petition requests that the NRC amend its regulations regarding offsite state and local government emergency plans for nuclear power plants to ensure that all day care centers and nursery schools in the Emergency Planning Zone (EPZ) of nuclear power facilities are properly protected in the event of a radiological emergency.

ADDRESSES: Publicly available documents related to this petition, including the petition for rulemaking, public comments received, and the NRC's letter of denial to the petitioner, may be viewed electronically on public computers in the NRC's Public Document Room (PDR), 01 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at: *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing in the documents located in ADAMS, contact the PDR reference staff at (800) 387–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3224, e-mail *MTJ1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In December 1979, the President directed the Federal Emergency Management Agency (FEMA), now part of the U.S. Department of Homeland Security (DHS), to lead state and local emergency planning and preparedness activities with respect to jurisdictions in proximity to nuclear reactors. FEMA has responsibilities under Executive Order 12148, issued on July 15, 1979, to establish federal regulations and policies and to coordinate civil emergency planning within emergency preparedness programs. Consequently, FEMA is the lead authority concerning the direction, recommendations, and determinations with regard to offsite state and local government radiological emergency planning efforts necessary for the public health and safety. FEMA sends its findings to the NRC for final determinations. FEMA implemented Executive Order 12148 in its regulations outlined in 44 CFR part 350. Within the framework of authority created by Executive Order 12148, FEMA also entered into a Memorandum of Understanding (MOU) (58 FR 47966, September 9, 1993) with the NRC to provide acceptance criteria for and determinations as to whether state and local government emergency plans are adequate and capable of being implemented to ensure public health and safety. FEMA's regulations are further amplified by FEMA Guidance Memorandum (GM) EV–2, ''Protective Actions for School Children,'' and the ''Radiological Emergency Preparedness Exercise Evaluation Methodology'' (67 FR 20580 dated April 25, 2002).

The Commission's emergency planning regulations for nuclear power reactors are contained in 10 CFR part 50, specifically § 50.33(g), 50.47, 50.54 and Appendix E. As stated in 10 CFR 50.47(a)(1), in order to issue an initial operating license, the NRC must make a finding ''that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency'' to protect the public health and safety. An acceptable way of meeting the NRC's emergency planning requirements is contained in Regulatory Guide (RG) 1.101, Rev. 4, ''Emergency Planning and Preparedness for Nuclear Power Reactors'' (ADAMS Accession No. ML032020276). This guidance document endorses NUREG–0654/FEMA–REP–1, Rev. 1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants'' (ML040420012; Addenda: ML021050240), an NRC and FEMA joint guidance document intended to provide nuclear facility operators and Federal, state, and local government agencies with acceptance criteria and guidance on the creation and review of radiological emergency plans. Together, RG 1.101, Rev. 4; and

NUREG–0654, Rev. 1, provide guidance to licensees and applicants on methods acceptable to the NRC staff for complying with the Commission's regulations for emergency response plans and preparedness at nuclear power reactors.

Emergency plans for all nuclear power reactors are required under part 50, as amplified by NUREG–0654/FEMA–REP–1 and applicable FEMA guidance documents, to have specific provisions for all ''special facility populations,'' which refers not only to pre-schools, nursery schools, and day care centers, but all kindergarten through twelfth grade (K–12) students, nursing homes, group homes for physically or mentally challenged individuals and those who are mobility challenged, as well as those in correctional facilities. FEMA GM 24, ''Radiological Emergency Preparedness for Handicapped Persons,'' dated April 5, 1984, and GM EV–2, ''Protective Actions for School Children,'' dated November 13, 1986, provide further guidance. These specific plans should, at a minimum:

- Identify the population of such facilities;
- Determine and provide protective actions for these populations;
- Establish and maintain notification methods for these facilities; and
- Determine and provide for transportation and relocation.

State and local Emergency Operations Plans and procedures are initially and periodically evaluated by FEMA. The plans are tested in a biennial emergency preparedness exercise conducted for each nuclear power station. If plans or procedures are found to be inadequate, they must be corrected.

The NRC emergency preparedness regulations are predicated on State and local governments that participate in emergency planning assuming overall responsibility for ensuring the performance of off-site planning and preparedness activities. This predicate is appropriate since State and local governments have responsibility for public health and safety, and the authority to take actions to protect the public during an emergency. A radiological emergency is but one of the hazards for which a State and its local government entities may prepare. Emergency response is intended to be primarily local; the planning for that response must similarly reflect local capabilities, constraints, organizational relationships, statutes, regulations, and ordinance. The Commission's emergency preparedness regulations allow a finding of reasonable assurance that adequate protective measures can and will be taken during a radiological emergency where a State or local government tasks a non-governmental entity with emergency planning, preparedness, or response activities responsive to the planning standards of 10 CFR 50.47(b), provided that the overall responsibility for demonstrating, with reasonable assurance, that adequate protective measures can and will be taken in the event of a radiological emergency continues to remain with the State and local governments.

Onsite and offsite emergency response plans for nuclear power plants are evaluated against the planning standards established in 10 CFR 50.47(b) and 44 CFR part 350, as informed by supporting regulatory guidance and case law. The NRC and FEMA jointly developed NUREG–0654/FEMA–REP–1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' to provide guidance and acceptance criteria for the development of licensee and State and local government emergency plans. NUREG–0654/FEMA–REP–1 is incorporated by reference in 44 CFR 350.5 and the planning standards and related criteria therein are used by FEMA (now part of DHS) to review, evaluate, and approve State and local radiological emergency plans and preparedness. FEMA Guidance Memorandum (GM) EV–2, ''Protective Actions for School Children,'' identifies methods acceptable to DHS (previously FEMA) for showing compliance with the planning standards and evaluation criteria, to the extent they apply to school children. Methods different from those identified in GM–EV–2 can be found acceptable if they provide an adequate basis for FEMA to determine that the planning standards and evaluation criteria are met. The NRC will then base its licensing decisions, with regard to offsite emergency planning, on a review of the FEMA findings.

The petition denial references GM–EV–2 in several locations as an example of existing regulatory guidance that satisfies the intent of the individual petition requests. However, the Commission recognizes that DHS may find alternatives, other than those identified in GM–EV–2, to be acceptable means for meeting the planning standards and the evaluation criteria in NUREG–0654/FEMA–REP–1.

Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following:

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Public File Area O–1 F21, Rockville, Maryland. Copies of publicly available NRC documents related to this petition can be viewed electronically on public computers in the PDR. The PDR reproduction contractor will make copies of documents for a fee.

Rulemaking Web site (Web). The NRC's interactive rulemaking Web site is located at *http://ruleforum.llnl.gov.* Selected documents may be viewed and downloaded electronically via this Web site.

The NRC's Public Electronic Reading Room (ADAMS). The NRC's public Electronic Reading Room is located at *http://www/nrc.gov/reading-rm/adams.html.* Through this site, the public can gain access to the NRC's Agencywide Document Access and Management System, which provides text and image files of NRC's public documents.

NRC Staff Contact (NRC Staff). For single copies of documents not available in an electronic file format, contact Michael T. Jamgochian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3224, e-mail *MTJ1@nrc.gov.*

Document	PDR	Web	ADAMS	NRC staff
Petition for Rulemaking (PRM–50–79)	X	X	ML023110466	
Federal Register Notice—Receipt of Petition for Rulemaking (67 FR 66588; Nov. 1, 2002)	X	X	ML023050008	
Federal Register Notice—Receipt of Petition for Rulemaking; Correction (67 FR 67800; Nov. 7, 2002)	X	X	ML040770516	
Public Comments, Part 1 and 2	X	X	ML040770480	
Public Comments, Part 2 of 2	X	X	ML040770544	
Additional Public Comments		X	ML041910013	

Document	PDR	Web	ADAMS	NRC staff
Letter of Denial to the Petitioners	X	X	ML053260004	
Public Comment (PEMA) on Dec. 19, 2005 FRN	X	X	ML060680076	
Public Comment (DHS/FEMA) on Dec. 19, 2005 FRN	X	X	ML060860342 ML060730534	
REG 1.101, Rev. 4, Emergency Planning and Preparedness for Nuclear Power Reactors (July 2003)	X		ML032020276	
NUREG–0654/FEMA REP–1, Rev. 1 Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants (November 1980)	X		ML040420012	
NUREG–0654/FEMA–REP–1, Rev. 1 Addenda (March 2002)	X		ML021050240	
Executive Order 12148, Federal Emergency Management (July 20, 1979)	X			
MOU Between FEMA and NRC Relating to Radiological Emergency Planning and Preparedness (June 17, 1993)				X
FEMA GM 24, Radiological Emergency Preparedness for Handicapped Persons (April 5, 1984)				X
Radiological Emergency Preparedness (REP) Exercise Methodology (66 FR 47526—September 12, 2001 and 67 FR 20580–April 25, 2002)				
FEMA GM EV–2, Protective Actions for School Children (November 13, 1986)				X

The Petitioners' Request

This petition for rulemaking (PRM–50–79) generally requests that the NRC establish new rules requiring that emergency planning for day care centers and nursery schools located in the Emergency Planning Zone (EPZ) be in clued in the state and local government offsite emergency plans of all NRC nuclear power facility licensees. More specifically, the petition requests that the NRC amend its regulations to ensure that all children attending day care centers and nursery schools within the EPZ are:

A. Assigned to designated relocation centers established safely outside of the EPZ.

B. Provided with designated transportation to a relocation center in the event of an emergency evaluation.

C. Transported in approved child-safety seats that meet state and federal laws as they pertain to the transportation of children and infants under 50 pounds in weight or 4 feet 9 inches to height.

The petitioners also request that the following be mandated by NRC regulations:

D. The creation and maintenance of working rosters of emergency bus drivers and back-up drivers for day care center and nursery school evacuation vehicles, and the establishment of a system for notifying these individuals in the event of a radiological emergency. These rosters should bed regularly checked and updated, with a designated back-up driver listed for each vehicle and route.

E. Notification of emergency management officials by individual preschools as to the details of each institution's radiological emergency plan.

F. Annual site inspections of day care centers and nursery schools within the evacuation zone by emergency management officials.

G. Participation of day care centers and nursery schools within the EPZ in radiological emergency preparedness exercises designed to determine each institution's state of readiness.

H. Creation of identification cards, school attendance lists, and fingerprint records for all children who are to be transported to a relocation center, to ensure no child is left behind or is unable, due to age, to communicate his or her contact information to emergency workers.

I. Development by emergency management officials of educational materials for parents, informing them what will happen to their children in case of a radiological emergency, and where their children can be picked up after an emergency evacuation.

J. Stocking of potassium iodide (KI) pills and appropriate educational materials at all day care centers and nursery schools within the EPZ.

K. Radiological emergency preparedness training for all day care center and nursery school employees within the EPZ.

L. Listing of designated relocation centers for day care centers and nursery schools in area phone directories, so that parents can quickly and easily find where their children will be sent in case of a radiological emergency.

M. Establishment of toll-free or 911-type telephone lines to provide information about radiological emergency plans and procedures for day care centers and nursery schools within the EPZ.

N. Creation of written scripts for use by the local Emergency Alert System (EAS) that include information about evacuation plans and designated relocation centers for day care centers and nursery schools.

Public Comments

The NRC received 55 public comment letters relating to this petition. Twenty-three letters supported granting the petition (mostly from citizens including three letters with 410 signatures), while 30 letters requested that the petition be denied. Those letters that supported denial of the petition were primarily from state and local governmental agencies, FEMA, and licensees. In addition, the NRC received a letter that discussed KI but did not take a position on the petition and a letter that strongly supports the development of all-hazards emergency plans for child day care facilities and nursery schools throughout the state but did not take a position on the petition. Subsequent to the December 19, 2005 notice of denial, the NRC received two letters and an E-mail commenting on errors and potential mischaracterizations in the published denial.

More specifically;

23 Letters supporting the granting of the petition:

13 Comment letters from citizens supporting the granting of the petition.

1 Comment letter from a citizens group supporting the granting of the petition.

4 Comment letters from local governmental agencies or officials supporting the petition.

3 Comment letters with 410 signatures supporting the petition.

1 Letter from the petitioner supporting the petition. The petitioner also ''suggests a federal model that mirrors the Illinois, Massachusetts, Michigan, or Nebraska—* * *'' emergency plans for day care centers

and nursery schools, even though those state plans only meet about 30 percent of the elements requested by the petitioner, while meeting FEMA guidance.

1 Letter from eight local governments that agreed with the concepts of the petition but had reservations about some of the specific requests of the petitioners.

30 Letters asking the Commission to deny the petition:

4 Letters from two local governments located near the petitioners, and from two citizens to deny the petition but suggested that the day care centers and nursery schools should be responsible for developing their own emergency plans.

8 Letters from local governmental agencies to deny the petition for rulemaking because they felt that current regulations are adequate.

12 Letters from State governments including two letters from FEMA (Headquarters and Region 7) to deny the petition, based on the opinion that the petitioners' requests are adequately addressed in current regulations and guidance.

4 Letters from licensees or companies that own nuclear utilities, to deny the petition.

1 Nuclear Energy Institute (NEI) letter to deny the petition.

1 Letter representing six licensees to deny the petition.

1 Letter that discusses KI, but does not take a position on the petition.

1 Letter from the Special Assistant to the Governor of Pennsylvania withdrawing an earlier submitted letter and strongly supporting the development of all-hazards emergency plans for child day care facilities and nursery schools throughout the state. This letter did not express a position on the petition and was characterized by the NRC as supporting the petition. The Director of PEMA, on behalf of the Governor's office, subsequently challenged the NRC's characterization of the original letter as supporting the petition and requested the characterization be formally corrected.

1 Letter and E-mail from DHS/FEMA commenting on errors and potential mischaracterizations within the December 19, 2005, **Federal Register** Notice denying the petition.

NRC Evaluation

The Commission has reviewed each of the petitioners' requests and provides the following analysis:

1. The petitioners' first and more general request is that day care centers and nursery schools, located within the 10-mile EPZ, be included in state and local government offsite emergency planning.

NRC Review

The current regulatory structure already requires that day care centers and nursery schools be included in the offsite emergency planning for nuclear power plants. Consequently, no revision to 10 CFR part 50 is necessary. The Commission's emergency planning regulations, in 10 CFR 50.47, require the NRC to make a finding, before issuing an initial operating license, that there is ''reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.'' Implicit in this regulation is the requirement that offsite emergency plans be protective of all members of the public, including children attending day care centers and nursery schools, within the 10-mile EPZ. Joint NRC and FEMA implementing guidance, NUREG–0654/FEMA–REP–1, Rev. 1, states that emergency plans must provide specific means for ''protecting those persons whose mobility may be impaired due to such factors as institutional or other confinement.'' NUREG–0654, Section II.J. and Appendix 4, as well as FEMA GM 24, ''Radiological Emergency Preparedness for Handicapped Persons,'' dated April 5, 1984, also provide guidance. Children in day care centers and nursery schools are included in the category of persons needing special protection. FEMA GM EV–2, ''Protective Actions for School Children,'' was issued to provide guidance to assist federal officials in evaluating adequacy of state and local government offsite emergency plans and preparedness for protecting school children during a radiological emergency. This guidance is also intended for state and local government officials and administrators of public and private schools, including licensed and government supported pre-schools and day care centers, for developing emergency response plans and preparedness for protecting the health and safety of children in their charge.

FEMA (now part of DHS) is the Federal agency responsible for making findings and determinations as to whether state and local emergency plans are adequate and whether there is a reasonable assurance that they can be implemented. FEMA uses the guidance documents discussed above to make such findings. The NRC makes its finding as to whether the emergency plans provide a reasonable assurance that adequate protective measures can and will be taken under 10 CFR 50.47(a)(2). The NRC's findings are based upon FEMA findings and determinations in this area. The NRC would not grant an initial operating license if FEMA found that state and local government emergency plans did not adequately address day care centers and nursery schools. In accordance with 10 CFR 50.54(s)(2)(ii), if significant deficiencies in a state or local governments' off-site emergency plan were discovered after the operating license was issued, and those deficiencies were not corrected within four months of discovery (or a plan for correction was not in place), the Commission would determine whether the reactor should be shut down until the deficiencies are remedied or whether some other enforcement action would be appropriate. Based on this information and considering that the existing regulatory structure already has requirements addressing the facilities of concern to the petitioners, no revision to 10 CFR part 50 is necessary in response to the petitioners' general request.

The more specific elements of the petition follow:

A. Require that children attending day care centers and nursery schools be assigned to designated relocation centers established safely outside the EPZ.

NRC Review

The petitioners' requested revision to 10 CFR part 50 is not needed because the requested action is already covered by FEMA guidance documents. FEMA's GM EV–2 (p. 5) specifies that evacuation planning may be developed in three contexts: (1) Part of the existing radiological emergency plans; (2) a separate annex of an existing integrated plan for many types of disasters and emergencies; or (3) a separate evacuation plan for all of the schools in each school system. GM EV–2 specifies that schools officials should document in the plan the basis for determining the proper protective action (e.g., evacuation, early preparatory measures, early evacuation, sheltering, early dismissal or combination) including but not limited to, the name and location of relocation center(s), and transport route(s), if applicable and on an institution-specific basis. Furthermore, GM EV–2 specifies that local governments should ensure that appropriate organizational officials assume responsibility for the emergency planning and preparedness for all of the identified schools, including day care centers and nursery schools. Local governments should also ensure that the emergency planning undertaken by these organizations is integrated within the larger offsite emergency

management framework for the particular nuclear power plant site. FEMA assesses offsite emergency plans using this guidance when making a finding that a plan adequately protects the public. Under the MOU between FEMA and the NRC, the NRC defers to FEMA's expertise in offsite emergency plan requirements and assessments.

B. Require that children attending day care centers and nursery schools be provided with designated transportation to relocation centers in the event of an emergency evacuation.

NRC Review

As previously discussed, FEMA (now part of DHS) is the federal agency responsible for making findings and determinations as to whether state and local emergency plans are adequate. FEMA's GM EV–2 (p. 5) specifies that school officials should document in their plans the basis for determining the proper protective action (e.g., evacuation, early preparatory measures, early evacuation, sheltering, early dismissal or combination) including but not limited to, the means for effecting protective actions and specific resources allocated for transportation and supporting letters of agreement if resources are provided from external sources, on an institution-specific basis. Furthermore, FEMA's GM EV–2 specifies that local governments should ensure that appropriate organizational officials assume responsibility for the emergency planning and preparedness for all of the identified schools, including day care centers and nursery schools. Local governments should also ensure that the emergency planning undertaken by these organizations is integrated within the larger offset emergency management framework for the particular nuclear power plant site. FEMA reviews emergency plans to ensure that this provision is addressed. Consequently, a revision to 10 CFR part 50 is not needed.

C. Require that children attending day care centers and nursery schools be transported in approved child-safety seats that meet state and federal laws as they pertain to the transportation of children and infants under 50 pounds in weight or 4 feet 9 inches in height.

NRC Review

Requiring seat belts or child safety seats on school buses that may be used for evacuating schools is outside NRC statutory authority. Such a requirement would instead need to be promulgated by the Department of Transportation or appropriate state authorities.

D. Require the creation and maintenance of working rosters of emergency bus drivers and back-up drivers for day care center and nursery school evacuation vehicles, and the establishment of a system for notifying these individuals in the event of a radiological emergency. These rosters should be regularly checked and updated, with a designated back-up driver listed for each vehicle and route.

NRC Review

The petitioners' requested revision to 10 CFR part 50 is not needed because NRC considers the existing requirements and guidance adequate for the evaluation of planning with respect to transportation resources, including drivers. FEMA's GM EV–2 (pp. 5–6) specifies that school officials should document in the plan the basis for determining the proper protective action including: Means for effecting protective actions; specific resources allocated for transportation and supporting letters of agreement if resources are provided from external sources; and, means for alerting and notifying appropriate persons and groups associated with the schools and the students, including the method for contacting and activating designated dispatchers and school bus drivers. Under the MOU between FEMA and the NRC, the NRC defers to FEMA's (now part of DHS) expertise in state and local emergency plan requirements and assessments. FEMA recently completed an emergency preparedness exercise at TMI and issued a final report on August 4, 2005. FEMA identified no deficiencies in this particular area.

E. Require notification of emergency management officials by individual preschools as to the details of each institution's radiological emergency plan.

NRC Review

NRC considers that current NRC and FEMA (now part of DHS) requirements and guidance are adequate. FEMA's GM EV–2 (p. 5) identifies criteria by which an emergency plan will typically be acceptable if it fully addresses the emergency functions for the evacuation of, or other appropriate protective measures, for school children including licensed and government supported pre-schools and day care centers. Accordingly, local government should take the initiative to identify and contact all public and private school systems, including day care centers and nursery schools, within the designated plume exposure pathway EPZ to assure that both public and private school officials address appropriate planning for protecting the health and safety of their students from a commercial nuclear power plant accident.

The planning of both the public and private school officials should be closely coordinated with that of the local government. Local governments should ensure that appropriate organizational officials assume responsibility for the emergency planning and preparedness for all of the identified schools. Local governments should also ensure that the emergency planning undertaken by these organizations is integrated within the larger offsite emergency management framework for the particular nuclear power plant site.

As mentioned previously in response to issue ''A'', the evacuation planning may be developed in three contexts: (1) Part of the existing radiological emergency plans; (2) a separate annex of an existing integrated plan for many types of disasters and emergencies; or (3) a separate evacuation plan for all of the schools in each school system. GM EV–2 specifies that school officials should document in the plan the basis for determining the proper protective action (e.g., evacuation, early preparatory measures, early evacuation, sheltering, early dismissal or combination) including:

- Identification of the organization and officials responsible for both planning and effecting the protective action.
- Institution-specific information:

—Name and location of school;
—Type of school and age grouping (e.g., public elementary school, grades kindergarten through sixth);
—Total population (students, faculty, and other employees);
—Means for implementing protective actions;
—Specific resources allocated for transportation and supporting letters of agreement if resources are provided from external sources; and
—Name and location of relocation center(s) and transport route(s), if applicable.

- If parts of the institution-specific information apply to many or all schools, then the information may be presented generically.
- Time frames for effecting the protective actions.
- Means for alerting and notifying appropriate persons and groups associated with the schools and the students including:

—Identification of the organization responsible for providing emergency information to the schools;
—The method (e.g., siren and telephone calls) for contacting and providing emergency information on recommended protective actions to school officials;

—The method (e.g., siren, tone-alert radios, and telephone calls) for contacting and activating designated dispatchers and school bus drivers; and

—The method (e.g., Emergency Alert System (EAS) messages) for notifying parents and guardians of the status and location of their children.

Based on the above, the petitioners' requested revision to 10 CFR part 50 is not required.

F. Require annual site inspections of day care centers and nursery schools within the evacuation zone by emergency management officials.

NRC Review

Inspections of day care centers and nursery schools are the responsibility of the individual state and are outside NRC statutory authority. The Commission sees no safety reason within the scope of its statutory authority to require annual inspections of day care centers and nursery schools.

G. Require the participation of day care centers and nursery schools within the EPZ in radiological emergency preparedness exercises designed to determine each institution's state of readiness.

NRC Review

Current NRC regulations in 10 CFR part 50, Appendix E, Section F.2, permit exercises without public (including day care centers and nursery schools) participation. The Commission has determined that exercises can be adequately evaluated without the participation of schools or members of the public. This eliminates safety concerns for students, as well as the disruption of day care center and nursery school activities that might arise during exercise participation. In addition, as mentioned in the response to request ''E,'' pursuant to FEMA (now part of DHS) guidance, governments should take the initiative to identify and contact all public and private school systems, including day care centers and nursery schools, within the designated plume exposure pathway EPZ to assure that both public and private school officials address appropriate planning for protecting the health and safety of their students from a commercial nuclear power plant accident. The petition has presented no evidence that would cause the NRC to reconsider this determination.

H. Require creation of identification cards, school attendance lists, and fingerprint records for all children who are to be transported to a relocation center, to ensure no child is left behind or is unable, due to age, to communicate his or her contact information to emergency workers.

NRC Review

State and local governments have the responsibility for ensuring that licensed day care centers and nursery schools have mechanisms in place for maintaining child accountability. FEMA (now part of DHS), as the authority on offsite emergency planning, has determined that it is unnecessary to require that such detailed mechanisms be a component of emergency plans. The Commission finds no safety reason to justify requiring such detailed mechanisms in its regulations.

I. Require development by emergency management officials of educational materials for parents, informing them what will happen to their children in case of a radiological emergency, and where their children can be picked up after an emergency evacuation.

NRC Review

Current NRC and FEMA requirements and guidance adequately address this specific request. FEMA's GM EV–2 (p. 2) specifies that the Emergency Alert System (EAS) notify parents of the status and location of their children in the event of an emergency. The Commission believes that parental notification via the EAS is adequate to assure that parents will be informed of their children's location following an emergency evacuation.

J. Require socking of KI pills and appropriate educational materials at all day care centers and nursery schools within the 10-mile EPZ.

NRC Review

The Commission's regulations, specifically 10 CFR 50.47b.(10), require individual states to consider using KI in the event of an emergency. The regulations require that a range of protective actions be developed for the plume exposure pathway EPZ for emergency workers and the public. In developing this range of actions, consideration was to be given to evacuation, sheltering, and, as a supplement to these, the prophylactic use of KI, as appropriate. Under this regulation, each individual state must decide whether the stockpiling of KI is appropriate for the citizens within its jurisdiction. Once a state decides to stockpile KI, it is incumbent on that state to develop a program for distribution. This program is reviewed by FEMA (now part of DHS) under the 44 CFR part 350 process. The petition did not provide information that would cause the NRC to reconsider this determination.

K. Require radiological emergency preparedness training for all day care center and nursery school employees within the 10-mile EPZ.

NRC Review

The Commission believes that specialized training for day care center and nursery school employees is unnecessary because they would be using already established and distributed procedures for evacuation. Absent compelling information that specialized training for day care and nursery school employees would result in significant safety benefits that justify the additional regulatory burden, the Commission finds no safety reason to justify the requested revision to 10 CFR part 50.

L. Require listing of designated relocation centers in area phone directories, so that parents can quickly and easily find where their children will be sent in case of a radiological emergency.

NRC Review

FEMA's GM EV–2 (pp. 2 and 4) specifies that offsite emergency plans are to identify relocation centers outside of the 10-mile EPZ for all schools, including day care centers and nursery schools. Some states list the relocation centers in telephone directories, some states identify the relocation centers in the yearly public information packages, and some states identify the relocation centers in their offsite emergency plans.[1] The Commission believes that the current publication practices are adequate.

M. Require establishment of toll-free or 911-type telephone lines, to provide information about radiological emergency plans and procedures for day care centers and nursery schools within the 10-mile EPZ.

NRC Review

Although not required by NRC regulations or provided in FEMA guidance, all states provide a toll-free phone number in the yearly public information package where members of the public can acquire emergency preparedness information. The Commission sees no added safety benefits in revising its regulations to require something that all states are already doing.

N. Creation of written scripts for use by the local Emergency Alert System

[1] See March 23, 2005 letter from Roy Zimmerman to Eric J. Epstein and March 24, 2005 letter from Roy Zimmerman to Lawrence T. Christian (available on NRC's ADAMS document system under the accession numbers ML050590344 and ML050590357, respectively).

that include information about evacuation plans and designated relocation centers for day care centers and nursery schools.

NRC Review

FEMA's GM EV–2 (p. 6) specifies that a method is to exist (e.g., EAS) for notifying day care center and nursery school parents of the status and location of their children, in the event of an emergency. FEMA (now part of DHS) has decided that it is unnecessary to incorporate such a prescriptive requirement into its regulations and guidance, which allows the off-site response organizations the flexibility to develop adequate plans and procedures that best fit their specific needs, and the needs of the affected public that they are charged with protecting. The petition provided no evidence that the current method of notification is inadequate. As a result, the Commission sees no added safety benefit in requiring a written script.

Commission Evaluation

The evaluation of the advantages and disadvantages of the rulemaking requested by the petition with respect to the four strategic goals of the Commission follows:

1. *Ensure Protection of Public Health and Safety and the Environment:* The NRC staff believes that the requested rulemaking would not make a significant contribution to maintaining safety because current NRC and FEMA regulations and guidance already require inclusion of nursery schools and day care centers in state and local government offsite emergency plans. This was verified by the state governments that submitted comment letters which stated that day care centers and nursery schools are included in their offsite emergency planning and that this is not an issue requiring a change to the emergency planning regulations. As such, it is a potential compliance issue that can be resolved using the current regulatory structure.

2. *Ensure the Secure Use and Management of Radioactive Materials:* The requested regulatory amendments would have no impact on the security provisions necessary for the secure use and management of radioactive materials. The petition for rulemaking deals with the taking of protective actions for nursery schools and day care centers by offsite authorities, which is currently required by NRC and FEMA regulations and guidance.

3. *Ensure Openness in Our Regulatory Process:* The requested rulemaking would not enhance openness or public confidence in our regulatory process because the petitioners' requests raise potential issues of compliance with the existing requirements and guidance. The NRC staff does not believe that the contentions identify deficiencies in regulatory requirements. The Commission's regulations require that protective actions have been developed for the public, including day care centers and nursery schools. Existing guidance in NUREG–0654 and in GM–EV2 address the planning for this segment of the population. Appendix 4 in NUREG–0654, discusses ''special facility populations.'' Day care centers and nursery schools fall under the definition of ''special facility populations'' and as such, these populations should be included in the offsite emergency response plans. It should be noted, however, that 3000 members of the public co-signed the original petition for rulemaking. Additionally, 410 members of the public signed letters supporting the petition. This amount of public support reinforces the importance of NRC and FEMA's continued commitment to providing protection for the public in the event of an emergency which has always included day care centers and nursery schools.

4. *Ensure that NRC Actions Are Effective, Efficient, Realistic and Timely:* The proposed revisions would decrease efficiency and effectivensss because current NRC and FEMA regulations and guidance already adequately address the petition requests. Amending the regulations would require licensees and state and local governments to generate additional and more prescriptive information in their emergency plans, and the NRC and FEMA staffs would need to evaluate the additional information. The additional NRC staff and licensee effort would not improve efficiency or effectiveness. In addition, the NRC resources expended to promulgate the rule and supporting regulatory guidance would be significant with little return value.

5. *Ensure Excellence in Agency Management:* The requested rule would have no effect on the excellence in NRC management, but would increase licensee and state and local government burden by requiring the generation of additional, unnecessary, and burdensome information with little expected benefit because current NRC and FEMA regulations and guidance already adequately address the petition requests. This rulemaking would add significant burden on a national scale in order to address a potential local compliance issue.

Reason for Denial

The Commission is denying the petition for rulemaking (PRM–50–79) submitted by Mr. Lawrence T. Christian, et al. Current NRC requirements and NRC and FEMA guidance, provide reasonable assurance of adequate protection of all members of the public, including children attending day care centers and nursery schools, in the event of a nuclear power plant incident. Many of the specific requests of the petitioner are either already covered by regulations and/or guidance documents or are inappropriate for inclusion in NRC regulations due to their very prescriptive nature. The Commission does believe, however, that information obtained during the review of the petition does raise questions about local implementation of relevant requirements and guidelines. Accordingly, the NRC staff met with FEMA officials to assure an understanding of this issue for consideration by FEMA as reflected in separate letters to the petitioner and TMI-Alert Chairman, Eric Epstein dated respectively, March 23, 2005 and March 24, 2005.[2] Copies of those letters are available through the NRCs ADAMS document system and can be located using accession numbers ML050590344 and ML050590357, respectively. The NRC staff will continue to work with FEMA to ensure emergency planning exercises are appropriately focused and provide adequate assurance regarding compliance with NRC and FEMA regulations and guidance.

For these reasons, the Commission denies PRM–50–79.

Dated at Rockville, Maryland, this 1st day of August, 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 06–6723 Filed 8–4–06; 8:45 am]

BILLING CODE 7590–01–M

[2] FEMA did evaluate a May 3, 2005 Emergency Planning exercise at TMI. NRC understands that during this exercise FEMA reviewed aspects of emergency planning involving nurseries and day care centers. No deficiencies were identified by FEMA during the exercise. FEMA's final report on the exercise was issued on August 4, 2005.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109367–06]

RIN 1545–BF52

Section 1221(a)(4) Capital Asset Exclusion for Accounts and Notes Receivable

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that clarify the circumstances in which accounts or notes receivable are ''acquired * * * for services rendered'' within the meaning of section 1221(a)(4) of the Internal Revenue Code. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by November 6, 2006. Outlines of topics to be discussed at the public hearing scheduled for November 7, 2006, must be received by October 17, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–109367–06), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–109367–06). The public hearing will be held in the New Carrollton Auditorium, 5000 Ellin Road, Lanham, Maryland.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, K. Scott Brown (202) 622–3920 (not a toll-free number); concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, e-mail: *Kelly.D.Banks@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

I. Section 1221(a)(4) Language, Legislative History, and Regulations

Section 1221 defines a capital asset as all property held by a taxpayer unless specifically excepted. Section 1221(a)(4) treats accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in section 1221(a)(1) as ordinary assets.

Congress enacted section 1221(a)(4) in 1954 to correct a character mismatch problem. Before its enactment, the value of accounts or notes receivable acquired for rendering services or selling inventory was taken into account by a taxpayer as ordinary income, but gain or loss on a later disposition of the receivables was given capital treatment. Section 1221(a)(4) corrected this mismatch by treating the accounts or notes receivable as ordinary assets.

The legislative history confirms this limited focus by referring explicitly to accounts and notes receivable acquired ''in payment for'' inventory or services rendered by the holder. The specific problem being addressed by the enactment of section 1221(a)(4) was described in the House Report:

> Paragraph (4) is a new provision which excepts from the definition of capital assets accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in paragraph (1), that is, stock in trade or inventory or property held for sale to customers in the ordinary course of trade or business. This will change present law treatment, for example, as follows: If a taxpayer acquires a note or account receivable in payment for inventory or services rendered, reports it as income and sells it at a discount, then this amendment will provide ordinary loss treatment. Under present law such loss treatment is only allowed if the taxpayer is also, in effect, a dealer in such accounts or notes. Alternatively, the taxpayer may sell the account or note for something more than the discounted value that was originally reported. Under present law this difference would be capital gain unless the taxpayer is such a dealer. The amendment will cause such gain to be ordinary income.

H.R. Rep. No. 1337, 83d Cong., 2d Sess., A273–74 (1954).

The longstanding regulation interpreting section 1221(a)(4) also confirms this limited focus. Section 1.1221–1(a) of the Income Tax Regulations states that the term *capital assets* includes all classes of property not specifically excluded by section 1221. Section 1.1221–1(d), which addresses the section 1221(a)(4) exclusion, repeats the statutory language of section 1221(a)(4) and then interprets it to apply as follows:

> Thus, if a taxpayer acquires a note receivable for services rendered, reports the fair market value of the note as income, and later sells the note for less than the amount previously reported, the loss is an ordinary loss. On the other hand, if the taxpayer later sells the note for more than the amount originally reported, the excess is treated as ordinary income.

II. Expansion of Section 1221(a)(4)

Notwithstanding the above, section 1221(a)(4) has been applied more expansively. The initial expansion occurred with respect to notes obtained in loan originations. In *Burbank Liquidating Corp.* v. *Commissioner*, 39 T.C. 999 (1963), *acq. sub nom. United Assocs., Inc.*, 1965–1 CB 3, *aff'd. in part and rev'd. in part on other grounds*, 335 F.2d 125 (9th Cir. 1964), the Tax Court held that mortgage loans originated by a savings and loan association in the ordinary course of its business were, in the hands of that association, ordinary assets under section 1221(a)(4) because they were notes receivable acquired for the service of making loans. In addition to acquiescing to the decision, the Service relied upon *Burbank Liquidating* in a series of revenue rulings treating loans made by commercial lenders (including banks and REITs) as ordinary assets under section 1221(a)(4) when held by the original lender. See Rev. Rul. 72–238 (1972–1 CB 65); Rev. Rul. 73–558 (1973–2 CB 298); Rev. Rul. 80–56 (1980–1 CB 154); Rev. Rul. 80–57 (1980–1 CB 157). See § 601.601(d)(2) of this chapter.

Historically, a lending transaction was sometimes thought of as rendering a service to the borrower. See Rev. Rul. 70–540 (1970–2 CB 101); Rev. Rul. 69–188 (1969–1 CB 54); Rev. Rul. 68–6 (1968–1 CB 325). That characterization, however, does not justify treating notes acquired by an originator in a lending transaction as ordinary assets under section 1221(a)(4). That treatment strains the language of the statute because the notes are not issued by borrowers solely or even predominantly for services rendered. Rather, the notes are, for the most part, issued by the borrower to the lender in exchange for money.

Subsequently, the Tax Court further extended the application of section 1221(a)(4) in *Federal National Mortgage Association* v. *Commissioner*, 100 T.C. 541 (1993) (*FNMA*), by applying that provision to notes that were purchased in transactions that the court considered closely associated with the process of origination. Although FNMA was not an originator, the court used the *Burbank Liquidating* analysis to extend section 1221(a)(4) treatment to mortgages purchased by FNMA. The court justified this result by pointing out that FNMA's purchasing activity was undertaken in accordance with its statutorily defined purpose ''to provide supplementary assistance to the secondary market for home mortgages by providing a degree of liquidity for mortgage investments.''

FNMA, 100 T.C. at 545 (quoting the Housing Act of 1954, ch. 649, title II, section 201, 12 U.S.C. 1716(a)). Because of this purpose, the court concluded that the purchases were ''a service to the mortgage lending business and the members thereof.'' Id. at 578.

The expansion of section 1221(a)(4) cannot be reconciled with Congress' stated purpose for enacting the statute. Acquisition of notes or mortgages using consideration other than services or section 1221(a)(1) property generally does not trigger current ordinary income and so does not create a potential for the character mismatch that concerned Congress when it enacted section 1221(a)(4).

The proposed regulation reflects a conclusion by the Treasury Department and the IRS that the extension of section 1221(a)(4) to notes acquired by a creditor in a lending transaction or to notes purchased in the secondary market is inconsistent with Congressional intent and is unsound as a matter of tax policy. In addition, the interpretation of section 1221(a)(4) set forth in *Burbank Liquidating* and *FNMA* impedes effective administration of the tax laws by causing the status of the notes to hinge on judgments as to whether the lending transaction or a subsequent secondary market purchase of the notes provides a service to the borrower or the mortgage lending industry. Reliance on judgments such as this fosters uncertainty and disputes.

Accordingly, the proposed regulation clarifies that an account or note receivable is not described in section 1221(a)(4) if, in exchange for the account or note receivable, the taxpayer provides more than de minimis consideration other than services or property described in section 1221(a)(1), or if the account or note receivable is not issued by the party acquiring the services or property described in section 1221(a)(1). In particular, a note is not acquired for services within the meaning of section 1221(a)(4) on the grounds that the taxpayer's act of acquiring (including originating) the account or note receivable constitutes, or includes, the provision of a service or services to the issuer of the account or note receivable, to the secondary market in which accounts or notes receivable of this sort may trade, or to the participants in that market.

Effect on Other Documents

Rev. Rul. 72–238 and Rev. Rul. 73–558 are not determinative with respect to future transactions because these rulings apply to taxable years beginning before July 12, 1969, and were superseded by section 582(c) of the Internal Revenue Code of 1986. Accordingly, simultaneously with the publication of these proposed regulations, those rulings are being declared obsolete. When final regulations are published, the IRS will determine whether Rev. Rul. 80–56 and 80–57 should similarly be declared obsolete.

Proposed Effective Date

These regulations are proposed to apply to accounts or notes receivable acquired after the date the final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entitles, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rule making will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and IRS invite comments on the proposed effective date, on the impact of the proposed regulation on hedging practices of lending institutions or other taxpayers to which section 582(c) does not apply, and on appropriate measures to deal with that impact. Comments are specifically requested from taxpayers in the acceptance finance, debt collection, factoring and personal finance industries on any impact that the proposed regulation may have. The Treasury Department and the IRS also specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 7, 2006, beginning at 10 a.m. in the New Carrollton Auditorium, 5000 Ellin Road, Lanham, Maryland. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by October 17, 2006. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is K. Scott Brown, Office of the Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.1221–1 is amended as follows:

1. Paragraph (e) is redesignated as (f).
2. A new paragraph (e) is added.

The addition reads as follows:

§ 1.1221–1 Meaning of terms.

(e)(1) An account or note receivable is not described in section 1221(a)(4) if—

(i) In acquiring the account or note receivable, the taxpayer provides more than de minimis consideration other than services or property described in section 1221(a)(1); or

(ii) The obligor under the account or note receivable is a person other than the person acquiring the services or property described in section 1221(a)(1).

(2) In particular, an account or note receivable is not described in section 1221(a)(4) on the grounds that the taxpayer's act of acquiring (including originating) the account or note receivable constitutes, or includes, the provision of a service or services to the issuer of the account or note receivable, to the secondary market in which accounts or notes receivable of this sort may trade, or to the participants in that market. If a lender, however, separately invoiced reasonable fees for services that the lender rendered to the borrower in connection with a lending transaction and if the lender received as evidence of the obligation to make payment of those fees an account or note receivable that is separate from the debt instrument that was originated in the lending transaction, then this paragraph (e)(2) does not prevent the separate account or note receivable from being described in section 1221(a)(4).

(3) This paragraph (e) applies to accounts or notes receivable acquired after the date the final regulations are published in the **Federal Register**.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–12789 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

32 CFR Part 312

[Docket No. DOD–2006–OS–0168]

RIN 0790–AI01

Inspector General; Privacy Act; Implementation

AGENCY: Inspector General, DoD.

ACTION: Proposed rule.

SUMMARY: The Office of the Inspector General (OIG) is proposing to exempt a new system of records in its inventory of systems of records pursuant to the Privacy Act of 1974 (5 U.S.C. 552), as amended, to protect records that are presently exempt from certain requirements of the Act.

DATES: Comments must be received on or before October 6, 2006 to be considered by this agency.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods.

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20311–1160.

Instructions: All submissions received must include the agency Name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions for members of the pubic is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve 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 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 312

Privacy.

Accordingly, 32 CFR part 312 is proposed to be amended as follows:

PART 312—OIG PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 312 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 312.12, is proposed to be revised by adding paragraph (j) to read as follows:

§ 312.12 Exemptions.

(j) *System identifier:* CIG 23.

(1) *System name:* Public Affairs Files.

Exemption: During the course of processing a request for information, exempt materials from other systems of records may in turn become part of the records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this Public Affairs Files, the Office of the Inspector General hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

(3) *Authority:* 5 U.S.C. 552(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(4) *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent (1) such provisions have been identified and an exemption claimed for the original record and (2) the purposes underlying the exemption for the original record still pertain to the record which is now contained in this

system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

* * * * *

Dated: August 1, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–6719 Filed 8–4–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

32 CFR Part 318

[Docket No. D0D–2006–OS–0169]

RIN 0790–AI03

Defense Threat Reduction Agency; Privacy Act; Implementation

AGENCY: Defense Threat Reduction Agency DoD.

ACTION: Proposed rule.

SUMMARY: The Defense Threat Reduction Agency is proposing to exempt those records contained in HDTRA 021, entitled ''Freedom of Information Act and Privacy Act Case Files'' when an exemption has been previously claimed for the records in another Privacy Act system of records. The exemption is intended to preserve the exempt status of the record when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records.

DATES: Comments must be received by October 6, 2006.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda M. Carter at (703) 767–1771 or DSN 427–1771.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve 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 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 318

Privacy.

Accordingly, 32 CFR part 318 is proposed to be amended as follows:

PART 318—DEFENSE THREAT REDUCTION AGENCY PRIVACY PROGRAM

1. The authority citation for 32 CFR part 318 continued to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 318.16 is proposed to be amended by adding paragraph (d) as follows:

§ 318.16 Exemption rules.

* * * * *

(d) *System identifier and name:* HDTRA 021, Freedom of Information Act and Privacy Act Request Case Files.

(1) *Exemption:* During the processing of a Freedom of Information Act or Privacy Act request exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Defense Threat Reduction Agency claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(2) *Authority:* 5 U.S.C. 552a(j)(2), (k)(l), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6) and (k)(7).

(3) *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption

claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: August 1, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–6721 Filed 8–4–06; 8:45 am]

BILLING CODE 5001–06–M

Notices

Federal Register
Vol. 71, No. 151
Monday, August 7, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 2, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Request for Release of Lien and/or Approval of Sale.

Omb Control Number: 0572–0041

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA) that makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. RUS manages loan programs in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended (RE Act). A 1949 amendment to the RE Act established the telephone program in RUS with the purpose of making loans to furnish and improve rural telephone service. Section 201 of the RE Act provides that loans shall not be made unless RUS finds and certifies that the security for the loan is reasonably adequate and that the loan will be repaid within the time agreed. In addition to providing loans and loan guarantees, one of RUS main objectives is to safeguard loan security until the loan is repaid.

Need and Use of the Information: A borrower's assets provide the security for a Government loan. The selling of assets reduces the security and increases the risk of loss to the Government. A borrower seeking permission to sell some of its assets uses RUS Form 793. The form contains detailed information regarding the proposed sale. If the information in Form 793 is not collected when capital assets are sold, the capital assets securing the Government's loans could be liquidated and the Government's security either eliminated entirely or diluted to an undesirable level. This increases the risk of loss to the Government in the case of a default.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 60.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 165.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–12767 Filed 8–4–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. LS–06–05]

Request for an Extension of and Revision to a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of and revision to the currently approved information collection for the Seed Service Testing Program.

DATES: Comments received by October 6, 2006 will be considered.

Additional Information or Comments: Contact Richard C. Payne, Chief, Seed Regulatory and Testing Branch (SRTB), Livestock and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture, 801 Summit Crossing Place, Suite C, Gastonia, North Carolina 28054–2193; telephone (704) 810–8871 and Fax (704) 852–4109.

SUPPLEMENTARY INFORMATION:

Title: Seed Service Testing Program.

OMB Number: 0581–0140.

Expiration Date of Approval: May 31, 2007.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: This information collection is necessary to conduct voluntary seed testing on a fee for service basis. The Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 *et seq.* authorizes the Secretary to inspect and certify the quality of agricultural products and collect such fees as reasonable to cover the cost of service rendered. Regulations for inspection and certification of quality of agricultural and vegetables seeds at 7 CFR Part 75.

The purpose of the voluntary program is to promote efficient, orderly marketing of seeds, and assist in the development of new and expanding markets. Under the program, samples of agricultural and vegetable seeds

submitted to AMS are tested for factors such as purity and germination at the request of the applicant for the service. In addition, grain samples, submitted at the applicant's request, by the Grain Inspection, Packers, and Stockyards Administration are examined for the presence of certain weed and crop seed. A Federal Seed Analysis Certificate is issued giving the test results. Most of the seed tested under this program is scheduled for export. Many importing countries require a Federal Seed Analysis Certificate on U.S. seed.

The only information collected is information needed to provide the service requested by the applicant. This includes information to identify the seed being tested, the seed treatment (if treated with a pesticide), the tests to be performed, and any other appropriate information required by the applicant to be on the Federal Seed Analysis Certificate.

The number of seed companies applying for the seed testing service has decreased from 82 to 53 during the past 3 years due to a decrease in the number of companies exporting seed. The total number of samples received for testing has increased. Therefore, the average burden for information collection has increased for seed companies applying for the service.

The information in this collection is used only by authorized AMS employees to track, test, and report results to the applicant.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: Applicants for seed testing service.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 51.4.

Estimated Total Annual Burden on Respondents: 681.0 hours.

Comments are invited on: (1) 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; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Richard C. Payne, Chief, Seed Regulatory and Testing Branch, LS, AMS, USDA, 801 Summit Crossing Place, Suite C, Gastonia, North Carolina 28054–2193 or by E-mail to *richard.payne2@usda.gov*. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 1, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–12750 Filed 8–4–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. LS–06–04]

Request for an Extension of and Revision to a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension for and revision to a currently approved information collection for Federal Seed Act Labeling and Enforcement.

DATES: Comments received by October 6, 2006 will be considered.

Additional Information or Comments: Contact Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture, 801 Summit Crossing Place, Suite C, Gastonia, North Carolina 28054–2193; telephone (704) 810–8871, fax (704) 852–4109.

SUPPLEMENTARY INFORMATION:

Title: Federal Seed Act Program.

OMB Number: 0581–0026.

Expiration Date of Approval: May 31, 2007.

Type of Request: Extension and revision of currently approved information collection.

Abstract: This information collection and recordkeeping requirements are necessary to conduct the Federal Seed Act (FSA) (7 U.S.C. 1551, *et seq.*) program with respect to certain testing, labeling, and recordkeeping requirements of agricultural and vegetable seeds in interstate commerce. Regulations under the FSA appear at 7 CFR Part 201.

The FSA, Title II, is a truth-in-labeling law that regulates agricultural and vegetable planting seed in interstate commerce. Seed subject to the FSA must be labeled with certain quality information and it requires that information to be truthful. The FSA prohibits the interstate shipment of falsely advertised seed and seed containing noxious-weed seeds that are prohibited from sale in the State into which the seed is being shipped.

No unique forms are required for this information collection. The FSA requires seed in interstate commerce to be tested and labeled. Once in a State, seed must comply with the testing and labeling requirements of the State seed law. The same test and labeling required by the FSA nearly always satisfies the State's testing and labeling requirements. Also the receiving, sales, cleaning, testing, and labeling records required by the FSA, are records that the shipper would normally keep in good business practice.

The information obtained under this information collection is the minimum information necessary to effectively carry out the enforcement of the FSA. With the exception of the requirements for entering a new variety into a state seed certification program (set forth separately below), the information collection is entirely recordkeeping rather then reporting.

Seed Testing and Labeling

Estimate of Burden: Public reporting (recordkeeping) burden for this collection of information is estimated to average 14.38 hours per recordkeeper.

Respondents (Record keepers): Interstate shippers and labelers of seed.

Estimated Number of Respondents (Record keepers): 2,740.

Estimated Number of Responses per Respondent (Record keeper): Not Applicable.

Estimated Total Annual Burden on Respondents (Record keepers): 39,388 hours.

Eligibility for Certification of New Varieties

Estimate of Burden: Public reporting burden for this collection of information (eligibility for certification of new varieties) is estimated to average 1 hour per response.

Respondents: Entities seeking to enter new varieties into State seed certification programs.

Estimated Number of Respondents: 40.

Estimated Number of Responses per Respondent: 2.5.

Estimated Total Annual Burden on Respondents: 100 hours.

Comments are invited on: (1) 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; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Richard C. Payne, Chief, Seed Regulatory and Testing Branch, LS, AMS, USDA, 801 Summit Crossing Place, Suite C, Gastonia, North Carolina 28054–2193 or E-mail to *richard.payne2@usda.gov*. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 1, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–12752 Filed 8–4–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–06–315]

United States Standards for Grades of Summer Squash

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising official grade standards, is soliciting comments on the possible revisions of the United States Standards for Grades of Summer Squash. At a meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review the Fresh Fruit and Vegetable grade standards for usefulness in serving the industry. As a result, AMS has identified the United States Standards for Grades of Summer Squash for possible revision.

AMS is considering proposed revisions to the U.S. standards that would incorporate grades that describe the quality and size of summer squash currently being marketed. Additionally, definitions would be included for defects not currently in the standards, and the ''Unclassified'' category would be eliminated from the standards. AMS is seeking comments regarding these changes and any other revisions to the summer squash standards that may be necessary to better serve the industry.

DATES: Comments must be received by October 6, 2006.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; fax (202) 720–8871, e-mail *FPB.DocketClerk@usda.gov.* Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The United States Standards for Grades of Summer Squash are available either at the above address or by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm.*

FOR FURTHER INFORMATION CONTACT: Cheri L. Emery, at the above address or call (202) 720–2185; e-mail *Cheri.Emery@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. AMS makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs.

AMS is considering revisions to the voluntary United States Standards for Grades of Summer Squash using procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised on January 6, 1984.

Background

At a meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review the Fresh Fruit and Vegetable grade standards for usefulness in serving the Industry. AMS has identified the United States Standards for Grades of Summer Squash for possible revision. Prior to undertaking detailed work to develop the proposed revisions to the standards, AMS is soliciting comments on the proposed revisions, and any other comments on the United States Standards for Grades of Summer Squash to better serve the industry.

AMS is considering revising the U.S. standards to include a U.S. Fancy grade that would describe the level of quality and size of the summer squash currently being marketed by the industry. AMS is also proposing to add specific definitions for defects that are not defined in the standards, which are currently scored and described using the general definitions for ''damage'' and ''serious damage'' depending on whether the defect ''materially'' or ''seriously detracts from the appearance, or edible or marketing quality of the squash.'' Definitions for scars, cuts, cracks, dirt, mechanical damage, bruising, scuffing, surface discoloration, pitting, shriveling and mold would be included. Additionally, AMS also would eliminate the ''Unclassified'' category. This section is being removed in all standards when they are revised. This category is not a grade and only serves to show that no grade has been applied to the lot. It is no longer considered necessary. Additionally, AMS is seeking comments regarding any other provisions to the summer squash standards that may be necessary to better serve the industry.

This notice provides for a 60-day comment period for interested parties to comment on the proposed changes to the United States Standards for Grades of Summer Squash. Should AMS conclude that revisions are needed, it will develop a proposed revised standard that will be published in the **Federal Register** with a request for comments in accordance with 7 CFR 36.

Authority: 7 U.S.C. 1621–1627.

Dated: August 1, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–12758 Filed 8–4–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. TM–06–10]

Notice of Agricultural Management Assistance Organic Certification Cost Share Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This notice invites eligible States to submit a Standard Form 424, Application for Federal Assistance, and to enter into a Cooperative Agreement with the Agricultural Marketing Service (AMS) for the Allocation of Organic Certification Cost-Share Funds. The AMS has allocated $1.0 million for this organic certification cost-share program in Fiscal Year 2006. Funds will be available under this program to 15 designated States to assist organic crop and livestock producers certified by the Department of Agriculture (USDA) accredited certifying agents to the National Organic Program (NOP). Eligible States interested in obtaining cost-share funds for their organic producers will have to submit an Application for Federal Assistance, and will have to enter into a cooperative agreement with AMS for the allocation of such funds.

DATES: Completed applications for Federal assistance along with signed cooperative agreements must be received by September 6, 2006, in order to participate in this program.

ADDRESSES: Applications for federal assistance and cooperative agreements shall be requested from and submitted to: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TMP/NOP, Room 4008–South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0268; Telephone: (202) 720–3252; Fax: (202) 205–7808; E-mail: *bob.pooler@usda.gov*. Additional information may be found through the National Organic Program's homepage at *http://www.ams.usda.gov/nop*.

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TM/NOP, Room 4008–South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0268; Telephone: (202) 720–3252; Fax: (202) 205–7808; E-mail: *bob.pooler@usda.gov*.

SUPPLEMENTARY INFORMATION: This Organic Certification Cost-Share Program is part of the Agricultural Management Assistance Program authorized under the Federal Crop Insurance Act (FCIA), as amended, (7 U.S.C. 1524). Under the applicable FCIA provisions, the Department is authorized to provide cost share assistance to producers in the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. This organic certification cost share program provides financial assistance to organic producers certified to the NOP authorized under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*)

To participate in the program, eligible States must complete a Standard Form 424, Application for Federal Assistance, and enter into a written cooperative agreement with AMS. The program will provide cost-share assistance, through participating States, to organic crop and livestock producers receiving certification or update of certification by a USDA accredited certifying agent from October 1, 2006 through September 30, 2007. The Department has determined that payments will be limited to 75 percent of an individual producer's certification costs up to a maximum of $500.00.

Authority: 7 U.S.C. 1524.

Dated: August 1, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–12745 Filed 8–4–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Crop Insurance Education in Targeted States (Targeted States Program)

Announcement Type: Modification—Competitive Cooperative Agreements

This announcement modifies the Request for Application Notice published in the **Federal Register**, May 3, 2006 (71 FR 26033—26039). The Dates and Summary portions have been modified.

CFDA Number: 10.458.

DATES: Applications are due 5 p.m. EDT, August 22, 2006.

SUMMARY: The following paragraph has been added to the beginning of the Summary portion of the May 3, 2006, **Federal Register** Notice: The Risk Management Agency (RMA) did not receive any complete and valid application packages for the State of Massachusetts under the original Request for Application Notice published in the **Federal Register** on May 3, 2006, for the Crop Insurance Education in Targeted States Program (Targeted States Program). As a result, RMA is re-announcing its Funding Opportunity—Request for Applications under the Targeted States Program for the State of Massachusetts only. Applicants who previously submitted an application under the May 3, 2006, Targeted States Program for Massachusetts must submit new applications that meet all the requirements of the original Notice published in the **Federal Register** on May 3, 2006.

All other portions and sections of the full text Notice remain unchanged.

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact: Lon Burke, USDA–RMA–RME, phone: 202–720–5265, fax: 202–690–3605, E-mail: *RMA.Risk-Ed@rma.usda.gov.* You may also obtain information regarding this announcement from the RMA Web site at: *http://www.rma.usda.gov/aboutrma/agreements/*.

Dated: July 28, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E6–12749 Filed 8–4–06; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; Application for Permit, Non-Federal Commercial Use of Roads Restricted by Order

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection, Application for Permit, Non-Federal Commercial Use of Roads Restricted by Order.

DATES: Comments must be received in writing on or before October 6, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Director, Engineering Staff, RPC5, USDA Forest Service, 1400 Independence Avenue, SW., Mail Stop 1101, Washington, DC 20250–1101.

Comments also may be submitted via facsimile to (703) 605–1542 or by e-mail to: *jbell01@fs.fed.us.*

The public may inspect comments received at the Office of the Director of Engineering, USDA Forest Service, 1601 N. Kent. St., Room 500, Arlington, VA 22209 during normal business hours. Visitors are encouraged to call ahead to (703) 605–4646 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: John Bell, Engineering Staff, at (703) 605–4612. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Application for Permit, Non-Federal Commercial Use of Roads Restricted by Order.

OMB Number: 0596–0016.

Expiration Date of Approval: August 31, 2006.

Type of Request: Extension of a currently approved collection.

Abstract: Authority for road use permits is derived from the National Forest Roads and Trails Act (Pub. L. 88–657, 16 U.S.C. 532–538, as amended). The law authorizes the Secretary of Agriculture to establish procedures for sharing investments in roads and to require commercial users to perform road maintenance commensurate with their use of roads. Detailed implementing regulations are contained in Title 36 of the Code of Federal Regulations, sections 212.5, 212.9, and 261.54. 36 CFR 212.5 and 36 CFR 212.9 authorize the Chief of the Forest Service to establish procedures for investment sharing and to require commercial users to perform road maintenance commensurate with use. 36 CFR 261.54 contains a national prohibition against using a National Forest System road for commercial hauling without a permit or written authorization when so provided by order. Forest Service policies implementing the regulations are found in Forest Service Manual chapter 7730. The policies require Forest Supervisors to enter into appropriate investment sharing arrangements, to require commercial users of National Forest System roads to perform road maintenance commensurate with their use, and to issue orders that implement the national prohibition at 36 CFR 261.54. These policies assure that those commercial haulers not already operating under investment and maintenance sharing provisions contained in Forest Service permits and contracts will obtain road use permits. The road use permits they obtain contain requirements for maintenance and investment sharing.

FS–7700–40—Application for Permit for Non-Federal Commercial Use of Roads Restricted by Order. This form is used by individuals, corporations, or organizations that apply for a permit to use National Forest System roads for non-Federal commercial use. The following information is collected: (1) Name, address, and telephone number; (2) identification by Forest Service route number of roads to be used; (3) purpose of use; (4) use schedule; and (5) plans for future use. The requester submits the information to the Forest Supervisor or District Ranger responsible for the National Forest System roads on which commercial vehicular use is requested. Engineering personnel on the staff of the responsible National Forest System unit evaluates the information. The information is used by the Forest Service to identify road maintenance required as a direct result of the applicant's vehicular traffic and to calculate the applicant's commensurate share of road maintenance. The information will also be used to calculate collections for recovery of past Federal investments in roads when that method of sharing investment is appropriate. These fees are then embodied in clauses in the road use permit (FS–7700–41) issued to the applicant.

Estimate of Annual Burden: 15 minutes per application.

Type of Respondents: Commercial users of National Forest System roads.

Estimated Annual Number of Respondents: 2,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: July 28, 2006.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. E6–12727 Filed 8–4–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Extension of Comment Period on the Proposed Land Management Plans for the Bitterroot, Flathead and Lolo National Forest

AGENCY: Forest Service, USDA.

SUMMARY: The Forest Service published a notice in the **Federal Register** on May 8, 2006 initiating a 90-day comment period on the Proposed Land Management Plans for the Bitterroot, Flathead and Lolo National Forests. The closing date for submitting comments has been extended to September 7, 2006.

ADDRESSES: Comments should be sent to: Proposed Land Management Plan, Bitterroot National Forest, 1801 North 1st St., Hamilton, MT 59840. Comments by e-mail should be sent to: *wmpz@fs.fed.us.*

DATES: The comment period closing date has been extended, from August 7, 2006 to September 7, 2006.

FOR FURTHER INFORMATION CONTACT: Claudia Narcisco, 406–329–3802.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 8, 2006, (FR Vol. 71, Num. 88, page 26734) the Forest Service initiated a 90-day comment period on the Proposed Land Management Plans for the Bitterroot, Flathead and Lolo National Forests. The closing date for submitting comments has been extended from August 7, 2006 to September 7, 2006.

Pursuant to 36 CFR 219.9(b)(2), the Bitterroot, Flathead and Lolo National Forests are asking for comments on their Proposed Forest Land Management Plans. The Plans are available for viewing and downloading at the Web

site: *www.fs.fed.us/r1/wmpz.* CD (Compact Disk) copies of the Plans have been mailed to persons on our current mailing list and are available to others on request. Plans are also available for viewing at Supervisors Offices and Ranger Stations on the Bitterroot, Flathead and Lolo National Forests.

Please note that all comments, names, and addresses become part of the public record and are subject to the Freedom of Information Act, except for proprietary documents and information.

Dated: July 31, 2006.

Deborah L.R. Austin,

Forest Supervisor, Lolo National Forest.

[FR Doc. 06–6706 Filed 8–4–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee, Custer, SD

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to authorities in the Federal Advisory Committee Act (Public Law 92–463) and the Secure Rural Schools and Community Self determination Act of 2000 (Public Law 106–393), the Black Hills National Forest's Custer County Resource Advisory Committee will meet on Tuesday, August 15, 2006 in Custer, South Dakota for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on August 15 will begin at 6 p.m. at the Black Hills National Forest Supervisor's office at 25041 North Highway 16, Custer, South Dakota. Agenda topics will include election of officers and discussion of potential projects.

FOR FURTHER INFORMATION CONTACT: Mike Lloyd, Hell Canyon District Ranger and Designated Federal Officer, at 605–673–4853.

Dated: August 1, 2006.

Michael D. Lloyd,

District Ranger.

[FR Doc. 06–6704 Filed 8–4–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Highwood Generating Station

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Extension of Public Comment Period and Additional Public Hearing, Draft Environmental Impact Statement, Highwood Generating Station, Great Falls, Montana.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is extending the public comment period for the Draft Environmental Impact Statement (EIS) for the Highwood Generating Station (HGS), and, as requested, is conducting an additional public hearing. The Draft EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 et seq.) in accordance with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR 1500–1508) and RUS regulations (7 CFR 1794). This document has been prepared jointly with the Montana Department of Environmental Quality (MDEQ).

The Draft EIS is to evaluate the potential environmental impacts of and alternatives to the Southern Montana Electric Transmission & Generation Cooperative, Inc. (SME) application for a loan guarantee to construct a 250 megawatt (MW) coal-fired power plant near Great Falls, Montana. SME is proposing to use a coal combustion technology known as circulating fluidized bed (CFB). Along with other proposed pollution controls collectively known as Best Available Control Technology (BACT), the HGS would be among the cleanest-burning coal-fired power plants currently operating in the United States. SME also proposes to construct and operate four, 1.5–MW wind turbines to generate supplemental electrical power at the preferred project location eight miles east of Great Falls.

Receipt of the Draft EIS was announced by the U. S. Environmental Protection Agency in the **Federal Register** on July 3, 2006 (official date June 30, 2006). Requests for extension of public comment periods may be honored per 40 CFR 1506.10. The initial 45-day public comment period was to end on August 15, 2006. With the 15-day extension, the new deadline for public comments is now August 30, 2006.

In addition to the public hearing held in Great Falls, Montana on July 27, an additional hearing will be held in Havre, Montana. The Havre public hearing will be held on August 7, 2006 at the Applied Technology Center Auditorium at MSU Northern, 300 West 11th Street, Havre, MT. An open house will be held from 5–7 p.m., with the hearing beginning at 7 p.m. The hearing will include a presentation summarizing the findings of the Draft EIS and the opportunity for attendees to submit both oral and written comments. In accordance with 40 CFR Section 1503.1, Inviting Comments, the purpose of the meeting will be to solicit comments from interested parties on the Draft EIS for the Highwood Generating Station.

DATES: Written comments on this Draft EIS will be accepted on or before August 30, 2006.

ADDRESS FOR FURTHER INFORMATION: To send comments or for more information, contact: Richard Fristik, USDA, Rural Development, Utilities Programs, 1400 Independence Avenue, Mail Stop 1571, Room 2237, Washington, DC 20250–1571, telephone (202) 720–5093, fax (202) 720–0820, or e-mail: *Richard.Fristik@wdc.usda.gov.*

A copy of the Draft EIS can be obtained or viewed online at *http://www.usda.gov/rus/water/ees/eis.htm.* The files are in a portable document format (pdf); in order to review or print the document, users need to obtain a free copy of Acrobat Reader. The Acrobat Reader can be obtained from *http://www.adobe.com/prodindex/acrobat/readstep.html.*

Copies of the Draft EIS will be available for public review during normal business hours at the following locations:

Montana State Library System, Attn: Roberta Gebhardt, P.O. Box 201800, Helena, MT 59620–1800, (406) 444–5393.

University of Montana at Missoula, 32 Campus Drive 59801, Mansfield Library, Missoula, MT 59812, (406) 243–6866.

Missoula Public Library, 301 East Main, Missoula, MT 59802–4799, (406) 721–2665.

Montana State University Libraries, P. O. Box 173320, Bozeman, MT 59717–3320, (406) 994–3119.

Great Falls Public Library, 301 2nd Ave North, Great Falls MT 59401–2593, (406) 453–0349.

Chouteau County Library, 1518 Main, Fort Benton, MT 59442.

Branches: Box 1247, Big Sandy, MT 59520; Box 316, Geraldine, MT 59446.

MSU-Northern Library, P. O. Box 7751, Havre, MT 59501–7751.

Havre-Hill County Library, 402 3rd St., Havre, MT 59501–3644.

Stone Child College Library, R. R. 1 Box 1082, Box Elder, MT 59521.

Belt Public Library, 70 Castner St., Belt, MT 59411–0467.

Wedsworth Memorial Library, 9–½ Front St., Cascade, MT 59421–0526.

Fort Belknap College Library and Tribal Archives, P. O. Box 159, Harlem, MT 59526.

Harlem Public Library, 37 First Ave., SE, Harlem, MT 59526.

Choteau-Teton County Library, 17 Main Ave., North, Choteau, MT 59422.

Copies of the Draft EIS may also be obtained by contacting either Richard Fristik at (202) 720–5093 (e-mail: *Richard.Fristik@wdc.usda.gov*) or Kathy Johnson at (406) 444–1760 (e-mail: *katjohnson@mt.gov*).

Dated: August 1, 2006.

Mark S. Plank,

Director, Engineering and Environmental Staff.

[FR Doc. E6–12672 Filed 8–4–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: U.S. Caribbean Small-Scale Fleet Economic Performance Study.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 1,000.

Number of Respondents: 1,000.

Average Hours per Response: Survey, one hour.

Needs and Uses: The National Marine Fisheries Service (NMFS) proposes to collect socioeconomic data on small-scale fishing fleets operating in the U.S. Caribbean (*e.g.*, hook and line, net, and dive fisheries). The survey intends to collect economic information about revenues, variable and fixed costs, capital investment and other auxiliary and demographic information. The data gathered will be used to describe economic performance in small-scale fisheries and to evaluate the socioeconomic impacts of future federal regulatory actions. In addition, the information will be used to strengthen and improve fishery management decision-making, and to satisfy legal mandates under Executive Order 12866, the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act, and other pertinent statues.

Affected Public: Business or other for-profit organizations.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, fax number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: August 1, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–12706 Filed 8–4–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NMFS Alaska Region Vessel Monitoring System (VMS) Program.

Form Number(s): None.

OMB Approval Number: 0648–0445.

Type of Request: Regular submission.

Burden Hours: 23,838.

Number of Respondents: 1,854.

Average Hours per Response: VMS transmission, 5 seconds; VMS installation, 6 hours; VMS maintenance, 4 hours annually; one-time VMS check-in report, 12 minutes; notification of VMS malfunction, 2 minutes.

Needs and Uses: The National Marine Fisheries Service (NMFS) Alaska Region requires use of the VMS when fishing under certain conditions in the following fisheries: Atka Mackerel, Pollock, Pacific Cod, Bering Sea and Aleutian Islands (BSAI) Management Area Crab, essential fish habitat (EFH) and habitat areas of particular concern (HAPC) in the Aleutian Islands and Gulf of Alaska. The Vessel Monitoring System (VMS) transmitter automatically determines the vessel's position several times per hour using a Global Positioning System satellite. A communications service provider receives the transmission and relays it to NMFS, Office for Enforcement. The VMS transmitters are designed to be tamper-resistant and automatic. In most cases, the vessel owner is unaware of exactly when the unit is transmitting and is unable to alter the signal or the time of transmission. The VMS unit is passive and automatic, requiring no reporting effort of the vessel operator.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, fax number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: August 1, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–12708 Filed 8–4–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey (CPS)—Annual Social and Economic Supplement (ASEC)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 6, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625,

14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Shannon Burnett, U.S. Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, at (301) 763–3806.

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau plans to request clearance for the collection of data concerning the Annual Social and Economic Supplement (ASEC), formerly known as the Annual Demographic Survey, to be conducted in conjunction with the February, March, and April CPS. The Census Bureau has conducted this supplement annually for over 50 years. The Census Bureau, the Bureau of Labor Statistics, and the Department of Health and Human Services sponsor this supplement.

In the ASEC, we collect information on work experience, personal income, noncash benefits, health insurance coverage, and migration. The work experience items in the ASEC provide a unique measure of the dynamic nature of the labor force as viewed over a one-year period. These items produce statistics that show movements in and out of the labor force by measuring the number of periods of unemployment experienced by people, the number of different employers worked for during the year, the principal reasons for unemployment, and part-/full-time attachment to the labor force. We can make indirect measurements of discouraged workers and others with a casual attachment to the labor market.

The income data from the ASEC are used by social planners, economists, government officials, and market researchers to gauge the economic well-being of the country as a whole and selected population groups of interest. Government planners and researchers use these data to monitor and evaluate the effectiveness of various assistance programs. Market researchers use these data to identify and isolate potential customers. Social planners use these data to forecast economic conditions and to identify special groups that seem to be especially sensitive to economic fluctuations. Economists use ASEC data to determine the effects of various economic forces, such as inflation, recession, recovery, and so on, and their differential effects on various population groups.

A prime statistic of interest is the classification of people in poverty and how this measurement has changed over time for various groups. Researchers evaluate ASEC income data not only to determine poverty levels but also to determine whether government programs are reaching eligible households.

Congressional passage of the State Children's Health Insurance Program (SCHIP), or Title XXI, led to a mandate from Congress, in 1999, that the sample size for the CPS, and specifically the ASEC, be increased to a level whereby more reliable estimates can be derived for the number of individuals participating in this program at the state level. By administering the ASEC in February, March, and April, rather than only in March as in the past, we have been able to achieve this goal. The total number of respondents has not been upwardly affected by this change.

II. Method of Collection

The ASEC information will be collected by both personal visit and telephone interviews in conjunction with the regular February, March and April CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 0607–0354.

Form Number: There are no forms. We conduct all interviewing on computers.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 78,000.

Estimated Time Per Response: 25 minutes.

Estimated Total Annual Burden Hours: 32,500.

Estimated Total Annual Cost: There are no costs to the respondents other than their time to answer the CPS questions.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182; and Title 29, United States Code, Sections 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 1, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–12709 Filed 8–4–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Asher Karni; Pakland PME Corporation and Humayun Khan; In the Matter of: Asher Karni, Federal Inmate Registration Number: 32338–016, Fort Dix FCI, Fort Dix, NJ 08640, Respondent: and Pakland PME Corporation, Unit 7&8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad-44000, Pakistan; Humayun Khan, Unit 7&8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Bule Area, F–64, Islamabad-44000, Pakistan, Related Persons; Order Denying Export Privileges

A. Denial of Export Privileges of Asher Karni

On August 4, 2005, in the U.S. District Court in the District of Columbia, Asher Karni (''Karni'' or ''Respondent'') was convicted of violating the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. §§ 2401–2420 (2000)) (the ''Act'').[1] Karni was found guilty of willfully exporting and attempting to export two oscilloscopes and triggered spark gaps from the United States to Pakistan via South Africa without having first obtained the required export licenses from the Department of Commerce.

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005 (70 FR 45273, August 5, 2005), has continued the Regulations in effect under IEEPA.

Karni was sentenced to three years imprisonment and two years of supervised release following imprisonment. He is scheduled to be released on August 12, 2006.

Section 11(h) of the Act and Section 766.25 of the Export Administration Regulations (''Regulations'')[2] provide, in pertinent part, that ''([t]he Director of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny export privileges of any person who has been convicted of a violation of * * * the Act,'' for a period not to exceed 10 years from the date of conviction. 15 CFR Sections 766.25(a) and (d). In addition, section 750.8 of the Regulations states that BIS's Office of Exporter Services may revoke any BIS licenses previously issued in which the person had an interest in at the time of this conviction.

I have received notice of Karni's conviction for violating the Act, and have provided notice and an opportunity for Karni to make a written submission to the Bureau of Industry and Security as provided in section 766.25 of the Regulations. I have also received a written submission from Karni and have decided, following consultations with the Office of Export Enforcement, including its Director, to deny Karni's export privileges under the Regulations for a period of 10 years from the date of Karni's conviction.

B. Denial of Export Privileges of Related Persons

In addition, pursuant to Sections 766.25(h) and 766.23 of the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, may take action to name persons related to the Respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business in order to prevent evasion of the Order. I gave notice to Parkland PME Corporation (''Pakland'') and Humayun Khan (''Khan'') by Federal Express, notifying them that their export privileges under the Regulations could be denied for up to 10 years as BIS believes that these entities are related to Karni and including them in the Karni Order is necessary to prevent evasion. The basis for naming these entities to the Karni order include the fact that Karni, and his company, Top Cape Technology, acted in concert with Khan and Pakland to divert U.S. origin goods to Pakistan.

Having received no submission from Khan and Pakland, I have decided, following consultations with the Office of Export Enforcement, including its Director, to name Khan and Pakland as related persons to the Karni Denial Order, thereby denying their export privileges for 10 years from the date of Karni's conviction.

I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Karni, Khan and Pakland had an interest at the time of Karni's conviction. The 10-year denial period ends on August 4, 2015.

Accordingly, it is hereby *Ordered:*

I. Until August 4, 2015, Asher Karni, Federal Inmate Registration Number: 32338–016, Fort Dix FCI, Fort Dix, NJ 08640, and when acting for or on his behalf, his employees, agents or representatives, (''the Denied Person'') and the following persons related to the Denied Person as defined by Section 766.23 of the Regulations, Pakland PME Corporation, Unit 7&8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad–44000, Pakistan and Humayun Khan, Unit 7&8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad–44000, Pakistan, and when acting for or on their behalf, their employees, agents or representatives, (''The Related Persons'') (together, the Denied Person and the Related Persons are ''Persons Subject To This Order'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'' exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Persons Subject To This Order any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Persons Subject To This Order of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Persons Subject To This Order acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Persons Subject To This Order of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Persons Subject To This Order in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Persons Subject To This Order, or service any item, of whatever origin, that is owned, possessed or controlled by the Persons Subject To This Order if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. In addition to the Related Persons named above, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Karni by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until August 4, 2015.

VI. In accordance with Part 756 of the Regulations, Karni may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

[2] The Regulations are currently codified at 15 CFR Parts 730–744 (2006).

VII. In accordance with Section 766.23(c), Khan and Pakland may file an appeal with the Administrative Law Judge.

VIII. A copy of this Order shall be delivered to Karni and the Related Persons. This Order shall be published in the **Federal Register**.

Dated: August 1, 2006.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 06–6716 Filed 8–4–06; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071306I]

Endangered Species; Permit Nos. 1579, 1555, and 1545

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

ACTION: Notice; Issuance of permits.

SUMMARY: Notice is hereby given that the following groups have been issued scientific research or enhancement permits to take shortnose sturgeon (Acipenser brevirostrum):

Alden Research Laboratory, Inc. (Edward P. Taft, Responsible Party), 30 Shrewsbury Street, Holden, MA 01520 (Permit No. 1579);

David J. Stier, Springfield Science Museum, 220 State Street, Springfield, MA 01103 (Permit No. 1555); and

North Carolina Zoological Park (John D. Groves, Principal Investigator), 4401 Zoo Parkway, Asheboro, NC 27205 (Permit No. 1545).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

All documents: 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;

For Permit Nos. 1579 and 1555: Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9328; fax (978)281–9394; and

For Permit No. 1545: Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Jennifer Skidmore at (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested permits have been issued under the authority of 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 222–226).

Permit No. 1579: On May 26, 2006, notice was published in the **Federal Register** (71 FR 30385) that a request for a scientific research permit to take shortnose sturgeon had been submitted by Alden Research Laboratory, Inc. Alden will perform research on entrainment and impingement rates for selected bar rack and bypass configurations in attempt to identify design criteria for a downstream passage facility at the Hadley Falls Hydroelectric Project on the Connecticut River. The applicant will use captive-bred sturgeon and all testing will take place in the Alden Lab testing flume. During the first year of the permit up to 70 sturgeon will be transported from hatcheries, measured, handled, Passive Integrated Transponder tagged, and participate in the flume testing. During the remaining four years up to 200 sturgeon will participate in the study annually. At the end of the five-year study the sturgeon will be sacrificed.

Permit Nos. 1555 and 1545: On November 4, 2005 and November 10, 2005, notice was published in the **Federal Register** (70 FR 67141 and 70 FR 68398) that requests for enhancement permits to take shortnose sturgeon had been submitted by David Steir and the North Carolina Zoological Park (John D. Groves, Principal Investigator), respectively. Mr. Steir will obtain and use five captive-bred, non-releaseable juvenile shortnose sturgeon from the Silvio O. Conte Anadramous Fish Research Center in Turners Falls, MA. The North Carolina Zoological Park will use ten captive-bred, non-releaseable shortnose sturgeon from the U.S. Fish and Wildlife Service's Warm Springs National Fish Hatchery for the purposes of educational display. The proposed projects to display endangered cultured shortnose sturgeon respond directly to a recommendation from the NMFS recovery plan outline for this species. These sturgeon displays will be used to increase public awareness of the shortnose sturgeon and its status. The proposed projects will educate the public on shortnose sturgeon life history and the reasons for the species decline. The permits are issued for 5 years.

Issuance of these permits, as required by the ESA, was based on a finding that these permits (1) Were applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 1, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–12755 Filed 8–4–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 060725202–6202✖ I.D. No. 072006D]

Endangered and Threatened Wildlife; 90–Day Finding for a Petition To List the Cook Inlet Beluga Whale as an Endangered Species

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

ACTION: Notice of 90–day petition finding.

SUMMARY: We (NMFS) announce a 90–day finding on a petition to list the Cook Inlet beluga whale as an endangered species under the Endangered Species Act (ESA). We find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted.

DATES: The finding announced in this document was made on August 7, 2006.

ADDRESSES: Requests for copies of the petition should be addressed to NMFS, Protected Resources Division, 709 West 9th Street, Box 21668, Juneau, AK 99802–1668. The petition may also be viewed on our Web site at *http://www.fakr.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, AK 99517, telephone (907) 271–5006, fax (907) 271–3030; Kaja Brix, NMFS, (907)586–7235, fax (907) 586–7012; or Marta Nammack, NMFS, (301)713ndash;1401.

SUPPLEMENTARY INFORMATION: On April 20, 2006, we received a petition from Trustees For Alaska to list the Cook Inlet beluga whale as endangered under the ESA. Section 4(b)(3)(A) of the ESA requires, to the maximum extent practicable, that within 90 days of receipt of a petition to designate a species as threatened or endangered, the Secretary of Commerce (Secretary) make a finding on whether that petition

presents substantial scientific or commercial information indicating that the petitioned action may be warranted. That finding is to be published promptly in the **Federal Register**.

In determining whether a petition contains substantial information, we consider information submitted with and referenced in the petition and all other information readily available in our files. We do not conduct additional research at this point, and we subject the petition to critical review. Our ESA implementing regulations at 50 CFR 424.14(b)(1) define ≥substantial information≥ as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. If the petition is found to present such information, the Secretary must conduct a status review of the involved species. In making a finding on a petition to list a species, the Secretary must consider whether such a petition (i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (iii) provides information regarding the status of the species over all or a significant portion of its range; and (iv) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

The petition submitted by Trustees for Alaska presents substantial evidence in support of their request. The petition states the Cook Inlet population of beluga whales is a ''species'' under the definition of the ESA, and that NMFS in June 2000 wrote that the Cook Inlet population of beluga whales qualifies as a Distinct Population Segment (DPS, which is a species under the ESA) under the joint NMFS/U.S. Fish and Wildlife policy on the Recognition of Distinct Vertebrate Population Segments under the ESA (61 FR 4722; February 7, 1996). This policy states that a population can be considered a DPS if it is discrete from other conspecific populations and if it is significant to the taxon to which it belongs. The petitioner provides genetic and geographic information to support that the Cook Inlet beluga whale is discrete from other beluga whale populations, as well as rationale for why this population is also significant to the beluga whale species. It is the petitioner's contention that the Cook Inlet beluga whale is in danger of extinction throughout its range, and, therefore, is an endangered species as defined under 16 U.S.C. 1532(6). The petition presents information on the abundance, demographics, and distribution of the Cook Inlet beluga whales, as well as a discussion of the applicability of the ESA section 4(a)(1) factors found at 16 U.S.C. 1533(a).

We evaluated whether the information provided or cited in the petition met the ESA's standard for ''substantial information.'' After reviewing the information contained in the petition, as described above, as well as other scientific information readily available, we have determined that the petition presents substantial scientific information indicating that the petitioned action may be warranted.

We initiated a status review on March 29, 2006 (71 FR 14836), prior to receiving the petition. A status review is an evaluation of the available information about the biological vulnerability of a species, subspecies, or DPS. Information considered during a status review includes demographic information such as abundance, reproductive success, age structure, and distribution, and information provided in a petition for listing. A status review considers both historical and recent trends in these parameters, to the extent that this information is available. The status review must also evaluate current and potential threats facing the species and ongoing efforts to protect the species, subspecies, or DPS. We solicited information from the public to help us in evaluating the status of the Cook Inlet beluga whale when we announced the initiation of the status review (71 FR 14836; March 24, 2006).

Upon completion of the status review, and within 12 months of the petition, we must make one of the following findings: (1) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register and so notify the petitioner; (2) the petitioned action is warranted, in which case the Secretary shall promptly publish in the **Federal Register** a proposed regulation to implement the action pursuant to 50 CFR 424.16; or (3) the petitioned action is warranted, but that (A) the immediate proposal and timely promulgation of a regulation to implement the petitioned action is precluded because of other pending proposals to list, delist, or reclassify species, and (B) expeditious progress is being made to list, delist, or reclassify qualified species, in which case such findings shall be promptly published in the **Federal Register** together with a description and evaluation of the reasons and data on which the finding is based.

Authority

The authority for this action is the ESA, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 1, 2006.

William Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E6–12754 Filed 8–4–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080106B]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for seven scientific research permits (1135, 1290, 1318, 1322, 1330, 1333, 1461).

SUMMARY: Notice is hereby given that NMFS has received seven scientific research permit application requests relating to Pacific salmonids. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on September 6, 2006.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by E-mail to *resapps.nwr@NOAA.gov*.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, Fax: 503–230–5441, E-mail: *Garth.Griffin@noaa.gov*). Permit application instructions are available from the address above.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened lower Columbia River (LCR), threatened upper Willamette River (UWR), threatened Snake River (SR) fall, threatened SR spring/summer, endangered upper Columbia River (UCR).

Chum salmon (*O. keta*): threatened Columbia River.

Steelhead (*O. mykiss*): threatened LCR, threatened UWR, threatened UCR, threatened SR, threatened middle Columbia River.

Coho salmon (*O. kisutch*): threatened LCR.

Sockeye salmon (*O. nerka*): endangered SR.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1135

The U. S. Geological Survey (USGS) is requesting a 5–year research permit to take adult and juvenile LCR steelhead. The purpose of this study is to collect information on the survival, growth, habitat use, population density, health, and life-histories of steelhead in the Wind River subbasin of southern Washington. The research would provide information to help state, tribal, and Federal managers in their efforts to restore LCR steelhead populations and habitats. Permit 1135 has been in place for almost five years and is due to expire on December 31, 2006. Adult and juvenile LCR steelhead would be observed/harassed during snorkel and habitat surveys. Juvenile LCR steelhead would be collected (using backpack electrofishers, minnow traps, angling, seines, and weir traps), anesthetized, sampled for biological data (length, weight, disease status) and tissues/scales. The fish would then be allowed to recover from the anesthesia and released. In addition, some juvenile LCR steelhead would be tagged with passive integrated transponders (PIT-tags), some would be killed for pathological analyses, and a few more may die as an unintended result of the research.

Permit 1290

The Northwest Fisheries Science Center (NWFSC) is requesting a 5–year research permit that would allow them to take all fish species covered in this notice while conducting research in the Columbia River estuary. The purposes of the research are to determine the prevalence and intensity of pathogens in juvenile salmonids and investigate the relationship between forage fish populations in the estuary and salmonid survival. The research would benefit the fish by contributing information on (1) the extent to which diseases affect juvenile salmonid growth and survival in the estuarine and early ocean environments and (2) the relationship between forage fish abundance and salmonid survival in the estuary and marine environments. If the researchers cannot obtain enough fish samples from the Columbia River estuary, they ask to collect fish at the juvenile bypass facility at Bonneville Dam. Permit 1290 has been in place for almost five years and is due to expire on December 31, 2006. Juvenile salmonids would be variously collected (using beach and purse seines), anesthetized, weighed, scanned for tags, fin clipped, sampled for stomach contents, allowed to recover from the anesthesia, and released. Not all fish would undergo all these procedures, but all would be anesthetized. In addition, some juvenile salmonids would be killed for pathological analyses, and a few more may die as an unintended result of the research.

Permit 1318

The Oregon Department of Fish and Wildlife (ODFW) is requesting a 5–year research permit that would allow them to take all fish species covered in this notice while conducting research in the Deschutes, Willamette, and Columbia Rivers in Oregon. The application contains six projects: (1) Warm water fish management surveys; (2) investigations of natural production of spring Chinook salmon in the Mohawk River subbasin; (3) genetic characterization of rainbow trout in the Upper Willamette System; (4) fish abundance, population status, genetics and disease surveys in the Upper Willamette Basin; (5) native rainbow and cutthroat trout surveys for abundance, size composition, and migration patterns in the mainstem McKenzie River; and (6) resident redband population estimates in the Deschutes River. The research would benefit the fish by providing information on fish population structure, abundance, genetics, disease occurrences, and species interactions. That information would be used to direct management actions to benefit listed species. Permit 1318 has been in place for almost five years and is due to expire on December 31, 2006. Juvenile salmonids would be collected (using boat electrofishing). Some fish would be anesthetized, sampled for length and weight, allowed to recover from the anesthesia, and released. Most salmonids would only be shocked and allowed to swim away, or be netted and released immediately. The ODFW does not intend to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

Permit 1322

The NWFSC is requesting a 5–year research permit that would allow them to take all fish species covered in this notice while conducting research in the estuary and lower Columbia River. The objectives of the research are to (1) determine the presence and abundance of fall and spring Chinook, coho, and chum salmon in the estuary and lower Columbia River; (2) examine the relationship between juvenile salmon and lower Columbia River estuarine habitat; and (3) obtain information about flow change, sediment input, and habitat availability withe goal of developing a numerical model of the fishes' survival. The research would benefit listed salmonids by serving as a basis for estuarine restoration and preservation plans. Permit 1322 has been in place for almost five years and is due to expire on December 31, 2006. Juvenile salmonids would be collected (using trap nets, beach seines, and purse seines), anesthetized, measured, sampled for tissues, allowed to recover from the anesthesia, and released. Some juvenile salmonids would be killed to confirm species identification, catch composition, food habits, and timing of estuarine entry. A few more may die as an unintended result of the research.

Permit 1330

The Weyerhaeuser Company (Weyco) is requesting a 5–year research permit to take juvenile LCR Chinook salmon, LCR coho salmon, and LCR steelhead during the course of research to be conducted in the Toutle River and on lands owned by Weyco around Mt. St. Helens in Washington. The purposes of the research are to determine fish

abundance and distribution in the North Fork Toutle River and monitor juvenile salmonids in watersheds affected by the 1980 eruption of Mt. St. Helens. The information collected would be used to help develop and implement effective forest management practices and regulations. The research would benefit listed species by contributing information that would help Weyco maintain high quality habitat and develop recovery plans for listed species. Permit 1330 has been in place for almost five years and is due to expire on December 31, 2006. Weyco proposes to capture fish using backpack electrofishing, measure, and release them. They does not intend to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

Permit 1333

The Oregon State University (OSU) Department of Fisheries and Wildlife is requesting a 5–year research permit to take adult and juvenile UWR Chinook and steelhead during the course of research designed to evaluate floodplain and riparian restoration activities, test the effectiveness of new assessment tools for conservation planning, and improve aquatic habitat. The study would benefit listed salmonids by helping determine what actions are needed to restore ecological processes in salmon and steelhead habitat. Permit 1333 has been in place for almost five years and is due to expire on December 31, 2006. The OSU proposes to capture (using boat electrofishing), measure, examine for abnormalities, and release juvenile fish. Adult fish may be encountered but would not be netted. The OSU does not intend to kill any of the fish being captured, but a few may die as an unintended result of the activities.

Permit 1461

The USGS is requesting a 5–year research permit that would allow them to take all fish species covered in this notice while conducting research at Crims Island and the Julia Butler Hanson National Wildlife Refuge in the lower Columbia River. The purpose of the research is to determine fish species composition, habitat use, and salmon diet composition in the areas sampled. The data gathered would be used to guide and determine the effectiveness of habitat restoration activities in the lower Columbia River. The species would benefit from well-planned and monitored habitat restoration activities as well as (ultimately) the restored habitat itself. Permit 1461 has been in place since 2004; the USGS is requesting that the permit be issued for an additional five years. Juvenile salmonids would be collected (using beach seines, Fyke nets, backpack electrofishing, and boat electrofishing), and variously anesthetized, measured for length and weight, sampled for stomach contents and scales, marked (using fluorescent elastomers, Pan-jet needle-less inocculators, or batch-marked with a flourochrome dye), PIT-tagged, allowed to recover from the anesthesia, and released. Not all fish would undergo all these procedures, but all would be anesthetized. The USGS does not intend to kill any fish, but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations.The final permit decisions will not be made until after the end of the 30–day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: August 1, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–12751 Filed 8–4–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072506A]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Issuance of scientific research permits.

SUMMARY: Notice is hereby given that NMFS has issued Permit 1047 - Modification 1 to Marin Municipal Water District (MMWD) in Corte Madera, CA; Permit 1079 - Modification 2 to Campbell Timberland Management, LLC. (CTM) in Fort Bragg, CA; Permit 1162 - Modification 3 to Salmon Protection and Watershed Network (SPAWN) in Forest Knolls, CA; and Permit 1181 - Modification 1 to Mendocino Redwood Company, LLC. (MRC) in Fort Bragg, CA.

ADDRESSES: The applications, permits, and related documents are available for review by appointment at: Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 315, Santa Rosa, CA 95404 (ph: 707–575–6097, fax: 707–578–3435, e-mail: *Jeffrey.Jahn@noaa.gov*).

FOR FURTHER INFORMATION CONTACT: Jeffrey Jahn at phone number 707–575–6097, or e-mail: *Jeffrey.Jahn@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Species Covered in This Notice

This notice is relevant to federally threatened Southern Oregon/Northern California Coast coho salmon (*Oncorhynchus kisutch*), endangered Central California Coast coho salmon (*O. kisutch*), threatened California Coastal Chinook salmon (*O. tshawytscha*), threatened Northern California steelhead (*O. mykiss*), and threatened Central California Coast steelhead (*O. mykiss*).

Permits Issued

Permit 1047 - Modification 1 was issued to MMWD on July 11, 2006, authorizing capture (by electrofishing or rotary screw trap), handling, sampling (by collection of scales or fin clips), marking (using fin clips or fin dye), and release of juvenile Central California Coast coho salmon, California Coastal Chinook salmon, and Central California Coast steelhead. Permit 1047 Modification 1 also authorizes MMWD to capture, handle, sample (by collection of scales, fin clips, or other tissue), mark, and release adult carcasses of Central California Coast coho salmon, California Coastal Chinook salmon, and Central California Coast steelhead. Permit 1047 - Modification 1 is for research to be conducted in the Walker Creek and Lagunitas Creek watersheds in Marin

County, California. Permit 1047 - Modification 1 does not authorize take of live adult ESA-listed salmonids or intentional lethal take of ESA-listed salmonids. Permit 1047 - Modification 1 authorizes unintentional lethal take of juvenile ESA-listed salmonids associated with research activities not to exceed 5 percent of ESA-listed salmonids captured. The purpose of the research is to provide scientific data on ESA-listed salmonid populations and salmonid habitat and assist MMWD in assessing the effects of water diversion practices on ESA-listed salmonids. Permit 1047 Modification 1 expires on June 30, 2011.

Permit 1079 Modification 2 was issued to CTM on July 14, 2006, authorizing capture (by electrofishing), handling, and release of juvenile Southern Oregon/Northern California Coasts coho salmon, Central California Coast coho salmon, and Northern California steelhead. Permit 1079 Modification 2 is for research to be conducted in numerous watersheds on CTM managed property in Mendocino County, California, including: South Fork Eel River, Usal Creek, Dehaven Creek, Wages Creek, Abalobadiah Creek, Ten Mile River, Pudding Creek, Noyo River, Big River, and Big Salmon Creek. Permit 1079 Modification 2 does not authorize take of live adult ESA-listed salmonids or intentional lethal take of ESA-listed salmonids. Permit 1079 Modification 2 authorizes unintentional lethal take of juvenile ESA-listed salmonids associated with research activities not to exceed 2 percent of ESA-listed salmonids captured. The purpose of the research is to provide scientific data on ESA-listed salmonid populations and salmonid habitat and assist CTM in assessing the effects of timber harvest practices on ESA-listed salmonids. Permit 1079 Modification 2 expires on November 30, 2011.

Permit 1162 Modification 3 was issued to SPAWN on July 11, 2006, authorizing capture (by dip-net, pipe-trap, or funnel-trap), handling, sampling (by collection of fin clips), marking (using fin clips or fin dye), and release of juvenile Central California Coast coho salmon and Central California Coast steelhead. Permit 1162 Modification 3 also authorizes SPAWN to capture, handle, sample (by collection of scales, fin clips, or other tissue), mark, and release adult carcasses of Central California Coast coho salmon, California Coastal Chinook salmon, and Central California Coast steelhead. Permit 1162 Modification 3 is for research to be conducted in the Lagunitas Creek and San Geronimo Creek watersheds in Marin County, California. Permit 1162 Modification 3 does not authorize take of live adult ESA-listed salmonids or intentional lethal take of ESA-listed salmonids. Permit 1162 Modification 3 authorizes unintentional lethal take of juvenile ESA-listed salmonids associated with research activities not to exceed 3 percent of ESA-listed salmonids captured. The purpose of the research is to provide scientific data on ESA-listed salmonid populations, distribution, and salmonid habitat. The research will also result in the rescue and relocation of juvenile ESA-listed salmonids that are under an imminent threat of mortality from stranding in drying streams. Permit 1162 Modification 3 expires on June 30, 2011.

Permit 1181 Modification 1 was issued to MRC on July 14, 2006, authorizing capture (by electrofishing or rotary screw trap), handling, sampling (by collection of fin clips), and release of juvenile Southern Oregon/Northern California Coasts coho salmon, Central California Coast coho salmon, Northern California steelhead, and Central California Coast steelhead. Permit 1181 Modification 1 also authorizes MRC to capture, handle, mark, and release adult carcasses of Southern Oregon/Northern California Coasts coho salmon, Central California Coast coho salmon, California Coastal Chinook salmon, and Northern California steelhead. Permit 1181 Modification 1 is for research to be conducted in numerous watersheds on MRC property ranging from Hollow Tree Creek (a tributary to the South Fork Eel River) in Mendocino County, California, south to the Russian River and Gualala River in Sonoma County, California. Permit 1181 Modification 1 does not authorize take of live adult ESA-listed salmonids or intentional lethal take of ESA-listed salmonids. Permit 1181 Modification 1 authorizes unintentional lethal take of juvenile ESA-listed salmonids associated with research activities not to exceed 3.5 percent of ESA-listed salmonids captured. The purpose of the research is to provide scientific data on ESA-listed salmonid populations and salmonid habitat and assist MRC in assessing the effects of timber harvest practices on ESA-listed salmonids. Permit 1181 Modification 1 expires on November 30, 2011.

Dated: August 1, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–12753 Filed 8–4–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 60–50)

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notificaiton. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 60–50 with attached transmittal, policy justificaiton, and Sensitivity of Technology.

Dated: August 1, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

28 JUL 2006

In reply refer to:
I-06/008931

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-50, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Singapore for defense articles and services estimated to cost $301 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-50

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser**: Singapore

(ii) **Total Estimated Value**:

Major Defense Equipment*	$ 2 million
Other	$299 million
TOTAL	$301 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: continuation of Continental United States pilot proficiency training program for PEACE CARVIN II and munitions, services and support for F-16C/D aircraft which includes: 12 AIM-9 Sidewinder coolant bottles, 105,000 20mm cartridges, aircraft modifications kits, maintenance, participation in joint training exercises, fuel and fueling services, supply support, flight training, spare/repair parts, support equipment, program support, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services and other related elements of program support.

(iv) **Military Department**: Air Force (NCX)

(v) **Prior Related Cases, if any**: FMS case NCV - $69 million - 26Mar90

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: None

(viii) **Date Report Delivered to Congress**: 28 JUL 2006

* as defined in Section 47(6) of the Arms Export Control Act.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Singapore.

POLICY JUSTIFICATION

Singapore – Pilot Training Program with Munitions, Services, and Support

The Government of Singapore has requested a possible sale of continuation of Continental United States (CONUS) pilot proficiency training program for PEACE CARVIN II and munitions, services and support for F-16C/D aircraft which includes: 12 AIM-9 Sidewinder coolant bottles, 105,000 20mm cartridges, aircraft modifications kits, maintenance, participation in joint training exercises, fuel and fueling services, supply support, flight training, spare/repair parts, support equipment, program support, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $301 million.

This proposed sale will contribute to the foreign policy and national security of the United States (U.S.) by helping to improve the security of a friendly country that has been and continues to be an important force for economic progress in Southeast Asia. This proposed sale will help augment the Republic of Singapore's self-defense capability and will ensure interoperability with U.S. forces for coalition operations. Singapore is a firm supporter of the global war on terrorism and has deployed forces to assist in Operation Iraqi Freedom.

Singapore needs these munitions, services and equipment to continue a long-term pilot proficiency-training program at Luke Air Force Base, Arizona. This program will enable Singapore to develop mission ready and experienced pilots through its CONUS training program to support Singapore's current and future F-16 aircraft inventory. The long-term pilot training program in CONUS continues a professional interaction and enhances operational interoperability with U.S. forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

There is no prime contractor involved in this program. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Singapore.

[FR Doc. 06–6724 Filed 8–4–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–49]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–49 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 1, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

28 JUL 2006

In reply refer to:
I-06/008928

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-49, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to United Arab Emirates for defense articles and services estimated to cost $808 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-49

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser**: United Arab Emirates

(ii) **Total Estimated Value**:

Major Defense Equipment*	$745 million
Other	$ 63 million
TOTAL	$808 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: 26 UH-60M BLACK HAWK helicopters with engines, 4 spare T-700-GE-701D turbine engines, spare and repair parts, publications and technical data, support equipment, personnel training and training equipment, ground support, communications equipment, contractor engineering, logistics, and a quality assurance team, aircraft survivability equipment, tools and test equipment, and other related elements of logistics support.

(iv) **Military Department**: Army (ZUE)

(v) **Prior Related Cases, if any**: none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex attached

(viii) **Date Report Delivered to Congress**: 28 JUL 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates - UH-60M BLACK HAWK Helicopters

The Government of United Arab Emirates (UAE) has requested a possible sale of 26 UH-60M BLACK HAWK helicopters with engines, 4 spare T-700-GE-701D turbine engines, spare and repair parts, publications and technical data, support equipment, personnel training and training equipment, ground support, communications equipment, contractor engineering, logistics, and a quality assurance team, aircraft survivability equipment, tools and test equipment, and other related elements of logistics support. The estimated cost is $808 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The United Arab Emirates plans to increase its air mobility capabilities and increase its existing helicopter fleet. The UH-60M BLACK HAWK helicopters will be used for various military operations to include the protection of sovereign borders as well as the protection and defense of U.S. and coalition strategic facilities. The proposed purchase of UH-60M BLACK HAWK helicopters will greatly enhance UAE's military functionality by increasing deterrence capabilities.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Sikorsky Aircraft Corporation of Stratford, Connecticut and General Electric of Lynn, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of one Contractor Field Service and up to six U.S. Government Quality Assurance representatives to United Arab Emirates for two years to assist in the delivery and deployment of the helicopters.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-49

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The UH-60M BLACK HAWK helicopters contain communications and identification equipment, navigation equipment, aircraft survivability equipment, displays and sensors. The airframe itself does not contain sensitive technology. The highest level of classified information required to be released for training, operation and maintenance of the Black Hawk helicopters is Unclassified. The highest level that could be revealed through reverse engineering or testing of the end item is Secret.

2. The UH-60M BLACK HAWK helicopters will include the following pertinent equipment listed below, either installed on the aircraft or included in the proposed sale:

a. The AN/APR-39A(V)3, Radar Signal Detecting Set is a system, which provides warning of a radar directed air defense threat to allow appropriate countermeasures. Hardware is classified Confidential when programmed with United States threat data; releasable technical manuals for operation and maintenance are classified Confidential; releasable technical data (technical performance) is classified Secret. The system can be programmed with threat data provided by the purchasing country.

b. The AN/AVR-2A, Laser Warning Set is a passive laser warning system that receives, processes and displays threat information resulting from aircraft illumination by lasers, on the multi-functional display. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret. Reverse engineering is not a major concern.

c. The AN/ALQ-144A(V)3 Infrared (IR) Jammer is an active, continuous operating, omni-directional, electrically fired IR jammer system designed to confuse or decoy threat IR missile systems, in conjunction with low reflective paint and engine suppressors. Hardware is classified Confidential and releasable technical manuals for operation and maintenance are classified Secret. Reverse engineering and

development of countermeasures are concerns if the hardware and releasable technical data are compromised to a competent adversary.

d. The M130 Flare and Chaff Dispenser. The Dispenser components and Payload Module components dispense decoy objects to confuse threat radar devices. Radar cross-section and frequency coverage are sensitive elements. Hardware and the releasable technical publications for operation and maintenance are Unclassified. Aircraft optimization is the critical element; reverse engineering is not a major concern. Additional components are the Control Panel and the Electronics Module that have been integrated in the Weapons Management and Control software.

e. The AN/ALE-47 Countermeasures Dispenser System provides an integrated, reprogrammable, computer controlled system to dispense expendables/decoys to enhance aircraft survivability. The system is designed to employ electronic and infrared countermeasures according to a program developed and implemented by the aircrew. The hardware is Unclassified. Releasable technical manuals for operation and maintenance are classified Secret. Reverse engineering and development of countermeasures are concerns if the hardware and releasable technical data are compromised to a competent adversary.

f. The Hover InfraRed Suppression System (HIRSS) and Improved HIRSS and Forward Looking Infrared (FLIR) systems are Unclassified. The FLIR is optional.

g. The SAFIRE/II/HD Forward Looking Infrared System is Unclassified.

h. The 200 Gallon Internal Auxiliary Fuel Tank Kits provide extra range fuel capabilities and allow the helicopter to transport and dispense aviation fuel to aircraft or tactical vehicles at forward landing zones. The tank kit allows for rapid mission changes are is Unclassified. The tank kits are optional.

i. The Six-Man Pole and Litter Mission Kit provides search and rescue capabilities and can be used in a wide range of rescue operations, including tactical, Hazmat and disaster preparation. The kit is Unclassified and considered optional.

j. The AN/ARC-232 Starblazer Airborne Very High Frequency/Ultra High Frequency Multi-band Communications System (Exportable version) supports the requirement for an airborne, multi-band, multi-mission, anti-jam, voice and data network-capable communication system in one small lightweight package qualified to military standards. The system is Unclassified and can be procured without the Electronic Counter Countermeasures waveform that eliminates any releasability issues.

k. The AN/ARC-201E Single Channel Ground/Airborne Subsystem Radio (Exportable) is a tactical airborne radio subsystem that provides secure, anti-jam voice and data communication. There are no releasability issues. The system is Unclassified.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

[FR Doc. 06–6725 Filed 8–4–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–45]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–45 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 1, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

27 JUL 2006
In reply refer to:
I-06/008217

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-45, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Poland for defense articles and services estimated to cost $73 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-45

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Poland

(ii) Total Estimated Value:

Major Defense Equipment*	$33 million
Other	$40 million
TOTAL	$73 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:

2 Shadow 200 RQ-7B Unmanned Aerial Vehicle (UAV) Systems consisting of:
- 8 - Shadow 200 Air Vehicles with electro-optic/infrared imaging payloads
- 4 - Ground Control Stations (GCS) and associated ground data terminals
- 2 - Portable GCS
- 2 - Portable Ground Data Terminals
- 2 - Chassis Launchers
- 2 - Maintenance Section Multifunctional Vehicles
- 2 - APX-100 Transponder
- 2 - Global Positioning Systems

2 spare Air Vehicles
28 AN/VRC-90F Single Channel Ground and Airborne Radio System (SINCGARS)
14 M1152 unarmored High Mobility Multi-purpose Wheeled Vehicles
12 AN/PRC-148 Multi-band Inter-team Radio w/U.S. SINCGARS Waveform
28 RT 1523E SINCGARS Receiver-Transmitter and KIT-1C Crypto Computer
AN/VRC-103 consisting of 3 RT-1796 (P) Harris Multi-band Radios

Also included are Mobile Maintenance Facilities consisting of 2 air vehicles and ground support equipment, environment control units, shelters, maintenance, trailers, kits, containers, installation, systems, communications equipment, spare and repair parts, publications and technical data, personnel training and training equipment, quality assurance, U.S. Government, Field Service, and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $73 million.

*** as defined in Section 47(6) of the Arms Export Control Act.**

(iv) Military Department: Army (UBG)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(viii) Date Report Delivered to Congress: 27 JUL 2006

POLICY JUSTIFICATION

Poland – Shadow 200 RQ-7B Unmanned Aerial Vehicle Systems

The Government of Poland has requested a possible sale of:

2 Shadow 200 RQ-7B Unmanned Aerial Vehicle (UAV) Systems consisting of:
- **8 - Shadow 200 Air Vehicles with electro-optic/infrared imaging payloads**
- **4 - Ground Control Stations (GCS) and associated ground data terminals**
- **2 - Portable GCS**
- **2 - Portable Ground Data Terminals**
- **2 - Launcher**
- **2 - Maintenance Section Multifunctional Vehicles**
- **2 - APX-100 Transponder**
- **2 - Global Positioning Systems**

2 spare Air Vehicles
28 AN/VRC-90F Single Channel Ground and Airborne Radio System (SINCGARS)
14 M1152 unarmored High Mobility Multi-purpose Wheeled Vehicles
12 AN/PRC-148 Multi-band Inter-team Radio with U.S. SINCGARS Waveform
28 RT 1523E SINCGARS Receiver-Transmitter and KIT-1C Crypto Computer
AN/VRC-103 consisting of 3 RT-1796 (P) Harris Multi-band Radios

Also included are Mobile Maintenance Facilities consisting of 2 air vehicles and ground support equipment, environment control units, shelters, maintenance, trailers, kits, containers, installation, systems, communications equipment, spare and repair parts, publications and technical data, personnel training and training equipment, quality assurance, U.S. Government, Field Service, and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $73 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Poland and furthering standardization and interoperability with U.S. forces.

Poland intends to use the UAV systems in support of European Union Brigades and North Atlantic Treaty Organization operations. The proposed sale of the UAVs will enable Poland to provide intelligence from the Battalion to the Brigade/Division level. The UAVs will be in support of Poland's Maneuver Brigades in order to provide critical intelligence and early warning to military forces to combat terrorist cells and activities. In addition, the UAVs protect the common interests of coalition partners through intelligence gathering, surveillance and reconnaissance.

The proposed sale will enhance Poland's defensive capability against hostile forces. Poland will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be AAI Corporation in Hunt Valley, Maryland. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of up to five contractor representatives to provide individual and system level training in Poland for up to two years. U.S. Government and contractor representatives will travel to Poland on a temporary basis in conjunction with program, technical, and management oversight and support requirements.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-45

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Shadow is a small, lightweight, tactical Unmanned Aerial Vehicle (UAV) system. It is designed as a ground maneuver commander's primary day/night reconnaissance, surveillance, target acquisition, and battle damage assessment system. The system is comprised of air vehicles, modular mission payloads, ground control stations, launch and recovery equipment, and communications equipment.

a. The APX 100 transponder is Secret when the Mode IV Identification Friend Foe is installed with the crypto key. The transponder itself is unclassified.

b. The Mission Payload's highest classification level is Secret when interfaced with another Secret system, payload, or keyed communication equipment classified by applicable Security Classification guide. The short range – UAV Multi-Optronics Stabilized Payload Electro Optic/Infrared (EO/IR) Sensor and the Tactical UAV Plug-in Optronic Payload EO/IR Sensor are Unclassified.

c. The basic technology for the communications and COMSEC (Type 1) including AN/VRC-90F Single Channel Ground and Airborne Radio System (SINCGARS), AN/PRC-148 Multi-band Inter-team Radio with U.S. SINCGARS Waveform, RT 1523E SINCGARS Receiver-Transmitter, KIT-1C Crypto Computer, and AN/VRC-103 consisting of RT-1796 (P) Harris Multi-band Radio is not considered classified or sensitive.

2. The highest level of classified information that could be disclosed by this proposed sale, maintenance, training, and reverse engineering of the end item is Unclassified. The highest level of classified information that could be disclosed by operation of the end item is Secret when interfaced with another system, payload, or keyed communication equipment classified by applicable Security Classified Guide. The highest level of classified information that could be revealed by testing the end item is Secret (with respect to vulnerabilities/weaknesses data).

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–6726 Filed 8–4–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–44]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–44 with attached transmittal and policy justification.

Dated: August 1, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

27 JUL 2006
In reply refer to:
I-06/008213

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-44, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Spain for defense articles and services estimated to cost $73 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-44

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser**: Spain

(ii) **Total Estimated Value**:

Major Defense Equipment*	$54 million
Other	$19 million
TOTAL	$73 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: 43 T55-GA-714A Turbine Engines, modification and fielding kits, test equipment, technical assistance, spare and repair parts, and other related elements of logistics support.

(iv) **Military Department**: Army (VMG)

(v) **Prior Related Cases, if any**: none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: None

(viii) **Date Report Delivered to Congress**: 27 JUL 2006

* as defined in Section 47(6) of the Arms Export Control Act.

i. The M130 Flare and Chaff Dispenser consists of the dispenser assembly and the payload module. These components dispense decoy objects to confuse threat radar devices. Radar cross section and frequency coverage are sensitive elements. The hardware is unclassified; releasable technical publications for operation and maintenance are unclassified. Aircraft optimization is the critical element; reverse engineering is not a major concern.

j. The Integrated Helmet Display Sight System (IHDSS) is an enhanced version of its predecessor. It will provide improved operational performance primarily in resolution allowing greater utilization of the M-TADS/M-PNVS performance enhancements. The hardware is unclassified.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–6727 Filed 8–4–06; 8:45 am]
BILLING CODE 5001–06–O

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–43]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–43 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 1, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

28 JUL 2006

In reply refer to:
I-06/008039

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-43, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Netherlands for defense articles and services estimated to cost $200 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-43

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Netherlands

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 2 million
Other	$198 million
TOTAL	$200 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** establishment of a Continental United States (CONUS)-based Royal Netherlands Air Force F-16 Formal Training Unit (FTU) to include: 130 Laser Guided Training rounds, 150,000 20mm Target Practice training bullets, 3,750 BDU-33 low-drag training bombs, 875 MK-106 high-drag training bombs, pilot training, JP-8 fuel, air refueling support, CONUS base start up, base operating support, facilities, and other related operational/logistics services and support.

(iv) **Military Department:** Air Force (NAB)

(v) **Prior Related Cases, if any:**
FMS case YFH - $24 million - 1Oct90
FMS case YFF - $16 million - 4Dec89

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none

(viii) **Date Report Delivered to Congress:** 28 JUL 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Spain – Turbine Engines

The Government of Spain has requested a possible sale of 43 T55-GA-714A Turbine Engines, modification and fielding kits, test equipment, technical assistance, spare and repair parts, and other related elements of logistics support. The estimated cost is $73 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the military capabilities of Spain and furthering standardization and interoperability with U.S. forces.

Spain needs these engines to replace those used in the CH-47 Chinook aircraft supporting coalition operations. The proposed sale will enhance Spain's ability to continue to engage in coalition warfare along with the U.S. Army. Spain will have no difficulty absorbing these additional engines into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Honeywell International of Phoenix Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to Spain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 06–6728 Filed 8–4–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal 06–42]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–42 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 1, 2006.

C.R. Choate,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

2 8 JUL 2006

In reply refer to:
I-06/007830

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-42, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Bahrain for defense articles and services estimated to cost $252 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-42

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Bahrain

(ii) **Total Estimated Value:**

Major Defense Equipment*	$104 million
Other	$148 million
TOTAL	$252 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** nine (9) UH-60M BLACK HAWK helicopters, two (2) T700-GE-701D turbine engines, spare and repair parts, publications and technical data, personnel training and training equipment, contractor engineering, logistics, and technical support services, a quality assurance team, aircraft survivability equipment; tools and test equipment; and other related elements of logistics support.

(iv) **Military Department:** Army (UIR)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 28 JUL 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Bahrain - UH-60M BLACK HAWK HELICOPTERS

The Government of Bahrain has requested a possible sale of nine (9) UH-60M BLACK HAWK helicopters, two (2) T700-GE-701D turbine engines, spare and repair parts, publications and technical data, support equipment, personnel training and training equipment, contractor engineering, logistics, and technical support services, a quality assurance team, aircraft survivability equipment, tools and test equipment, and other related elements of logistics support. The estimated cost is $252 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

Bahrain plans to increase its air mobility capabilities and continue its force modernization program. These defense enhancements promote continued interoperability with U.S. forces, assist in the cooperative defense of neighboring states and increase Bahrain's capability as a partner in the Global War on Terror. Additionally, the UH-60M BLACK HAWK Helicopters will supplement Bahrain's existing helicopter fleet.

The UH-60M BLACK HAWK helicopters will be used for various military operations to include the protection of sovereign borders as well as the protection and defense of U.S. and coalition strategic facilities. The proposed purchase of UH-60M BLACK HAWK helicopters will greatly enhance Bahrain's military functionality by increasing deterrence capabilities.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Sikorsky Aircraft Corporation of Stratford, Connecticut and General Electric of Fairfield, Connecticut. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of one Contractor Field Service representative to Bahrain for one year to assist in the delivery and deployment of the helicopters. Several U.S. Government representatives will travel to Oman for one-week trips to participate in training, program management, and technical assistance/review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-42

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The UH-60M BLACK HAWK helicopters contain communications and identification equipment, navigation equipment, aircraft survivability equipment, displays and sensors. The airframe itself does not contain sensitive technology. The highest levels of classified information require to be released for training, operation and maintenance of the Black Hawk Helicopters is Unclassified. The highest level that could be revealed through reverse engineering or testing of the end item is secret.

2. The UH-60M BLACK HAWK Helicopters will include the following pertinent equipment listed below, either installed on the aircraft or included in the sale:

a. The AN/APR-39A(V)3, Radar Signal Detecting Set is a system, which provides warning of a radar directed air defense threat to allow appropriate countermeasures. Hardware is classified Confidential when programmed with United States threat data; releasable technical manuals for operation and maintenance are classified Confidential; releasable technical data (technical performance) is classified Secret. The system can be programmed with threat data provided by the purchasing country.

b. The AN/AVR-2A, Laser Warning Set is a passive laser warning system that receives, processes and displays threat information resulting from aircraft illumination by lasers, on the multi-functional display. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified secret. Reverse engineering is not a major concern.

c. The AN/ALQ-144A(V)3 Infrared (IR) Jammer is an active, continuous operating, omni-directional, electrically fired IR jammer system designed to confuse or decoy threat IR missile systems, in conjunction with low reflective paint and engine suppressors. Hardware is classified Confidential and releasable technical manuals for operation and maintenance are classified secret. Reverse engineering and development of countermeasures are concerns if the hardware and releasable technical data are compromised to a competent adversary.

d. The M130 Flare and Chaff Dispenser. The Dispenser and Payload Module components dispense decoy objects to confuse threat radar devices. Radar cross section and frequency coverage are sensitive elements. Hardware and the releasable technical publications for operation and maintenance are Unclassified. Aircraft optimization is the critical element; reverse engineering is not a major concern. Additional components are the Control Panel and the Electronics Module that have been integrated in the Weapons Management and Control software.

e. The AN/ALE-47 Countermeasures Dispenser System provides and integrated, reprogrammable, computer controlled system to dispense expendables/decoys to enhance aircraft survivability. The system is designed to employ electronic and infrared countermeasures according to a program developed and implemented by the aircrew. The hardware is Unclassified. Releasable technical manuals for operation and maintenance are classified Secret. Reverse engineering and development of countermeasures are concerns if the hardware and releasable technical data are compromised to a competent adversary.

f. The Hover InfraRed Suppression System (HIRSS) and Improved HIRSS and Forward Looking Infrared (FLIR) systems are Unclassified. The FLIR is optional.

g. The 200 Gallon Internal Auxiliary Fuel Tank Kits provide extra range fuel capabilities and allow the helicopter to transport and dispense aviation fuel to aircraft or tactical vehicles at forward landing zones. The tank kit allows for rapid mission changes are is Unclassified. The tank kits are optional.

i. The Six-Man Pole and Litter Mission Kit provides search and rescue capabilities and can be used in a wide range of rescue operations, including tactical, Hazmat and disaster preparation. The kit is Unclassified and considered optional.

j. The AN/ARC-232 Starblazer Airborne Very High Frequency/Ultra High Frequency Multi-band Communications System (Exportable version) supports the requirement for an airborne, multi-band, multi-mission, anti-jam, voice and data network-capable communication system in one small lightweight package qualified to military standards. The system is Unclassified and can be procured without the Electronic Counter Countermeasures waveform that eliminates any releasability issues.

k. The AN/ARC-201E Single Channel Ground/Airborne Subsystem Radio (Exportable) is a tactical airborne radio subsystem that provides secure, anti-jam voice and data communication. There are no releasability issues. The system is Unclassified.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

[FR Doc. 06–6729 Filed 8–4–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–39]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–39 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 1, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

28 JUL 2006

In reply refer to:
I-06/007041

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-39, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $400 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

LIEUTENANT GENERAL, USA
DIRECTOR

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Transmittal No. 06-39

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

Major Defense Equipment*	$350 million
Other	$ 50 million
TOTAL	$400 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: remanufacture and upgrade of 12 AH-64A to AH-64D APACHE attack helicopters, 10 spare T-700-GE -701A engines converted to T-700-GE-701D models, Modernized Targeting Acquisition and Designation Systems, spare and repair parts, communications equipment, support equipment, simulators, quality assurance teams, chemical masks, tools and test sets, chaff dispensers, Integrated Helmet and Display Sight Systems, electronic equipment, test facility spares, publications, Quality Assurance Teams service, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support.

(iv) Military Department: Army (VTX)

(v) Prior Related Cases, if any:
FMS Case JBN - $300 million - 21Dec90
FMS Case VNT - $900 million - Cancelled

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(viii) Date Report Delivered to Congress: 28 JUL 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia – REMANUFACTURE AND UPGRADE OF AH-64A to AH-64D APACHE HELICOPTERS

The Government of Saudi Arabia has requested a possible sale of the remanufacture and upgrade of 12 AH-64A APACHE attack helicopters to AH-64D configuration, 10 spare T-700-GE -701A engines converted to T-700-GE-701D models, Modernized Targeting Acquisition and Designation Systems, spare and repair parts, communications equipment, support equipment, simulators, quality assurance teams, chemical masks, tools and test sets, chaff dispensers, Integrated Helmet and Display Sight Systems, electronic equipment, test facility spares, publications, Quality Assurance Teams service, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support. The estimated cost is $400 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

Saudi Arabia will use the AH-64D in the same manner as they are currently using their AH-64A models. Their focus is on national security, protecting their borders and oil infrastructure. The resulting effect will be more advanced targeting and engagement capabilities. The proposed sale will upgrade the Saudi anti-armor day/night missile capability, provide for the defense of vital installations, and provide close air support for the military ground forces. Saudi Arabia will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be:

Boeing Corporation of Mesa, Arizona
General Electric Company of Fairfield, Connecticut
Lockheed Martin Corporation of Palmdale, California

There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of up to 10 U.S. Government and contractor representatives required in-country to support the fielding and maintenance of the aircraft.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-39

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AH-64D APACHE Attack Helicopter includes the following sensitive and/or classified (up to and including secret) components:

a. The AN/APG-78 Longbow Fire Control Radar (FCR) is an active fire control radar system providing detection, location, classification and prioritization of targets to be engaged and handed over to other on-board sensor systems. This enables the APACHE helicopter to detect and fire upon targets under in visual conditions that preclude the use of visual or infrared imaging systems. Hardware and releasable technical manuals for operation and organic level maintenance are unclassified. The data, including operational software, proposed for release will not, in itself, facilitate reverse engineering.

b. The AN/APR-48A Radar Frequency Interferometer (RFI) is part of the AN/APG-78 FCR. It passively detects, locates in azimuth, identifies radar emitters, and sends the emitter identification and location to either the FCR or to the APACHE Weapons Processor for display to the aircrew. Emitter information can also be used to cue the FCR, as well as to make decisions on FCR target prioritization. Hardware is classified confidential when the User Data Module (UDM) is attached to the RFI Processor Assembly; unclassified when the UDM is absent. Releasable technical manuals for operation and organic level maintenance are unclassified. The data, including operational software, proposed for release will not facilitate reverse engineering.

c. The AN/ASQ-170 Modernized Target Acquisition and AN/AAQ-11 Designation Sight/Pilot Night Vision Sensor (TADS/PNVS) provides day, night, and limited adverse weather target information, as well as night navigation capabilities. The PNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while TADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), television, and Forward Looking Infrared sighting systems that may be used singly or in

combinations. The hardware is unclassified. The technical manuals for authorized maintenance levels are unclassified. Reverse engineering is not a major concern.

d. The Common Missile Warning System (CMWS) detects energy emitted by threat missiles in-flight, evaluates potential false alarm emitters in the environment, declares validity of threats, and selects appropriate counter-measures. The CMWS consists of an Electronic Control Unit (ECU) and four to six Electro-Optic Missile Sensors (EOMSs). The ECU provides the central processing and integrates the sub-components of the CMWS and processes information obtained from the EOMSs. The ECU hardware is unclassified; the software is secret. The EOMSs are passive starring detectors operating in the Ultraviolet (UV) electromagnetic spectrum. They detect UV radiation generated from the plume of an in-flight missile and transmit the information to the EUC. Both the EUC hardware and software are unclassified.

e. The AN/ALQ-144A(V)3 Infrared Jammer is an active, continuous operating, omni-directional, electrically fired infrared (IR) jammer system designed to confuse or decoy threat IR missile systems, in conjunction with low reflective paint and engine suppressors. Hardware is classified confidential and releasable technical manuals for operation and maintenance are classified secret. Reverse engineering and development of counter countermeasures are concerns if the hardware and releasable technical data are compromised to a competent adversary.

f. The AN/APR-39A(V)4 Radar Signal Detecting Set is a system, that provides warning of a radar directed air defense threat and allow appropriate countermeasures. This is the 1553 databus compatible configuration. The hardware is classified confidential when programmed with U.S. threat data; releasable technical manuals for operation and maintenance are classified confidential; releasable technical data (technical performance) is classified secret.

g. The AN/ALQ-136(V)5 Radar Jammer is an automatic radar jammer that analyzes various incoming radar signals. When threat signals are identified and verified, jamming automatically begins and continues until the threat radar breaks lock. The hardware is classified confidential; releasable technical manuals for operation and maintenance are classified secret; releasable technical data (technical performance) is classified secret.

h. The AN/AVR-2B Laser Warning Set is a passive laser warning system that receives, processes and displays threat information resulting from aircraft illumination by lasers on the multi-functional display. The hardware is classified confidential; releasable technical manuals for operation and maintenance are classified secret. Reverse engineering is not a major concern.

i. The M130 Flare and Chaff Dispenser consists of the dispenser assembly and the payload module. These components dispense decoy objects to confuse threat radar devices. Radar cross section and frequency coverage are sensitive elements. The hardware is unclassified; releasable technical publications for operation and maintenance are unclassified. Aircraft optimization is the critical element; reverse engineering is not a major concern.

j. The Integrated Helmet Display Sight System (IHDSS) is an enhanced version of its predecessor. It will provide improved operational performance primarily in resolution allowing greater utilization of the M-TADS/M-PNVS performance enhancements. The hardware is unclassified.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–6730 Filed 8–4–06; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. [Transmittal No. 06–38]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: None.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–38 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 1, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

28 JUL 2006

In reply refer to:
I-06/006608

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-38, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Oman for defense articles and services estimated to cost $48 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-38

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Oman

(ii) **Total Estimated Value:**

Major Defense Equipment*	$38 million
Other	$10 million
TOTAL	$48 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 250 JAVELIN missile rounds and 30 JAVELIN command launch units, simulators, trainers, support equipment, spare and repair parts, equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support.

(iv) **Military Department:** Army (UIW)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 28 JUL 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Oman – JAVELIN Anti-tank Missile Systems

The Government of Oman has requested a possible sale of 250 JAVELIN missile rounds and 30 JAVELIN command launch units, simulators, trainers, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is $48 million.

This proposed sale will contribute to the foreign policy and national security of the United States (U.S.) by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The desert warfare missions of Oman's infantry and light armored forces require the protection afforded by the capabilities of the JAVELIN system. JAVELIN will provide the forces with a credible anti-armor defense that is critical to successful operations. The proposed sale of JAVELIN is consistent with Oman's ongoing efforts to modernize its armed forces and the presence of the weapon in the land forces' inventory will provide yet another inroad for enhancing interoperability between the U.S. and Omani military forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon/Lockheed-Martin JAVELIN Joint Venture in Orlando, Florida. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of a U.S. Government Quality Assurance Team consisting of one contractor and two U.S. Government representatives to Oman for one week to assist in the delivery and deployment of the missiles. Several contractor and U.S. Government representatives will travel to Oman for two-week intervals twice annually to participate in training, program management, and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-38

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The JAVELIN Weapon System hardware and the documentation provided with the proposed sale thereof are unclassified. However, sensitive technology is contained with the system itself. This sensitivity is primarily in the software programs which instruct the system how to operate in the presence of countermeasures. The JAVELIN system provided to Oman is limited to the Block I Version 2 (8 series software) of the system.

2. The JAVELIN anti-tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. JAVELIN is comprised of two major tactical components; a reusable Command Launch Unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU provides the interface between the operator and the missile. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLUs thermal sight is a second-generation Forward Looking Infrared (FLIR) sensor, operating in the 8 to 10 microns wavelength, and is a 240x2 scanning array integral with Dewar/Cooler unit. To facilitate initial loading and subsequent updating of software, all on-board missile software is uploaded via the CLU after mating and prior to launch. JAVELIN is unclassified, however, information associated with the system is classified up to the secret level.

3. The software programs contained in the JAVELIN Weapon System are in the form of microprocessors equipped with available Read Out Memory maps. However, the system does not allow access to the actual software program. The overall hardware is considered sensitive in that the modulation frequency and infrared wavelengths could be useful in attempted countermeasure developments.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–6731 Filed 8–4–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–31]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06-31 with attached transmittal, policy justification, and Sensitivity of Technology.

August 1, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer. Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

28 JUL 2006

In reply refer to:
I-06/004610

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-31, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $2.9 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-31

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

Major Defense Equipment*	$ .038 billion
Other	$2.862 billion
TOTAL	$2.900 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 58 M1A1 Abrams tanks, which, together with 315 M1A2 Abrams tanks already in Saudi Arabia's inventory, will be modified and upgraded to the M1A2S (Saudi) Abrams configuration, kits, spare and repair parts, communications and support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services and other related elements of logistics support.

(iv) Military Department: Army (VTC)

(v) Prior Related Cases, if any: FMS case VKZ - $1,839 million - 8Jul90

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(viii) Date Report Delivered to Congress: 28 JUL 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia - M1A1 and Upgrade of M1A2 to M1A2S Abrams Tanks

The Government of Saudi Arabia has requested a possible sale and reconfiguration for 58 M1A1 Abrams tanks, which, together with 315 M1A2 Abrams tanks already in Saudi Arabia's inventory, will be modified and upgraded to the M1A2S (Saudi) Abrams configuration, kits, spare and repair parts, communications and support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $2.9 billion.

We previously notified transmittal number 90-07 to Congress on 2 December 1989 of the possible sale of 315 M1A2A Abrams tanks, with ancillary weapons and equipment, 30 M88A1 recovery vehicles, 175 M998 utility trucks, other trucks, ammunition, and full logistics support for an estimated value of $725 million. Transmittal number 90-78 was notified to Congress on 27 October 1990 for the possible sale of 150 M1A2 tanks, 200 Bradley Fighting Vehicle Family Systems (including TOW versions and 1,750 TOW IIA Missiles), 207 M113 Armored Personnel Carrier Family Vehicles, 50 M548 Cargo Carriers, 17 M88A1 and 43 M578 Recovery Vehicles, ammunition, and full logistics support for an estimated value of $3.2 billion.

This proposed sale will contribute to the foreign policy and national security of the United States (U.S.) by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

This proposed sale consists of three phases: (1) engineering phase for 30 months, (2) purchase of and upgrade of 58 M1A1s to M1A2S (Saudi) configuration, and (3) tear down of the 315 M1A2 Abrams in Saudi Arabia's tank fleet and upgrade to the M1A2S configuration. The Abrams Integrated Management (AIM) program was designed economically to rebuild and maintain the M1A1 Main Battle Tank (MBT) to a 'like new' condition to improve fleet readiness and reduce sustainment costs. The 58 M1A1s will undergo an 'AIM-like' process and will be upgraded to the M1A2S configuration in the United States. The 315 Saudi M1A2A MBT's will undergo an 'AIM-like' process and will be re-configured to the M1A2S configuration. Vehicle teardown and final re-assembly will be accomplished in Saudi Arabia.

The proposed sale and upgrade will allow Saudi Arabia to operate and exercise a more lethal and survivable M1A2S tank for the protection of critical infrastructure. This proposed sale/upgrade keeps a substantial number of tanks in the region that have a high degree of commonality with the U.S. tank fleet. The M1A2S design is intended to take advantage of the digital capabilities of the M1A2 while limiting obsolescence challenges. Saudi will have no difficulty absorbing these additional tanks into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be General Dynamics Land Systems of Sterling Heights, Michigan. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of U.S. Government and contractor representatives to Saudi Arabia for up to eight years. The exact number of representatives will be established during program definition between representatives of the United States Government and the purchaser.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-31

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The M1A2S (Saudi) Abrams Integrated Management (AIM) tanks' components considered to contain sensitive technology in the proposed program are as follows:

a. The M1A2S Thermal Imaging System (TIS) constitutes a target acquisition system which, when operated with other tank systems gives the tank crew a substantial advantage over the potential threat. The TIS provides the M1A2 crew with the ability to effectively aim and fire the tank main armament system under a broad range of adverse battlefield conditions. The hardware itself is Unclassified. The engineering design and manufacturing data associated with the detector and infrared (IR) optics and coatings are considered sensitive. The technical data package is Unclassified with exception of the specifications for target acquisition range (Confidential), nuclear hardening (Confidential, restricted data) and laser hardening (Secret).

b. Major components of Special Armor are fabricated in sealed modules and in serialized removable subassemblies. Special armor vulnerability data for both chemical and kinetic energy rounds are classified Secret. Engineering design and manufacturing data related to the special armor are also classified Secret.

c. The M1A2S Tank 120mm Gun and Ammunition system is composed of a smooth bore gun manufactured at Watervliet Arsenal; "long rod" Armor Piercing Fin Stabilized Discarding Sabot warheads; and combustible cartridge case ammunition. This has not changed from the original M1A1 and M1A2 system.

d. The use of the Advanced Gas Turbine-1500 (AGT-1500) Gas Turbine Propulsion System in the M1A2S is a unique application of armored vehicle power pack technology. The hardware is composed of the AGT-1500 engine and transmission, and is Unclassified. Manufacturing processes associated with the production of turbine blades, recuperator, bearings and shafts, and hydrostatic pump and motor, are proprietary and therefore commercially competition sensitive.

e. A major survivability feature of the Abrams Tank is the compartmentalization of fuel and ammunition. Compartmentalization is the positive separation of the crew and critical components from combustible materials. In the event that the fuel or ammunition is ignited or deteriorated by an incoming threat round, the crew is fully protected by the compartmentalization. Sensitive information includes the performance of the ammunition compartments as well as the compartment design parameters.

f. The Far Target Locator gives the tank commander or gunner the capability to use laser energy to locate a target and record the grid coordinates of the target. The coordinates are displayed on the Binocular Image Control Unit (BICU) and are also electronically recorded for embedding in an electronic message. This allows the tank commander to call for fire so those targets beyond the range of the tank can be engaged by order of a tactical operations center.

g. The AN/PVS-7B Night Vision Goggles are considered items of a sensitive nature. These devices are man-portable night vision devices, which incorporate image-intensification technology. This technology is contained in a sealed image intensifier tube that is serialized and removable. Additionally, U.S. Government systems are equipped with a counter-measure device. Engineering and manufacturing data related to the image intensification tube sub-components (Photocathode, Micro channel Plate, and Tube Seals) are classified Confidential. Engineering, testing, and manufacturing data related to the counter-measure device are classified Secret. Additionally, all data related to vulnerabilities and weaknesses are classified Secret.

h. The Second Generation Forward Looking Infrared (FLIR) Horizontal Technology Integration Security (TIS) Classification Guide is a "second generation" thermal imaging sight that attaches to the Abrams tank Gunner's Primary Sight (GPS) and the Commander's Independent Thermal Viewer. The TIS provides the gunner an all-weather/night sight for surveillance, target acquisition, identification and engagement. The latest, "Block I" version of the TIS consists of two line replaceable units, the Thermal Receiving Unit (TRU) and the BICU. The TRU shares a portion of the same head mirror used by the GPS day channel to gather and process thermal information. The BICU injects thermal imagery and fire control symbology into the same GPS eyepiece used for day operations as well as providing a binocular eyepiece for use in battlefield surveillance in the thermal mode. The binocular eyepiece reduces gunner fatigue during long surveillance periods.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–6732 Filed 8–4–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–30]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–30 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 1, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

28 JUL 2006

In reply refer to:
I-06/004606

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-30, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Jordan for defense articles and services estimated to cost $156 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-30

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Jordan

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$156 million
TOTAL	$156 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: refurbishment/sustainment of 1,000 M113A1 Armored Personnel Carriers (APC) to M113A2-Jordan configuration. This will include various upgraded conversion kits: diesel engines, transmission upgrades and overhaul, differential conversions, suspension upgrades, cooling system up-grades, and drive train upgrades; spare and repair parts; support equipment; publications and technical data; communications equipment; maintenance; personnel training and training equipment; contractor representatives' services; and other related elements of logistics support.

(iv) Military Department: Army (VXI, Amd 4)

(v) Prior Related Cases, if any: FMS case UWX -$11 million- closed

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: 28 JUL 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Jordan – Refurbishment/sustainment of M113A1 Armored Personnel Carriers

The Government of Jordan has requested a possible refurbishment/sustainment of 1,000 M113A1 Armored Personnel Carriers (APC) to M113A2-Jordan configuration. This will include various upgraded conversion kits: diesel engines, transmission upgrades and overhaul, differential conversions, suspension upgrades, cooling system upgrades, and drive train upgrades; spare and repair parts; support equipment; publications and technical data; communications equipment; maintenance; personnel training and training equipment; contractor representatives' services; and other related elements of logistics support. The estimated cost is $156 million.

The proposed sale will enhance the foreign policy and national security objectives of the United States by improving the security of a key regional partner who has proven to be a vital force for political stability and peace in the Middle East.

The Jordan Armed Forces (JAF) requires the defense services to refurbish its M113A1 APC's to a sustainable configuration. The upgrade will provide JAF with a dependable vehicle capable of responding quickly against aggression or unauthorized entry on the border. This capability is essential to modernizing Jordan's military forces and maintaining equipment for effective internal security operations.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be BAE Company in Santa Clara, California. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the assignment of two full time representatives at the facilities in Jordan to provide technical support for the duration (scheduled until 2010) of the program.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 06–6733 Filed 8–4–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Inspector General; Privacy Act of 1974; System of Records

[DOD–2006–OS–0171]

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice To Add Systems of Records.

SUMMARY: The Office of the Inspector General (OIG) proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on September 6, 2006, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Chief, FOIA/PA Office, Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General (OIG) systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on (date), to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated

February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 1, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG–23

SYSTEM NAME:

Public Affairs Files.

SYSTEM LOCATION:

Assistant Inspector General for Office of Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual(s) who writes or contacts the OIG DoD requesting general information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records created or compiled in response to an inquiry, to include the response to the inquiry. Records may include, but are not limited to, news media reports and articles pertaining to the OIG DoD military and civilian officials to include Presidential Appointees; news media reports and articles pertaining to OIG DoD components, commands and/or systems; Congressional testimony and/or hearing transcripts; DoD military and civilian personnel speeches; Presidential and Congressional speeches pertaining to OIG DoD interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978 (Public Law 95–452), as amended; DoD Directive 5106.1 (32 CFR part 312), Inspector General of the Department of Defense; DoD Directive 5122.5, Assistant Secretary of Defense for Public Affairs; DoD Directive 5230.9, Clearance of DoD Information for Public Release; and OIG Memorandum, Subject: Public Release of Information from the Office of the Inspector General, Department of Defense, June 27, 2003.

PURPOSE(S):

To collect information in order to respond to inquiries about OIG DoD activities and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of the OIG compilation of system of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records are stored in file folders, computerized index listings and electronic storage media on local area network.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS

Paper records are stored in file cabinets located in an office suite, accessible only to OIG DoD personnel who must use the records to perform their duties. Computer systems in which records reside are protected through the use of assigned user identification(s) and multiple levels of passwords restricting access. Records are secured in a guarded building.

RETENTION AND DISPOSAL:

Disposition pending. No records will be destroyed until authorization is granted from the National Archives and Records Administration. All records will be retained until approval is granted.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Office of Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written request to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name, all former names and alias of the requester under which the file may be maintained. The request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written requests to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 222–4704.

Written request should contain the individual's full name, all former names and alias of the requester under which the file may be maintained. The request must be signed.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in DoD Directive 5106.1 (32 CFR part 312) or may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information obtained from the Department of Defense Military Services and Components, U.S. Congress, DoD OIG Hotline, public media, and source documents such as reports of investigation and/or audit.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of processing a Public Affairs request, exempt materials from other systems of records may become part of the records in this system. To the extent that copies of exempt records from those other systems of records are entered into this Public Affairs case record, the Office of the Inspector General, DoD, hereby claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

[FR Doc. 06–6720 Filed 8–4–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

DOD–2006–OS–0172

Defense Threat Reduction Agency Privacy Act of 1974; Systems of Records

AGENCY: Defense Threat Reduction Agency.

ACTION: Notice to Add a System of Records.

SUMMARY: The Defense Threat Reduction Agency proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on September 6, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 767–1771.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 10, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 1, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 021

SYSTEM NAME:

Freedom of Information Act and Privacy Act Case Files

SYSTEM LOCATION:

Defense Threat Reduction Agency, Freedom of Information and Privacy Office, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who submit Freedom of Information Act (FOIA) and/or Privacy Act (PA) requests or file administrative appeals to the Defense Threat Reduction Agency (DTRA); individuals whose requests and/or records have been referred to DTRA by other Federal agencies; individuals who are the subjects of such requests; and/or the DTRA personnel assigned to handle such requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records created or compiled in response to FOIA and/or Privacy Act requests. This includes original requests and administrative appeals; responses to such requests and appeals; all related memoranda, correspondence, notes, and other related or supporting documentation; and in some instances, copies of requested records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, The Freedom of Information Act; 5 U.S.C. 552a, The Privacy Act of 1974; DoD 5400.7–R, DoD Freedom of Information Act Program; DoD Directive 5400.11 and DoD 5400.11–R, DoD Privacy Program; DTRA Instruction 5400.7, FOIA Program; and DTRA Instruction 5400.11, Privacy Program.

PURPOSE(S):

To process access requests under the FOIA and access and amendment requests under the Privacy Act; to administer appeals and litigation arising from such requests; and to assist DTRA in discharging any other responsibilities under the FOIA and the Privacy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To other Federal, state, and local agencies for purposes of affecting necessary coordination relating to the processing of the requests.

The 'Blanket Routine Uses' set forth at the beginning of DTRA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Records are retrieved by name of the requester; the number assigned to the request; and/or the name of other identifier of DTRA personnel assigned to handle such requests.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules, and policies, including DTRA's automated systems security and access policies. Classified information is appropriately stored in safes and in accordance with other applicable requirements. Records and technical equipment are maintained in buildings with restricted access. The required use of password protection identification features and other system protection methods also restrict access. Access is limited to those officers and employees of the agency who have an official need for access in order to perform their duties.

RETENTION AND DISPOSAL:

FOIA and PA cases involving full releases or administrative dispositions are destroyed two years after date of reply. Cases involving full and partial denials are maintained for six years after final FOIA action and five years after final Privacy Act action or three years after final adjudication by courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should submit a written request, to the Defense Threat Reduction Agency, Freedom of Information and Privacy Office, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Written requests should contain the full name, current address, telephone number, and date request was submitted.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should submit a written request, to the Defense Threat Reduction Agency, Freedom of Information and Privacy Office, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Written requests should contain the full name, current address, telephone number, and date request was submitted.

CONTESTING RECORD PROCEDURES:

The Defense Threat Reduction Agency's rules for accessing records is published in 32 CFR part 318 or may be obtained as indicated in the 'notification procedure'.

RECORD SOURCE CATEGORIES:

Data is provided by the record source, the FOIA/Privacy Act staff; and other agencies or entities that have referred requests to DTRA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA and Privacy Act action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those other systems of records are entered into this FOIA or Privacy Act case record, DTRA hereby claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 318. For additional information, contact the system manager.

[FR Doc. 06–6722 Filed 8–4–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Policy and Standards Team, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 6, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Policy and Standards Team, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 1, 2006.

Leo J. Eiden,

Leader, Information Policy and Standards Team, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development.

Type of Review: Revision.

Title: Annual Mandatory Collection of Elementary and Secondary Education Data for the Education Data Exchange Network (EDEN).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 17,152.

Burden Hours: 570,804.

Abstract: The Education Data Exchange Network (EDEN) is in the implementation phase of a multiple year effort to consolidate the collection of education information about States, Districts, and Schools in a way that improves data quality and reduces paperwork burden for all of the national education partners. To minimize the burden on the data providers, EDEN seeks the transfer of the proposed data as soon as it has been processed for State, District, and School use. These data will then be stored in EDEN and accessed by federal education program managers and analysts as needed to make program management decisions. This process will eliminate redundant data collections while providing for the timeliness of data submission and use.

Additional Information: The Department of Education is specifically requesting the data providers in each State Education Agency review the proposed data for availability, consistency with state data definitions, and appropriate use. Our responses to the public comments that were submitted in May and June are found in Attachment E. There are two additional issues state data providers are asked to address.

The Department proposes collecting the EDEN data groups from the Civil Rights Survey directly from the districts in 2006 as it has historically collected that data. It is the Department's intent to move this data collection into the EDEN Submission System in the future and ask state education agencies to submit the data for their districts. The Department plans to specify in the 2007–2008 EDEN paperwork submission request that all civil rights data groups and categories be included in the EDEN Submission System beginning with the 2007–2008 school year. During a transition period through 2009–2010, the Department may continue to use the Web-based EDEN Survey Tool or other mechanism to collect these data directly from districts in those states that are unable to report required civil rights items from the SEA level through EDEN. The Department would like to know what challenges this decision will put on the states and how the Department might work with the states to mitigate any problems.

In response to the public comment regarding the challenges of submitting the whole EDEN data set and the need to prioritize the EDEN data and focus on the submission of the most important and useful data, the Department has developed a prioritized phase-in plan to the states that is presented in Attachment B of the EDEN 2006–2007 data collection package. All EDEN data will still need to be submitted within the two-year transition period but the expectation to submit will be adjusted based on which data is most available and most highly required by the Department. The EDEN Submission System will receive all requested EDEN data from every state that can submit any EDEN data from the 2006–2007 school year. The Department would like to know if this adjustment will help the States make more timely submissions of EDEN data and if States agree with the prioritization of the data groups.

In this issue of the **Federal Register** the Department is publishing Proposed Guidance on Maintaining, Collecting, and Reporting Data on Race and Ethnicity to the U.S. Department of Education. Data on race and ethnicity in the format outlined in the proposed guidance will be required to be reported to ED no later than the 2009–2010 school year. Those States that can provide it sooner are encouraged to do so. Since this guidance may directly and immediately affect the collection of EDEN data, the Department encourages relevant public comment on the impact of this guidance on the collection of EDEN data as part of this EDEN paperwork clearance process.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3017. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to

ICDocketMgr@ed.gov or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–12695 Filed 8–4–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Discretionary Grant Programs

AGENCY: Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Secretary of Education proposes priorities that the Department of Education (Department) may use for any appropriate discretionary grant program in fiscal year (FY) 2007 and in FY 2008. We take this action to focus Federal financial assistance on expanding the number of programs and projects Department-wide that support activities in areas of greatest educational need. Although we expect that these priorities will have the greatest applicability to programs authorized by the Elementary and Secondary Education Act of 1965 (as amended by the No Child Left Behind Act of 2001), we are establishing the priorities on a Department-wide basis, so that Department offices can use one or more of these priorities in any discretionary grant competition, as appropriate.

DATES: We must receive your comments on or before September 6, 2006.

ADDRESSES: Address all comments about these proposed priorities to Margo K. Anderson, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W311, Washington, DC 20202–5910. If you prefer to send your comments through the Internet, use the following address: *comments@ed.gov.*

You must include the term ''Department Priorities'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Margo Anderson. Telephone: (202) 205–3010 or via Internet at *Margo.Anderson@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify the specific proposed priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs.

During and after the comment period, you may inspect all public comments about these proposed priorities in room 4W333, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

General

In the four years since the enactment of the No Child Left Behind Act of 2001, there have been significant changes in our educational system that provide a strong framework for reaching the goal that all students will be proficient in reading/language arts and mathematics by the year 2014. States have put in place rigorous new accountability systems and in this school year (2005–2006) administered reading and mathematics assessments covering all students in grades 3 to 8 and at least once for students in grades 10 to 12. By school year 2007–2008, States will be assessing students in science at least once in each of three grade spans (3–5, 6–9, 10–12). A focus on professional development and teacher qualifications is helping States to ensure that increasing numbers of students are being taught by highly qualified teachers. School districts are providing new support and assistance to schools in need of improvement, while making available public school choice and supplemental educational services options to eligible students who attend these schools.

National Assessment of Educational Progress (NAEP) results for older students provide a reminder of the need to continue to emphasize high standards and accountability for all students, especially those in the higher grades. The 2005 NAEP math results for 8th graders, for example, are both illustrative and alarming: less than one-third of 8th graders, and just 13 percent of low-income 8th graders, scored at the proficient level or above. High school test scores in mathematics have barely budged since the 1970s, and according to the American College Testing, Inc. (ACT), less than half of high school graduates in 2005 were ready for college-level math and science coursework.

America's rapidly changing economy requires an educational system that is producing high school graduates with the skills needed to be successful in postsecondary education and the workforce. In addition to improving the academic achievement of students in mathematics and science, we must expand the number of Americans mastering foreign languages critical to national security and to our participation in the global economy. High schools must develop a larger pool of technically adept and numerically literate Americans, a continual supply of highly trained mathematicians, scientists, and engineers, and more students with higher levels of proficiency in critical-need languages. The Department believes that high-quality professional development for secondary school teachers is a critical part of the solution, because it can help ensure that these teachers have the content knowledge and expertise required to improve student achievement.

Rigorous instruction, high standards, and accountability for results are helping to raise achievement in the early grades. Now America must complete the task. We must focus on improving the mathematics and science achievement of secondary school students, expanding foreign language learning to include critical-need languages, providing teachers with better training and support, helping districts improve all their schools, and ensuring that all students meet rigorous

State mathematics and science academic standards and graduate from high school. Student performance is not just an education issue; it is an economic issue, a civic issue, a social issue, and a national security issue.

In addition to content-specific priorities, the Secretary is proposing a priority for collecting data to assess the effect of projects on the academic achievement of student participants relative to appropriate comparison or control groups. The Secretary believes that interventions must be designed to collect the best available data to determine the impact of the proposed intervention on student achievement and to inform future improvement efforts. Finally, to assist schools and districts in using data effectively, we are proposing a priority for projects that will help educators use information from State data systems to improve student achievement or other appropriate outcomes.

Discussion of Proposed Priorities

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering public comments on the proposed priorities and other information available to the Department. This notice does not preclude the Secretary from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these proposed priorities, we invite applications for new awards under the applicable program through a notice in the **Federal Register**. When inviting applications we designate the priorities as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

The Secretary proposes priorities that the Department may use for discretionary grant competitions in FY 2007 and FY 2008, as appropriate. The Secretary intends that these priorities will allow program participants and the Department to focus limited Federal resources on areas of greatest educational need. The Secretary recognizes that some of the priorities will not be appropriate for particular programs.

Proposed Priority 1—Mathematics. Projects that support activities to enable students to achieve proficiency or advanced proficiency in mathematics.

Proposed Priority 2—Science. Projects that support activities to enable students to achieve proficiency or advanced proficiency in science.

Proposed Priority 3—Critical-Need Languages. Projects that support activities to enable students to achieve proficiency or advanced proficiency in one or more of the following less commonly taught languages: Arabic, Chinese, Korean, Japanese, Russian, and languages in the Indic, Iranian, and Turkic language families.

Proposed Priority 4—Secondary Schools. Projects that support activities and interventions aimed at improving the academic achievement of secondary school students who are at greatest risk of not meeting challenging State academic standards and not completing high school.

Proposed Priority 5—Professional Development for Secondary School Teachers. Projects that support high-quality professional development for secondary school teachers to help these teachers improve student academic achievement.

Proposed Priority 6—School Districts with Schools in Need of Improvement, Corrective Action, or Restructuring. Projects that help school districts implement academic and structural interventions in schools that have been identified for improvement, corrective action, or restructuring under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001.

Proposed Priority 7—Student Achievement Data. Projects that collect pre- and post-intervention test data to assess the effect of the projects on the academic achievement of student participants relative to appropriate comparison or control groups.

Proposed Priority 8—State Data Systems. Projects that help educators use information from State data systems to improve student achievement or other appropriate outcomes.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering the Department's discretionary grant programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Executive Order 12372

Some of the programs affected by these proposed priorities are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*

(Catalog of Federal Domestic Assistance Number does not apply.)

Program Authority: 20 U.S.C. 1221e–3; 20 U.S.C. 6301 *et. seq.*

Dated: August 1, 2006.

Margaret Spellings,

Secretary of Education.

[FR Doc. E6–12780 Filed 8–4–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Safe and Drug-Free Schools and Communities Advisory Committee

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming open meeting of the Safe and Drug-Free Schools and Communities Advisory Committee. The notice also describes the functions of the Committee. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: Monday, August 21, 2006, and Tuesday, August 22, 2006.

Time: August 21, 2006: 8:30 a.m. to 5 p.m.; August 22, 2006: 8 a.m. to 11:30 a.m.

ADDRESSES: The Committee will meet at the U.S. Department of Education, 400 Maryland Avenue, SW., Barnard Auditorium, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Catherine Davis, Executive Director, Safe and Drug Free Schools and Communities Advisory Committee, U.S. Department of Education, 400 Maryland Avenue, SW., Room 1E110, Washington, DC 20202–3510; telephone: (202) 205–4169, or e-mail at *OSDFS@ed.gov*.

SUPPLEMENTARY INFORMATION: The Committee was established to provide advice to the Secretary on Federal, State and local programs designated to create safe and drug-free schools, and on issues related to crisis planning. The focus for this meeting is the Safe and Drug Free Schools and Communities State Grants Programs, a formula grant program. The agenda will include panel presentations by invited speakers offering an overview of the program and looking at opportunities to strengthen and improve it in order to ensure that schools and communities are implementing the most effective programs and interventions, and are prepared to meet current and future needs of students. Further, the Committee will address strategies for accomplishing their mission as stated in the committee charter.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or materials in alternative format) should notify Catherine Davis at *OSDFSC@ed.gov* or 202–205–4169 no later than August 7, 2006. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Individuals interested in attending the meeting must register in advance because limited space is available at the meeting site. Please notify Catherine Davis at *OSDFSC@ed.gov* or 202–205–4169 of your intention to attend the meeting.

Opportunities for public comment are available on August 22 from 8:40–9:15 a.m. on a first come, first served basis. Comments presented at the meeting must be limited to 5 minutes in length. Written comments that accompany oral remarks are optional. Five copies are recommended and should be submitted to the committee Chairman.

Request for Written Comments: We invite the public to submit written comments relevant to the focus of the Advisory Committee. We would like to receive written comments from members of the public no later than April 30, 2007.

ADDRESSES: Submit all comments to the Advisory Committee using one of the following methods: 1. Internet. We encourage the public to submit comments through the Internet to the following address: *OSDFSC@ed.gov*. 2. Mail. The public may also submit your comments via mail to Catherine Davis, Office of Safe and Drug Free Schools, U.S. Department of Education, 400 Maryland Avenue, SW., Room 1E110, Washington, DC 20202. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

Records are kept of all Committee proceedings and are available for public inspection at the Office of Safe and Drug Free Schools, U.S. Department of Education, 400 Maryland Avenue, SW., Room 1E110, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m. Eastern Standard Time.

Ray Simon,

Deputy Secretary.

[FR Doc. 06–6710 Filed 8–4–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Request for Expressions of Interest in an Advanced Burner Reactor To Support the Global Nuclear Energy Partnership

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice of request for expressions of interest.

SUMMARY: Based upon feedback since the President of the United States announced the Global Nuclear Energy Partnership (GNEP) in February 2006, the U.S. Department of Energy (DOE) is seeking Expressions of Interest (EOI) from domestic and international industry in building an Advanced Burner Reactor (ABR). An ABR in the United States would establish a fast reactor capability to be used to transmute fuel and consume transuranic elements within the fuel, generate electricity, and support implementation of GNEP. DOE is also seeking to define the interest of industry to build upon their proven capabilities and participate in demonstrating spent nuclear fuel (SNF) recycling technologies that meet GNEP goals. This EOI will help inform DOE's GNEP Program as to those issues that industry and potential host sites consider important to the construction of sustainable, commercial-scale SNF recycling technologies that meet GNEP objectives. The information gained from this EOI will be used to create Requests for Proposals (RFP) for the proposed ABR.

DATES: Interested parties wishing to submit an EOI should do so in writing by September 8, 2006, to ensure their input is considered. A briefing for respondents to learn about DOE's baseline plan and answer EOI-related questions will be held on August 14, 2006, 8 am–12 pm, in the Washington, DC metropolitan area. The specific meeting location will be announced on the GNEP Web site, *http://www.gnep.energy.gov*. Please indicate your interest in attending the briefing by sending an e-mail indicating your intent to attend to *GNEP_EOI_RSVP@nuclear.energy.gov*. It is recognized that GNEP is moving forward on an aggressive schedule that will task all of the responders' abilities to provide quality information in a short period of time. DOE believes that GNEP can help to revitalize the U.S. nuclear industry and improve its global competitive position. Early participation by industry in this effort will greatly maximize GNEP's success.

FOR FURTHER INFORMATION CONTACT: By postal mail, Mr. John F. Gross, Mail

Stop: NE–2.4/Germantown, 1000 Independence Avenue, SW., Washington DC 20585–0119; by phone on 301–903–3918; by e-mail at *GNEP_EOI_RSVP@nuclear.energy.gov*.

ADDRESSES: Please send all hardcopy Expressions of Interest to Mr. John F. Gross, Mail Stop: NE–2.4/Germantown, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119. Electronic versions of the Expressions of Interest may be submitted in pdf (portable document format) format by e-mail to *GNEP_EOI_RSVP@nuclear.energy.gov*.

SUPPLEMENTARY INFORMATION:

Background

As part of President Bush's Advanced Energy Initiative, DOE has launched the Global Nuclear Energy Partnership (GNEP). The broad goals of GNEP are described in the Report to Congress—Spent Nuclear Fuel Recycling Program Plan issued May 2006, *http://www.gnep.energy.gov/pdfs/snfRecyclingProgframPanMay2006.pdf.*

A major element of GNEP is the development and deployment of advanced nuclear fuel recycling technologies. In general, advanced recycling technologies focus on three operations:

(1) Separate commercial LWR SNF into its usable and waste components.

Spent nuclear fuel contains uranium, transuranics (plutonium and other long-lived radioactive elements), and fission products. The fission products are waste and make up less than five percent of the used fuel. Buildup of fission products within the fuel inhibits nuclear fission reactions so the spent fuel must be replaced with fresh fuel for continued operation of a nuclear reactor. The transuranics and uranium in SNF would be separated from the fission products and then fabricated into new fuel for a fast reactor to consume the transuranics and uranium while simultaneously recovering their energy content. The SNF recycling program would use advanced separation processes (*e.g.,* Uranium Extraction Plus or other comparable processes).

(2) Fabricate and recycle fast reactor fuel containing transuranic elements.

Fabricating, testing, and qualifying fast reactor fuel containing transuranic and actinide elements (*i.e.,* transmutation fuel), obtained from recycled spent fast reactor fuel, is required to provide fresh fuel for the reactor. After the qualification of transmutation fuel, the GNEP facilities would demonstrate recycle of fast reactor transmutation fuel and eventually could include the construction of a separate transmutation fuel separations and fabrication facility.

(3) Convert transuranics into shorter-lived radioisotopes while producing electricity.

Fast reactors produce high-energy neutrons that can fission long-lived transuranics, thus converting the transuranics into shorter-lived radioisotopes. As the transuranics are consumed, significant energy is released that can be used to produce electricity from material that would otherwise be considered waste and potentially require disposal in a geologic repository.

The Department initially announced an approach that would demonstrate technologies from the laboratory at engineering scale, prior to a second phase of commercialization. This approach is described in the Report to Congress—Spent Nuclear Fuel Recycling Program Plan issued May 2006, *http://www.gnep.energy.gov/pdfs/snfRecyclingProgframPanMay2006.pdf.*

Following the announcement of the GNEP Program by the President, a number of foreign governments and private companies expressed interest in cooperating in the near-term with the Department in the development and deployment of advanced recycling technologies. Some of these entities indicated they are pursuing similar technologies and, in some cases, these technologies may be ready for deployment prior to those currently under development by the Department. In light of this information, DOE seeks to determine the feasibility of accelerating the development and deployment of advanced recycling technologies that would enable commercial scale demonstrations that meet GNEP objectives. These demonstrations would utilize industry expertise to build the well-understood stages of advanced technology for the separation of LWR SNF, and the construction and operation of a fast reactor, while designing in the modules for incorporating group separation of actinides, transmutation fuel production, burning, and recycling operations.

This approach would involve two simultaneous tracks: (1) Deployment of commercial scale facilities for which advanced technologies are available now or in the near future and (2) further research and development on transmutation fuels technologies. This two-track approach could result in two commercial scale facilities, one of which is the subject of this EOI. These facilities are:

- Consolidated Fuel Treatment Center (CFTC)—a facility to separate the usable uranium and transuranics from spent light-water reactor fuel for use in fabricating fast reactor fuel. During the second track the CFTC would be augmented or a separate transmutation fuel separations and fabrication facility would be constructed to separate and fabricate fast reactor transmutation fuel.
- Advanced Burner Reactor (ABR; subject of this EOI)—fast reactor to use transmutation fuel and consume transuranic elements within the fuel and generate electricity. The ABR is expected to be qualified with conventional fast reactor fuel. Subsequently, the ABR would be used to demonstrate the feasibility of recycling fast reactor transmutation fuel.

A third facility, the Advanced Fuel Cycle Facility (AFCF), will be designed and directed through DOE's national laboratories and will support development of the technologies required to separate and fabricate fast reactor transmutation fuel. The AFCF is not currently a subject of a Request for Expressions of Interest.

ABR Characteristics

DOE prefers to constrain as little as possible this EOI on the fuel cycle pathway to meet GNEP goals. Industry's input is valuable in considering the ultimate technical and pragmatic configuration of GNEP's closed fuel cycle. Some rough parameters for considering the ultimate characteristics of an ABR for the GNEP Technology Demonstration Program are set out below. They simply illustrate the type of information DOE is requesting in this EOI and respondents should not interpret the following information as a final decision from DOE on the ABR's characteristics or the overall demonstration program. The responses to this EOI may significantly influence subsequent RFPs.

Desired ABR General Characteristics

The ABR is essential to perform key functions in support of GNEP technology development objectives, including:

- Providing a fast neutron reactor necessary to consume the transuranic and actinide elements contained in transmutation fuel, i.e., fuel that is fabricated from uranium, plutonium, and other transuranics found in light water reactor (LWR) spent fuel.
- Generating and providing electricity to a power grid and contribute to commercial sustainability. Thus, the ABR would consume transuranic elements in fuel made possible by other key elements of the technology program: separation of LWR and fast reactor SNF into their usable components and the

fabrication of transmutation fuel from those components.

• Consuming transuranic elements separated from LWR SNF. See the Consolidated Fuel Treatment Center (CFTC) EOI for a discussion of that element.

• Ensuring that facility designs meet U.S. standards for safeguards and security.

Developing this complete system to support GNEP remains the central objective, drawing upon the expertise and capabilities of industry and international partners to achieve it. Further,

The ABR shall safely and reliably perform its power generation and transmutation functions. The ABR shall be capable of being licensed by the U.S. Nuclear Regulatory Commission (NRC) and operated in accordance with NRC regulations. The ABR shall incorporate design features and technologies to promote reliable system performance during normal operations and in response to postulated accident scenarios.

• The ABR shall be designed such that the future cost of electrical power generation using ABRs can be shown to be economical, with a goal of being competitive with Advanced Light Water Reactors, reasonably accounting for any externalities.

• ABRs shall be capable of generating power through the net destruction of transuranic material.

• The strategy for potential development of ABRs shall be made to be as affordable as possible without introducing undue risk into the development effort so as to place in serious jeopardy the potential to successfully achieve the ABR mission.

• To support timely implementation supportive of GNEP goals, the ABR system shall be capable of commercial deployment as early as possible.

Example Technical Characteristics of the ABR

• *Reactor neutron energy spectrum:* Fast.

• *Reactor technology:* Pool-type sodium cooled.

• *Power conversion technology:* Steam-Rankine or Super-critical CO_2 Brayton Cycle.

• *Reactor fuel type:* Oxide or metal based.

• *Reactor unit thermal power:* 500 MWt–2000 MWt.

• *Electrical power from reactor unit:* 200 MWe–800 MWe, generated electricity can be provided to a commercial power grid.

• For modular approach, technology for reactor unit should be scalable to higher power levels up to at least 1 GWe.

• The ABR would have the capability of being started on conventional fast reactor driver fuel, transitioned to full core operation on transmutation fuel, and provide a capability for transmuting minor actinide targets prior to this transition.

• Process storage capacity: Sufficient process storage capacity should be included to support full-scale plant operations, including storage of spent fuel prior to recycling.

Geographic

• The reactor may be collocated with the SNF processing and fuel fabrication operations. This is not a requirement but rather a possibility.

Regulatory

• Must comply with all environmental protection laws and regulations.

• Must be capable of being licensed under NRC regulations applicable to demonstration operations on privately owned land regardless of where the demonstration is sited.

Content of EOI

The following items identify the information that DOE is requesting in this EOI. All respondents are encouraged to provide information beyond that requested if it is believed to be beneficial to their responses.

1. Level of Interest and Proposed Scope of Interest

Please describe how you believe DOE could accelerate successful demonstration of SNF integrated recycling technologies to advance the goals of GNEP. Describe the approach that you believe should be taken to accomplish this goal, including its benefits and risks, and describe your level of interest or potential participation. Also, provide a description of what you believe your approach does to advance the broad goals of GNEP (as described, for example, in the Background section). In particular, for the ABR, DOE is interested in:

a. What reactor unit size (MWt) would be proposed by industry to achieve the ABR mission, and what reactor size would be proposed for the demonstration program (*e.g.*, sub-scale, full-size module)?

b. What set of reactor system technologies (*e.g.*, basic type of fuel, reactor and power conversion technologies) is proposed to achieve the ABR mission?

c. What would the general fuel qualification approach and schedule be for initial driver fuel and transmutation fuel? Identify the basic in-reactor tests and facilities that would be used to support fuel qualification.

d. In addition to advanced reactor systems, what research and development (R&D) on near-term water-cooled reactor approaches could be pursued to support transmutation of transuranics consistent with the goals of GNEP?

2. Proposed Roles of Parties Involved

Please identify who you believe the parties to such a venture should include and the role of each party. Parties could include U.S. Government and foreign government agencies, state and local government agencies, nongovernmental organizations, domestic and foreign commercial firms (*e.g.*, Architect & Engineering (A&E) firms, component manufacturers, electric utility companies, etc.) or any other entity you may identify that fits into your proposed solution. Your statement should clearly identify the role each party would play in ensuring the success of your proposition, whether direct or indirect. Examples of roles include, but are not limited to, providing financing, guaranteeing financing, A&E services, construction, facility operations, program or project management, regulatory compliance support, and hardware vendor. Provide an assessment of the benefit to the U.S. Government and GNEP of your proposed parties and their roles. Also, provide a description of the benefits that would accrue to each of the parties in this venture. Benefits could include, but are not limited to, financial gain, intellectual property, market position, facilities, education, and advancing policy goals.

3. Resources

For each entity you have identified in Item 2 above, provide specifics describing the resources each party could provide to ensure the program's success. These resources may include, but are not limited to, financial, existing or new facilities, personnel (include a description of the type of personnel, *e.g.*, technical, management, regulatory, financial, etc.), intellectual property, and leased equipment.

4. Proposed Contractual Vehicle

Please provide a description of the contractual vehicle(s) you feel should be employed in furtherance of your approach. Examples may include, but are not limited to, contracts, financial assistance, Cooperative Research and

Development Agreements, loan guarantees, other transactional arrangements. Please limit your suggestions to those contractual authorities already granted to DOE or other government agencies you identify.

5. Areas of Technology Development Required for Potential Commercialization

Please identify what technical areas associated with your approach would benefit from additional research, development or demonstration (RD&D) activities, how and to what extent this RD&D would mitigate technical or technology risk, estimated timeframes to accomplish this RD&D, parties performing the activities, and other technical issues that need to be addressed.

6. Government Furnished Data/ Technology/Equipment

Describe what, if any, government furnished data, technology, or equipment you would require to accomplish your defined approach. State whether you have any existing rights or license for the use of the data or technology, and if not, how you would pursue acquiring such rights.

Confidentiality

Confidential or business sensitive information contained in the submission must be identified and marked accordingly. DOE will protect this information from public disclosure to the extent permitted by law.

This EOI is not a formal solicitation requesting proposals and does not represent a commitment by the Government to award a contract. The Government does not intend to formally respond to information submitted in response to this EOI. The Government is not responsible for costs incurred to submit a response to this EOI, conducting other activities associated with pre-solicitation planning, or submitting a proposal in response to a solicitation, if issued.

Issued in Washington, DC, on July 31, 2006.

Dennis R. Spurgeon,

Assistant Secretary for Nuclear Energy, Office of Nuclear Energy.

[FR Doc. E6–12747 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Request for Expressions of Interest in a Consolidated Fuel Treatment Center To Support the Global Nuclear Energy Partnership

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice of request for expressions of interest.

SUMMARY: Based upon feedback since the President of the United States announced the Global Nuclear Energy Partnership (GNEP) in February 2006, the U.S. Department of Energy (DOE) is seeking Expressions of Interest (EOI) from domestic and international industry in building spent nuclear fuel recycling and transmutation fuel fabrication capabilities. DOE contemplates locating these capabilities together in a Consolidated Fuel Treatment Center (CFTC) and seeks expressions of interest from potential domestic host sites. DOE is also seeking to define the interest of industry to build upon their proven capabilities and participate in demonstrating spent nuclear fuel (SNF) recycling technologies that meet GNEP goals. This EOI will help inform DOE's GNEP Program as to those issues that industry and potential host sites consider important to the ultimate construction of sustainable, commercial-scale SNF recycling technologies that meet GNEP objectives. The information gained from this EOI will be used to create Requests for Proposals (RFP) for the proposed CFTC.

DATES: Interested parties wishing to submit an EOI should do so in writing by September 8, 2006, to ensure their input is considered. A briefing for respondents to learn about DOE's baseline plan and answer EOI-related questions will be held on August 14, 2006, 8 a.m.–12 p.m., in the Washington, DC metropolitan area. The specific meeting location will be announced on the GNEP Web site, *http://www.gnep.energy.gov.* Please indicate your interest in attending the briefing by sending an e-mail indicating your intent to attend to *GNEP_EOI_RSVP@nuclear.energy.gov.* It is recognized that GNEP is moving forward on an aggressive schedule that will task all of the responders' abilities to provide quality information in a short period of time. DOE believes that GNEP can help to revitalize the U.S. nuclear industry and improve its global competitive position. Early participation by industry in this effort will greatly maximize GNEP's success.

FOR FURTHER INFORMATION CONTACT: By postal mail, Mr. John F. Gross, Mail Stop: NE–2.4/Germantown, 1000 Independence Avenue, SW., Washington, DC 20585–0119; by phone on 301–903–3918; by e-mail at *GNEP_EOI_RSVP@nuclear.energy.gov.*

ADDRESSES: Please send all hardcopy Expressions of Interest to Mr. John F. Gross, Mail Stop: NE–2.4/Germantown, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119. Electronic versions of the Expressions of Interest may be submitted in pdf (portable document format) format by e-mail to *GNEP_EOI_RSVP@nuclear.energy.gov.*

SUPPLEMENTARY INFORMATION:

Background

As part of President Bush's Advanced Energy Initiative, DOE has launched the Global Nuclear Energy Partnership (GNEP). The broad goals of GNEP are described in the Report to Congress—Spent Nuclear Fuel Recycling Program Plan issued May 2006, *http://www.gnep.energy.gov/pdfs/snfRecyclingProgframPanMay2006.pdf.*

A major element of GNEP is the development and deployment of advanced nuclear fuel recycling technologies. In general, advanced recycling technologies focus on three operations:

(1) Separate commercial LWR SNF into its usable and waste components.

Spent nuclear fuel contains uranium, transuranics (plutonium and other long-lived radioactive elements), and fission products. The fission products are waste and make up less than five percent of the used fuel. Buildup of fission products within the fuel inhibits nuclear fission reactions so the spent fuel must be replaced with fresh fuel for continued operation of a nuclear reactor. The transuranics and uranium in SNF would be separated from the fission products and then fabricated into new fuel for a fast reactor to consume the transuranics and uranium while simultaneously recovering their energy content. The SNF recycling program would use advanced separation processes (e.g., Uranium Extraction Plus or other comparable processes).

(2) Fabricate and recycle fast reactor fuel containing transuranic elements.

Fabricating, testing, and qualifying fast reactor fuel containing transuranic and actinide elements (i.e., transmutation fuel), obtained from recycled spent fast reactor fuel, is required to provide fresh fuel for the reactor. After the qualification of transmutation fuel, the GNEP facilities would demonstrate recycle of fast

reactor transmutation fuel and eventually could include the construction of a separate transmutation fuel separations and fabrication facility.

(3) Convert transuranics into shorter-lived radioisotopes while producing electricity.

Fast reactors produce high-energy neutrons that can fission long-lived transuranics, thus converting the transuranics into shorter-lived radioisotopes. As the transuranics are consumed, significant energy is released that can be used to produce electricity from material that would otherwise be considered waste and potentially require disposal in a geologic repository.

The Department initially announced an approach that would demonstrate technologies from the laboratory at engineering scale, prior to a second phase of commercialization. This initial approach is described in the Report to Congress—Spent Nuclear Fuel Recycling Program Plan issued May 2006, *http://www.gnep.energy.gov/pdfs/snfRecyclingProgframPanMay2006.pdf.*

Following the announcement of the GNEP Program by the President, a number of foreign governments and private companies expressed interest in cooperating in the near-term with the Department in the development and deployment of advanced recycling technologies. Some of these entities indicated they are pursuing similar technologies and, in some cases, these technologies may be ready for deployment prior to those currently under development by the Department. In light of this information, DOE seeks to determine the feasibility of accelerating the development and deployment of advanced recycling technologies that would enable commercial scale demonstrations that meet GNEP objectives. These demonstrations would utilize industry expertise to build the well-understood stages of advanced technology for the separation of LWR SNF, and the construction and operation of a fast reactor, while designing in the modules for incorporating group separation of actinides, transmutation fuel production, burning, and recycling operations.

This approach would involve two simultaneous tracks: (1) Deployment of commercial scale facilities for which advanced technologies are available now or in the near future and (2) further research and development on transmutation fuels technologies. This two-track approach could result in two commercial scale facilities, one of which is the subject of this EOI. These facilities are:

- Consolidated Fuel Treatment Center (CFTC; subject of this EOI)—a facility to separate the usable uranium and transuranics from spent light-water reactor fuel for use in fabricating fast reactor fuel. During the second track the CFTC would be augmented or a separate transmutation fuel separations and fabrication facility would be constructed to separate and fabricate fast reactor transmutation fuel.
- Advanced Burner Reactor (ABR)—fast reactor to use transmutation fuel and consume transuranic elements within the fuel and generate electricity. The ABR is expected to be qualified with conventional fast reactor fuel. Subsequently, the ABR would be used to demonstrate the feasibility of recycling fast reactor transmutation fuel.

A third facility, the Advanced Fuel Cycle Facility (AFCF), will be designed and directed through DOE's national laboratories and will support development of the technologies required to separate and fabricate fast reactor transmutation fuel. The AFCF is not currently a subject of a Request for Expressions of Interest.

CFTC Characteristics

DOE prefers to constrain as little as possible this EOI on the fuel cycle pathway to meet GNEP goals. Industry's input is valuable in considering the ultimate technical and pragmatic configuration of GNEP's closed fuel cycle. Some rough parameters for considering the ultimate characteristics of a CFTC facility for the GNEP Technology Demonstration Program are set out below. They simply illustrate the type of information DOE is requesting in this EOI and respondents should not interpret the following information as a final decision from DOE on the CFTC's characteristics or the overall demonstration program. The responses to this EOI may significantly influence subsequent RFPs.

Desired CFTC General Characteristics

The complete CFTC would be designed to perform several key functions in support of GNEP technology development objectives, including:

- Separating reusable uranium and transuranics from spent light water reactor (LWR) fuel for use in fabricating fast reactor driver fuel. (An additional facility designed and directed through a DOE national laboratory will support development of the technologies required to separate and fabricate fast reactor transmutation fuel, i.e., fuel that is fabricated from uranium, plutonium, and other transuranics found in LWR spent fuel.)
- Demonstrating the separation of LWR and fast reactor SNF into their usable components and the fabrication of transmutation fuel from those components.
- Consuming transuranic elements in a fast reactor. See the Advanced Burner Reactor (ABR) EOI for a discussion of that element.
- Ensuring that facility designs meet U.S. standards for safeguards and security.

Developing this complete system to support GNEP remains the central objective, drawing upon the expertise and capabilities of industry and international partners to achieve it. Further,

- The CFTC shall safely and reliably perform its LWR spent fuel process storage and separations functions as well as providing safe and reliable ABR driver fuel fabrication capabilities. The CFTC shall be capable of being licensed by the U.S. Nuclear Regulatory Commission (NRC) and operated in accordance with NRC regulations. The CFTC shall incorporate design features and technologies to promote reliable system performance during normal operations and in response to postulated accident scenarios.
- The CFTC shall demonstrate improved spent fuel separations technologies. This shall be accomplished in a process whose end products are not pure plutonium or other weapons-grade fissile material. The spent fuel separations technology will be further enhanced by advanced safeguards and security monitoring technology.
- The CFTC will produce, through spent fuel separations, high-purity uranium for reuse as reactor fuel or disposal as low-level waste, transuranic fuel feed material for transmutation in a fast reactor, and fission products with reduced heat generation and radiotoxicity for long-term geologic disposal.
- The CFTC shall be designed such that the future cost of spent fuel receipt, separations process, product management, and fuel fabrication capabilities can be shown as an efficient component of an economical fuel cycle. It is desirable that the material remain throughout in as low a category as possible for attractiveness for use in a nuclear weapon and for safeguarding purposes.
- The CFTC shall fabricate the driver fuel (i.e., fuel for the initial startup core and subsequent refueling of the core in advance of the availability of transmutation fuel) for the ABR to initially generate power.

• CFTC technologies shall be capable of commercial deployment.

Example of Technical Characteristics of the CFTC

• Process storage capacity: Sufficient storage capacity should be included to support full-scale plant operation, including storage of spent fuel prior to separations as well as storage of the resulting separated material.

• Spent fuel separations throughput: Able to be increased to approximately 2,000 to 3,000 metric tons per year to support commercial operation.

• Separations technology: UREX+1a where major products include high-purity uranium, cesium and strontium, transuranics, spent fuel cladding hulls, and fission products. Alternative separation technologies with different product streams (e.g., different actinide separation efficiencies or distributions) may be proposed.

• Waste disposition strategies: Waste minimization is a priority and should focus on reducing radiotoxicity, half-life, heat generation, and minimize criticality concerns.

• Fast reactor driver fuel type: Oxide or metal based (depends on fuel type selected in related GNEP ABR EOI).

Geographic

• The SNF processing and fuel fabrication operations may be collocated with ABR.

• Existing DOE or commercial facilities or new facilities may be addressed in the response.

Regulatory

• Must comply with all environmental protection laws and regulations.

• Must be capable of being licensed under NRC regulations applicable to demonstration operations on privately owned land regardless of where the demonstration is sited.

Content of EOI

The following items identify the information that DOE is requesting in this EOI. All respondents are encouraged to provide information beyond that requested if it is believed to be beneficial to their responses.

1. Level of Interest and Proposed Scope of Interest

Please describe how you believe DOE could accelerate successful demonstration of SNF integrated recycling technologies to advance the goals of GNEP. Describe the approach that you believe should be taken to accomplish this goal, including its benefits and risks, and describe your level of interest or potential participation. Also, provide a description of what you believe your approach does to advance the broad goals of GNEP (as described, for example, in the Background section). In particular, for the CFTC, DOE is interested in:

a. What LWR spent fuel process storage capabilities, separations technology and throughput (initial and final), and fast sodium reactor driver fuel fabrication system characteristics would be proposed to achieve the CFTC mission?

b. What set of separations process technologies are sufficiently mature to implement immediately and what proposed technologies or components require additional developmental work (e.g., advanced centrifugal contactors, advanced monitoring instrumentation) to achieve the CFTC mission?

c. What are the key elements of the proposal's product and waste management strategies? Are there near-term strategies using existing technology as well as long-term strategies for improved waste minimization and product form as well as storage and disposition technologies envisioned? If so, specify the key elements of future improvements, their relative costs and their benefits.

d. In addition to advanced separation processes, what technology development could be pursued to support spent fuel recycling consistent with the goals of GNEP?

2. Proposed Roles of Parties Involved

Please identify who you believe the parties to such a venture should include and the role of each party. Parties could include U.S. Government and foreign government agencies, state and local government agencies, nongovernmental organizations, domestic and foreign commercial firms (e.g., Architect & Engineering (A&E) firms, component manufacturers, electric utility companies, etc.) or any other entity you may identify that fits into your proposed solution. Your statement should clearly identify the role each party would play in ensuring the success of your proposition, whether direct or indirect. Examples of roles include, but are not limited to, providing financing, guaranteeing financing, A&E services, construction, facility operations, program or project management, regulatory compliance support, and hardware vendor. Provide an assessment of the benefit to the U.S. Government and GNEP of your proposed parties and their roles. Also, provide a description of the benefits that would accrue to each of the parties in this venture. Benefits could include, but are not limited to, financial gain, intellectual property, market position, facilities, education, and advancing policy goals.

3. Resources

For each entity you have identified in Item 2 above, provide specifics describing the resources each party could provide to ensure the program's success. These resources may include, but are not limited to, financial, existing or new facilities, personnel (include a description of the type of personnel, e.g., technical, management, regulatory, financial, etc.), intellectual property, and leased equipment.

4. Proposed Contractual Vehicle

Please provide a description of the contractual vehicle(s) you feel should be employed in furtherance of your approach. Examples may include, but are not limited to, contracts, financial assistance, Cooperative Research and Development Agreements, loan guarantees, other transactional arrangements. Please limit your suggestions to those contractual authorities already granted to DOE or other government agencies you identify.

5. Areas of Technology Development Required for Potential Commercialization

Please identify what technical areas associated with your approach would benefit from additional research, development or demonstration activities, how and to what extent this research and development (R&D) would mitigate technical or technology risk, estimated timeframes to accomplish this R&D, parties performing the activities, and other technical issues that need to be addressed.

6. Government Furnished Data/ Technology/Equipment

Describe what, if any, government furnished data, technology, or equipment you would require to accomplish your defined approach. State whether you have any existing rights or license for the use of the data or technology, and if not, how you would pursue acquiring such rights.

Confidentiality

Confidential or business sensitive information contained in the submission must be identified and marked accordingly. DOE will protect this information from public disclosure to the extent permitted by law.

This EOI is not a formal solicitation requesting proposals and does not represent a commitment by the

Government to award a contract. The Government does not intend to formally respond to information submitted in response to this EOI. The Government is not responsible for costs incurred to submit a response to this EOI, conducting other activities associated with pre-solicitation planning, or submitting a proposal in response to a solicitation, if issued.

Issued in Washington, DC, on July 31, 2006.

Dennis R. Spurgeon,

Assistant Secretary for Nuclear Energy, Office of Nuclear Energy.

[FR Doc. E6–12646 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Biological and Environmental Research (BER); Federal Interagency Steering Committee on Multimedia Environmental Modeling

AGENCY: Office of Science; Biological and Environmental Research (BER), Department of Energy, (DOE).

ACTION: Notice of open meeting.

SUMMARY: The annual public meeting of the Federal Interagency Steering Committee on Multimedia Environmental Modeling (ISCMEM) will convene to discuss new operational initiatives for FY 2007 as a result of the revised Memorandum of Understanding (MOU) among the participating agencies.

DATES: August 24, 2006. Time: 9:30 a.m. to 5 p.m.

ADDRESSES: The American Geophysical Union (AGU) headquarters building, 2000 Florida Avenue, NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be faxed or E-mailed to: Dr. Robert T. Anderson, ISCMEM Chair, Office of Biological and Environmental Research SC–23.4 / Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290. Tel: 301–903–5549. Fax: 301–903–4154. *Todd.Anderson@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: Nine Federal agencies have been cooperating under a MOU on the research and development of multimedia environmental models for the last 5 years. The MOU establishes a framework for facilitating cooperation and coordination among the following agencies (the specific research organization within the agency is in parenthesis): U.S. Army Corps of Engineers (Engineer Research and Development Center): U.S. Department of Agriculture (Agricultural Research Service); U.S. Department of Agriculture (Natural Resources Conservation Service); U.S. Department of Energy (Office of Biological and Environmental Research); U.S. Environmental Protection Agency; U.S. Geological Survey; U.S. National Oceanographic and Atmosphere Administration; and U.S. Nuclear Regulatory Commission (Office of Nuclear Regulatory Research); U.S. Bureau of Reclamation. These agencies are cooperating and coordinating in the research and development (R&D) of multimedia environmental models, software and related databases, including development, enhancements, applications and assessments of site specific, generic, and process-oriented multimedia environmental models as they pertain to human and environmental health risk assessment. Multimedia model development and simulation supports interagency interests in risk assessment, uncertainty analyses, water supply issues and contaminant transport. This MOU was just renewed by member agencies ensuring another 5 years of continuing collaboration and cooperation among the participating agencies in these areas.

Purpose of the Public Meeting: The annual public meeting provides an opportunity for the scientific community, other Federal and State agencies, and the public to be briefed on ISCMEM activities and their initiatives for the upcoming year, and to discuss technological advancements in multimedia environmental modeling.

Proposed Agenda: The ISCMEM Chair will open the meeting with a brief overview of the goals of the MOU, the activities of ISCMEM and changes in organizational operations as a result of the revised and renewed ISCMEM MOU. This introduction will be followed by series of invited presentations throughout the morning session focusing on topics of mutual interest to ISCMEM participants. The afternoon session will be largely devoted to discussing future goals and projects that will set the stage for collaborative interactions among ISCMEM participating agencies for the next 5 years. A detailed agenda with presentation titles and speakers will be posted on the MOU public Web site: *http://www.ISCMEM.org.*

Meeting Access: The headquarters of the American Geophysical Union (AGU) is located at 2000 Florida Avenue, NW., Washington, DC 20009. The most convenient transportation to the meeting venue is via Metro. Please take Metro to the Dupont Circle Metro stop on the Red Line. Take the ''Q'' Street exit of the Dupont Circle station. Upon exiting the Metro station proceed North on Connecticut Avenue for about 3 blocks. Turn right onto Florida Avenue for about one-half block. AGU building is on the right. Please inform the security personnel upon entering the building that you are attending the public meeting on multimedia environmental modeling. The meeting room is on the ground floor to your left as you enter the building.

Robert T. Anderson,

Chair, Federal Interagency Steering Committee on Multimedia Environmental Modeling.

[FR Doc. E6–12748 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Continuation of Forms EIA–182, ''Domestic Crude Oil First Purchase Report,'' and EIA–856, ''Monthly Foreign Crude Oil Acquisition Report''

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of Continuation of Forms EIA–182, ''Domestic Crude Oil First Purchase Report,'' and EIA–856, ''Monthly Foreign Crude Oil Acquisition Report.''

SUMMARY: The Energy Information Administration (EIA) will continue the monthly collection of data on the Forms EIA–182, ''Domestic Crude Oil First Purchase Report,'' and EIA–856, ''Monthly Foreign Crude Oil Acquisition Report,'' through the reporting of October 2006 data that is due to EIA by November 30, 2006.

DATES: Data collection on Forms EIA–182 and EIA–856 will continue though November 30, 2006.

ADDRESSES: Inquiries about the continuation of Forms EIA–182 and EIA–856 should be directed to Susan Harris at the Energy Information Administration, EI–42, Forrestal Building, Mail Stop: 2E–050, U.S. Department of Energy, Washington, DC 20585, telephone: (202) 586–8384, E-mail address: *susan.harris@eia.doe.gov* or fax number: (202) 586–1076.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Susan Harris at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

II. Current Actions

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

In the March 23, 2006, **Federal Register** (71 FR 14690), EIA announced its plan to discontinue the collection of Forms EIA–182 and EIA–856 after the data for July 2006 were collected. Given that no final decision has yet been made by the Congress regarding EIA's Fiscal Year 2007 budget, EIA has decided to continue collecting both forms monthly through the reporting of October 2006 data that is due to EIA by November 30, 2006, when the current Office of Management and Budget approval of all EIA petroleum marketing surveys is scheduled to expire.

II. Current Actions

EIA will continue collecting the Forms EIA–182, ''Domestic Crude Oil First Purchase Report,'' and EIA–856, ''Monthly Foreign Crude Oil Acquisition Report,'' though November 30, 2006.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, August 1, 2006.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E6–12746 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–422–000]

Cameron LNG, LLC, Notice of Application

July 28, 2006.

Take notice that on July 18, 2006, as supplemented on July 27, 2006, Cameron LNG, LLC (Cameron LNG) filed an application pursuant to section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's Rules and Regulations for approval of proposed expansion and modifications of its liquefied natural gas (LNG) import terminal. The Commission has previously granted approvals for Cameron LNG's import terminal, which is now under construction.[1]

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 ''eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the application may be directed to Stacy Van Goor, Director, Federal Regulatory Affairs, Sempra Global, 101 Ash Street HQ08C, San Diego, California 92101. Telephone number is 619–696–2264. Facsimile number is 619–696–2500. E-mail address is *svangoor@sempraglobal.com.*

The application seeks authority to expand the LNG terminal facilities previously approved and, in particular: (i) To increase the sendout rate of the terminal to 2,650,000 Mcf/d from the previously authorized send out rate of 1,500,000 Dth/d; (ii) to increase LNG storage tank capacity from 480,000 m^3 to 640,000 m^3 through the addition of a fourth storage tank; (iii) to increase the LNG unloading rate at each ship berth; (iv) to increase the send out rate to 1,800,000 Mcf/d from the previously certificated send out rate of 1,500,000 Dth/d, on an interim basis, while the proposed expansion facilities are being constructed, and (v) to modify the Btu control unit to include an option for diluting the send out gas with an inert gas stream composed of nitrogen and oxygen in addition to, or as an alternative to the liquids-stripping facility previously identified by Cameron LNG in earlier applications.

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 below listed comment date, 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.

Please note that on February 10, 2006, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for Cameron LNG's above proposed LNG terminal expansion project in Docket No. PF06–10–000. The environmental pre-filing review of Cameron LNG's proposal has been underway since December 2005 in that docket. However, Docket No. PF06–10–000 is now closed and all further

[1] See Hackberry LNG Terminal, L.L.C., 101 FERC 61,294 (2002) and Cameron LNG, LLC; 104 FERC 61,269 (2003); 111 FERC 61,018 (2005), and 115 FERC 61,229 (2006).

environmental comments should reference the pending application in Docket No. CP06–422–000.

Motions to intervene, protests and comments 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: August 21, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–12711 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–444–000]

Egan Hub Storage, LLC; Notice of Proposed Changes in FERC Gas Tariff

July 28, 2006.

Take notice that on July 25, 2006, Egan Hub Storage, LLC (Egan Hub) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing to be effective August 25, 2006.

Egan Hub states that copies of its filing have been mailed to all affected 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. E6–12710 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–435–000]

Northern Natural Gas Company; Notice of Petition for Limited Waiver of Tariff Provisions

July 28, 2006.

Take notice that on July 14, 2006, Northern Natural Gas Company (Northern) filed a Petition for Limited Waiver of Tariff Provisions. Northern states that it seeks to waive section 32(f) of its general terms and conditions in order to allow Northern to resolve a 17,771 Dt. imbalance cash-out transaction for Aquila, Inc., which was intended to be resolved through imbalance-to-storage but never communicated.

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 August 4, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–12721 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–64–000]

Central New York Oil and Gas Company, L.L.C; Notice of Availability of the Environmental Assessment for the Proposed Stagecoach Phase II Expansion Project

July 28, 2006.

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 Central New York Oil and Gas Company, L.L.C. (CNYOG) in the above-referenced dockets.

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 CNYOG's proposed underground gas storage facilities and associated pipeline

facilities. The proposed project is associated with CNYOG's existing Stagecoach Storage Project which has been in operation since 2002 and has a working storage capacity of 13.25 billion cubic feet (Bcf). The Stagecoach Phase II Expansion Project would convert four existing natural gas production fields that are nearly depleted into storage reservoirs in Bradford County, Pennsylvania and Tioga County, New York. The facilities required by the project would include: An additional 12,000-horsepower electric-drive centrifugal compressor unit; eight storage injection/withdrawal wells; approximately 6.7 miles of 6-inch- and 20-inch-diameter gathering pipeline and associated rights-of-way; eight wellhead meter stations and other appurtenant facilities, including isolation valves, separators, measurement and communication equipment; about 4.4 miles of access roads not contained within pipeline or well easements; and a 9.3-mile-long, 20-inch-diameter lateral (North Lateral) from the existing compressor station to the proposed Millennium Pipeline located north of the town of Owego, New York.[1]

The purpose of the project is to support increased demand for natural gas service in the northeast United States. The connection and integration of the additional reservoirs would essentially double the working storage capacity of the Stagecoach Facility from 13.25 Bcf to about 26.25 Bcf. The increase in storage capacity is expected to extend the facility's capability to handle withdrawals at a maximum rate of 500,000 million cubic feet (Mcf)/day from the existing level of 12 consecutive days to 20 consecutive days.

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, interested individuals, 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: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP06–64–000;
- Label one copy of the comments for the attention of the Gas Branch 1, PJ–11.1; and
- Mail your comments so that they will be received in Washington, DC on or before August 28, 2006.

Please note that 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 an account which can be created on-line.

Comments will be considered by the Commission but will not serve to make the commentor 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).[2] 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 (*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 *www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–12712 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

[1] The Millennium Pipeline Project was approved by the Commission on September 19, 2002 in Docket Nos. CP98–150–000. Construction of the Millennium Pipeline has not commenced to date, and Millennium Piepline L.P. is currently seeking Commission approval for design and route changes to its project in Docket Nos. CP98–150–006 and CP98–150–007.

[2] 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

[Project No. 1971–079]

Idaho Power Company; Notice of Availability of the Draft Environmental Impact Statement for the Hells Canyon Hydroelectric Project

July 28, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Hells Canyon Project (FERC No. 1971), located on the Snake River in Washington and Adams, Counties, Idaho, and Wallowa and Baker Counties, Oregon, and has prepared a Draft Environmental Impact Statement (draft EIS) for the project. About 5,270 acres of Federal lands administered by the Forest Service (Payette and Wallowa-Whitman National Forests and Hells Canyon National Recreational Area) and the Bureau of Land Management are included within the project boundary.

The draft EIS contains staff evaluations of the Idaho Power Company's proposal and the alternatives for relicensing the Hells Canyon Project. The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the draft EIS is available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426, 1–866–208–3676,

public.referenceroom@ferc.gov. The draft EIS also may be viewed on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

CD versions of the draft EIS have been mailed to everone on the mailing list for the project. Copies of the CD, as well as a limited number of paper copies, are available from the Public Reference Room identified above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Comments should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must be filed by October 3, 2006, and should reference Project No. 1971–079. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link.

Anyone may intervene in this proceeding based on this draft EIS (18 CFR 380.10). You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

In addition to or in lieu of sending written comments, you are invited to attend public meetings that will be held to receive comments on the draft EIS. Two meetings have been scheduled for Thursday night, September 7, and Friday morning, September 8, 2006, in Boise, Idaho. Details of these public meetings, and other meetings yet to be scheduled, will be included in a separate notice, as well as posted on the Commission's Web site (*www.ferc.gov*).

For further information, contact Alan Mitchnick at (202) 502–6074, *alan.mitchnick @ferc.gov;* or Emily Carter at (202) 502–6512, *emily.carter@ferc.gov.*

Magalie R. Salas,
Secretary.

[FR Doc. E6–12717 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–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. CP06–412–000]

Puget Sound Energy, Inc., Notice of Intent To Prepare an Environmental Assessment for the Proposed Jackson Prairie Storage Deliverability Expansion Project, Request for Comments on Environmental Issues

July 28, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Jackson Prairie (JP) Storage Deliverability Expansion Project involving abandonment, construction, and operation of facilities by Puget Sound Energy, Inc. (Puget) in Lewis County, Washington.[1] The Commission will use the EA in its decision-making process to determine whether or not to authorize the project. This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the project. Your input will help us determine the issues that need to be evaluated in the EA. Please note that the scoping period will close on August 28, 2006.

This notice is being sent to potentially affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American Tribes, other interested parties; local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

[1] Puget's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commmission's regulations.

If you are a landowner receiving this notice, you may be contacted by a Puget representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

Summary of the Proposed Project

Puget is seeking authorization to design, construct, operate, and maintain the following new facilities at the existing JP Storage Field in Lewis County, Washington:

- Up to ten new withdrawal/injection wells with associated well connect pipeline;
- About 0.8 mile of new 24-inch-diameter pipeline to loop a portion of the existing gathering system;
- One new 10,480-horsepower (hp) compressor unit at the existing JP Compressor Station; and
- Upgrades and auxiliary facility additions at both the JP Compressor Station (total 1,551 hp increase) and JP Meter Station.

Puget also requests to abandon various facilities that would be replaced by the proposed upgraded facilities.

The existing JP Storage Field interconnects with Northwest Pipeline Corporation's transmission system which provides natural gas supplies to markets in the Pacific Northwest. Puget's proposed new and upgraded facilities would allow it to increase maximum firm withdrawal deliverability of the JP Storage Field from 850 million cubic feet per day (MMcfd) to 1,150 MMcfd. Puget is expected to commence construction for the drilling of up to five of the new wells and installation of associated well connect lines in the spring of 2007. Production rate tests on the initial wells would be conducted to help determine the minimum number of wells required to achieve the desired 300 MMcfd. The remaining facilities are anticipated to be constructed in 2008.

The general location of Puget's proposed facilities is shown on the map attached as Appendix 1.[2]

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of this notice, other than appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call

Continued

Land Requirements for Construction

Puget states that all of the proposed activities associated with this project would occur on private lands owned or leased by the JP Storage Field. About 29.66 acres of land would be affected during construction and about 22.23 acres would be permanently maintained for operation of the proposed facilities. Six of the new withdrawal well sites would be located on new graveled well pads covering an area of 150 feet by 250 feet for drilling operations; the remaining four well sites would be co-located on two new graveled well pads which would require an area of 150 feet by 300 feet.

The new 24-inch loop gathering line would be constructed within a 90-foot-wide right-of-way (ROW); and Puget is proposing to maintain a 75-foot-wide permanent ROW along the pipeline route. The total surface disturbance for the well connect lines and well pads would require about 12.22 acres. These new well connect lines would range from 6- to 10-inch-diameter pipeline and would tie-in to the JP gathering line.

Puget would generally use established access roads; however, one new access road would need to be constructed and improvements on an existing two-track road would be necessary. Most modifications to the JP Compressor Station would occur within the station boundaries; however, the station would need to be expanded 0.51 acre to accommodate the new gas coolers. All of the modifications to the JP Meter Station would occur within the existing footprint. The existing Chehalis Compressor Station, which is about 2 miles southwest of the JP Storage Field, would be used as a pipe storage yard for the project.

The EA Process

We [3] are preparing the EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA.

By this notice, we are also asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments below (see Public Participation).

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

In the EA, we will discuss impacts that could occur as a result of the construction and operation of the project. We will also evaluate possible alternatives to the proposed project or portions of the project.

We have already identified some issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Puget. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential impacts on local Noise Quality associated with construction and operation.
- Potential impacts on Water Use and Quality.
- Potential impacts on Land Use from a 75-foot-wide permanent ROW.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. 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 letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of *Gas Branch 1*.
- Reference Docket No. CP06–412–000.
- Mail your comments so that they will be received in Washington, DC on or before August 28, 2006.

Please note that 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 an account which can be created on-line.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's e-Filing system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).[4] 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 environmental comments considered.

Additional Information

Additional information about the project is available from the

(202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'', refer to the environmental staff of the Office of Energy Projects (OEP).

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*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 *www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–12722 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. PF06–28–000

Southeast Supply Header, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Southeast Supply Header Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

July 28, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will identify and address the environmental impacts that could result from the construction and operation of the Southeast Supply Header Project proposed by Southeast Supply Header, LLC (SESH) a partnership between Duke Energy Gas Transmission and CenterPoint Gas Transmission.

In order to assist staff with the identification of environmental issues and to comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), a thirty day scoping period has been opened to receive comments on the proposed project. Please note that the scoping period for this project will close on August 28, 2006.

Additionally, as part of the scoping process, we will also hold three public meetings, as described below, to receive comments on the proposed project.

Date and time	Location
Monday—August 21, 2006, 7 p.m. to 9 p.m. (CST)	Multipurpose Building in Gallman, West Gallman Road, Gallman, Mississippi, Telephone: (601) 953–9007.
Tuesday—August 22, 2006, 7 p.m. to 9 p.m. (CST)	Hattiesburg Lake Terrace, Convention Center, One Convention Center Plaza, Hattiesburg, Mississippi 39042, Telephone: (800) 638–6877.
Thursday—August 24, 2006, 7 p.m. to 9 p.m. (CST)	Lucedale Rocky Creek Inn, 120 Woods Ridge Road, Lucedale, Mississippi 39452, Telephone: (601) 947–6900.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers; all of which are encouraged to submit comments on the proposed project. Details on how to submit comments are provided in the Public Participation section of this notice.

If you are a landowner receiving this notice, you may be contacted by a SESH representative about the acquisition of an easement to construct, operate, and maintain the proposed project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the FERC's proceedings.

Summary of the Proposed Project

SESH proposes to construct, own and operate a new 36-inch-diameter natural gas pipeline and associated facilities that would be capable of receiving and transporting about 1.0 billion cubic feet of natural gas per day in Richland and Madison Parishes, Louisiana; Warren, Claiborne, Hinds, Copiah, Simpson, Lawrence, Jefferson Davis, Covington, Jones, Forrest, Perry, Greene, George, and Jackson Counties, Mississippi; and Mobile County, Alabama.

The general location of the proposed pipeline is shown in the figure included as Appendix 1.[1]

Specifically, SESH proposes to construct and operate the following facilities:

- Approximately 270 miles of 36-inch-diameter pipeline beginning in Richland Parish, Louisiana and ending in Mobile County, Alabama;
- Three natural gas compressor stations: Delhi Compressor Station in Richland Parish (30,000 hp), Louisiana; Gwenville Compressor Station in Jefferson Davis County, Mississippi (15,000 hp) and the Lucedale Compressor Station in George County, Mississippi (15,000 hp);
- Three booster compressor stations at the Texas Eastern Transmission LP (TETLP) meter and regulation (M&R) Station, at the Transcontinental Gas Pipeline Corporation (Transco) M&R Station, and at the Tennessee Gas Pipeline Company (Tennessee Gas) M&R Station in Copiah, Jefferson Davis and Forrest Counties, Mississippi;
- Twelve natural gas pipeline interconnects and M&R Stations; and
- Three pig launching and receiving facilities and several mainline valves.

SESH proposes to have the project constructed and operational by June 2008.

Land Requirements for Construction

As proposed, the typical construction right-of-way for the project pipeline would be 100 feet wide. Following construction, SESH has proposed to retain a 50-foot-wide permanent right-of-way for operation of the project.

[1] The appendices referenced in this notice are not being printed in the **Federal Register**.

Additional, temporary extra workspaces beyond the typical construction right-of-way limits may also be required at certain feature crossings (e.g., roads, railroads, wetlands, or waterbodies), in areas with steep side slopes, or in association with special construction techniques. In residential areas, wetlands, and other sensitive areas, the construction right-of-way width would be reduced as necessary to protect homeowners and environmental resources.

Based on preliminary information, construction and operation of the proposed project facilities would affect about 3,789 acres of land. Following construction, about 1,616 acres would be maintained as permanent right-of-way, and about 120 acres of land would be maintained as new aboveground facility sites. The remaining 2,053 acres of temporary workspace (including all temporary construction rights-of-way, extra workspaces, and pipe storage and contractor yards) would be restored and allowed to revert to its former use.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from the approval of an interstate natural gas pipeline. The FERC will use the EIS to consider the environmental impact that could result if the CEGT project is authorized under section 7 of the Natural Gas Act.

NEPA also requires us to discover and address concerns the public may have about proposals to be considered by the Commission. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. With this Notice of Intent, the Commission staff is requesting public comments on the scope of the issues to be addressed in the EIS. All comments received will be considered during preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources;
- Wetlands and vegetation;
- Fish and wildlife;
- Threatened and endangered species;
- Land use, recreation, and visual resources;
- Air quality and noise;
- Cultural resources;
- Socioeconomics;
- Reliability and safety; and
- Cumulative impacts.

In the EIS, we will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on affected resources.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; commentors; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. We will consider all comments on the final EIS before we make our recommendations to the Commission. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this notice.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under the Commission's Pre-filing Process. The purpose of the Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

With this notice, we are asking Federal, State, and local governmental agencies with jurisdiction and/or special expertise with respect to environmental issues, especially those identified in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments provided in Appendix 2.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified several issues that we think deserve attention based on a preliminary review of the project site and the facility information provided by CEGT. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential effects on prime farmland and erodable soils.
- Potential impacts to perennial and intermittent waterbodies, including waterbodies with Federal and/or State designations/protections.
- Evaluation of temporary and permanent impacts on wetlands and development of appropriate mitigation.
- Potential impacts to fish and wildlife habitat, including potential impacts to federally and state-listed threatened and endangered species.
- Potential visual effects of the aboveground facilities on surrounding areas.
- Potential impacts and potential benefits of construction workforce on local housing, infrastructure, public services, and economy.
- Potential impacts to local air and noise quality associated with construction and operation.
- Public safety and potential hazards associated with the transport of natural gas.
- Alternative alignments for the pipeline route and alternative sites for the compressor stations.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposed project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of Gas Branch 2, DG2E.
- Reference Docket No. PF06–28–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before August 28, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable timeframe in our environmental analysis of this project. The Commission strongly encourages electronic filing of any

comments in response to this Notice of Intent. For information on electronically filing comments, please see the instructions on the Commission's Web site at *www.ferc.gov*.

The public scoping meetings are designed to provide another opportunity to offer comments on the proposed project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of each meeting will be generated so that your comments will be accurately recorded.

Once SESH formally files its application with the Commission, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you received this notice, you are on the environmental mailing list for this project. If you do not want to send comments at this time, but still want to remain on our mailing list, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be removed from the Commission's environmental mailing list.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372). Additional information can also be found on the Internet at *www.ferc.gov*. The ''eLibrary link'' on the FERC Web site provides access to documents submitted to and issued by the Commission, such as comments, orders, notices and rulemakings. Once on the FERC Web site, click on the ''eLibrary link,'' select ''General Search'' and in the ''Docket Number'' field enter the project docket number excluding the last three digits (PF06–28). When researching information be sure to select an appropriate date range. In addition, the FERC now offers a free e-mail service called eSubscription that 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. To register for this service, go to *www.ferc.gov/esubscribenow.htm*.

Public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

For assistance with the FERC Web site or with eSubscription, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659.

Finally, SESH has established an Internet Web site for this project at *www.duke-energy.com/companies/degt/projects/sesh/*. The Web site includes a description of the project, a map of the proposed pipeline route, and answers to frequently asked questions. You can also request additional information or provide comments directly to SESH at 1–888–312–7374.

Magalie R. Salas,

Secretary.

[FR Doc. E6–12720 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 28, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12713–000.

c. *Date filed:* July 14, 2006.

d. *Applicant:* Reedsport OPT Wave Park, LLC.

e. *Name of Project:* Reedsport OPT Wave Park Project.

f. *Location:* The project would be located in the Pacific Ocean about 3 miles off shore in Douglas County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Charles F. Dunleavy, Reedsport OPT Wave Park, LLC, 1590 Reed Road, Pennington, NJ 08534, phone: (609)–730–0400.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 200 Power Buoys having a total installed capacity of 50 megawatts, (2) a proposed 13.8 kilovolt transmission line; and (3) appurtenant facilities. The project is estimated to have an annual generation of 153.3 gigawatt-hours per-unit per-year, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the

particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR § 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–12713 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

July 28, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12714–000.

c. *Date filed:* July 14, 2006.

d. *Applicant:* H2O Providers L.L.C.

e. *Name and Location of Project:* The proposed Phantom Canon Hydroelectric Pumped Back Storage/Hydroelectric Generation Project would be located on the Brush Hollow Creek of the Arkansas River in Fremont County in Penrose, Colorado.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mark Morley, 15 North Nevada Ave., Colorado Springs, CO 80903, (719) 499–4390.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12714–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Existing Facilities and Proposed Project:* The proposed project would consist of the following new facilities: (1) An upper reservoir with a maximum storage capacity of 58,000 acre-feet and a surface area of 1,114 acres at normal water surface elevation of 5,600 feet above mean sea level (msl), impounded by an earthen dam, 70-foot-high and 1,400-foot-long; (2) a 38,000-foot-long, 4-foot-diameter reservoir river diversion concrete-reinforced pipeline; (3) a 21,750 or 17,825-foot-long, 4-foot-diameter steel pipe and/or steel- or concrete-lined penstock; (4) a powerhouse with two 180–220-megawatt pump/turbines; (5) a lower reservoir with a maximum storage capacity of 10,000 acre-feet and a surface area of 200 acres at maximum water surface elevation of 5,175 feet msl, impounded by a 140-foot-high, 3,800-foot-long earthen dam; (8) a 9-mile-long, 115-kilovolt transmission line. The proposed project would have an annual generation of 280,800–457,600 MWh.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction 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 ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–12714 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 28, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12715–000.

c. *Date filed:* July 18, 2006.

d. *Applicant:* Fairlawn Hydroelectric Company LLC.

e. *Name of Project:* Jennings Randolph Dam Project.

f. *Location:* The project would be located on the Potomac River, in Mineral County, West Virginia, and Garrett County, Maryland. The project would use the Jennings Randolph Dam owned by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. M. Clifford Phillips, Fairlawn Hydroelectric Company LLC, 150 North Miller Road, Suite 450C, Fairlawn, OH 44333, Phone (333) 869–8451.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would use the U.S. Army Corps of Engineer's Jennings

Randolph Dam and consist of: (1) A proposed powerhouse containing two generating units with a total installed capacity of 10.5 megawatts, (2) a proposed 4-mile-long, 14.7-kilovolt transmission line; and (3) appurtenant facilities. The project would have an annual generation of 48 gigawatt hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''COMPETING APPLICATION'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–12715 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 28, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12716–000.

c. *Date filed:* July 18, 2006.

d. *Applicant:* City and Borough of Sitka Electric Department.

e. *Name of Project:* Lake Diana Project.

f. *Location:* The project would be located on Lake Diana in Sitka, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* John Stein, City and Borough of Sitka Electric Department, 100 Lincoln Street, Sitka, AK 99835, phone: (907) 747–3294.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) The existing natural lake with surface area of 470 acres with a storage capacity

of 40,000 acre-feet and normal water surface elevation of 1,728 feet mean sea level, (2) a proposed lake tap intake structure, (3) a proposed 4,000-foot-long, 8-foot-diameter tunnel, (4) a proposed 10,000-foot-long, 4-foot-diameter steel above ground penstock, (5) a proposed powerhouse containing a generating unit with installed capacity of 7 megawatts, (6) a proposed 8-mile-long, 69 kilovolt transmission line; and (7) appurtenant facilities. The project is estimated to have an annual generation of 45 gigawatt-hours, which would be used for sale to its customers.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–12716 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2101–074]

Sacramento Municipal Utility District; Notice of Application and Applicant-Prepared EA Accepted for Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

July 28, 2006.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New—Major Modified License.

b. *Project No.:* 2101.

c. *Date Filed:* July 15, 2005.

d. *Applicant:* Sacramento Municipal Utility District.

e. *Name of Project:* Upper American River Project.

f. *Location:* On the Rubicon River, Silver Creek, and South Fork of the American River near Placerville, California. The project affects 6,375 acres of Federal land administered by the El Dorado National Forest and 54 acres of Federal land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* David Hanson, Project Manager, Sacramento Municipal Utility District, 6301 S Street, Sacramento, California 95817–1899. Phone: 916–732–6703 or e-mail: *dhanson@smud.org.*

i. *FERC Contact:* Jim Fargo at (202) 502–6095, or e-mail: *james.fargo@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing.

l. *Description of project:* The project is located on the west slope of the Sierra Nevada Mountain Range, in El Dorado and Sacramento counties. The proposed project would be comprised of eight developments; seven of which are existing developments (Loon Lake, Robbs Peak, Jones Fork, Union Valley, Jaybird, Camino, and Slab Creek/White Rock) constructed by SMUD from 1959 through 1985 under the initial FERC license, and one of which would be a new pumped storage development (Iowa Hill) proposed by SMUD to be constructed by 2015. Nearly all of the land surrounding the project reservoirs within the FERC Project Boundary is owned by the United States and administered by the Forest Service as part of the Eldorado National Forest (ENF). There are also several project-related recreation facilities, which are owned and operated by the ENF, at Loon Lake, Gerle Creek, Union Valley, and Ice House reservoirs. These recreation facilities are not project features.

• *Loon Lake Development*—(1) Rubicon Dam—A 36-foot-high by 644-foot-long, concrete gravity main diversion dam located on the Rubicon River, and a concrete gravity auxiliary dam that is 29-foot-high by 553-foot-long. These structures create the Rubicon Reservoir; (2) Rockbound Tunnel—A 0.2-mile-long, 13-foot-diameter unlined horseshoe tunnel that diverts water from Rubicon Reservoir to Buck Island Reservoir via Rockbound Lake (a non-project facility) located on Highland Creek; (3) Buck Island Dam—A concrete gravity diversion dam located on the Little Rubicon River that is 23-feet-high by 293-feet-long, and a 15-foot-high by 244-foot-long concrete gravity auxiliary dam. These structures create Buck Island Reservoir; (4) Buck-Loon Tunnel—A 1.6-mile-long, 13-foot-diameter unlined modified horseshoe tunnel that diverts water from Buck Island Reservoir to Loon Lake Reservoir; (5) Loon Lake Dam—A rockfill dam on Gerle Creek that is 0.4-mile-long by 108-feet-high, with a 250-foot-long side channel spillway on the right bank, and a 910-foot-long by 95-foot-high rockfill auxiliary dam, and an earthfill dike. These create Loon Lake Reservoir; (6) Loon Lake Penstock—A 0.3-mile-long, 14-foot-diameter concrete-lined horseshoe tunnel; 10-foot-diameter concrete lined vertical shaft; and 8.5-foot-diameter steel lined tunnel that extends from Loon Lake Reservoir to Loon Lake Powerhouse; (7) Loon Lake Powerhouse—An underground powerhouse, located over 1,100 feet below the surface of the Loon Lake Reservoir, consisting of one turbine with a rated capacity of 70,479 kW at best gate opening and one generator rated at 85,215 kW, with powerhouse maximum capability of 82,000 kW; (8) Loon Lake Tailrace Tunnel—A 3.8-mile-long, 18-foot diameter unlined horseshoe tunnel that runs from Loon Lake Powerhouse and discharges into Gerle Creek Reservoir; and (9) Transmission Lines—Two 69 kV overhead transmission lines: one extending to the Robbs Peak switchyard via the 7.9-mile-long Loon Lake-Robbs Peak Transmission Line, and the other extending to the Union Valley Switchyard via the 12.4-mile-long Loon Lake-Union Valley Transmission Line.

• *Robbs Peak Development*—(1) Gerle Creek Dam—A 58-foot-high, 444-foot-long concrete gravity overflow structure located on Gerle Creek, upstream of its confluence with SFRR, incorporating the intake of Gerle Creek Canal in its left abutment, creating Gerle Creek Reservoir; (2) Gerle Creek Canal—An above ground canal, 22-foot-wide and 19-foot-deep, extending 1.9 miles from Gerle Creek Reservoir to Robbs Peak Reservoir. It is partially lined with gunite; (3) Robbs Peak Dam—A 44-foot-high, 320-foot-long concrete gravity overflow structure, with 12 steel bulkhead gates, all 6.2-foot-high, on the spillway crest, located on the SFRR upstream of its confluence with Gerle Creek, that forms Robbs Peak Reservoir; (4) Robbs Peak Tunnel—A 3.2-mile-long, 13-foot-diameter unlined horseshoe and 10-foot-diameter lined diversion tunnel from Robbs Peak Reservoir to Robbs Peak Penstock; (5) Robbs Peak Penstock—A 9.75-to 8.5-foot-diameter, 0.4-mile-long steel penstock from Robbs Peak Tunnel to Robbs Peak Powerhouse; (6) Robbs Peak Powerhouse—Located on the northeast shore of Union Valley Reservoir, equipped with one turbine that has a rated capacity at best gate opening of 28,125 kW, and one generator rated at 29,700 kW, with maximum capability of 29,000 kW; and (7) Robbs Peak-Union Valley Transmission Line—A 6.8-mile-long, 69 kV overhead line that connects the Robbs Peak switchyard to the Union Valley switchyard.

• *Jones Fork Development*—(1) Ice House Dam—A rockfill dam located on the South Fork Silver Creek, 0.3-mile-long and 150-foot-high, incorporating a concrete ogee spillway with radial gates, and two auxiliary earthfill dikes; these create the Ice House Reservoir; (2) Jones Fork Tunnel—A 0.3-mile-long, 8-foot-diameter horseshoe concrete- and steel-lined tunnel from Ice House Reservoir to the Jones Fork Penstock; (3) Jones Fork Penstock—A 1.6-mile-long, 6-foot-diameter steel and concrete penstock from Jones Fork Tunnel to the Jones Fork Powerhouse; (4) Jones Fork Powerhouse—Contains a turbine with a rated capacity at best gate opening of 10,400 kW, and one generator rated at 11,495 kW, located on the southeast shore of Union Valley Reservoir; with maximum capability of 11,500 kW; and (5) Jones Fork-Union Valley Transmission Line—A 69 kV, 4.0-mile-long overhead transmission line from the Jones Fork switchyard to the Union Valley switchyard.

• *Union Valley Development*—(1) Union Valley Dam—An earthfill dam located on Silver Creek, 0.3-mile-long and 453-feet-high, incorporating a concrete ogee spillway with radial gates, creating Union Valley Reservoir; (2) Union Valley Tunnel—A 268-foot-long, 11-foot-diameter concrete-lined tunnel with an approximately 10-foot-diameter steel penstock in part of the tunnel and connecting Union Valley Reservoir with Union Valley Powerhouse; (3) Union Valley Penstock—A 0.3-mile-long, 10-foot-diameter steel penstock that conveys water from the outlet of the Union Valley Tunnel to the Union

Valley Powerhouse; (4) Union Valley Powerhouse—The powerhouse is equipped with one turbine with a rated capacity at best gate opening of 40,074 kW, and one generator rated at 44,400 kW, located at the base of Union Valley Dam; with maximum capability of 46,700 kW; and (5) Transmission Lines—Two 230 kV overhead transmission lines, one to the Camino switchyard via the 11.8-mile-long Union Valley-Camino Transmission Line, and the other to the Jaybird switchyard via the 5.9-mile-long Union Valley-Jaybird Transmission Line.

• *Jaybird Development*—(1) Junction Dam—A double curvature, concrete overflow arch dam located on Silver Creek that is 525 feet long and 168 feet high, creating Junction Reservoir; (2) Jaybird Tunnel—An 11- to 14-foot-diameter modified horseshoe tunnel 4.4-mile-long, connecting Junction Reservoir and the Jaybird Penstock; (3) Jaybird Penstock—A 6- to 10-foot-diameter steel penstock with a surge tank that is 0.5-mile-long, connecting Jaybird Tunnel and Jaybird Powerhouse; (4) Jaybird Powerhouse—The powerhouse is equipped with two Pelton turbines, one with a rated capacity of 61,607 kW and the other 61,574 kW at best gate opening, and two generators, each rated at 84,450 kW; with total powerhouse maximum capability of 144,000 kW; and (5) Jaybird-White Rock Transmission Line—A 15.9-mile-long, 230 kV overhead transmission line connecting the Jaybird and White Rock switchyards.

• *Camino Development*—(1) Camino Dam—A concrete double curvature arch dam located on Silver Creek that is 470-foot-long and 133-foot-high, and has three integral bulkhead gates. These structures create Camino Reservoir; (2) Camino Tunnel—A 5-mile-long power tunnel with a diameter ranging from 13 feet to 14 feet; and including a surge tank that connects Camino Reservoir with the Camino Penstock; (3) Brush Creek Dam—A double curvature arch dam located on Brush Creek, 213 feet high and 780 feet long, creating Brush Creek Reservoir; (4) Brush Creek Tunnel—An approximately 14-foot-diameter modified horseshoe tunnel extending 0.8 mile from Brush Creek Reservoir to the lower end of Camino Tunnel; (5) Camino Penstock—A 5-foot to 12-foot-diameter, 0.3-mile-long above ground steel penstock connecting Camino Tunnel and Camino Powerhouse; (7) Camino Powerhouse—The powerhouse is located on the SFAR and is equipped with two turbines: One with a rated capacity of 73,760 kW and the other with a rated capacity at best gate opening of 70,769 kW with total powerhouse maximum capability of 150,000 kW. The powerhouse is also equipped with two generators rated at 90,820 kW each. Both generators are installed with secondary oil containment; and (8) Transmission Lines—Two 230 kV overhead transmission lines originate at the Camino Switchyard, one (Camino-Lake) is 31.7-mile-long and connects to SMUD's Lake Substation and the other (Camino-White Rock) is 10.0 miles long and connects to the White Rock Switchyard.

Slab Creek/White Rock Development—(1) Slab Creek Dam—A double curvature variable radius concrete arch dam that stretches across the South Fork American River is 250 feet high and 817 feet long, with a central uncontrolled overflow spillway. The structures create Slab Creek Reservoir; (2) Slab Creek Penstock—A 40-foot-long, 24-inch-diameter steel penstock that passes through the dam and connects Slab Creek Reservoir with Slab Creek Powerhouse; (3) Slab Creek Powerhouse—The powerhouse, which is located at the base of Slab Creek Dam and utilizes minimum stream flow releases, has one turbine with a rated capacity at best gate opening of 450 kW, and one generator rated at 485 kW, with a total powerhouse maximum capability of 400 kW; (4) White Rock Tunnel—an approximately 20- to 24-foot-diameter modified horseshoe tunnel 4.9-mile-long and has a surge shaft that connects Slab Creek Reservoir with White Rock Penstock; (5) White Rock Penstock—A 9- to 15-foot-diameter, 0.3-mile-long above-ground steel penstock that connects White Rock Tunnel to White Rock Powerhouse; (6) White Rock Powerhouse—The powerhouse is equipped with two turbines, one rated at 112,976 kW and the other at 120,000 kW at best gate opening, and two generators, rated at 109,250 kW and 133,000 kW, with total powerhouse maximum capability of 224,000 kW; and (7) Transmission Lines—There are two 230 kV overhead transmission lines and one 12 kV distribution line. The two transmission lines, both 21.8 miles in length, connect the White Rock switchyard to SMUD's Folsom Junction. The 600-foot-long 12 kV Slab Creek tap line connects the Slab Creek Powerhouse to the junction with Pacific Gas and Electric Company's 12-kV distribution line.

SMUD's Proposed Action includes the addition of the Iowa Hill Development. The development would be composed of the following features: (1) Iowa Hill Reservoir—A new off-stream, rock filled earthen dike of varying height depending on natural terrain (maximum height 280 feet) and 5,900 feet in circumference with a geotextile liner on the reservoir floor and inside surface of the dike; (2) Iowa Hill Tunnel—A new underground water conduit extending from Iowa Hill Reservoir and connecting to Slab Creek Reservoir, and comprised of: a 1,120-foot-long, 19.02-foot-diameter, concrete-lined vertical shaft; a 1,110-foot-long, 19.02-foot-diameter concrete-lined high pressure tunnel; a 250-foot-long, 15.74-foot-diameter, steel-lined high pressure tunnel; a 150-foot-long, 12.45-foot-diameter, steel manifold; three 180-foot-long, 7.87-foot-diameter, steel penstocks; three 450-foot-long, 12.46-foot-diameter draft tube extensions; a 150-foot-long, 17.22-foot-diameter steel manifold; and a 1,230-foot-long, 20–93-foot-diameter, concrete-lined low pressure tunnel; (3) Iowa Hill Powerhouse—A new underground powerhouse along the Iowa Hill Tunnel that would include three variable speed turbines each with a nominal rating of 133 MW, and a three generators each rated at 170 MW as a pump motor. The powerhouse would have a maximum capability of 400 MW; (4) Iowa Hill Switchyard—A new Iowa Hill Switchyard; and (5) Transmission Line—A new 230 kV transmission line that would connect the Iowa Hill Switchyard to the existing Camino-White Rock Transmission Line. SMUD anticipates that from the time a new project license is issued by FERC and accepted by SMUD, seven years would be required to complete the engineering, procurement, and construction of the Iowa Hill Development.

In addition, as part of the License Application, SMUD proposes to exclude from the project description and FERC Project Boundary certain transmission line sections included in the current license and FERC Project Boundary. The excluded sections are: (1) A 9.3-mile long section of 230 kV line from Folsom Junction to Orangevale Substation; (2) a 17.8-mile long section of 230 kV line from Folsom Junction to Hedge Substation; and (3) a 1.9-mile long section of 230 kV line from Folsom Junction to Lake Substation.

m. A copy of the application 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 ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available

for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Milestone	Tentative date
Notice of the availability of the draft EIS.	March 2007.
Notice of the availability of the final EIS.	August 2007.
Ready for Commission's decision on the application.	October 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–12718 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2155–024]

Pacific Gas and Electric Company; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 28, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2155–024.

c. *Date Filed:* July 15, 2005.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Chili Bar Project.

f. *Location:* On the South Fork American River in El Dorado, near Placerville, California. The project affects 48 acres of Federal land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Randal S. Livingston, Power Generation Senior Director, Pacific Gas and Electric Company, P.O. Box 770000, Mail Code: N11E, San Francisco, CA 94177.

i. *FERC Contact:* Jim Fargo, (202) 502–6095 or *james.fargo@ferc.gov*.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted and is now ready for environmental analysis.

l. The existing Chili Bar Project consists of: (1) A 120-foot-high concrete gravity dam; (2) a 110-acre reservoir with a useable storage of 1,339 acre-feet; (3) a powerhouse with one 7-MW unit and (9) appurtenant facilities. The applicant estimates that the total average annual generation would be 33,500 megawatt hours. All generated power is utilized within the applicant's electric utility system.

m. A copy of the application 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 ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in

accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Milestone	Tentative date
Notice of the availability of the draft EIS.	March 2007
Notice of the availability of the final EIS.	August 2007
Ready for Commission's decision on the application.	October 2007

Magalie R. Salas,

Secretary.

[FR Doc. E6–12719 Filed 8–4–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8206–6]

EPA Science Advisory Board (SAB) Staff Office; Clean Air Scientific Advisory Committee; Request for Nominations for CASAC Review Panels for NO_X and SO_X

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office is seeking nominations of nationally recognized experts for consideration of membership on two new Clean Air Scientific Advisory Committee (CASAC) Review Panels. One Review Panel will provide advice to EPA on primary (human health-based) air quality standards for oxides of nitrogen (NO_X) and sulfur oxides (SO_X), while the second will focus on secondary (welfare-based) standards.

DATES: New nominations should be submitted by August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov*. General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: *Background:* The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. The chartered CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. Section 109(d)(1) of the Clean Air Act (CAA) requires that EPA carry out a periodic review and revision, as appropriate, of the air quality criteria and the NAAQS for the six criteria air pollutants. EPA is currently preparing to review the air quality criteria for NO_X and SO_X. The SAB Staff Office is establishing two separate CASAC NO_X and SO_X Review Panels. One will provide advice to EPA on primary (human health-based) air quality standards for oxides of nitrogen (NO_X) and sulfur oxides (SO_X), while the second will focus on secondary (welfare-based) standards. The CASAC NO_X and SO_X Review Panels will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The CASAC NO_X and SO_X Review Panels will each consist of the seven members of the chartered CASAC supplemented by additional subject matter experts. This **Federal Register** notice seeks nominations for the subject matter experts described below. The CASAC NO_X and SO_X Review Panels will comply with the provisions of FACA and all appropriate EPA procedural policies.

Expertise Sought: The SAB Staff Office requests nominees who are nationally-recognized experts regarding NO_X and SO_X in one or more of the following disciplines.

(1) *CASAC Primary (Health-Based) Review Panel*

(a) *Atmospheric Science.* Expertise in physical and chemical properties of nitrogen oxides and sulfur oxides; atmospheric processes involved in their formation and transport on urban to global scales; transformation of these pollutants in the atmosphere; and movement of the pollutants between media through deposition and other such mechanisms. Also, expertise in the evaluation of natural and anthropogenic sources and emissions of nitrogen oxides and sulfur oxides and resulting ambient levels due to natural sources; pertinent monitoring or measurement methods for these pollutants; and spatial and temporal trends in their atmospheric concentrations.

(b) *Human Health Exposure and Risk Assessment/Modeling.* Expertise in measuring human population exposure to nitrogen oxides and sulfur oxides, or in modeling human population exposure to pollutants from ambient and indoor sources. Expertise in human health risk analysis modeling for nitrogen oxides and sulfur oxides related to respiratory and other non-cancer health effects.

(c) *Dosimetry.* Expertise in evaluation of the dosimetry of animal and human subjects, including identification of factors determining differential patterns of inhalation and/or deposition/uptake in respiratory tract regions that may contribute to differential susceptibility of human population subgroups and animal-to-human dosimetry extrapolations.

(d) *Toxicology.* Expertise in evaluation of experimental laboratory animal studies and in vitro studies of the effects of sulfur oxides and/or oxides of nitrogen on pulmonary and extra-pulmonary (e.g., cardiovascular, immunological) endpoints.

(e) *Controlled Human Exposure.* Expertise in evaluations of controlled human exposure studies of the effects of nitrogen oxides and sulfur oxides on healthy and compromised (e.g., having pertinent preexisting disease such as asthma) human adults and children, including physicians with experience in the clinical treatment of asthma and chronic lung diseases.

(f) *Epidemiology and Biostatistics.* Expertise in epidemiologic evaluation of the effects of exposures to ambient nitrogen oxides and sulfur oxides and/or other major air pollutants (e.g., particulate matter, ozone, carbon monoxide) on human population groups, including mortality and morbidity effects (e.g., respiratory symptoms, lung function decrements, asthma medication use, emergency department visits, respiratory-related hospital admissions). Also, expertise in associated biostatistics and/or health risk analysis.

(2) *CASAC Secondary (Welfare-Based) Review Panel*

(a) *Atmospheric Science.* Expertise in physical and chemical properties of nitrogen oxides and sulfur oxides; atmospheric processes involved in their

formation and transport on urban to global scales; transformation of these pollutants in the atmosphere; and movement of the pollutants between media through deposition and other such mechanisms. Also, expertise in the evaluation of natural and anthropogenic sources and emissions of nitrogen oxides and sulfur oxides and resulting ambient levels due to natural sources; pertinent monitoring or measurement methods for these pollutants; and spatial and temporal trends in their atmospheric concentrations.

(b) *Ecological Effects.* Expertise in evaluation of the effects of exposure to nitrogen oxides and sulfur oxides, acid deposition and nitrogen deposition, on agricultural crops and natural ecosystems and their components, both flora and fauna, ranging from biochemical/sub-cellular effects on organisms to increasingly more complex levels of ecosystem organization. Appropriate expertise disciplines include: aquatic chemistry; aquatic ecology/biology; limnology; terrestrial ecology; forest ecology; grassland ecology; rangeland ecology; terrestrial/aquatic biogeochemistry; terrestrial/aquatic nutrient cycling; and terrestrial/aquatic wildlife biology and soil chemistry.

(c) *Other Welfare Effects.* Expertise in the evaluation of the effects of nitrogen oxides and sulfur oxides and acid deposition on public welfare, including impaired visibility and damage to materials, and also the interactions of these pollutants to affect global climate conditions.

(d) *Ecosystem Exposure and Risk Assessment/Modeling.* Expertise in deposition modeling across a range of scales from local watershed to landscape to continental, static and dynamic ecosystem response models, integrated assessment models, identification of bio-indicators useful for tracking ecosystem change, methods and approaches available to estimate total loadings of sulfur and nitrogen species to ecosystems, and the current state of critical loads science and application.

(e) *Resource Valuation.* Expertise in ecological resources, other welfare effects valuation, and/or economic benefits assessment approaches and models.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals for consideration of membership on the CASAC NO_X and SO_X Review Panels in the areas of expertise described above. Nominations should be submitted in electronic format through the SAB Web site at the following URL: *http://www.epa.gov/sab*; or directly via the *Form for Nominating Individuals to Panels of the EPA Science Advisory Board* link found at URL: *http://www.epa.gov/sab/panels/paneltopics.html*. Please follow the instructions for submitting nominations carefully. The nominating form requests contact information about: the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; and a biographical sketch of the nominee indicating current position, educational background; research activities; and recent service on other national advisory committees or national professional organizations. To be considered, nominations should include all of the information required on the associated forms. Anyone unable to submit nominations using the electronic form and who has any questions concerning the nomination process may contact Mr. Fred Butterfield, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than August 28, 2006. The EPA SAB Staff Office will acknowledge receipt of nominations.

Qualified nominees will be included in a smaller subset of nominees known as the Short List. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and their biosketch. Public comments on the Short List will be accepted for a minimum of 21 calendar days. During this comment period, the public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates. CASAC Review Panel members will be selected from the Short List.

For the EPA SAB Staff Office, a balanced subcommittee or review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In establishing the final CASAC Review Panels, the SAB Staff Office will consider public responses to the Short List, information provided by candidates, and background information independently gathered by the SAB Staff Office on each candidate (e.g., financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating Short List candidates for Panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; and (e) skills working in committees, subcommittees and advisory panels; and, for the Panel as a whole, (f) diversity of and balance among, scientific expertise, viewpoints.

Prospective candidates will also be required to fill-out the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110–48.pdf*.

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at: *http://www.epa.gov/sab/pdf/ec02010.pdf*.

Dated: August 1, 2006.

Anthony F. Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–12764 Filed 8–4–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8206–5]

Science Advisory Board Staff Office; Advisory Council on Clean Air Compliance Analysis; Notification of a Public Advisory Committee Meeting; (Teleconference)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency), Science Advisory Board (SAB) Staff Office

announces a public teleconference of the Advisory Council on Clean Air Compliance Analysis and its Air Quality Modeling Subcommittee.

DATES: The teleconference will take place on August 31, 2006 from 1 p.m. to 4 p.m. (Eastern Time).

FOR FURTHER INFORMATION: Any member of the public who wishes to obtain the teleconference call-numbers and access codes or who wishes to submit a written or a brief oral statement (five minutes or less), must contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail: (202) 343–9867. Requests to provide oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Stallworth no later than five business days prior to the teleconference in order to reserve time on the meeting agenda. It is the policy of the EPA Science Advisory Board Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible.

The technical contact for this review is Dr. Linda Chappell, Economist in the Office of Air and Radiation's Air Quality Analysis Division. Dr. Chappell may be reached at 919–541–2864 or *chappell.linda@epa.gov.*

SUPPLEMENTARY INFORMATION: *Background:* The Advisory Council on Clean Air Compliance Analysis (Council) is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The Council is charged with providing advice, information and recommendations to the Agency on the economic issues associated with programs implemented under the Clean Air Act and its Amendments. Pursuant to a requirement under section 812 of the 1990 Clean Air Act Amendments, EPA's Office of Air and Radiation (OAR) conducts periodic studies to assess the benefits and the costs of the Clean Air Act. The Council has been the chief reviewing body for these studies and has issued advice on a retrospective study issued in 1997, a prospective study issued in 1999, and, since 2003, analytic blueprints for a second prospective study on the costs and benefits of clean air programs covering the years 1990—2020.

EPA's Office of Air and Radiation is conducting a regulatory impact analysis to support a final regulation for the National Ambient Air Quality Standards on particulate matter. As part of this effort, EPA is requesting the Council to provide advice regarding an interim method for estimating future air emissions. In response to this request, the Council will conduct a consultation on this topic. Background document(s) for this review will be posted on the OAR Web site at: *http://www.epa.gov/ttn/ecas/articles.html.* For additional technical information, Dr. Chappell may be contacted at the e-mail and phone number noted above. The meeting agenda and any other background materials will be posted on the SAB Web site at: *http://www.epa.gov/sab/* prior to the meeting.

Procedures for Providing Public Input: Members of the public may submit relevant written or oral information for the SAB Panel to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker with no more than a total of fifteen minutes for all speakers. Interested parties should contact the DFO, contact information provided above, in writing via e-mail at least seven days before the teleconference in order to be places on the public speaker list.

Dated: August 1, 2006.

Anthony F. Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–12759 Filed 8–4–06; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

Date and Time: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 10, 2006, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*
- July 13, 2006 (Open).

B. *New Business*
- Fall 2006 Unified Agenda.

C. *Reports*
- Office of Management Services Quarterly Report.

Dated: August 3, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 06–6762 Filed 8–3–06; 2:10 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act; Deletion of Agenda Item From August 3, 2006, Open Meeting

August 2, 2006.

The following item has been deleted from the list of Agenda items scheduled for consideration at the Thursday, August 3, 2006, Open Meeting and previously listed in the Commission's Notice of Thursday, July 27, 2006.

1	*Wireline Competition*	*Title:* United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service (WC Docket No. 06–10). *Summary:* The Commission will consider a Memorandum Opinion and Order concerning the classification of broadband over power line Internet access service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–6757 Filed 8–3–06; 12:40 pm]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, August 9, 2006. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN PORTION: *Data Reporting Requirements: Affordable Housing Program.*

Proposed Bank Examination Rating System.

MATTER TO BE CONSIDERED AT THE CLOSED PORTION: *Periodic Update of Examination Program Development and Supervisory Findings.*

CONTACT PERSON FOR MORE INFORMATION: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov.*

Dated: August 2, 2006.

By the Federal Housing Finance Board.

John P. Kennedy,

General Counsel.

[FR Doc. 06–6748 Filed 8–3–06; 9:33 am]

BILLING CODE 6725–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Government-Owned Inventions: Availability for Licensing

AGENCY: National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention. Technology Transfer Office, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The invention named in this notice is owned by agencies of the United States Government and is available for licensing in the United States (U.S.) in accordance with 35 U.S.C. 207, to achieve expeditious commercialization of results of federally funded research and development. This opportunity is available until 30 days after publication of this notice. Respondents may be provided a longer period of time to furnish additional information if CDC/NIOSH finds this necessary.

ADDRESSES: Licensing information may be obtained by contacting Thomas O'Toole, Chief Licensing Officer, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Mailstop K–79, 4770 Buford Highway, Atlanta, GA 30341, telephone (770) 488–8600; facsimile (770) 488–8615. Information related to the listed technology, may be obtained by contacting Eric Zahl, Civil Engineer, Spokane Research Laboratory, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), 315 E. Montgomery Avenue, Spokane, WA 99207, telephone (509) 354–8020; or e-mail *EZahl@cdc.gov.*

Occupational Safety Device—Mobile Manipulator System (MMS): NIOSH researchers have developed a Mobile Manipulator System (MMS), a prototype lifting device that enables one person to lift and maneuver up to 600 pound loads. The MMS is a utility device, designed to reduce lifting accidents among maintenance personnel associated with the manual handling of equipment and materials. Prototype specifications, capabilities, photos, video clips, and further details may be viewed online at *http://www.cdc.gov/niosh/mining/products/product147.htm.*

CDC/NIOSH is seeking licensing partner(s) to refine development of this system and commercialize the final product. Preferred partners should have a strong market share and a demonstrated business network capable of effective dissemination and customer support for the final product. Partners should also have: (1) Expertise in developing safe and effective material handling equipment for the U.S. markets and (2) evidence of manufacturing similar types of equipment for wide-spread distribution throughout U.S. markets in an expeditious manner.

Companies interested in the opportunity should submit a proposal of five pages or less to: Eric Zahl, Civil Engineer, Spokane Research Laboratory, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), 315 E. Montgomery Avenue, Spokane, WA 99207, telephone (509) 354–8020; or e-mail *EZahl@cdc.gov.*

Inventors: Clark, Curtis.

U.S. Patent Application SN: 10/485,706 filed 2/2/2004 and PCT/US02/24542. (CDC Ref. #: I–018–01 & I–029–05)

Dated: July 31, 2006.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–12734 Filed 8–4–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Discussions Regarding Exotic Animal Importation, Sale, and Distribution: Summary of Information Presented at Public Meeting

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice; Summary of information presented at public meeting.

SUMMARY: On May 18, 2006, CDC hosted a public meeting on the subject of infectious disease threats associated with exotic animal importation and trade. CDC announced the public meeting through a **Federal Register** notice on April 20, 2006 (Volume 71, Number 76, Page 20402–20403). The public meeting was held at 130 Clairemont Ave., Decatur, GA 30030, from 1 p.m. to 5 p.m.

Background: Zoonoses are diseases that can be transmitted from animals to people. Wild exotic animals may carry a variety of known and emerging zoonotic pathogens. The American Veterinary Medical Association (AVMA), the Council of State and Territorial Epidemiologists (CSTE), and the National Association of State Public Health Veterinarians (NASPHV) have issued position statements calling for a coordinated federal approach to better control infectious disease risks associated with the exotic animal trade. To gather information on the topic, CDC organized this public meeting to share information concerning infectious disease risks associated with exotic animal importation and trade.

Meeting Summary: Five panelists were present to answer potential questions generated by public comments; these panelists represented NASPHV, HHS/CDC, the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Animal Care, HHS/

Food and Drug Administration (FDA), and the Department of the Interior (DOI) United States Fish and Wildlife Service (FWS). No questions or comments were posed to the panel during the public meeting.

A representative from HHS/CDC's Division of Global Migration and Quarantine provided an overview of the scope of the current issues and problems surrounding exotic animal importation and the spread of disease. Reasons for concern include a high-volume trade with rapid turnover of animals and the absence of health screening for animals prior to or after shipment. The meeting was opened by inviting comments and discussion regarding the exotic pet trade and associated infectious disease risks. The meeting facilitator addressed the time limits for speakers to a maximum of 15 minutes and reminded attendees that the discussion would be a matter of public record.

Two registered participants addressed the panel and meeting attendees. A representative of the Consortium for Conservation at Wildlife Trust, New York, read a statement describing the work of the Consortium on exotic animal importation with two primary research objectives: (1) to catalog the wildlife species that are legally imported to the United States each year and assess the risk of this trade introducing pathogens into the United States; and (2) to work with wildlife dealers to understand how the process of importation influences the risk of disease emergence. The Consortium hopes the findings of this scientific initiative will be used to make policy recommendations on disease screening for imported wild animals that will maintain the economic and other benefits of the trade while minimizing risks for introducing new diseases.

A representative of PETCO Animal Supplies read a statement indicating that PETCO opposes a possible ban on the importation of exotic animals and fully supports legal importation when proper biosecurity measures are taken to ensure the public health. Details of PETCO's current activities for ensuring animal and owner health and safety were presented. The representative from PETCO also stated that PETCO feels the legal trade of exotic animals has a positive economic effect on captive breeding and export programs in other countries by supporting the local economy and curbing poaching of animals from their native habitats.

After the registered participants read their prepared statements, 20 public comments that had been received prior to the meeting by e-mail and fax were read into the public record. Public comments submitted prior to the meeting included the following:

- Two requests from avian groups (representative of the Indonesian Parrot Project and a representative from the Avian Welfare Coalition) were submitted requesting that importation of all wild birds be banned except for legitimate scientific purposes. In addition, these statements suggested the risk of zoonoses from birds within the United States could be reduced through mandatory quarantine and laboratory testing of birds for interstate transport, enforcing bans on animal fighting, requiring a permit system for commercial sale of birds, and establishing strict biosecurity procedures for avian care facilities.
- A statement was submitted by a representative from the Captive Wild Animal Protection Coalition requesting a ban of all importation of exotic animals for private ownership, revising legislation to prevent commercial sale of wildlife, forming a single regulatory agency to oversee the exotic animal trade, introducing biosecurity measures to reduce disease risks from wild animals, prohibiting further breeding of wild or exotic animals by private individuals, prohibiting the trade or movement of wild/exotic animals already in private hands, and introducing a new licensing system to ensure that wild/exotic animals held by private individuals are registered.
- A statement from a private citizen was submitted opposing all exotic animal importation.
- A statement was submitted from a representative of the Conservator's Center, Inc. opposing actions to prevent organizations that are not members of the Association of Zoos and Aquariums (AZA) from participating in wild/exotic animal ownership. This statement indicated that private sector expertise was needed to facilitate protection of endangered species. This statement requested that any standards imposed on owners or importers be science-based and not influenced by politics or media attention.
- A statement was submitted from a representative of Big Cat Rescue requesting a prohibition on the trade of exotic cats due to public safety and disease concerns.
- A statement was submitted from a representative of the Idaho State Department of Agriculture supporting a comprehensive system to restrict importation of any exotic plants and animals, and to allow entry only after appropriate testing and quarantine.
- A statement was submitted from an owner of a pet monkey stating she believes all pet monkeys in private ownership were born in the United States, and that she does not believe there has been any transfer of disease from pet monkeys to owners in the past 20 years.
- A statement was submitted from a member of the Society for Small Nonintrusive Government stating that they support a complete ban on exotic animal importation and native wildlife export. This statement indicated an opposition to any federal regulation of exotic animal trade inside the U.S. borders, indicating it is a matter best regulated by individual states.
- A statement was submitted from a citizen indicating they felt that claims regarding infectious disease risks from exotic animals were over-exaggerated.
- Five statements were submitted from citizens suggesting that typical domestic pets carry a disease risk similar to that of exotic animals, and that living with pets is beneficial to humans. These statements indicated that exotic animals should be categorized in the same manner as domestic pets, and that proper husbandry and handwashing are common-sense approaches to reduce disease risks.
- Three statements were submitted from citizens indicating that ferrets are domestic species and should not be restricted.
- A statement was submitted from a citizen opposing removal of exotic animals from the commercial pet trade and indicating that better regulations, inspections, and oversight would be a more appropriate response.
- A statement was submitted from a citizen claiming that legislation of the exotic animal trade is best left to individual states, and opposing any more federal legislation on animal importation.

In summary, a variety of positions and views were submitted to the public meeting. Of the 22 statements received for consideration, 7 indicated a measure of support for increased restrictions on the importation and sale of exotic species, while 15 expressed support for alternatives to regulatory or legal restrictions or opposition to possible restrictions.

Dated: July 30, 2006.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–12736 Filed 8–4–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH); Advisory Board on Radiation and Worker Health (ABRWH)

Correction: This notice was published in the **Federal Register** on July 24, 2006, Volume 71, Number 141, page 41806.

A public comment period has been added during the discussion of the Conflicts of Interest policies. To aid in the discussion, please see the Office of Compensation Analysis and Support Web site at: *http://www.cdc.gov/niosh/ocas/ocasdose.html#drcoi.*

For Further Information Contact: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513.533.6825, fax 513.533.6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 1, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–12735 Filed 8–4–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Area Closure to Off-Road Vehicles for Subsistence Use in Area Adjacent to King Cove Access Project, Izembek National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of permanent closure.

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Alaska Region, is permanently restricting off-road vehicles (ORVs) within a portion of the Izembek National Wildlife Refuge (Izembek Refuge) consistent with Federal law and regulations, Izembek Refuge management plans and objectives, and provisions of the King Cove Access Project Final Environmental Impact Statement (FEIS) published December 2003.

DATES: The effective date of this notice is November 1, 2006.

ADDRESSES: Sandra Siekaniec, Refuge Manager, Izembek National Wildlife Refuge, P.O. Box 127, Cold Bay, AK 99571.

FOR FURTHER INFORMATION CONTACT: Sandra Siekaniec, (877) 837–6332 or (907) 532–2445 phone; (907) 532–2549 fax; *Sandra_Siekaniec@fws.gov* e-mail.

SUPPLEMENTARY INFORMATION: This notice advises the public of a permanent closure to the use of off-road vehicles (ORVs) within an approximate 4-square-mile (10.4 km^2) area encompassing approximately 2,670 acres of the Izembek Refuge that has not traditionally been used for ORV access for subsistence purposes. We define off-road vehicle as any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, wetland, or other natural terrain, except snowmobiles as defined by regulation. This definition includes, but is not limited to, four-wheel-drive or low-pressure-tire vehicles, motorcycles, and related two-, three-, or four-wheel vehicles, amphibious machines, ground-effect or air-cushion vehicles, air-thrust boats, recreation vehicle campers, and any other means of transportation deriving motive power from any source other than muscle or wind (50 CFR 36.2).

The King Cove Access Project Final Environmental Impact Statement (FEIS), December 2003, proposed a marine-road link between the communities of King Cove and Cold Bay, including construction of a 17.2-mile (27.5-km) road along the east side of Cold Bay between the King Cove airstrip and a proposed Northeast Cold Bay hovercraft terminal. A 5.6-mile (9-km) portion of this road is being built on King Cove Corporation lands located within the legislative boundary of the Izembek Refuge. The proposed closure area is restricted to Izembek Refuge lands in portions of Sections 9 and 10 and Sections 15, 22, 27, and 34 in their entirety of Township 57 South, Range 87 West, Seward Meridian. We selected this area since it provides the minimum area for closure adjacent to the King Cove Access Project of lands currently managed by the Izembek Refuge under Section 906(o) of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 410hh–3233) (ANILCA), which requires that Native-selected lands be managed as Refuge lands until conveyed. The FEIS directed that no road-related ORV access would occur within the Congressionally designated Wilderness Area of the Izembek Refuge and identified the need for mitigation measures where the road is within 1/2 mile (.8 km) of the Refuge boundary. Research has shown ORV use for subsistence did not traditionally occur either pre- or post-ANILCA on these lands due to the steep, rocky terrain and thick vegetation, so this limited closure will not change current use of the area.

We issue this notice of closure pursuant to 50 CFR 36.42(e), which describes the process to be followed in implementing permanent closures or restrictions on Alaska National Wildlife Refuges. We held public hearings explaining the proposed closure in Cold Bay and King Cove on May 2 and 3, 2005, respectively, followed by a 30-day public comment period. We held final closure hearings in Cold Bay and King Cove on August 23 and 24, 2005, respectively. We made available to the public maps delineating boundaries of the proposed closure and provided/posted news releases and public notices announcing public meetings and other details of the proposed closure to news media in local communities. Prior to closure implementation, we will post a cable barrier and signs in the immediate vicinity of the restricted area. Authorities for this action can be found within 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), the Refuge Recreation Act of 1962 (16 U.S.C. 460k, 460k–4), and ANILCA.

Notice of Permanent Closure

We close portions of Sections 9 and 10 and Sections 15, 22, 27, and 34 in their entirety of Township 57 South, Range 87 West, Seward Meridian, within the Izembek National Wildlife Refuge, to the use of off-road vehicles (ORVs) for subsistence purposes. For purposes of this closure we define ORVs in 50 CFR 36.2 (2005).

Dated: July 11, 2006.

E. Laverne Smith,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. E6–12416 Filed 8–4–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Liquor Control Ordinance of the Tonkawa Tribe of Indians of Oklahoma

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Liquor Control Ordinance of the Tonkawa Tribe of Indians of Oklahoma (Tribe). The Ordinance regulates and controls the possession, sale and consumption of liquor within the tribal lands of the Tribe. The tribal lands are located within the geographic area that includes all land included within the definition of ''Indian country,'' as established and described by Federal law, and that is under the jurisdiction of the Tonkawa Tribe of Indians of Oklahoma, including all tribally-owned trust lands. This Ordinance allows for possession and sale of alcoholic beverages within its exterior boundaries. This Ordinance will increase the ability of the tribal government to control the community's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective on August 7, 2006.

FOR FURTHER INFORMATION CONTACT: Terry Bruner, Deputy Regional Director, Southern Plains Regional Office, Bureau of Indian Affairs, WCK Office Complex, P.O. Box 368, Anadarko, OK 73005; Telephone 405–247–1668, Fax: 405–247–5611 or 247–9240; or Ralph Gonzales, Office of Tribal Services, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240, Telephone: (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Tonkawa Tribal Business Committee of the Tonkawa Tribe of Indians of Oklahoma (Business Committee) adopted its Liquor Ordinance by Resolution No. T–R–14–05 on October 6, 2005. This is the first Liquor Ordinance passed by the Tribe. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within the tribal lands of the Tribe.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs. I certify that this Liquor Ordinance of the Tonkawa Tribe of Indians of Oklahoma was duly adopted by the Business Committee on October 6, 2005.

Dated: July 31, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

The Tonkawa Tribe of Indians of Oklahoma Liquor Ordinance reads as follows:

Alcohol Control

Article I—Introduction

Section 1–010. Title

This Ordinance shall be known as the ''Tonkawa Tribe of Indians of Oklahoma Alcohol Control Ordinance.''

Section 1–120. Authority

This Ordinance is enacted pursuant to the Act of August 15, 1953, Pub. L. 83–277, 67 Stat. 586, 18 U.S.C. 1161 and Article V, § 1, of the Constitution and By-Laws of the Tonkawa Tribe of Indians of Oklahoma.

Section 1–130. Purpose

The purpose of this Ordinance is to regulate and control the manufacture, distribution, possession, and sale of Alcohol on Tribal lands of the Tonkawa Tribe of Indians of Oklahoma. The enactment of this Ordinance will enhance the ability of the Tribal government to control all such alcohol-related activities within the jurisdiction of the Tribe and will provide an important source of revenue for the continued operation and strengthening of the Tribal government and the delivery of Tribal government services.

Section 1–140. Application of Federal Law

Federal law forbids the introduction, possession and sale of liquor in Indian Country (18 U.S.C. 1154 and other statutes), except when in conformity both with the laws of the State and the Tribe (18 U.S.C. 1161). As such, compliance with this ordinance shall be in addition to, and not a substitute for, compliance with the laws of the State of Oklahoma.

Section 1–150. Administration of Ordinance

The General Council, under its powers vested under the Constitution and Bylaws and this Ordinance, delegates to the Tonkawa Tribe of Indians of Oklahoma Tax Commission the authority to exercise all of the powers and accomplish all of the purposes as set forth in this Ordinance, which may include the following actions:

A. Adopt and enforce rules and regulations for the purpose of effectuating this Ordinance, which includes the setting of fees;

B. Execute all necessary documents; and

C. Perform all matters and things incidental to and necessary to conduct its business and carry out its duties and functions under this Ordinance.

Section 1–160. Sovereign Immunity Preserved

A. The Tribe is immune from suit in any jurisdiction except to the extent that the General Council of the Tonkawa Tribe of Indians of Oklahoma expressly and unequivocally waives such immunity in writing.

B. Nothing in this Ordinance shall be construed as waiving the sovereign immunity of the Tribe.

Section 1–170. Applicability

This Ordinance shall apply to all Tribal enterprises located within Tribal lands consistent with applicable federal Indian liquor laws.

Section 1–180. Computation of Time

Unless otherwise provided in this Ordinance, in computing any period of time prescribed or allowed by this Code, the day of the act, event, or default from which the designated period time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. For the purposes of this Ordinance, the term ''legal holiday'' shall mean all legal holidays under Tribal or Federal law. All papers mailed shall be deemed served at the time of mailing.

Section 1–190. Liberal Construction

Provisions of this Ordinance shall be liberally construed to achieve the purposes set forth, whether clearly stated or apparent from the context of the language used herein.

Section 1–200. Applicable Taxes

The Tax Commission shall enforce all applicable and lawful taxes imposed on the sale of Alcohol Beverages. The failure of any licensee to pay applicable taxes on the sale of alcohol may subject the licensee to, among other things, the revocation of said license.

Article II—Declaration of Public Policy

Section 1–210. Matter of Special Interest

The manufacture, distribution, possession, sale, and consumption of Alcohol Beverages within the jurisdiction of the Tonkawa Tribe of Indians of Oklahoma are matters of significant concern and special interest to the Tribe. The General Council hereby declares that the policy of the Tribe is to eliminate the problems associated with unlicensed,

unregulated, and unlawful importation, distribution, manufacture, and sale of Alcohol Beverages for commercial purposes and to promote temperance in the use and consumption of Alcohol Beverages by increasing Tribal control over such activities on Tribal land.

Section 1–220. Federal Law

The introduction of Alcohol within the jurisdiction of the Tribe is currently prohibited by federal law (18 U.S.C. 1154), except as provided for therein, and the Tribe is expressly delegated the right to determine when and under what conditions Alcohol Beverages shall be permitted thereon (18 U.S.C. 1161).

Section 1–230. Need for Regulation

The Tribe finds that the Federal prohibition upon manufacture, distribution, possession, sale, and consumption of Alcohol Beverages has proven ineffective and that the problems associated with same should be addressed by the laws of the Tribe, with all such business activities related thereto subject to the taxing and regulatory authority of the Tonkawa Tribe of Indians of Oklahoma Tax Commission.

Section 1–240. Locations

The Tribe finds that the manufacture, distribution, possession, sale, and consumption of Alcohol Beverages shall be licensed under this Ordinance only where such activity will be conducted within or upon Tribal land.

Section 1–250. Definitions

As used in this Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

A. ''Alcohol'' means the product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

B. ''Alcohol Beverage'' when used in this Ordinance means, and shall include liquor, beer, or spirits of wine, by whatever name they may be called, and from whatever source and by whatever process they may be produced, and which contain a sufficient percent of alcohol by volume which, by law, makes said beverage subject to regulation as an intoxicating beverage under the laws of the state where the beverage is sold.

C. ''Applicant'' means any person who submits an application to the Tax Commission for an Alcohol Beverage license and who has not yet received such a license.

D. ''Tribal Committee'' means the duly elected Tribal Committee of the Tonkawa Tribe of Indians of Oklahoma.

E. ''Constitution'' means the Constitution and By-Laws of the Tonkawa Tribe of Indians of Oklahoma.

F. ''Tribal Council'' means the General council of the Tonkawa Tribe of Indians of Oklahoma, which is the supreme governing body of the Tonkawa Tribe of Indians of Oklahoma, which is composed of the voting membership of the Tribe.

G. ''License''' means an Alcohol Beverage license issued by the Tonkawa Tribe of Indians of Oklahoma Tax Commission authorizing the importation, manufacture, distribution, or sale of Alcohol Beverages for commercial purposes under the provisions of this Ordinance.

H. ''Licensee'' means a Tribal enterprise that holds an Alcohol Beverage license issued by the Tax Commission and includes any employee or agent of the Licensee.

I. ''Liquor store'' means any store or establishment at which liquor is sold and shall include any and all businesses engaged in the sale of Alcohol Beverages, whether sold as packaged or by the drink.

J. ''Manufacturer'' means any person engaged in the manufacture of Alcohol Beverage.

K. ''Ordinance'' means the Tonkawa Tribe of Indians of Oklahoma Alcohol Beverage Control Ordinance, as hereafter amended.

L. ''Package'' means the sale of an Alcohol Beverage by delivery of same by a seller to a purchaser in any container, bag, or receptacle for consumption beyond the premises or the location designated on the license.

M. ''Public place'' means and shall include Tribal, County, State, or Federal highways, roads, and rights-of-way; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; public restaurants, buildings, meeting halls, hotels, theaters, retail stores, and business establishments generally open to the public and to which the public is allowed to have unrestricted access; and all other places to which the general public has unrestricted right of access and that are generally used by the public. For the purpose of this Ordinance, ''public place'' shall also include any privately owned business property or establishment that is designed for or may be regularly used by more persons other than the owner of the same but shall not include the private, family residence of any person.

N. ''Sale'' and ''Sell'' means the exchange, barter, traffic, furnishing, or giving away for commercial purpose an Alcohol Beverage by any and all means, by whatever name commonly used to describe the same, by any person to another.

O. ''Tax Commission'' means the Tonkawa Tribe of Indians of Oklahoma Tax Commission.

P. ''Tribal Court'' means the Tonkawa Tribal Court.

Q. ''Tribal land(s)'' shall mean and reference the geographic area that includes all land included within the definition of ''Indian country'' as established and described by federal law and that is under the jurisdiction of the Tonkawa Tribe of Indians of Oklahoma including all tribally-owned trust lands located within same as are now in existence or may hereafter be added to.

R. ''Tribal law'' means the Tribal Constitution and all laws, Ordinances, codes, resolutions, and regulations now and hereafter duly enacted by the Tribe.

S. ''Tribe'' shall mean the Tonkawa Tribe of Indians of Oklahoma.

Article III—Sales of Alcoholic Beverages

Section 1–260. Prohibition of the Unlicensed Sale of Alcohol Beverages

This Ordinance prohibits the importation, manufacture, distribution, or sale of Alcohol Beverages for commercial purposes, other than where conducted by a lawfully issued license in accordance with this Ordinance. The Federal liquor laws are intended to remain applicable to any act or transaction that is not authorized by this Ordinance, and violators shall be subject to Federal law and or Tribal law.

Section 1–280. License Required

Any and all sales of Alcohol Beverages conducted upon Tribal land shall be permitted only where the seller holds a current Alcohol Beverage license duly issued by the Tonkawa Tribe of Indians of Oklahoma Tax Commission. A licensee has the right to engage only in those Alcohol Beverage transactions expressly authorized by such license in accordance with this Ordinance.

Section 1–290. Sales for Cash

All sales of Alcohol Beverages conducted shall be conducted on a cash-only basis, and no credit for said purchase and consumption of same shall be extended to any person, organization, or entity except that this provision does not prohibit the payment of same by use of credit cards acceptable to the seller (including but not limited to VISA, MasterCard, or American Express).

Section 1–300. Personal Consumption

All sales shall be for the personal use and consumption of the purchaser or his/her guest(s). The resale of any Alcohol Beverage purchased within or upon Tribal lands by an unlicensed seller is prohibited.

Section 1–310. Consumption of Liquor

No Tribal operator shall permit any person to open or consume liquor on his or her premises or any premises adjacent thereto and in his or her control. The Commission will allow the consumption of liquor and shall identify where liquor may be consumed on Tribal Trust lands.

Article IV—Licensing

Section 1–320. Eligibility

Only applicants operating upon Tribal lands shall be eligible to receive a license for the sale of any Alcohol Beverage under this ordinance.

Section 1–330. Application Process

The Tax Commission may cause a license to be issued to any applicant as is deemed appropriate and not contrary to the best interests of the Tribe and its Tribal members. Any applicant that desires to be licensed to sell Alcohol Beverages and that meets the eligibility requirements pursuant to this ordinance must apply to the Tax Commission of the Tonkawa Tribe of Indians of Oklahoma for a license to sell or to serve Alcohol Beverages. Any such person as may be empowered to make such application shall fully and accurately complete an application provided by the Tax Commission, and shall pay such application fee as may be required by the Tax Commission.

Section 1–340. Classes of Licenses

The Tax Commission shall have the authority to issue the following classes of Alcohol Beverage licenses:

A. ''Retail on-sale general license'' means a license authorizing the licensee to sell Alcohol Beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license. This class includes, but is not limited to, hotels where alcohol beverages may be sold for consumption on the premises and in the rooms of bona fide registered guests.

B. ''Retail on-sale beer and wine license'' means a license authorizing the licensee to sell beer and wine at retail to be consumed by the buyer only on the premises or at the location designated in the license. This class includes, but is not limited to, hotels where beer and/or wine may be sold for consumption on the premises and in the rooms of bona fide registered guests.

C. ''Retail off-sale general license'' means a license authorizing the licensee to sell Alcohol Beverages at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

D. ''Retail off-sale beer and wine license'' means a license authorizing the licensee to sell beer and wine at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

E. ''Manufacturers license'' means a license authorizing the applicant to manufacture Alcohol Beverages for the purpose of sale on or off Tribal land.

F. ''Temporary license'' means a license authorizing the sale of Alcohol Beverages on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering, or similar occasion. Temporary licenses may not be renewed upon expiration. A new application must be submitted for each such license.

Section 1–350. Application Form and Content

An application for a license shall be made to the Tax Commission and shall contain at least the following information:

A. The name and address of the applicant, including the names and addresses of all of the principal officers and directors, and other employees with primary management responsibility related to the sale of Alcohol Beverages;

B. The specific area, location, and/or premise(s) for which the license is applied;

C. The hours that the applicant will sell the Alcohol Beverages;

D. For Temporary Licenses, the dates for which the license is sought to be in effect;

E. The class of Alcohol Beverage license applied for as set forth in Section 1–340;

F. Whether the applicant has a state liquor license;

G. A sworn statement by the applicant to the effect that none of the applicant's officers and directors, and employees with primary management responsibility related to the sale of Alcohol Beverage, were ever convicted of a felony under any law, and have not violated and will not violate or cause or permit to be violated any of the provisions of this Ordinance; and

H. The application shall be verified under oath and notarized by a duly authorized representative.

Section 1–360. Public Hearing

Upon receipt of an application for issuance or renewal of a license, and the payment of any fees required by the Tax Commission, the Tax Commission shall set the matter for a public hearing. Notice of the time and place of the hearing shall be given to the applicant and the public at least twenty (20) calendar days before the hearing. Notice shall be given to the applicant by prepaid U.S. mail at the address listed in the application. Notice shall be given to the public by publication in a newspaper of general circulation sold on the Tribal lands. The notice published in the newspaper shall include the name of the applicant, whether the action involves a new issuance or renewal, the class of license applied for, and a general description of the area where the alcohol will be or has been sold. At the hearing, the Tax Commission shall hear from any person who wishes to speak for or against the application. The Tax Commission shall have the authority to place time limits on each speaker and limit or prohibit repetitive testimony.

Section 1–370. Action on the Application

The Tax Commission shall act on the matter within thirty (30) days of the conclusion of the public hearing. The Tax Commission shall have the authority to deny, approve, or approve with conditions the application, consistent with the laws of the Tribe. Upon approval of an application, the Tax Commission shall issue a license to the applicant in a form to be approved from time to time by the Tax Commission.

Section 1–380. Denial of License or Renewal

An application for a new license or license renewal may be denied for one or more of the following reasons.

A. The applicant has materially misrepresented facts contained in the application;

B. The applicant is presently not in compliance with this ordinance or other Tribal or Federal laws;

C. Granting of the license (or renewal thereof) would create a threat to the peace, safety, morals, health, or welfare of the Tribe;

D. The applicant has failed to complete the application properly or has failed to tender the appropriate fee.

E. A verdict or judgment of guilty has been entered against or a plea of nolo contendere has been entered by an applicant's officer or director, or an employee with primary management responsibility related to the sale of Alcohol Beverages, to any offense under Federal or State law prohibiting or

regulating the sale, use, possession or giving away of Alcohol Beverages.

Section 1–390. Temporary Denial

If the application is denied solely on the basis of Section 1–380(D), the Tax Commission shall, within fourteen (14) days of receipt of the application, issue a written notice of temporary denial to the applicant. Such notice shall set forth the reasons for denial and shall state that the denial will become permanent if the problem(s) is not corrected within fifteen (15) days following receipt of the notice.

Section 1–400. Cure

If an applicant is denied a license, the applicant may cure the deficiency and resubmit the application for consideration. Each re-submission will be treated as a new application for license or renewal of a license.

Section 1–410. Investigation

Upon receipt of an application for the issuance, transfer, or renewal of a license, the Tax Commission shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied for qualify for a license and whether the provisions of this Ordinance have been complied with, and shall investigate all matters connected therewith which may affect the public health, welfare, and morals.

Section 1–420. Term and Renewal of License

Each license shall be issued for a period not to exceed two (2) years from the original date of issuance and may be renewed thereafter on a year-to-year basis, in compliance with this Ordinance and any rules and/or regulations hereafter adopted by the Tribe. The applicant shall renew a license by, not less than 90 days prior to the license's expiration date, submitting a written renewal application to the Tax Commission on the provided form.

Section 1–430. Procedures for Appealing a Denial or Condition of Application

Any applicant for a license or licensee who believes the denial of their license, request for renewal, or condition imposed on their license was wrongfully determined may appeal the decision of the Tax Commission in accordance with the Tax Commission Rules and Regulations. For purposes of appeal, an applicant or licensee shall stand in the place of a ''taxpayer'' as that term is used in the Tax Commission Rules and Regulations appeal procedure. For purposes of appeal, the action being complained of shall stand in the place of the term the ''tax,'' where appropriate, as that term is used in the Tax Commission Rules and Regulations appeal procedure.

Section 1–440. Revocation of License

The Tax Commission may initiate action to revoke a license whenever it is brought to the attention of the Commission that a licensee:

A. has materially misrepresented facts contained in any license application;

B. is not in compliance with Tribal or federal laws material to the issue of licensing;

C. failed to comply with any condition of a license, including failure to pay taxes on the sale of Alcohol Beverages or failure to pay a required fee;

D. has had a verdict, or judgment of guilty entered against, or has had a plea of nolo contendere entered by one of its officers or directors, or managers with primary responsibility over the sale of Alcohol Beverages, as to any offense under Federal or State law prohibiting or regulating the sale, use, or possession, of Alcohol Beverages;

E. failed to take reasonable steps to correct objectionable conditions constituting a nuisance on the licensed premises or any adjacent area within a reasonable time after receipt of a notice to make such corrections has been received from the Tax Commission; or

F. has had their Oklahoma liquor license suspended or revoked.

Section 1–450. Initiation of Revocation Proceedings

Revocation proceedings are initiated either: (1) By the Tax Commission, on its own motion and through the adoption of an appropriate resolution meeting the requirements of this section; or (2) by any person who files a complaint with the Tax Commission. The complaint shall be in writing and signed by the maker. Both the complaint and resolution shall state facts showing that there are specific grounds under this Ordinance, which would authorize the Tax Commission to revoke the license(s). The Tax Commission shall cause the matter to be set for a hearing before the Tax Commission on a date no later than 30 days from the Commission's receipt of a complaint or adoption of the resolution. Notice of the time, date, and place of the hearing shall be given to the licensee and the public in the same manner as set forth in section 1–360. The notice shall state that the licensee has the right to file a written response to the complaint or resolution, verified under oath and signed by the licensee, no later than ten (10) days prior to the hearing date.

Section 1–460. Hearing

Any hearing held on any complaint shall be held under such rules and regulations as the Tax Commission may prescribe. Both the licensee and the person filing the complaint shall have the right to present witnesses to testify and to present written documents in support of their positions to the Tax Commission. The Commission shall render its decision within sixty (60) days after the date of the hearing. The decision of the Commission shall be final. Except that any person so aggrieved may file a written appeal to the Tribal Committee clearly stating the reason for appeal within ten (10) days after the decision of the Commission is received. Please refer to Chapter Two, Section 272–278 (Liquor Tax Code), of the Tonkawa Tribal General Revenue and Taxation Code.

Section 1–470. Delivery of License

Upon revocation of a license, the enterprise shall forthwith deliver up the license to the Tax Commission.

Section 1–480. Transferability of Licenses

Alcohol Beverage licenses shall be issued to a specific licensee for use at a single business location (business enterprise) and shall not be transferable for use by any business or location. Separate licenses shall be issued for each of the premises of any business establishment having more than one address.

Section 1–490. Posting of License

Every licensee shall post and keep posted its license(s) in a conspicuous place(s) on the licensed premises.

Article V—Powers of Enforcement

Section 1–500. Tax Commission Authority

In furtherance of this Ordinance, the Tax Commission shall have exclusive authority to administer and implement this Ordinance and shall have the following powers and duties hereunder:

A. To publish and enforce rules and regulations governing the sale, manufacture, distribution, and possession of Alcohol Beverages within the Tribal lands of the Tonkawa Tribe of Indians of Oklahoma;

B. To employ such persons as may be reasonably necessary to perform all administrative and regulatory responsibilities of the Tax Commission hereunder. All such employees shall be Tribal employees;

C. To issue licenses permitting the sale, manufacture, distribution, and possession of Alcohol Beverages within the Tribal lands;

D. To give reasonable notice and to hold hearings on violations of this Ordinance, and for consideration of the issuance or revocation of licenses hereunder;

E. To bring such other actions as may be required to enforce this Ordinance;

F. To prepare and deliver such reports as may be required by law or regulation; and

G. To collect taxes, fees, and penalties as may be required, imposed, or allowed by law or regulation, and to keep accurate books, records, and accounts of the same.

Section 1–510. Right of Inspection

Any business premises licensed to manufacture, distribute, or sell alcohol pursuant to this Ordinance shall be open for inspection by the Tax Commission for the purpose of insuring the compliance or noncompliance of the licensee with all provisions of this Ordinance and any applicable Tribal law or regulation.

Section 1–520. Limitation on Powers

In the exercise of its powers and duties under this Ordinance, members of the Tax Commission shall not, whether individually or as a whole:

A. Accept any gratuity, compensation or other thing of value from any Alcohol Beverage wholesale, retailer, or distributor, or from any applicant or licensee of the Tribe;

B. Waive the sovereign immunity of the Tonkawa Tribe of Indians of Oklahoma, or of any agency, commission, or entity thereof without the express written consent of the General Council of the Tonkawa Tribe of Indians of Oklahoma.

Article VI—Taxes

Section 1–530. Excise Tax

There is hereby levied and shall be collected a tax on each retail and wholesale sale of Alcohol Beverages on Tribal land in the amount of one percent (1%) of the retail sales price. All taxes from the sale of such Alcohol Beverages shall be paid into a separate account under exclusive authority of the Tax Commission. This tax may be adjusted as requested by the Tax Commission and approved by the Tribal Committee.

Section 1–540. Taxes Due

All taxes for the sale of Alcohol Beverages under this Ordinance are due on the 15th day of the month following the end of the calendar quarter for which taxes are due.

Section 1–550. Delinquent Taxes

Past due taxes shall accrue interest at the rate of two percent (2%) per month until paid.

Section 1–560. Reports

Along with the payment of taxes imposed hereby, the licensee shall submit a quarterly report and accounting of all income from the sale or distribution of Alcohol Beverages, and for the taxes collected.

Section 1–570. Audit

All licensees are subject to the review or audit of its books and records relating to the sale of Alcohol Beverages hereunder by the Tax Commission. Such review or audit may be performed periodically by Tax Commission's agents or employees at such times as in the opinion of the Tax Commission such review or audit is appropriate to the proper enforcement of this Ordinance.

Article VII—Rules, Regulations, and Enforcement

Section 1–580. Sale or Distribution Without License

Any person who sells or offers for sale or distribution any Alcohol Beverage in violation of this Ordinance, or who operates a business on Tribal land and has Alcohol Beverage(s) for sale in his possession without a license shall be in violation of this Ordinance.

Section 1–590. Unlawful Purchase

Any person who purchases any Alcohol Beverage on Tribal lands from a person or business that is not licensed by the Tax Commission to sell Alcohol Beverages shall be in violation of this Ordinance.

Section 1–600. Intent to Sell

Any person who keeps or possesses, or causes another to keep or possess, upon his person or any premises within his control, an Alcohol Beverage, with the intent to sell or to distribute the same contrary to the provisions of this Ordinance, shall be in violation of this Ordinance.

Section 1–610. Sale to Intoxicated Person

Any person who knowingly sells an Alcohol Beverage to a person who is intoxicated shall be in violation of this Ordinance.

Section 1–620. Public Conveyance

Any person engaged in the business of carrying passengers for hire, and every agent, servant, or employee of such person who shall knowingly permit any person to drink an Alcohol Beverage in any such public conveyance shall be in violation of this Ordinance.

Section 1–630. Age of Consumption

No person under the age of twenty-one (21) years shall possess or consume any Alcohol Beverage on Tribal lands.

Section 1–640. Serving Underage Person

No person shall serve an Alcohol Beverage to a person under the age of 21 or permit any such person to consume alcohol on the premises or on any premises under his control. Any licensee violating this section shall be guilty of a separate violation of this Ordinance for each and every drink served and/or consumed.

Section 1–650. False Identification

Any person who purchases or who attempts to purchase an Alcohol Beverage through the use of false, or altered identification that falsely purports to show the person to be over the age of 21 years shall be in violation of this Ordinance.

Section 1–660. Documentation of Age

When requested by a seller of Alcohol Beverages, any person shall be required to present proper and satisfactory documentation of the bearer's age, signature, and photograph. For purposes of this Ordinance, proper and satisfactory documentation shall include one or more of the following:

A. Drivers license or personal identification card issued by any state department of motor vehicles or tribal or federal government agency;

B. United States active duty military credentials; C. Passport.

Section 1–670. General Penalties

Any person adjudged to be in violation of this Ordinance, including any lawful regulation promulgated pursuant thereto, shall be subject to a civil penalty not more than Five Hundred Dollars ($500.00) for each such violation. The Tax Commission may adopt by resolution a separate schedule for fines for each type of violation, taking into account the seriousness and threat the violation may pose to the general health and welfare. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollars ($500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties that may be imposed under a separate Ordinance, adopted by the Tribe.

Section 1–680. Initiation of Action

Any violation of this Ordinance shall constitute a public nuisance. The Tax

Commission may initiate and maintain an action in Tribal court to abate and permanently enjoin any nuisance declared under this Ordinance. Any action taken under this section shall be in addition to any other penalties provided for in this Ordinance. The plaintiff shall not be required to give bond in this action.

Section 1–690. Contraband; Seizure; Forfeiture

A. All Alcohol Beverages within tribal lands held, owned, or possessed by any person or licensee operating in violation of this Ordinance is hereby declared to be contraband and subject to seizure and forfeiture to the Tribe.

B. Seizure of contraband as defined in this Ordinance shall be done by law enforcement and all such contraband seized shall be inventoried and maintained by law enforcement pending final order of the Tax Commission and any appeals there from as may be filed with the Tribal Committee. The owner of the contraband seized may alternatively request that the contraband seized be sold and the proceeds received therefrom be maintained by law enforcement pending final order of the Tax Commission and any appeals therefrom. The proceeds are subject to forfeiture in lieu of the seized contraband.

C. Within ten days following the seizure of the contraband, a hearing shall be held by the Tax Commission, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities.

D. Notice of the hearing of at least 10 days shall be given to the person from whom the property was seized, if known. If the person is unknown, notice of the hearing shall be posted at the place where the contraband was seized and at other public places on tribal lands. The notice shall describe the property seized, and the time, place, and cause of seizure and give the name and place of residence, if known, of the person from whom the property was seized. If upon the hearing, the evidence warrants, or, if no person appears as a claimant, the Tax Commission shall thereupon enter a judgment of forfeiture, and all such property shall be the property of the Tonkawa Tribe of Indians of Oklahoma. If upon the hearing the evidence does not warrant forfeiture, the seized contraband shall be immediately returned to the owner.

Article VIII—Nuisance and Abatement

Section 1–700. Nuisance

Any room, house, building, vehicle, structure or other place where Alcohol Beverages are sold, manufactured, bartered, exchanged, given away, furnished, or otherwise possessed or disposed of in violation of this Ordinance, or of any other Tribal law related to the transportation, possession, distribution or sale of Alcohol Beverages, and including all property kept therein, or thereon, and use in, or in connection with the violation is hereby declared to be a nuisance upon any second or subsequent violation of the same.

Section 1–710. Action to Abate Nuisance

Upon a finding that any such place or activity is a nuisance under the provision of this Ordinance, the Tribe or the Tax Commission may bring a civil action in the Tribal Court to abate and to perpetually enjoin any such activity declared to be a nuisance. Such injunctive relief may include a closure of any business or other use of the property for up to one (1) year from the date of the order, or until the owner, lessee or tenant shall give bond of no less than Five Thousand dollars ($5,000) as per the Indian Civil Rights Act, payable to the Tribe and conditioned that no further violation of this Ordinance or other Tribal Alcohol Beverage law and by payment of all fines, costs and assessments against him/her. If any condition of the bond is violated, the bond may be recovered and proceeds delivered to the Tax Commission for the use of the Tribe. Any action taken under this section shall be in addition to any other penalties provided for in this Ordinance.

Article IX—Revenue and Reporting

Section 1–720. Use and Appropriation of Revenue Received

All revenue received by the Tax Commission under this Ordinance, from whatever sources, shall be expended first for the administrative costs incurred in the administration and enforcement of this Ordinance. Any excess funds shall be subject to and available to appropriation by the Tribe for essential governmental, and social services, related to drug and alcohol education, counseling and treatment.

Section 1–730. Audit

Tax Commission handling of revenue received under this ordinance is subject to review and audit as a part of the annual financial audit of the Tax Commission.

Section 1–740. Reports

The Tax Commission shall submit to the Tribal Committee a quarterly report and an accounting of all revenue received and expended pursuant to this Ordinance.

Article X—Miscellaneous

Section 1–750. Severability

If any provision or application of this Ordinance is found invalid and or unenforceable, such determination shall not be held to render ineffectual any of the remaining provisions or applications of this Ordinance not specifically identified thereby, or to render such provision to be inapplicable to other persons or circumstances.

Section 1–760. Construction

Nothing in this ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Tonkawa Tribe of Indians of Oklahoma.

Section 1–770. Effective Date

This Ordinance shall be effective upon certification by the Secretary of the Interior, publication in the **Federal Register** and recorded in the office of the Clerk of the Tribal Court.

Section 1–780. Prior Law Repealed

Any and all prior enactments of the Tonkawa Tribe of Indians of Oklahoma that are inconsistent with the provisions of this Ordinance are hereby rescinded.

Section 1–770. Amendment

This Ordinance may be amended only in accordance with the provisions of the Constitution of the Tonkawa Tribe of Indians of Oklahoma.

[FR Doc. E6–12731 Filed 8–4–06; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Expand the Scope of the General Management Plan/ Environmental Impact Statement Being Prepared for Everglades National Park

SUMMARY: The National Park Service (NPS) is expanding the scope of the General Management Plan (GMP)/ Environmental Impact Statement (EIS) being prepared for Everglades National Park. As part of this planning effort, the NPS will include a wilderness study to determine if any portions of the East Everglades Expansion Area should be

recommended for inclusion in the National Wilderness Preservation System as defined in the Wilderness Act of 1964. The study will be included as part of the GMP/EIS currently in preparation. The wilderness study will only address East Everglades, the 109,000 acres which were added to the park by the Everglades National Park Protection and Expansion Act of 1989.

A Notice of Intent to prepare an EIS for the GMP was originally published in the **Federal Register** of October 25, 2002 (Volume 67, Number 207). That EIS now will be expanded to include an evaluation of the impacts associated with possible designation of wilderness in East Everglades. This notice is being furnished under the National Environmental Policy Act regulations, 40 CFR 1501.7 and 1506.6.

To facilitate sound planning and analysis of environmental impact, the NPS is gathering information necessary for the preparation of the GMP, the wilderness study, and the associated EIS and is obtaining suggestions and information from other agencies and the public on the scope of issues to be addressed. Comments and participation in this scoping process are invited.

DATES: Open house meeting places and times will be announced by press release to print, radio and television organizations throughout South Florida including The Miami Herald, Naples Daily News and the South Florida Sun-Sentinel and on the park Web site at: *www.nps.gov/ever.*

ADDRESSES: Persons wishing to comment may do so by any one of several methods. They may attend open houses noted above. They may mail comments to Everglades National Park, Attention: Fred Herling, 40001 State Road 9336, Homestead, Florida 33034. They also may comment via the internet at *http://parkplanning.nps.gov/*. Finally, they may hand-deliver comments to the Everglades National Park headquarters in Homestead, Florida.

Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Everglades National Park, 40001 State Road 9336, Homestead, FL 33034, 305–242–7704.

SUPPLEMENTARY INFORMATION: Persons who previously submitted comments on the scope of the EIS as it relates to the GMP need not resubmit those comments. The NPS already is considering that input as planning continues. However, persons who have not previously submitted comments on the scope of the EIS, or who wish to submit additional comments related to the scope of the EIS in consideration of the wilderness study are encouraged to do so.

The environmental review of the GMP, wilderness study, and EIS for Everglades National Park will be conducted in accordance with requirements of NEPA (42 U.S.C. 4371 *et seq.* and 40 CFR parts 1500–1508), other appropriate Federal regulations, and NPS procedures and policies for compliance with those regulations.

Authority: The authority for publishing this notice is 40 CFR 1506.6.

The responsible official for this draft GMP/EIS is the Regional Director for the Southeast Region, Patricia A. Hooks.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 06–6734 Filed 8–4–06; 8:45 am]

BILLING CODE 4310–XH–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–539–C (Second Review)]

Uranium From Russia

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that termination of the suspended investigation on uranium from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on July 1, 2005 (70 FR 38212) and determined on October 4, 2005 that it would conduct a full review (70 FR 60368, October 17, 2005). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 20, 2006 (71 FR 3326).[3] The hearing was held in Washington, DC, on May 25, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on August 1, 2006. The views of the Commission are contained in USITC Publication 3872 (August 2006), entitled *Uranium from Russia: Investigation No. 731–TA–539–C (Second Review).*

Issued: August 1, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–12779 Filed 8–4–06; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Deanna Tanner Okun did not participate in this review; Commissioner Charlotte R. Lane made a negative determination.

[3] A revision to the schedule was published in the **Federal Register** on April 7, 2006 (71 FR 17915).

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–049]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 14, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–671–673 (Second Review) (Silicomanganese from Brazil, China, and Ukraine)—briefing and vote. (The Commission is currently scheduled

to transmit its determination and Commissioners' opinions to the Secretary of Commerce on August 28, 2006.)

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 3, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–6760 Filed 8–3–06; 1:37 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0001]

Office on Violence Against Women; Agency Information Collection Activities: Revision of a Currently Approved Collection and Extension of a Currently Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act as Amended for Applicants to the Stop (Services* Training* Officers* Prosecutors) Violence Against Women Formula Grant Program.

The Department of Justice, Office on Violence Against Women (OVW) 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 71, Number 120, page 35946 on June 22, 2006, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 7, 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:

(1) 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;

(2) 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;

(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:* Revision of a currently approved collection and extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act as Amended for Applicants to the STOP Formula Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–001. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes STOP formula grantees (50 states, the District of Columbia and five territories (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands)). The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 and reauthorized and amended by the Violence Against Women Act of 2000 and the Violence Against Women Act of 2005. The purpose of the STOP Formula Grant Program is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice's Office on Violence Against Women (OVW) administers the STOP Formula Grant Program funds which must be distributed by STOP state administrators according to statutory formula (as amended by VAWA 2000 and VAWA 2005).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 56 respondents (state administrators from the STOP Formula Grant Program) less than one hour to complete a Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act, as Amended.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Certification is less than 56 hours.

If additional information is required contact: Lynn Bryant, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: August 1, 2006.

Lynn Bryant,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. E6–12729 Filed 8–4–06; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0259]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Bureau of Justice Assistance Application Form: Medal of Valor.

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 71, Number 101, page 30174 on May 25, 2006] allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until September 6, 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:* Extension of a previously approved collection for which approval will expired on December 31, 2005.

(2) *Title of the Form/Collection:* Public Safety Officer Medal or Valor.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None.

(4) *Affected public who will be as or required to respond, as well as a brief abstract: Primary:* State, local and tribal government agencies within the United States and its territories.

Abstract: The Bureau of Justice Assistance, a component of the Office of Justice Program, Department of Justice, administers the Public Safety Officer's Medal of Valor. One a year, the President of the United States of America may award, and present in the name of Congress, a Medal of Valor of appropriate design, with ribbons and appurtenances, to a public safety officer who is cited by the Attorney General, upon the recommendation of the Medal of Valor Review Board, for extraordinary valor above and beyond the call of duty. The Public Safety Officer Medal of Valor is the highest national award given to a public safety officer in recognition of their bravery and altruistic acts of valor to protect and save the lives of others. Nomination(s) for this award is voluntary. Nominations are received through the Internet, or postal mail. The Medal of Valor program is governed by F1.R.802, the ''Public Safety Officer Medal of Valor Act of 2001.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 182 applicants under the Medal of Valor approximately 25 minutes to complete the application/nomination form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* the total estimated annual hour burden to complete the certification form is 75.83 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 1, 2006.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E6–12728 Filed 8–4–06; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[AAG/A Order No. 012–2006]

Privacy Act of 1974; System of Records

AGENCY: Department of Justice (DOJ), Office of Justice Programs (OJP).

ACTION: Modification of a system of records.

SUMMARY: This is a notice of minor modifications to a system of records originally published in the **Federal Register** on September 4, 2002 (67 FR 56584), entitled ''Victims of International Terrorism Compensation and Assistance Program, OJP–014.'' The system is being re-named as ''Victims of International Terrorism Expense Reimbursement Program, OJP–014.'' Minor changes are made to reflect the nature of the program as an ''expense reimbursement'' program and to update routine uses as necessary.

DATES: In accordance with the requirements of 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, has 40 days in which to conclude its review of the system. Therefore, please submit any comments by September 18, 2006. If no comments are received, the revised system notice will be implemented without further notice in the **Federal Register**.

ADDRESSES: The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400 National Place Building), Facsimile number 202–307–1853.

FOR FURTHER INFORMATION CONTACT: Mary E. Cahill, 202–307–1823.

In accordance with 5 U.S.C. 552a (r), the DOJ has provided a report to OMB and the Congress on the modifications to this system of records.

Dated: July 31, 2006.

Lee J. Lofthus,

Acting Assistant Attorney General, for Administration.

JUSTICE/OJP—014

SYSTEM NAME:

Victims of International Terrorism Expense Reimbursement Program.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Original records will be kept at the Office of Justice Programs (OJP), 810 Seventh Street, NW., Washington, DC 20531. Copies of records may be kept at locations of authorized contractors. The Office for Victims of Crimes (OVC) will have access to any/all data base(s) established by an OVC contractor and the data base(s) will be maintained internally or placed on the OJP/OVC server.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants seeking expense reimbursement under the program,

individuals filing claims on behalf of claimants, and individuals referenced in claims or related documents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system include: Claim forms filed by or on behalf of claimants seeking expense reimbursement under the program; records from telephone contacts or inquiries; documents submitted in support of the claims; medical, personal, employment, financial, and other records obtained or generated to process claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system exists under the Victims of Crime Act (''VOCA''), 42 U.S.C. 10601 et seq.; 10604 (Administrative provisions).

PURPOSE OF RECORDS MAINTAINED IN THE SYSTEM:

Information contained in this system may be used to determine and record eligibility of claimants under the Victims of Crime Act, as amended, and any reimbursement provided under the Act, and to track claim status. For individuals who are eligible, see 42 U.S.C. 10603c(3)(A): The term ''victim'' means ''a person who—(i) suffered direct physical or emotional injury or death as a result of international terrorism occurring on or after December 21, 1988 with respect to which an investigation or prosecution was ongoing after April 24, 1996; and (ii) as of the date on which the international terrorism occurred, was a national of the United States or an officer or employee of the United States Government.'' [42 U.S.C. 10603c(3)(A)(i) and (ii)].

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records, or any information derived therefrom, may be disclosed as follows:

A. To appropriate Federal, State and local agencies to coordinate expense reimbursements paid under similar programs;

B. To Federal, State and local agencies to verify and certify eligibility for expense reimbursements;

C. In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

D. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

E. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

F. Limited information may be disclosed to relief organizations/agencies, as appropriate for acts of international terrorism.

G. To foreign compensation programs and/or foreign governments to coordinate payment of expense reimbursements and/or to ensure no duplication of payments.

H. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

I. Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, State, local, foreign, or tribal, law enforcement authority or other appropriate agency charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing such law.

J. To appropriate officials and employees of a Federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract, or the issuance of a grant or benefit.

K. To the White House (the President, Vice President, their staffs, and other entities of the Executive Office of the President (EOP)) for Executive Branch coordination of activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President or Vice-President.

L. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

M. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

N. The Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is maintained on a master index, in folders, and in an automated system.

RETRIEVABILITY:

Data is retrieved by name and address of claimant, name and address of deceased or injured victim, by terrorism incident, by type of service provider/service rendered to victim, by nationality (Foreign Service National (FSN) vs. U.S. National), by social security number, by date of birth, and individual case file number.

SAFEGUARDS:

Computerized information is safeguarded and protected by computer password key and limited access. Electronic record retention is also protected by ''firewalls.'' Operational access to information maintained on a dedicated computer system, is controlled by levels of security provided by password keys to prevent unauthorized entry, and audit trail of accessed information. Access to manual files is limited to personnel who have a need for files to perform official duties and is safeguarded in locked file cabinets. All files are maintained in a secure building.

RETENTION AND DISPOSAL:

Files are retained on hard copy and on a computer database. All claim files and automated data pertaining to a claim are destroyed 10 years after the date the claim has been fully processed and/or payment made, as approved by the National Archives and Records Administration (NARA). Automated data is retained in its most current form only, however, and as information is updated, outdated information is deleted. The schedule was approved and signed by the NARA Archivist on September 30, 2004.

SYSTEM MANAGER(S) AND ADDRESS:

Terrorism and International Victim Assistance Services Division, Office for Victims of Crime, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be addressed to the system manager listed above c/o FOI/PA Personnel.

RECORD ACCESS PROCEDURES:

Request for access to a record from this system shall be made in writing with the envelope and the letter clearly marked ''Freedom of Information/ Privacy Act Request.'' The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, state clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Public agencies including investigating agency, employing agency, claimants, educational institutions, physicians, hospitals, official State and Federal documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E6–12741 Filed 8–4–06; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,029]

American and Efird, Inc., Gastonia, NC; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA–W–59,029, which was published in the **Federal Register** on April 17, 2006 (71 FR 19753–19756) in FR Document E6–5658.

This rescinds the certification of eligibility for workers of TA–W–59,029, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 19754 in the third column, the fourteenth TA–W–number listed.

The Department appropriately published in the **Federal Register** April 17, 2006, page 19755, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA–W–59,029. The notice appears on page 19755 in the third column, the fourteenth TA–W–number listed.

Signed in Washington, DC, this 28th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–12773 Filed 8–4–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,973]

Arcona Leather Technologies, LLC, Hudson, NC; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA–W–58,973, which was published in the **Federal Register** on April 24, 2006 (72 FR 21043–21045) in FR Document E6–6095.

This rescinds the certification of eligibility for workers of TA–W–58,973, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 21044 in the second column, the third TA–W–number listed.

The Department appropriately published in the **Federal Register** April 24, 2006, page 21045, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA–W–58,973. The notice appears on page 21045 in the second column, the seventeenth TA–W–number listed.

Signed in Washington, DC, this 28th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–12771 Filed 8–4–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,681]

Atlas Spring Manufacturing Corp., Gardena, CA; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA–W–58,681, which was published in the **Federal Register** on April 18, 2006 (71 FR 19898–19901) in FR Document E6–5768.

This rescinds the certification of eligibility for workers of TA–W–58,681, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 19899 in the second column, the ninth TA–W–number listed.

The Department appropriately published in the **Federal Register** April 18, 2006, page 19900, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA–W–58,681. The notice appears on page 19900 in the third column, the twentieth TA–W–number listed.

Signed in Washington, DC, this 28th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–12768 Filed 8–4–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,103]

Ceramo Company, Inc., Jackson, MO; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA–W–59,103, which was published in the **Federal Register** on April 24, 2006 (74 FR 21043–21045) in FR Document E6–6095.

This rescinds the certification of eligibility for workers of TA–W–59,103, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 21044 in the first column, the fourth TA–W–number listed.

The Department appropriately published in the **Federal Register** April 24, 2006, page 21045, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA–W–59,103. The notice appears on page 21045 in the second column, the eighteenth TA–W–number listed.

Signed in Washington, DC, this 28th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–12775 Filed 8–4–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,081]

CFM Home Products, Joplin, MO; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA–W–59,081, which was published in the **Federal Register** on April 17, 2006 (71 FR 19753–19756) in FR Document E6–5658.

This rescinds the certification of eligibility for workers of TA–W–59,081, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 19754 in the third column, the sixteenth TA–W–number listed.

The Department appropriately published in the **Federal Register** April 17, 2006, page 19755, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA–W–59,081. The notice appears on page 19755 in the third column, the fifteenth TA–W–number listed.

Signed in Washington, DC, this 28th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–12774 Filed 8–4–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,156]

Clover Yarn, Inc., Clover, VA; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA–W–59,156, which was published in the **Federal Register** on April 24, 2006 (75 FR 21043–21045) in FR Document E6–6095.

This rescinds the certification of eligibility for workers of TA–W–59,156, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 21044 in the third column, the first TA–W–number listed.

The Department appropriately published in the **Federal Register** April 24, 2006, page 21045, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA–W–59,156. The notice appears on page 21045 in the second column, the twenty-first TA–W–number listed.

Signed in Washington, DC, this 28th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–12777 Filed 8–4–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,093]

Dana Corporation, Paris, TN; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA–W–59,093, which was published in the **Federal Register** on April 24, 2006 (73 FR 21043–21045) in FR Document E6–6095.

This rescinds the certification of eligibility for workers of TA–W–59,093, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 21044 in the second column, the twelveth TA–W–number listed.

The Department appropriately published in the **Federal Register** April 24, 2006, page 21045, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA–W–59,093. The notice appears on page 21045 in the second column, the twentieth TA–W–number listed.

Signed in Washington, DC, this 28th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–12772 Filed 8–4–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,924]

Miller Desk, Inc., High Point, NC; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA–W–58,924, which was published in the **Federal Register** on April 24, 2006 (71 FR 21043–21045) in FR Document E6–6095.

This rescinds the certification of eligibility for workers of TA–W–58,924, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 21044 in the first column, the eighth TA–W–number listed.

The Department appropriately published in the **Federal Register** April 24, 2006, page 21045, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA–W–58,924. The notice appears on page 21045 in the second column, the ninteenth TA–W–number listed.

Signed in Washington, DC, this 28th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–12770 Filed 8–4–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,918]

Perlos, Inc., Ft. Worth, TX; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA–W–58,918, which was published in the **Federal Register** on April 17, 2006 (71 FR 19753–19756) in FR Document E6–5658.

This rescinds the certification of eligibility for workers of TA–W–58,918, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 19755 in the first column, the third TA–W–number listed.

The Department appropriately published in the **Federal Register** April 17, 2006, page 19755, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA–W–58,918. The notice appears on page 19755 in the third column, the seventeenth TA–W–number listed.

Signed in Washington, DC, this 28th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–12769 Filed 8–4–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,117]

Point Technologies, Gibbon, MN; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA–W–59,117, which was published in the **Federal Register** on April 18, 2006 (71 FR 19898–19901) in FR Document E6–5768.

This rescinds the certification of eligibility for workers of TA–W–59,117, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 19899 in the third column, the twelveth TA–W–number listed.

The Department appropriately published in the **Federal Register** April 18, 2006, page 19900, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA–W–59,117. The notice appears on page 19900 in the third column, the nineteenth TA–W–number listed.

Signed in Washington, DC, this 28th day of July 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–12776 Filed 8–4–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Submitted for Public Comment and Recommendations: Surveys of Registered Apprenticeship Sponsors

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before October 6, 2006.

ADDRESSEE: Send comments to Ms. Charlotte Schifferes, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5637, Washington, DC 20210; (202) 693–3655 (this is not a toll-free number); e-mail: *schifferes.charlotte@dol.gov;* and fax: (202) 693–2766 (this is not a toll-free number).

FOR FURTHER INFORMATION: Contact Ms. Charlotte Schifferes, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5637, Washington, DC 20210; (202) 693–3655 (this is not a toll-free number); e-mail: *schifferes.charlotte@dol.gov*; and fax: (202) 693–2766 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor (DOL) is soliciting comments regarding a one-time survey of sponsors of registered apprenticeship programs.

Registered apprenticeship is a time-tested training method, involving hands-on instruction by experienced workers, a jobsite mentor, and related classroom instruction, all within a framework that identifies needed skills and provides recognized credentials. Apprenticeship programs are financed, sponsored, and implemented primarily by private sector employers and their workers, thus presenting minimal costs to the taxpayer. Programs may be sponsored unilaterally by employers or jointly by employers and unions. There are currently about 28,800 programs with an estimated 413,000 registered apprentices in the U.S.

DOL in accordance with the 1937 National Apprenticeship Act, is responsible for promoting the apprenticeship concept, assisting interested employers in developing apprenticeship programs, recognizing State Apprenticeship Agencies and Councils, registering apprenticeship programs and agreements, certifying registered apprentices, and monitoring registered programs and apprentices. In the last five years, the Department has focused on expanding use of registered apprenticeship in high-growth industries and new occupations. These promotional efforts have been an important element in the broader DOL initiative to create a demand-driven workforce system responsive to employer needs and successful in developing worker talent.

The proposed survey will be conducted by telephone and Internet with about 1,400 sponsors, of whom 80 percent, or 1,100 individuals, are expected to respond. A random stratified sample will be used to ensure broad representation nationally and to permit detailed information on the views of sponsors in clusters of industries, including those identified in the President's High Growth Job Training (HGJT) Initiative. Examples of newer industries identified in this initiative are Aerospace, Geospatial, and Health Services, among many others.

The information from the survey will provide a thorough and systematic understanding of sponsors' views, identifying what they value, dislike, or would like changed about registered apprenticeship; what they see as its main benefits and costs; what data they maintain on it; and how they interface with other parts of the workforce system. The data will show how, if at all, views differ by type of industry, number of apprentices, by type of program (unilateral or joint), or region.

The data collection will fill a gap in knowledge, since there is no systematic information on the views of sponsors in general nor of sponsors in high-growth industries who have recently embraced apprenticeship as a training method. The survey is part of a larger evaluation that will also involve on-site discussions in five states with key stakeholders. In each state, the contractor will talk in depth with apprentices, sponsors, state apprenticeship administrators, One-Stop Career Center directors, and community college officials involved in providing related instruction to apprentices.

The information collected in the survey, combined with findings from the site visits, will be used by the Department to inform policy development on registered apprenticeship, including how to make the system more responsive to employers and to further expand registered apprenticeship in high growth industries. The information will also be used to determine what data is available for possible impact or benefit-cost studies.

Section 172 of WIA is the authority under which the Employment and Training Administration (ETA) will collect the information proposed in this evaluation.

II. Desired Focus of Comments

Currently, ETA is soliciting comments, concerning the proposed survey of registered apprenticeship sponsors, that:

(a) 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;

(b) 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;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Actions

Type of Review: New

Agency: Employment and Training Administration.

Title: Survey of Registered Apprenticeship Program Sponsors.

OMB Number: New collection.

Affected Public: Sponsors of registered apprenticeship training programs, which may include small businesses.

Respondents and Burden Hours: The number of respondents who complete the interview is expected to be 1,144. The annual hour burden is calculated to be 324 hours, based on 1,144 respondents and a survey length of 17 minutes.

Total Burden Cost for capital and startup: $0.

Total Burden Cost for operation and maintenance: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: July 31, 2006.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E6–12737 Filed 8–4–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0NEW–(2006)–01]

Peer Review, Conflict of Interest and Disclosure Form; Request for the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment on the proposed Conflict of Interest and Disclosure Form (COI) form, which will be used to determine whether or not a conflict of interest exists for a potential peer review panel member.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by October 6, 2006.

Facsimile and electronic transmission: Your comments must be received by October 6, 2006.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0NEW–01–(2006), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 to 4:45 p.m., e.t.

Facsimile: If your comments are 10 pages or fewer, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov.* Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov.* In addition, the ICR, comments and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Todd Owen at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the ''Public Participation'' section in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Administration conducts peer reviews to review a draft product for quality by specialists in the field who were not involved in producting the draft. The selection of participants in a peer review is based on expertise, with due consideration of independence. The Office of Management and Budget published the Final Information Quality Bulletin for Peer Review on December 15, 2004. The Bulletin states ''* * * the agency must address reviewers' potential conflicts of interest (including those stemming from ties to regulated businesses and other stakeholders) and independence from the agency.'' The Bulletin requires agencies to adopt or adapt the committee selection policies employed by the National Academy of Sciences (NAS) when selecting peer reviewers who are not government employees. To fulfill this requirement OSHA has developed a Conflict of Interest and Disclosure Form, based on NAS, Conflict of Interest Disclosure form. This form will be used to determine whether or not a conflict exists for a potential peer review panel member.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting OMB to approve OSHA's COI form. The COI form would add 27 hours to OSHA's 114 million burden hour inventory. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB.

Type of Review: New information collection requirements.

Title: OSHA's Conflict of Interest and Disclosure Form (COI) form.

OMB Number: 1218–0NEW.

Affected Public: Individuals or households.

Number of Respondents: 36.

Frequency: On occasion.

Average Time Per Response: One half hour for respondents to complete Tier 1 for ''influential scientific assessments;'' and 1 hour for respondent to complete both Tier 1 and Tier 2 for ''highly influential scientific assessments.''

Estimated Total Burden Hours: 27 hours.

Estimated Cost (Operation and Maintenance): $0

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions.

You may submit comments and supporting materials in response to this notice by (1) hardy copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (FFY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery, and courier service.

All comments, submissions, and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Web page. Since all submissions become public, private information such as social security numbers should not be submitted.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on July 31, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. 06–6738 Filed 7–4–06; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Notice of Meetings

AGENCY: National Commission on Libraries and Information Science (NCLIS).

ACTION: Notice of Meetings.

Summary: The U.S. National Commission on Libraries and Information Science is also holding a closed meeting to discuss consolidation and staffing issues. Closing this meeting is in accordance with the exemption provided under Title 45, CFR, Part 1703.202(a)(9).

Date and Time: NCLIS Closed Meeting—August 14, 9—10 a.m.

Address: West Dining Room (Madison Building), Library of Congress, 101 Independence Avenue, SE., Washington, DC 20540–1099.

Status: Closed meeting.

Summary: The U.S. National Commission on Libraries and Information Science is holding an open business meeting to discuss Commission programs and administrative matters. Commissioners will review programs related to the Commission's strategic initiatives. Each of the Commission's task forces will share progress reports and the Commission will discuss future directions and activities. Topics will include (1) Policy Issues (Net Neutrality, E-ate, EPA); (2) Education Achievement/School Libraries, Battle of the Books; (3) School Librarian of the Year; (4) Appraisal/Assessment Initiative; (5) the White House Conference on Aging; (6) Emergency Preparedness and Disaster Response.

Date and Time: NCLIS Business Meeting—August 14, 2006, 10 p.m.–3:15 p.m.; August 15, 2006, 9 a.m.–1 p.m.

Address: West Dining Room (Madison Building), Library of Congress, 101 Independence Avenue, SE., Washington, DC 20540–1099.

Status: Open meeting.

Supplementary Information: The business meeting is open to the public, subject to space availability. To make special arrangements for physically challenged persons, contact Madeleine McCain, Director of Operations, 1800 M Street, NW., Suite 350 North Tower, Washington, DC 20036, e-mail *mmccain@nclis.gov*, fax 202–606–9203 or telephone 202–606–9200.

For Further Information Contact: Madeleine McCain, Director of Operations, U.S. National Commission on Libraries and Information Science, 1800 M Street, NW., Suite 350 North Tower, Washington, DC 20036, e-mail *mmccain@nclis.gov*, fax 202–606–9203 or telephone 202–606 9200.

Dated: August 1, 2006.

Madeleine C. McCain,

NCLIS Director of Operations.

[FR Doc. E6–12766 Filed 8–4–06; 8:45 am]

BILLING CODE 7528–01–P

NATIONAL INSTITUTE FOR LITERACY

Overview Information; Literacy Information and Communication (LINCS) Resource Collections; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.257S.

Dates:

Applications Available: August 7, 2006.

Deadline for Transmittal of Applications: September 11, 2006.

Deadline for Intergovernmental Review: September 11, 2006.

Eligible Applicants: Public and private agencies or institutions, or non-profit organizations, with knowledge and expertise in adult basic education and adult literacy; or consortia of such agencies, institutions, or organizations. Additional information concerning eligibility requirements is in Section III.1. of this notice.

Estimated Available Funds: $650,000.

Estimated Range of Awards: $175,000–$215,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: Up to 3.

Note: The National Institute for Literacy is not bound by any estimates in this notice.

Project Period: Up to 36 months. Each grantee will be required to enter into a cooperative agreement with the National Institute for Literacy (Institute) for the duration of the project period.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Literacy Information and Communication (LINCS) Resource Collections (Collections) is to develop, organize, and support online subject-oriented collections of instructional resources, including multi-media resources, informed by highest-quality research, especially scientifically based and other rigorous research, for use by adult education and literacy educators. The Collections also shall provide information on how to use the featured resources to enhance teaching and learning.

In addition, the Collections shall provide technical assistance on the content and use of the collections through presentations, workshops, and informational materials provided to adult education and literacy program administrators, project directors, and professional development staff. Limited technical assistance shall be provided via telephone and e-mail.

The LINCS Resource Collections are grouped into three main categories: I. Basic Skills; II. Program Planning; or III. Workforce Competitiveness.

I. Basic Skills Resource Collection shall focus on locating, reviewing, and selecting high-quality instructional materials, resources, and research on reading, writing, mathematics and numeracy for use by adult educators to improve instruction in basic skills.

1. Reading & Writing.
2. Mathematics & Numeracy.

II. Program Planning Resource Collection shall focus on locating, reviewing and selecting high-quality instructional materials, resources, and research on assessment, learning disabilities, and program improvement for use by adult education and literacy program administrators, project directors and professional development staff. The combination of topics is intended to direct attention to the role that assessments and awareness of learning disabilities can play in strengthening the quality of adult education services and learner outcomes.

1. Assessment.
2. Learning Disabilities.
3. Program Improvement.

III. Workforce Competitiveness Resource Collection shall focus on locating, reviewing, and selecting high-quality instructional materials, resources, and research on workforce basic skills education, English language acquisition, and technology. The combination of topics in this collection is intended to encourage special attention to (a) the development of connections between resources that support the acquisition of English language literacy with preparation for and participation in the workforce and (b) the role technology can play in supporting both English language acquisition and workforce basic skills.

1. English Language Literacy.
2. Technology.
3. Workforce Education.

The Collections are intended to play a vital role in helping the Institute fulfill its authorization to establish a national electronic database of information that disseminates information to the broadest possible audience within the literacy and basic skills field and a communication network for literacy programs, providers, social service agencies, and students. These grants will be awarded as cooperative agreements, as the Institute will be substantially involved with the grantees in the implementation of the funded activities. Applicants should specify which Resource Collection (I. Basic Skills; II. Program Planning; or III.

Workforce Competitiveness) they are submitting an application for in their proposals. Grantees will be responsible for each of the subject areas within their selected categories.

For background information on the Institute and LINCS, please visit: *http://www.nifl.gov/nifl/grants_contracts/info.html.*

Program Authority: 20 U.S.C. 9252.

Applicable Regulations: For purposes of this grant competition, the following regulations from the Education Department General Administrative Regulations (EDGAR) are applicable: 34 CFR parts 74, 75, 79, 80, 82, 84, 85, and 97.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: $650,000.

Estimated Range of Awards: $175,000–$215,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: Up to 3.

Note: The Institute is not bound by any estimates in this notice.

Project Period: Up to 36 months. Continuation awards are contingent on a grantee's progress and future Congressional appropriations.

III. Eligibility Information

1. *Eligible Applicants:* Public and private agencies or institutions, or non-profit organizations, with knowledge and expertise in adult basic education and adult literacy; or consortia of such agencies, institutions, or organizations. It is expected that applicants shall have significant knowledge and experience with the adult education and literacy system; understand current issues in adult education and literacy, especially content areas and professional development; and be familiar with researchers and experts in the adult education and literacy field, reading, learning disabilities, and research methods.

2. *Cost Sharing or Matching:* Although this program does not require cost sharing or matching for eligibility, the Institute encourages applicants to provide some institutional financial commitment to the project.

IV. Application and Submission Information

1. *Address to Request Application Package:* Jo Maralit; National Institute for Literacy; 1775 I Street, NW., Suite 730; Washington, DC 20006; Telephone: 202–233–2028; fax: 202–233–2050; e-mail: *mmaralit@nifl.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 the program contact person 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 competition.

Page Limit: The application narrative (Part IV of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. The Director strongly encourages applicants to limit Part IV to the equivalent of no more than 20 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part V, the budget section, including the narrative budget justification; Part VII, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part IV.

3. *Submission Dates and Times:*

Applications Available: August 7, 2006.

Deadline for Transmittal of Applications: September 11, 2006.

Applications for grants under this application notice may be submitted electronically using the Grants.gov Apply site (*www.grants.gov*), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

Deadline for Intergovernmental Review: September 11, 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

Electronic submissions of applications have been submitted electronically through the U.S. Department of Education's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, the Institute is participating as a partner in the new government wide Grants.gov Apply site in FY 2006. The Institute's LINCS Resource Collections application notice (CFDA Number 84.257S) is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for LINCS Resource Collections 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.

Notes:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from

Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the U.S. Department of Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this application notice to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the U.S. Department of Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.

• To submit your application via Grants.gov, you must complete the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*) and provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Institute will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an Institute-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under *For Further Information Contact*, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). The Institute 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 Institute will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), your package should include one original plus two copies of the application. Three additional copies (for a total of six applications) are requested, but not required. Each application should be clipped or stapled, not bound or enclosed in a folder and submitted on or before the application deadline date, to the Institute at the applicable following address:

By mail through the U.S. Postal Service:
National Institute for Literacy,
Attention: (CFDA Number 84.257S),
1775 I Street, NW., Suite 730,
Washington, DC 20006–2417; or

By mail through a commercial carrier:
National Institute for Literacy,
Attention: (CFDA Number 84.257S),
1775 I Street, NW., Suite 730,
Washington, DC 20006–2417, phone: 202–233–2025.

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 Director of the Institute.

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 Institute at the following address: National Institute for Literacy, Attention: (CFDA Number 84.257S), 1775 I Street, NW., Suite 730, Washington, DC 20006–2417.

The National Institute for Literacy 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 Institute:

(1) You must indicate on the envelope and Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter—of the competition under which you are submitting your application. For the LINCS Resource Collections competition: CFDA Number 84.257S.

(2) The Institute 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 National Institute for Literacy at 202–233–2025.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from section 75.210 of EDGAR, 34 CFR 75.210, and are as follows. The maximum possible score for all of these criteria is 100 points. The maximum possible score for each criterion is indicated in parentheses following the criterion.

1. Quality of the project design. (20 points).

(1) The Director considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Director considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The quality of the proposed demonstration design and procedures for documenting project activities and results.

(iii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(iv) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

2. Quality of project services. (20 points)

(1) The Director considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Director considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Director considers the following factors:

(i) The extent to which entities that are to be served by the propsoed project techical assistance project demonstrate support for the project.

(ii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(iv) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(v) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

3. Quality of project personnel. (25 points)

(1) The Director considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Director considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Director considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

4. Adequacy of resources. (25 points)

(1) The Director considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Director considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(iii) The extent to which the budget is adequate to support the proposed project.

(iv) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

5. Quality of the management plan. (10 points)

(1) The Director considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Director considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is the extent to which an applicant's response to the selection criteria addresses its ability to meet, and its commitment to, the following expectations of the Collections, which will be included in the cooperative agreements between the grantees and the Institute:

a. Create and implement a comprehensive plan for collecting the highest-quality information, especially scientifically based research and resources based on the most rigorous research available, as it pertains to the specific subject/topic area, in a central online Web site for high quality literacy information available for effective integration in teaching and professional development.

b. Nominate key personnel and content area experts, with expertise and knowledge, to work on each subject or topic to assist with identifying and selecting resources and providing technical assistance and training.

c. Collaborate to finalize guidelines, protocols, criteria, quality standards and common design templates for the Resource Collections.

d. Provide information on the application and implementation of how to use featured resources to enhance teaching and learning.

e. Provide content area professional development technical assistance and informational materials to adult education and literacy program administrators, project directors, professional development staff and practitioners via the online Resource Collection and conduct a minimum of two presentation workshops.

f. Gather data for measures established by the Institute concerning training and information dissemination.

g. Integrate a national discussion list into the offerings of the Collections. Depending on the topic area, the Collection shall nominate and manage, upon Institute approval, a discussion list moderator for an existing Institute discussion list to increase and promote active participation on the lists, and to stimulate discussion by posing questions and developing themes for the

specific subject areas that fall within the list's topics. For more information, go to: *http://www.nifl.gov/nifl/grants_contracts/info.html.*

h. Collaborate with other Collections and carry out joint activities when appropriate to maximize impact. Collections project directors and key personnel shall meet two times a year with Institute staff, participate in monthly conference calls, and other telephone meetings, as necessary.

i. Develop a sustainability plan that describes how the Collection plans to sustain the proposed activities after the grant period.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will 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 will 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 Institute. If you receive a multi-year award, you must submit semi-annual performance reports, as well as an annual performance report that provides the most current performance and financial expenditure information as specified in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the following measure has been developed for evaluating the overall effectiveness of the Institute's technical assistance and training: The percentage of individuals who receive NIFL technical assistance who can demonstrate that they implemented instructional practices grounded in scientifically based research within six months of receiving the technical assistance. The Institute will expect all grantees to document in the performance reports referenced in section VI.3. of this notice information that addresses this measure.

VII. Agency Contact

For Further Information Contract: Jo Maralit; National Institute for Literacy; 1775 I Street, NW., Suite 730; Washington, DC 20006; Telephone: 202–233–2028; FAX: 202–233–2050; e-mail: *mmaralit@nifl.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of the Institute published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.nifl.gov/nifl/grants_contracts/grants.html*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: August 2, 2006.

Sandra L. Baxter,

Director.

[FR Doc. 06–6758 Filed 8–4–06; 8:45 am]

BILLING CODE 6055–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* ''Nuclear Material Events Database (NMED)'' for the Collection of Event Report, Response, Analyses, and Follow-up Data on Events Involving the Use of Atomic Energy Act (AEA) Radioactive Byproduct Material.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* Agreement States are requested to provide copies of licensee material event reports electronically or by hard copy to NRC on a monthly basis or within 30 days of receipt from their licensee. In addition, Agreement States are requested to report events that may pose a significant health and safety hazard to the NRC Headquarters Operations Officer within the next working day of notification by an Agreement State licensee.

5. *Who will be required or asked to report:* Current Agreement States and any State receiving Agreement State status in the future.

6. *An estimate of the number of responses:* 741.

7. *The estimated number of annual respondents:* 34.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 756 hours, an average of approximately 1.0 hour per response for 711 events and 1.5 additional hours for 30 significant events, for all existing Agreement State reporting. Any new Agreement State would add approximately 21 event reports (including follow-up reports) per year or 22.5 burden hours.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* NRC regulations require NRC licensees to report incidents and events involving the use, transportation and security of radioactive byproduct material, and source material, such as those involving radiation overexposures, leaking or contaminated sealed source(s), release of excessive contamination of radioactive material, lost or stolen radioactive material, equipment failures, abandoned well logging sources and medical events. Agreement State licenses are also required to report these events to their individual Agreement State regulatory authorities under compatible Agreement State regulations. NRC is requesting that the Agreement States provide

information to NRC on the initial notification, response actions, and follow-up investigations on events involving the use (including suspected theft or terrorist activities) of nuclear materials regulated pursuant to the Atomic Energy Act. The event information should be provided in a uniform electronic format, for assessment and identification of any facilities/site specific or generic safety concerns that could have the potential to impact public health and safety. The identification and review of safety concerns may result in lessons learned, and may also identify generic issues for further study which could result in proposals for changes or revisions to technical or regulatory designs, processes, standards, guidance or requirements.

Comments and questions should be directed to the OMB reviewer listed below by September 6, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

John A. Asalone, Office of Information and Regulatory Affairs (3150–0178), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 1st day of August 2006.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E6–12723 Filed 8–4–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Power Company LLC, Oconee Nuclear Station, Units 1, 2, and 3; Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted the request of Duke Power Company LLC (the licensee) to withdraw its February 14, 2005, application for proposed amendments to Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 for Oconee Nuclear Station, Units 1, 2, and 3, respectively, located in Oconee County.

The proposed amendments would have revised the Technical Specifications to accommodate the replacement of the current analog-based reactor protective system (RPS) and engineered safeguards protective system (ESPS) with a digital computer-based RPS and ESPS.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 16, 2005 (70 FR 12907). However, by letter dated June 22, 2006, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated February 14, 2005, and the licensee's letter dated June 22, 2006, which withdrew the application for license amendments. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 24th day of July 2006.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–12725 Filed 8–4–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Nuclear Management Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–20, issued to Nuclear Management Company (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

The proposed amendment would remove tri-sodium phosphate from the Palisades' containment.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's public document room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property,

financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016, attorney for the licensee.

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 20, 2006, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 27th day of July 2006.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Acting Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–12724 Filed 8–4–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services Covered by Chapter 9 of the United States-Bahrain Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Determination under Trade Agreements Act of 1979.

EFFECTIVE DATES: August 7, 2006.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476, or Jason Kearns, Associate General Counsel, Office of the United States Trade Representative, (202) 395–9439.

On September 14, 2004, the United States and Bahrain entered into the United States-Bahrain Free Trade Agreement (''Bahrain FTA''). Chapter 9 of the Bahrain FTA sets forth certain obligations with respect to government procurement of goods and services, as specified in Annexes 9–A–1 and 9–A–2 of the Bahrain FTA. On January 11, 2006, the President signed into law the United States-Bahrain Free Trade Agreement Implementation Act (''the Bahrain FTA Act'') (Pub. L. 109–169, 119 Stat. 3581) (19 U.S.C. 3805 note). In section 101(a) of the Bahrain FTA Act, the Congress approved the Bahrain FTA. The Bahrain FTA entered into force on August 1, 2006.

Section 1–201 of Executive Order 12260 of December 31, 1980 (46 FR 1653) delegates the functions of the President under Sections 301 and 302 of the Trade Agreements Act of 1979 (''the Trade Agreements Act'') (19 U.S.C. 2511, 2512) to the United States Trade Representative.

Now, therefore, I, Susan C. Schwab, United States Trade Representative, in conformity with the provisions of Sections 301 and 302 of the Trade Agreements Act, and Executive Order 12260, and in order to carry out U.S. obligations under Chapter 9 of the Bahrain FTA, do hereby determine that:

1. Bahrain is a country, other than a major industrialized country, which, pursuant to the Bahrain FTA, will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products. In accordance with Section 301(b)(3) of the Trade Agreements Act, Bahrain is so designated for purposes of Section 301(a) of the Trade Agreements Act.

2. With respect to eligible products of Bahrain (*i.e.*, goods and services covered by the Schedules of the United States in Annexes 9–A–1 and 9–A–2 of the Bahrain FTA) and suppliers of such products, the application of any law, regulation, procedure, or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than accorded—

(A) To United States products and suppliers of such products; or

(B) To eligible products of another foreign country or instrumentality which is a party to the Agreement on Government Procurement referred to in section 101(d)(17) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(17)) and suppliers of such products, shall be waived.

With respect to Bahrain, this waiver shall be applied by all entities listed in the Schedules of the United States in Annex 9–A–1 and in List A of Annex 9–A–2 of the Bahrain FTA.

3. The designation in paragraph 1 and the waiver in paragraph 2 are subject to modification or withdrawal by the United States Trade Representative.

Susan C. Schwab,

United States Trade Representative.

[FR Doc. E6–12792 Filed 8–4–06; 8:45 am]

BILLING CODE 3190–W6–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS345]

WTO Dispute Settlement Proceeding Regarding United States—Customs Bond Directive for Merchandise Subject to Anti-Dumping/ Countervailing Duties

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on June 6, 2006, India requested consultations with the United States under the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement'') concerning certain issues relating to Customs Bond Directive 99–3510–004, as amended by the Amendment to Bond Directive 99–3510–004 (July 9, 2004), and clarifications and amendments thereof. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS345/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before August 18, 2006 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0624@ustr.eop.gov,* Attn: ''India Bond Dispute (DS345)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

FOR FURTHER INFORMATION CONTACT: Elissa Alben, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–9622.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by India

On August 4, 2004, the Department of Commerce published in the **Federal Register** notice of its affirmative preliminary less-than-fair-value (''LTFV'') determination in an investigation concerning certain frozen and canned warm water shrimp from India (69 FR 47,111). On December 23, 2004, the Department of Commerce published notice of its affirmative final LTFV determination (69 FR 76,916), and on February 1, 2005, the Department of Commerce published an amended final LTFV determination, along with an antidumping duty order, covering only certain frozen warm water shrimp from India (70 FR 5147). The latter notice contains the final margins of LTFV sales, as provided in section 733 of the Tariff Act of 1930, as amended.

In its request for consultations, India alleges that the United States has imposed on importers a requirement to maintain a continuous entry bond in the amount of the anti-dumping duty margin multiplied by the value of imports of frozen warmwater shrimp imported by the importer in the preceding year, and that Customs Bond Directive 99–3510–004, as amended on July 9, 2004 (and any clarifications and amendments thereof) as such constitutes specific action against dumping and subsidization not in accordance with GATT 1994 Article VI:2 and 3, as well as Articles 1, and 18.1 of the AD Agreement and Articles 10 and 32.1 of the Subsidies Agreement, that it results in charges in excess of the margin of dumping or amount of subsidy that are not in accordance with GATT 1994 Articles VI:2 and VI:3, and that it is unreasonable as security for payment of antidumping and countervailing duties and therefore inconsistent with Note Ad paragraphs 2 and 3 of GATT 1994 Article VI. India further alleges that the continuous bond requirement as such is inconsistent with Articles 7.1, 7.2, 7.4, and 7.5 of the AD Agreement and Articles 17.1, 17.2, 17.4, and 17.5 of the Subsidies Agreement to the extent that it may be characterized as a provisional measure or is applied prior to the imposition of definitive antidumping duties, and that it is inconsistent with Articles 9.2 and 9.3 of the AD Agreement and Articles 19.3 and 19.4 of the Subsidies Agreement. India further states that because the amended directive was not published in the **Federal Register** or the Customs Bulletin of the United States, it is inconsistent with GATT 1994 Article X, AD Agreement Article 18.5, and Subsidies Agreement Article 32.5. India alleges that the measure as such is inconsistent with GATT 1994 Article I and II as a charge in excess of that imposed or mandatorily required by legislation on the date of entry into force of the GATT, and that it is inconsistent with GATT 1994 Article XI as a restriction other than a duty, tax or other charge and GATT 1994 Article XIII to the extent it is applied in a discriminatory manner. India also states that the application of the continuous bond requirement to imports of frozen warmwater shrimp from India is inconsistent with Articles I, II, VI:2 (including Note 1 *Ad* Paragraphs 2 and 3 of Article VI) XI, and XIII of the GATT, and Articles 1, 7.1, 7.2, 7.4, 7.5, 9.2, 9.3, 9.3.1 and 18.1 of the AD Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit their comments either (i) electronically, to *FR0624@ustr.eop.gov,* Attn: ''India Bond Dispute (DS345)'' in the subject line, or (ii) by fax to Sandy McKinzy at (202) 395–3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–345, India Bond Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E6–12788 Filed 8–4–06; 8:45 am]

BILLING CODE 3190–W6–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a New Information Collection; OPM Form 1655 and OPM Form 1655–A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a new information collection. OPM 1655, Application for Senior Administrative Law Judge, and OPM 1655–A, Geographic Preference Statement for Senior Administrative Law Judge Applicant, are used by retired Administrative Law Judges seeking reemployment on a temporary and intermittent basis to complete hearings of one or more specified case(s) in accordance with the Administrative Procedures Act of 1946.

Approximately 150 OPM 1655 are completed annually. Each form takes approximately 30–45 minutes to complete. The annual estimated burden is 94 hours. Approximately 200 OPM 1655–A are completed annually. Each form takes approximately 15–25 minutes to complete. The annual estimated burden is 67 hours.

Comments are particularly invited on:

- Whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility;
- Whether our estimates of the public burden of this collection of information is accurate, and based on valid assumptions and methodology;
- And ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Juanita H. Love, Program Manager, Administrative Law Judge Program Office, Human Capital Leadership & Merit System, Accountability Division, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7425, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Karyn D. Lusby, Program Analyst, Administrative Law Judge Program Office, Human Capital Leadership & Merit System, Accountability Division, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7425, Washington, DC 20415, *karyn.lusby@opm.gov*.

Office of Personnel Management.

Dan G. Blair,

Deputy Director.

[FR Doc. E6–12784 Filed 8–4–06; 8:45 am]

BILLING CODE 6325–43–P

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 June 1, 2006, and June 30, 2006. 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 June 2006.

Schedule B

No Schedule B appointments were approved for June 2006.

Schedule C

The following Schedule C appointments were approved during June 2006:

Section 213.3303 Executive Office of the President Council on Environmental Quality

EQGS60019 Associate Director for Agriculture, Lands and Wildlife to the Chairman (Council on Environmental Quality). Effective June 30, 2006.

Office of Management and Budget

BOGS60157 Confidential Assistant to the Administrator, E-Government and Information Technology. Effective June 16, 2006.

BOGS60011 Deputy General Counsel to the General Counsel. Effective June 19, 2006.

BOGS60155 Special Assistant to the Director, Office of Management and Budget. Effective June 19, 2006.

Office of National Drug Control Policy

QQGS60091 Legislative Analyst to the Associate Director, Office of Legislative Affairs. Effective June 01, 2006.

Office of Science and Technology Policy

TSGS60030 Confidential Assistant to the Chief of Staff and General Counsel. Effective June 09, 2006.

Section 213.3304 Department of State

DSGS61092 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs. Effective June 06, 2006.

DSGS61096 Senior Advisor to the Director, Policy Planning Staff. Effective June 09, 2006.

DSGS61095 Special Assistant to the Deputy Assistant Secretary. Effective June 13, 2006.

DSGS61089 Supervisory Protocol Officer (Visits) to the Chief of Protocol. Effective June 15, 2006.

DSGS61088 Special Assistant to the Chief Financial Officer. Effective June 16, 2006.

DSGS61094 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs. Effective June 16, 2006.

DSGS60817 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective June 19, 2006.

DSGS61093 Public Affairs Officer to the Chief of Protocol. Effective June 26, 2006.

DSGS61098 Legislative Analyst to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective June 30, 2006.

DSGS61100 Staff Assistant to the Ambassador-At-Large (War Crimes). Effective June 30, 2006.

Section 213.3305 Department of the Treasury

DYGS00442 Special Assistant to the Deputy Assistant Secretary (Public Liaison, Strategic Planning and Business Development). Effective June 30, 2006.

DYGS00472 Special Assistant to the Under Secretary for International Affairs. Effective June 30, 2006.

Section 213.3306 Office of the Secretary of Defense

DDGS16954 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs). Effective June 02, 2006.

DDGS16946 Staff Assistant to the Assistant Secretary of Defense (Health Affairs). Effective June 09, 2006.

DDGS16950 Confidential Assistant to the Deputy Under Secretary of Defense (Acquisition and Technology). Effective June 13, 2006.

DDGS16952 Special Administrative Assistant to the Under Secretary of Defense (Acquisition, Technology, and Logistics). Effective June 23, 2006.

Section 213.3310 Department of Justice

DJGS00126 Deputy Chief of Staff and Counsel to the Assistant Attorney General. Effective June 02, 2006.

DJGS00155 Speechwriter to the Director, Office of Public Affairs. Effective June 09, 2006.

DJGS00369 Deputy White House Liaison to the White House Liaison and Counsel to the Attorney General. Effective June 19, 2006.

DJGS00147 Confidential Assistant to the Assistant Attorney General, Environment and Natural Resources. Effective June 26, 2006.

DJGS00124 Senior Counsel to the Director, Office of Public Affairs. Effective June 28, 2006.

DJGS00226 Senior Advisor to the Director of the Bureau of Justice Assistance. Effective June 28, 2006.

DJGS00279 Deputy Director to the Director, Office of Intergovernmental and Public Liaison. Effective June 28, 2006.

Section 213.3311 Department of Homeland Security

DMGS00518 Special Assistant to the Assistant Secretary for Information Analysis. Effective June 01, 2006.

DMGS00531 Counselor to the General Counsel. Effective June 06, 2006.

DMGS00535 Director of Communications for Preparedness to the Under Secretary for Preparedness. Effective June 09, 2006.

DMGS00536 Director of Communications to the Deputy Director, Federal Emergency Management Agency. Effective June 09, 2006.

DMGS00534 Associate Director of Strategic Communications for Policy to the Director of Strategic Communications. Effective June 13, 2006.

DMGS00533 Advisor for Human Capital to the Under Secretary for Management. Effective June 16, 2006.

DMGS00537 Deputy Assistant Secretary for Policy Development to the Assistant Secretary for Policy. Effective June 21, 2006.

DMGS00515 Assistant Director of Legislative Affairs for Miscellaneous Offices to the Assistant Secretary for Legislative Affairs. Effective June 26, 2006.

DMGS00532 Advisor to the Director for Policy to the Director, Domestic Nuclear Detection Office. Effective June 28, 2006.

DMGS00541 Director/Executive Secretariat, Private Sector Advisory Committee to the Executive Director, Homeland Security Advisory Committees. Effective June 30, 2006.

DMGS00542 Advisor for Intelligence to the Assistant Secretary, Immigration and Customs Enforcement. Effective June 30, 2006.

Section 213.3312 Department of the Interior

DIGS01071 Special Assistant to the Solicitor. Effective June 16, 2006.

DIGS01072 Special Assistant—Scheduling and Advance to the Director—Scheduling and Advance. Effective June 30, 2006.

Section 213.3313 Department of Agriculture

DAGS00849 Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective June 21, 2006.

DAGS00850 Special Assistant to the Under Secretary for Rural Development. Effective June 21, 2006.

DAGS00851 Special Assistant to the Under Secretary for Research, Education and Economics. Effective June 21, 2006.

DAGS00854 Staff Assistant to the Assistant Secretary for Congressional Relations. Effective June 28, 2006.

DAGS00853 Director, Native American Programs to the Assistant Secretary

for Congressional Relations. Effective June 30, 2006.

Section 213.3314 Department of Commerce

DCGS00385 Senior Advisor to the Director. Effective June 09, 2006.

DCGS00492 Confidential Assistant to the Director of Advance. Effective June 09, 2006.

DCGS60205 Policy Advisor to the Chief of Staff. Effective June 09, 2006.

DCGS60272 Confidential Assistant to the Assistant Secretary for Market Access and Compliance. Effective June 09, 2006.

DCGS60380 Confidential Assistant to the Chief of Staff to the Under Secretary, International Trade Administration. Effective June 09, 2006.

DCGS00288 Confidential Assistant to the Director, Office of Business Liaison. Effective June 21, 2006.

DCGS00640 Speechwriter to the Director of Public Affairs. Effective June 21, 2006.

Section 213.3315 Department of Labor

DLGS60174 Special Assistant to the Director of Operations. Effective June 13, 2006.

DLGS60041 Staff Assistant to the Chief of Staff. Effective June 26, 2006.

DLGS60144 Staff Assistant to the White House Liaison. Effective June 28, 2006.

DLGS60077 Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective June 30, 2006.

Section 213.3316 Department of Health and Human Services

DHGS60057 Special Assistant to the Director, Office of Refugee Resettlement. Effective June 09, 2006.

DHGS60058 Confidential Assistant to the Director, Congressional Liaison Office. Effective June 16, 2006.

DHGS60059 Deputy Director for Regional Outreach and Operations to the Director of Intergovernmental Affairs. Effective June 21, 2006.

DHGS60127 Confidential Assistant to the Administrator, Centers for Medicare and Medicaid Services. Effective June 30, 2006.

DHGS60418 Confidential Assistant to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy) to the Assistant Secretary for Public Affairs. Effective June 30, 2006.

DHGS60570 Confidential Assistant (Advance) to the Deputy Director for Advance. Effective June 30, 2006.

Section 213.3317 Department of Education

DBGS00516 Special Assistant to the Assistant Secretary for Civil Rights. Effective June 02, 2006.

DBGS00537 Special Assistant to the Chief of Staff. Effective June 02, 2006.

DBGS00538 Confidential Assistant to the Chief of Staff. Effective June 19, 2006.

DBGS00540 Confidential Assistant to the Director, Scheduling and Advance Staff. Effective June 26, 2006.

DBGS00541 Special Assistant to the Assistant Deputy Secretary for Safe and Drug-Free Schools. Effective June 26, 2006.

DBGS00542 Special Assistant to the Executive Assistant. Effective June 26, 2006.

DBGS00535 Senior Advisor to the Secretary to the Chief of Staff. Effective June 30, 2006.

DBGS00539 Special Assistant to the Senior Counselor to the Secretary. Effective June 30, 2006.

DBGS00543 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective June 30, 2006.

DBGS00544 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach. Effective June 30, 2006.

DBGS00545 Director, Regional Services to the Assistant Secretary, Office of Communications and Outreach. Effective June 30, 2006.

DBGS00548 Special Assistant to the Deputy Assistant Secretary for Media Relations and Strategic Communications. Effective June 30, 2006.

Section 213.3318 Environmental Protection Agency

EPGS06018 Program Manager (Operations) to the Administrator. Effective June 16, 2006.

EPGS03200 Director of Scheduling to the Deputy Chief of Staff (Operations). Effective June 21, 2006.

EPGS06012 Director of Advance to the Deputy Chief of Staff (Operations). Effective June 26, 2006.

EPGS06013 Strategic Scheduler to the Deputy Chief of Staff (Operations). Effective June 26, 2006.

EPGS06014 Audio Visual Producer to the Deputy Chief of Staff (Operations). Effective June 26, 2006.

EPGS06015 Staff Secretary to the Chief of Staff. Effective June 26, 2006.

EPGS06016 Advance Specialist to the Deputy Chief of Staff (Operations). Effective June 26, 2006.

Section 213.3323 Overseas Private Investment Corporation

PQGS06015 Special Assistant to the Vice President, Investment Funds. Effective June 26, 2006.

Section 213.3325 United States Tax Court

JCGS60072 Trial Clerk to the Chief Judge. Effective June 15, 2006.

Section 213.3327 Department of Veterans Affairs

DVGS60050 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective June 13, 2006.

Section 213.3331 Department of Energy

DEGS00524 Assistant Press Secretary to the Director, Public Affairs. Effective June 02, 2006.

DEGS00523 Trip Coordinator to the Director, Office of Scheduling and Advance. Effective June 21, 2006.

DEGS00525 Deputy White House Liaison to the White House Liaison. Effective June 21, 2006.

DEGS00526 Trip Coordinator to the Director, Office of Scheduling and Advance. Effective June 27, 2006.

DEGS00527 Staff Assistant to the Director, Office of Scheduling and Advance. Effective June 27, 2006.

Section 213.3332 Small Business Administration

SBGS60169 Regional Administrator, Region I, Boston, Massachusetts to the Associate Administrator for Field Operations. Effective June 09, 2006.

Section 213.3337 General Services Administration

GSGS60095 White House Liaison to the Chief of Staff. Effective June 26, 2006.

GSGS00179 Small Business Specialist to the Associate Administrator for Small Business Utilization. Effective June 30, 2006.

Section 213.3356 Commission on Civil Rights

CCGS00017 Special Assistant to a Commissioner. Effective June 26, 2006.

Section 213.3384 Department of Housing and Urban Development

DUGS60187 Staff Assistant to the Assistant Secretary for Public Affairs. Effective June 16, 2006.

Section 213.3394 Department of Transportation

DTGS60054 Associate Director for Governmental Affairs to the Deputy Assistant Secretary for Governmental Affairs. Effective June 16, 2006

DTGS60337 Executive Director for Public Affairs to the Administrator. Effective June 21, 2006.

DTGS60381 Chief of Staff to the Administrator. Effective June 27, 2006.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

Dan G. Blair,

Deputy Director.

[FR Doc. E6–12785 Filed 8–4–06; 8:45 am]

BILLING CODE 6325–39–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Spouse Annuity Under the Railroad Retirement Act; OMB 3220–0042 Section 2(c) of the Railroad Retirement Act (RRA), provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the RRA. The age requirements for a spouse annuity depend on the employee's age and date of retirement and the employee's years of railroad service. The requirements relating to the annuities are prescribed in 20 CFR 216, 218, 219, 232, 234, and 295.

The RRB currently uses the electronic AA–3cert, *Application Summary and Certification* process and manual Form AA–3, *Application for Spouse/Divorced Spouse Annuity*, to obtain the information needed to determine an applicant's entitlement to an annuity and the amount of the annuity.

The AA–3cert process obtains information from an applicant by means of an interview with an RRB field-office representative. During the interview, the field-office representative enters the information obtained into an on-line information system. Upon completion of the interview, the applicant receives Form AA–3cert, Application Summary and Certification, which summarizes the information that was provided by/or verified by the applicant, for review and signature. The RRB also uses manual Form AA–3 in instances where the RRB representative is unable to contact the applicant in person or by telephone; *i.e.*, the applicant lives in another country.

The RRB estimates the burden for the collection as follows:

Estimated Burden

Form No.	Estimated annual responses	Estimated completion time (per response)	Estimated annual burden (hours)
AA–3cert	8,400	30	4,200
AA–3 (manual)	100	58	97
Total	8,500	.....	4,297

The RRB proposes to add new items to Form(s) AA–3cert and AA–3 to further document an applicant's most recent nonrailroad work. The items ask for the applicant's most recent job title and whether their employer is a seasonal employer. Non-burden-impacting changes are proposed to the certification statements of Form(s) AA–3cert and AA–3 that are intended to provide additional specificity regarding post-application events that require an applicant to contact the RRB. Other non-burden impacting, editorial (clarification) and formatting changes to Form AA–3cert and Form AA–3 are also proposed. Completion is required to obtain a benefit. One response is requested of each respondent.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E6–12757 Filed 8–4–06; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission; Office of Filings and Information Services Washington, DC 20549.

Extension: Rule 17f–1(b); SEC File No. 270–28; OMB Control No. 3235–0032.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

- Rule 17f–1(b): Requirements for reporting and inquiry with respect to missing, lost, counterfeit, or stolen securities

Rule 17f–1(b) (17 CFR 240.17f–1(b)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Act'') requires approximately 26,000 entities in the securities industry to register in the Lost and Stolen Securities Program (''Program''). Registration fulfills a statutory requirement that entities report and inquire about missing, lost, counterfeit, or stolen securities. Registration also allows entities in the securities industry to gain access to a confidential database that stores information for the Program.

We estimate that 1,000 new entities will register in the Program each year. The staff estimates that the average number of hours necessary to comply with the Rule 17f–1(b) is one-half hour. The total burden is therefore 500 hours (1,000 times one-half) annually for all participants.

Rule 17f–1(b) is a registration obligation only. Registering under rule 17f–1(b) is mandatory to obtain the benefit of a central database that stores information about missing, lost, counterfeit, or stolen securities for the Program. Reporting institutions required to register under rule 17f-1(b) will not be kept confidential; however, the Program database will be kept confidential. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (1) the Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 31, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–12696 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 202(a)(11)–1; SEC File No. 270–471; OMB Control No. 3235–0532.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Certain Broker-Dealers Deemed Not To Be Investment Advisers.'' Rule 202(a)(11)–1 (17 CFR 275.202(a)(11)–1) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) (''Advisers Act'') addresses the application of the Advisers Act to broker-dealers offering accounts charging an asset-based fee. The rule is intended to clarify when brokers offering these programs are subject to the provisions of the Advisers Act. The rule requires that all advertisements for brokerage accounts charging an asset-based fee and all agreements and contracts governing the operation of those accounts contain a certain prominent statement that the accounts are brokerage accounts and not advisory accounts. This collection of information is necessary so that customers are not confused with respect to the services that they are receiving, i.e., to prevent customers and prospective customers from mistakenly believing that the account is an advisory account subject to the Advisers Act. The collection assists customers in making informed decisions regarding whether to establish accounts.

The respondents to this collection of information are all broker-dealers that are registered with the Commission. The Commission has estimated that the average annual burden for ensuring compliance with the disclosure element of the rule is 5 minutes per broker-dealer taking advantage of the rule. If all of the approximately 6,158 broker-dealers registered with the Commission took advantage of the rule, the total estimated annual burden would be 511 hours (.083 hours × 6,158 brokers).

The rule imposes no additional requirements regarding record retention. The collection of information requirements under the rule are mandatory. Any information received by the Commission related to the rule would be kept confidential, subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312, or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 31, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–12698 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17f–1(c) and Form X–17F–1A; SEC File No. 270–29; OMB Control No. 3235–0037.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17f–1(c) and Form X–17F–1A: Reporting of missing, lost, stolen, or counterfeit securities.

Rule 17f–1(c) (17 CFR 240.17f–1(c)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Act'') requires approximately 26,000 entities in the securities industry to report lost, stolen, missing, or counterfeit securities certificates to the Commission or its designee, to a registered transfer agent for the issue, and, when criminal activity is suspected, to the Federal Bureau of Investigation. Such entities are required to use Form X–17F–1A (17 CFR 249.100) to make such reports. Filing these reports fulfills a statutory requirement that reporting institutions report and inquire about missing, lost, counterfeit, or stolen securities. Since these reports are compiled in a central database, the rule facilitates reporting institutions to access the database that stores information for the Lost and Stolen Securities Program.

We estimate that 26,000 reporting institutions will report that securities certificates are either missing, lost, counterfeit, or stolen annually and that

each reporting institution will submit this report 50 times each year. The staff estimates that the average amount of time necessary to comply with Rule 17f–1(c) and Form X–17F–1A is five minutes per submission. The total burden is 108,333 hours annually for the entire industry (26,000 times 50 times 5 divided by 60).

Rule 17f–1(c) is a reporting rule and does not specify a retention period. The rule requires an incident-based reporting requirement by the reporting institutions when securities certificates are discovered to be missing, lost, counterfeit, or stolen. Registering under rule 17f–1(c) is mandatory to obtain the benefit of a central database that stores information about missing, lost, counterfeit, or stolen securities for the Lost and Stolen Securities Program. Reporting institutions required to register under Rule 17f–1(c) will not be kept confidential; however, the Lost and Stolen Securities Program database will be kept confidential. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) the Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: July 31, 2006

Nancy M. Morris,

Secretary.

[FR Doc. E6–12700 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54250; File No. SR–CBOE–2005–93]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto To Establish a Quote Risk Monitor Mechanism and To Define Continuous Quoting

July 31, 2006.

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 November 3, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 16, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adopt CBOE Rule 1.1(ccc) to define the nature of CBOE Market-Makers' continuous electronic quoting obligations under the Exchange rules. CBOE also proposes to adopt CBOE Rule 8.18 to codify a description of the Quote Risk Monitor (''QRM'') Mechanism, which is a certain functionality the Exchange offers CBOE Market-Makers who have continuous electronic quoting obligations under Exchange rules for the Hybrid Trading System and Hybrid 2.0 Platform (''Hybrid'') to help them manage their quotations. The text of the proposed rule change, as amended, is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

Rule 1.1. Definitions

When used in these Rules, unless the context otherwise requires: (a)-(bbb) No change.

Continuous Electronic Quotes

(ccc) With respect to a Market-Maker who is obligated to provide continuous electronic quotes on the Hybrid Trading System or Hybrid 2.0 Platform (''Hybrid Market Maker''), the Hybrid Market-Maker shall be deemed to have provided ''continuous electronic quotes'' if the Hybrid Market-Maker provides electronic two-sided quotes for 99% of the time that the Hybrid Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day. If a technical failure or limitation of a system of the Exchange prevents the Hybrid Market-Maker from maintaining, or prevents the Hybrid Market-Maker from communicating to the Exchange, timely and accurate electronic quotes in a class, the duration of such failure shall not be considered in determining whether the Hybrid Market-Maker has satisfied the 99% quoting standard with respect to that option class. The Exchange may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances.

* * * * *

Rule 8.7—Obligations of Market-Makers

(a)–(c) No change.

(d) Market Making Obligations in Applicable Hybrid Classes

The following obligations in this paragraph (d) are only applicable to Market-Makers trading classes on the CBOE Hybrid System and only in those Hybrid classes. As such, this paragraph has no applicability to non-Hybrid classes. This paragraph is not applicable to Remote Market-Makers, who instead will be subject to the obligations imposed by Rule 8.7(e). Unless otherwise provided in this Rule, Market-Makers trading classes on the Hybrid System remain subject to all obligations imposed by CBOE Rule 8.7. To the extent another obligation contained elsewhere in Rule 8.7 is inconsistent with an obligation contained in paragraph (d) of Rule 8.7 with respect to a class trading on Hybrid, this paragraph (d) shall govern trading in the Hybrid class.

These requirements are applicable on a per class basis depending upon the percentage of volume a Market-Maker transacts electronically versus in open outcry. With respect to making this determination, the Exchange will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1, which replaced and superseded the original filing in its entirety, modified the proposed rule change to: (1) clarify the nature of a CBOE Market-Maker's obligation to quote ''continuously'' in order to incorporate a ''99% standard'' applicable to electronic quotes; and (2) provide that Hybrid Market-Makers are not required to use the QRM Mechanism.

monitor Market-Makers' trading activity every calendar quarter to determine whether they exceed the thresholds established in [this] paragraph (d)*(i)*. If a Market-Maker exceeds the threshold established below, the obligations contained in (d)(ii) will be effective the next calendar quarter.

For a period of ninety (90) days commencing immediately after a class begins trading on the Hybrid system, the provisions of paragraph (d)(i) shall govern trading in that class.

(i) Market-Maker Trades [Less Than] 20% *or Less* Contract Volume Electronically:

If a Market-Maker on the CBOE Hybrid System never transacts more than 20% (*i.e.*, he trades 20% or less) of his contract volume electronically in an appointed Hybrid class during any calendar quarter, the following provisions shall apply to that Market-Maker with respect to that class:

(A) Quote Widths: With respect to electronic quoting, the Market-Maker will not be required to comply with the quote width requirements of CBOE Rule 8.7(b)(iv) in that class. The effectiveness of this subparagraph (i)(A) shall be in effect in each Hybrid for a period of one year commencing with the date the class begins trading on the Hybrid System.

(B) Continuous Electronic Quoting Obligation: The Market-Maker will not be obligated to quote electronically in any designated percentage of series within that class. If a Market-Maker quotes electronically, its undecremented quote must be for at least ten contracts (''10-up''), unless the underlying primary market disseminates a 100-share quote, in which case the Market-Maker's undecremented quote may be for as low as 1-contract (''1-up''). The ability to quote 1-up when the underlying primary quotes 100 shares is expressly conditioned on the process being automated (*i.e.*, a Market-Maker may not manually adjust his quotes to reflect 1-up sizes). Quotes must automatically return to at least 10-up when the underlying primary market no longer disseminates a 100-share quote. Market-Makers that have not automated this process may not avail themselves of the relief provided herein. The ability to quote 1-up shall operate on a pilot basis and shall terminate February 17, 2006.

(C) Continuous Open Outcry Quoting Obligation: In response to any request for quote by a [floor broker or DPM representing an order as agent] *member or PAR Official,* Market-Makers must provide a two-sided market complying with the quote width requirements contained in Rule 8.7(b)(iv) for a minimum of ten contracts for non-broker-dealer orders and one contract for broker-dealer orders.

(D) In-Person Quoting Requirement: Any volume transacted electronically will not count towards the Market-Maker's in-person requirement contained in Rule 8.7.03(B).

(ii) Market-Maker Trades More Than 20% Contract Volume Electronically:

If a Market-Maker on the CBOE Hybrid System transacts more than 20% of his contract volume electronically in an appointed Hybrid class during any calendar quarter, commencing the next calendar quarter he will be subject to the following quoting obligations in that class for as long as he remains in that class:

(A) Quote Widths: The Market-Maker must comply with the quote width requirements contained in Rule 8.7(b)(iv).

(B) Continuous *Electronic* Quoting Obligation: A Market-Maker will be required to maintain continuous electronic [two-sided] quotes *(as defined in Rule 1.1(ccc))* [for at least ten contracts (undecremented size)] in 60% of the series of his/her appointed class[es]. *The initial size of a Market-Maker's quote must be for at least ten contracts (undecremented size).* If the underlying primary market disseminates a 100-share quote, a Market-Maker's undecremented quote may be for as low as 1-contract (''1-up''), however, this ability is expressly conditioned on the process being automated (*i.e.*, a Market-Maker may not manually adjust his quotes to reflect 1-up sizes). Quotes must automatically return to at least 10-up when the underlying primary market no longer disseminates a 100-share quote. Market-Makers that have not automated this process may not avail themselves of the relief provided herein. The ability to quote 1-up shall operate on a pilot basis and shall terminate February 17, 2006.

(C) Continuous Open Outcry Quoting Obligation: In response to any request for quote by a [floor broker or DPM representing an order as agent] *member or PAR Official,* in-crowd Market-Makers must provide a two-sided market complying with the current quote width requirements contained in Rule 8.7(b)(iv) for a minimum of ten contracts for non-broker-dealer orders and one contract for broker-dealer orders.

(iii) The obligations and duties of Market-Makers set forth in paragraphs (d)(i) and (d)(ii) apply to a Market-Maker on a per class basis and only when the Market-Maker is quoting in a particular class on a given trading day (e.g., if on a given trading day a Market-Maker is quoting in 1 of his/her 10 appointed classes, the Market-Maker has quote width, continuous electronic quoting and, to the extent the Market-Maker is present in the trading crowd, continuous open outcry quoting obligations in that class; the continuous electronic quoting obligation in subparagraph (d)(ii)(B) applies to 60% of the series of that class while the Market-Maker is quoting). The obligations and duties are not applicable to an appointed class if a Market-Maker is not quoting in that appointed class.

(iv) A Market-Maker that is in the trading crowd but that is not quoting electronically or in open outcry in an appointed class must provide an open outcry two-sided market complying with the current quote width requirements contained in Rule 8.7(b)(iv) for a minimum of ten contracts for non-broker-dealer orders and one contract for broker-dealer orders in response to a request for quote by a member or PAR Official directed at that Market-Maker or when, in response to a general request for a quote by a member of PAR Official, a market is not then being vocalized by a reasonable number of Market-Makers. A Market-Maker may also be called upon by an Exchange official designated by the Board of Directors to submit a single quote or maintain continuous quotes in one or more series of a class to which the Market-Maker is appointed whenever, in the judgment of such official, it is necessary to do so in the interest of maintaining a fair and orderly market.

(e) Obligations of Remote Market-Makers (RMMs): The following obligations apply only to RMMs:

(i) *An* RMM[s] must provide *legal-width,* continuous [two-sided, legal-width quotations] *electronic quotes (as defined in Rule 1.1(ccc))* in 60% of the series of [their] *its* appointed class[es]. The initial size of an RMM's quote must be for at least ten contracts (undecremented size). [The Exchange may consider exceptions to this quoting requirement based on demonstrated legal or regulatory requirements or other mitigating circumstances (*e.g.*, excused leaves of absence, personal emergencies, or equipment problems).] If the underlying primary market disseminates a 100-share quote, an RMM's undecremented quote may be for as low as 1-contract (''1-up''), however, this ability is expressly conditioned on the process being automated (*i.e.*, an RMM may not manually adjust its quotes to reflect 1-up sizes). Quotes must automatically return to at least 10-up when the underlying primary market no longer disseminates a 100-share quote. RMMs that have not automated this

process may not avail themselves of the relief provided herein. The ability to quote 1-up shall operate on a pilot basis and shall terminate February 17, 2006.

The obligations and duties of an RMM set forth in this paragraph (e)(i) apply to an RMM on a per class basis and only when the RMM is logged on to the CBOE Hybrid system and quoting electronically in a particular class on a given trading day (e.g., if on a given trading day an RMM is logged in and quoting electronically in 1 of its 10 appointed classes, the RMM has quote width and continuous electronic quoting obligations in that class; the continuous electronic quoting obligation applies to 60% of the series of that class while the RMM is logged on to the CBOE Hybrid system and quoting electronically in that class). The obligations and duties are not applicable to an appointed class if an RMM is not logged in and quoting electronically in that appointed class.

(ii) An RMM may be called upon by an Exchange official designated by the Board of Directors to submit a single *electronic* quote or maintain continuous *electronic* quotes in one or more series of a class to which the RMM is appointed whenever, in the judgment of such official, it is necessary to do so in the interest of maintaining a fair and orderly market.

(iii)–(vi) No change.

* * * Interpretations and Policies:

.01–.13 No change.

* * * * *

Rule 8.13. Preferred Market-Maker Program

(a) No change.

(b) Eligibility. Any Exchange Market-Maker type (*e.g.* Remote Market-Maker, Lead Market-Maker, and Designated Primary Market-Maker) may be designated as a Preferred Market-Maker, however, a recipient of a Preferred Market-Maker order will only receive a participation entitlement for such order if the following provisions are met:

(i)–(ii) No change.

(iii) The Preferred Market-Maker must comply with the quoting obligations applicable to its Market-Maker type under Exchange rules and must provide continuous [two-sided quotations] *electronic quotes (as defined in Rule 1.1(ccc))* in at least 90% of the series of each class for which it receives Preferred Market-Maker orders.

(c) No change.

* * * * *

Rule 8.15A. Lead Market-Makers in Hybrid Classes

(a) No change.

(b) LMM Obligations: LMMs are required to:

(i) provide continuous [market quotations] *electronic quotes (as defined in Rule 1.1(ccc))* that comply with the bid/ask differentials permitted by Rule 8.7(b) in 90% of the option series within their assigned classes;

(ii)–(vi) No change.

* * * * *

Rule 8.18. Quote Risk Monitor Mechanism

Each Market-Maker who is obligated to provide and maintain continuous electronic quotes (as defined in Rule 1.1(ccc)) in an option class traded on the Hybrid Trading System or the Hybrid 2.0 Platform (''Hybrid Market-Maker'') may establish parameters by which the Exchange will activate the Quote Risk Monitor (''QRM'') Mechanism. Hybrid Market-Makers that use the QRM Mechanism shall specify, for each such option class in which the Hybrid Market-Maker is engaged in trading, a maximum number of contracts for such option class (the ''Contract Limit'') and a rolling time period in seconds within which such Contract Limit is to be measured (the ''Measurement Interval''). When the Exchange determines that the Hybrid Market-Maker has traded more than the Contract Limit for such option class during any rolling Measurement Interval, the QRM Mechanism shall cancel all electronic quotes that are being disseminated with respect to that Hybrid Market-Maker in that option class until the Hybrid Market-Maker refreshes those electronic quotes.

* * * * *

Rule 8.85. DPM Obligations

(a) Dealer Transactions. Each DPM shall fulfill all of the obligations of a Market-Maker under the Rules, and shall satisfy each of the following requirements in respect of each of the securities allocated to the DPM. To the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (a)(i) through (a)(xi) of this Rule and the general obligations of a Market-Maker under the Rules, subparagraphs (a)(i) through (a)(xi) of this Rule shall govern. Each DPM shall:

(i) provide continuous [market quotations] *electronic quotes (as defined in Rule 1.1(ccc))* for each class and series allocated to it and assure that its disseminated market quotations are accurate;

(ii)–(xii) No change.

(b)–(e) No change.

* * * Interpretations and Policies:

.01–.03 No change.

* * * * *

Rule 8.93. e-DPM Obligations

Each e-DPM shall fulfill all of the obligations of a Market-Maker and of a DPM under the Rules (except those contained in Rules 8.85(a)(i),(iv),(v) and (vii)–(x), 8.85(b), 8.85(c)(i) and (v), and 8.85(e)), and shall satisfy each of the following requirements:

(i) provide continuous [two-sided quotations] *electronic quotes (as defined in Rule 1.1(ccc))* in at least 90% of the series of each allocated class, or alternatively, respond to 98% of Requests for Quotes (RFQs) if RFQ functionality is enabled as determined by the Exchange;

(ii)–(xi) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. CBOE 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

Proposed CBOE Rule 1.1(ccc)

The purpose of the proposed change to CBOE Rule 1.1 is to define the nature of a CBOE Market-Maker's obligation to provide ''continuous'' electronic quotes in an option class traded on Hybrid. This continuous electronic quoting obligation is contained in various CBOE rules—including CBOE Rules 8.7(d)(ii)(B), 8.7(e), 8.13(b)(iii), 8.14(b)(2), 8.15A(b)(i), 8.85(a)(i), and 8.93(i)—and these rules in turn prescribe the percentage of the series of an option class with respect to which specified types of Market-Makers (''Hybrid Market-Makers'') have an obligation to provide continuous electronic quotes.

Proposed CBOE Rule 1.1(ccc) will provide that a Hybrid Market-Maker satisfies the continuous electronic quoting obligation by providing electronic quotes for 99% of the time that the Hybrid Market-Maker is obligated to provide electronic quotes in an appointed option class on a given trading day. Proposed CBOE Rule

1.1(ccc) recognizes that there is always an interval between successive electronic quotes and that ''continuous'' electronic quoting cannot literally preclude all gaps in electronic quoting. In addition, gaps in electronic quoting are expected in certain circumstances. For instance, a Hybrid Market-Maker requires time to repost electronic quotes either after the quantity associated with an electronic quote has been exhausted by trades done at the quoted price or after electronic quotes have been canceled pursuant to the Quote Risk Monitor covered by proposed CBOE Rule 8.18.

In applying the proposed definition, the Exchange notes that the duration of a Hybrid Market-Maker's continuous electronic quoting obligation, and the percentage of series to which that obligation applies, varies depending on the particular type of Market-Maker. For instance, the Exchange rules impose a continuous electronic quoting obligation for the time the Exchange is open for trading in 100% of the series in each of a Designated Primary Market-Maker's (''DPM'') appointed classes, in 90% of the series in each of an Electronic DPM's (''e-DPM'') appointed classes, and in 90% of the series in each of a Lead Market-Maker's (''LMM'') appointed classes. The Exchange thus believes that these types of Market-Makers should be deemed to have provided continuous electronic quotes with respect to the applicable percentage of series in an option class if the respective DPM, e-DPM, or LMM has provided electronic quotes for 99% of the time that the Exchange is open for trading in that option class on a given trading day. The Exchange rules also impose a continuous electronic quoting obligation in 60% of the series in the respective Market-Maker's or Remote Market-Maker's (''RMM'') appointed class which applies only during the time the Market-Maker is quoting in the class or the RMM is logged onto Hybrid and quoting in that class. The Exchange thus believes that these two types of Market-Makers should be deemed to have provided continuous electronic quotes with respect to the applicable percentage of series in an option class if the respective Market-Maker or RMM has provided electronic quotes for 99% of the time that he is quoting in the class (in the case of a Market-Maker) or logged into Hybrid and quoting in that option class (in the case of an RMM) on a given trading day. Consequently, in calculating compliance with CBOE Rule 1.1(ccc), any time interval during which the Market-Maker or RMM has ceased quoting in that option class (*e.g.*, while taking breaks, during lunch or upon ceasing trading for the day) would not be considered.

The Exchange believes that the 99% standard sets an appropriately high threshold for continuous electronic quoting, while also recognizing the circumstances under which a Hybrid Market-Maker may require a brief time interval in order to post new electronic quotes. This 99% standard is similar to one contained in a rule submitted by the Pacific Exchange, Inc. (''PCX'') and approved by the Commission.[4]

The Exchange does not believe that a Hybrid Market-Maker has failed to quote continuously if Exchange technical problems prevent electronic quotes from being provided. Accordingly, if a technical failure or limitation in an Exchange system prevents a Hybrid Market-Maker from maintaining, or communicating to the Exchange, timely and accurate electronic quotes, proposed CBOE Rule 1.1(ccc) would exclude the duration of that technical failure or limitation in determining whether the Hybrid Market-Maker has satisfied the 99% continuous electronic quote obligation with respect to that option class.

Proposed CBOE Rule 1.1(ccc) will also provide that the Exchange may consider other exceptions to the continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances.[5] This provision is the same as an existing provision with respect to continuous electronic quoting obligations of RMMs contained in CBOE Rule 8.7(e). The Exchange believes it is appropriate to apply the same considerations to all Hybrid Market-Makers with continuous electronic quoting obligations and including this provision within the text of proposed CBOE Rule 1.1(ccc) accordingly reflects that principle. The Exchange is also proposing to amend various rules to include cross-references to the definition of ''continuous electronic quotes'' contained in proposed CBOE Rule 1.1(ccc). The Exchange will conduct regulatory surveillance for compliance with the 99% continuous electronic quote requirement set forth in CBOE Rule 1.1(ccc).

The Exchange is proposing various clarifying changes to CBOE Rule 8.7 respecting Market-Maker and RMM quoting obligations in order to clarify the intent and application of the rule that the continuous electronic quoting obligations apply on a per class basis and only during the time the respective Market-Maker is quoting or respective RMM is logged onto Hybrid and quoting, and to clarify certain open outcry quoting obligations. First, the changes make clear that obligations and duties of Market-Makers, as set forth in paragraph (d) of CBOE Rule 8.7, apply to a Market-Maker on a per class basis and only when the Market-Maker is quoting in a particular class on a given trading day (*e.g.*, if on a given trading day a Market-Maker is quoting in 1 of his 10 appointed classes, the Market-Maker has quote width, continuous electronic quoting and, to the extent the Market-Maker is present in the trading crowd, continuous open outcry quoting obligations in that 1 class; the continuous electronic quoting obligation applies in 60% of the series of that class while the Market-Maker is quoting in that class). The obligations and duties are not applicable to an appointed class if a Market-Maker is not quoting in an appointed class. The clarifications also make clear that, under certain circumstances, a Market-Maker present in the trading crowd may still be obligated to provide a quote in an appointed class that he is not currently quoting in electronically or in open outcry. Specifically, a Market-Maker in the trading crowd must provide an open outcry two-sided market complying with the Exchange rules on quote width and size in response to a request for quote directed at that Market-Maker or when, in response to a general request for a quote, a market is not then being vocalized in that series by a reasonable number of Market-Makers. These obligations are derived from CBOE Rule 8.7(b), which describes various conditions that trigger a Market-Maker's duty to verbalize a market in a particular option series. In addition, a Market-Maker may also be called upon by an Exchange official designated by the Board of Directors to submit a single quote or maintain continuous quotes in one or more series of a class to which the Market-Maker is appointed whenever, in the judgment of such official, it is necessary to do so in the interest of maintaining a fair and orderly

[4] *See* Securities Exchange Act Release No. 51740 (May 25, 2005), 70 FR 32686 (June 3, 2005) (SR–PCX–2005–64) (notice of filing and order granting accelerated approval to SR–PCX–2005–64).

[5] Mitigating circumstances that may be considered by the Exchange may include, but is not limited to, instances where a technical failure or limitation in a Hybrid Market-Maker's system prevents the Hybrid Market-Maker from maintaining, or communicating to the Exchange, timely and accurate electronic quotes. However, a pattern or practice of technical failures or limitations, or the excessive frequency of technical failures or limitations, may also be considered by the Exchange in determining whether to except the period of time from the continuous electronic quoting requirements.

market. This Exchange official provision is parallel to language that is already provided in paragraph (e) for RMMs.

Second, the changes make clear the obligations and duties of RMMs, as set forth in paragraph (e) of CBOE Rule 8.7, apply to an RMM on a per class basis and only when the RMM is logged on to the CBOE Hybrid system and quoting in a particular class on a given trading day (*e.g.*, if on a given trading day an RMM is logged in and quoting in 1 of its 10 appointed classes, the RMM has quote width and continuous electronic quoting obligations in that 1 class; the continuous electronic quoting obligation applies in 60% of the series of that class while the RMM is logged in and quoting in that class). The obligations and duties are not applicable to an appointed class if an RMM is not logged in and quoting in that appointed class. Clarifying language proposed to be added to paragraph (e) make clear these obligations and duties of RMMs.

Finally, the Exchange is proposing to amend the text in paragraphs (d)(i)(C) and (d)(ii)(C) of CBOE Rule 8.7, which pertains to the continuous open outcry quoting obligation of Market-Makers. The revised text will provide that the open outcry quoting obligation is triggered in response to a request for quote by a member or Exchange PAR Official. As currently written, the obligation is only triggered in response to a request for quote from a floor broker or a DPM representing an order as agent, the later of which is an outdated reference because DPMs no longer perform an agency function.[6]

Proposed CBOE Rule 8.18

Through this rule change, the Exchange is also seeking to codify in its rules a service CBOE offers Hybrid Market-Makers to help them manage their quotations. As discussed above, CBOE Rules require Hybrid Market-Makers to maintain continuous electronic quotes. To comply with this requirement, each Hybrid Market-Maker can employ its own proprietary quotation and risk management systems to determine the prices and sizes at which it quotes. In addition, Hybrid also has the QRM Mechanism, which is designed to help Hybrid Market-Makers manage their quotations in related option series.

A Hybrid Market-Maker's risk in an options class is not limited to the risk in a single series of that class. Rather, a Hybrid Market-Maker typically is active in quoting in multiple option classes, and each such option class can comprise dozens of individual option series. Under the Hybrid systems, trades are automatically effected against the Hybrid Market-Maker's then current quote. As a result, a Hybrid Market-Maker faces exposure in all series of a class, requiring that the Hybrid Market-Maker off-set or otherwise hedge its overall position in a class. The QRM functionality described in Proposed CBOE Rule 8.18 helps Hybrid Market-Makers limit this overall exposure and risk. Specifically, the functionality permits a Hybrid Market-Maker to establish parameters in the Hybrid to cancel its electronic quotes in all series of an option class until the Hybrid Market-Maker refreshes those electronic quotes.

Under proposed CBOE Rule 8.18, each Hybrid Market-Maker that elect to use the functionality would be required to specify two parameters that the QRM Mechanism would use to determine when that Hybrid Market-Maker's quotes should be cancelled. In particular, each Hybrid Market-Maker is required to specify a maximum number of contracts for each option class (the ''Contract Limit'') and a rolling time period in seconds during which such Contract Limit is to be measured (the ''Measurement Interval'').

When the QRM Mechanism determines that the Hybrid Market-Maker has traded more than the Contract Limit for any option class during any rolling Measurement Interval, the QRM Mechanism automatically cancels all of the Hybrid Market-Maker's quotes in any series of that option class. By limiting its exposure across series, a Hybrid Market-Maker is better able to quote aggressively in an option, knowing that the QRM Mechanism will automatically cancel all its quotations in a class when its exposure limit it hit.

The Exchange notes that the proposed rule would not relieve a Hybrid Market-Maker of its obligations to provide continuous electronic quotes under the Exchange rules nor to provide ''firm'' quotes pursuant to the requirements of CBOE Rule 8.51.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. 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–CBOE–2005–93 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2005–93. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be

[6] *See* Securities Exchange Act Release No. 52798 (November 18, 2005), 70 FR 71344 (November 28, 2005) (order approving amendments relating to the removal of agency responsibilities from DPMs and the establishment of PAR Officials).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

available for inspection and copying at the principal office of CBOE. 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 publicly available. All submissions should refer to File Number SR–CBOE–2005–93 and should be submitted on or before August 28, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[9] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires among other things, that the rules of the Exchange are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed QRM Mechanism should provide Hybrid Market-Makers assistance in effectively managing its quotations. In conjunction with the implementation of the QRM Mechanism, CBOE proposes to define the nature of Hybrid Market-Makers' continuous electronic quoting obligations under its rules. The Commission believes that it is consistent with the Act to allow CBOE to define ''continuous electronic quotes'' as providing electronic two-sided quotes for 99% of the time that the Hybrid Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day. The Commission notes that when the QRM Mechanism is triggered for an option class it will automatically cancel all of the Hybrid Market-Maker's quotes in any series of that option class. The Commission believes that the proposed definition of ''continuous electronic quotes'' should provide a Hybrid Market-Maker a brief amount of time to update its quotes after the QRM Mechanism has canceled its quotes in an option class.

In addition, CBOE proposes certain clarifying changes to CBOE Rule 8.7 regarding Market-Maker and RMM quoting obligations. Specifically, CBOE proposes to clarify the intent and application of the rule that the continuous electronic quoting obligations apply on a per class basis and only during the time the respective Market-Maker is quoting or respective RMM is logged onto Hybrid and quoting, and to clarify certain open outcry quoting obligations. The Commission believes that these clarifying changes are appropriate and consistent with the Act.

The Commission notes that the proposal does not alter the obligations of Hybrid Market-Makers, except for the fact that it will specifically define what it means to provide continuous electronic quotes. The Commission also notes that CBOE has represented that it will conduct routine surveillance for Hybrid Market-Maker compliance with the 99% standard for continuous electronic quotes set forth in CBOE Rule 1.1(ccc).

CBOE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that similar proposals to provide protection from risk for market makers have been approved for other options exchanges.[11] The Commission believes that granting accelerated approval of the proposal should allow Hybrid Market-Makers to have similar protections from the risk associated with an excessive number of near simultaneous executions in a single options class. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[12] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–2005–93) and Amendment No. 1 thereto be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–12740 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

[9] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Securities Exchange Act Release Nos. 51049 (January 18, 2005), 70 FR 3756 (January 26, 2005) (SR–BSE–2004–52); 51050 (January 18, 2005), 70 FR 3758 (January 26, 2005) (SR–ISE–2004–31); 51740 (May 25, 2005), 70 FR 32686 (June 3, 2005) (SR–PCX–2005–64); 53148 (January 19, 2006), 71 FR 4386 (January 26, 2006) (SR–Amex–2005–131); and 53166 (January 23, 2006), 71 FR 4625 (January 27, 2006) (SR–Phlx–2006–05).

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54253; File No. SR–NASDAQ–2006–018]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Technical and Conforming Changes to Nasdaq's 2000 and 3000 Series Rules

July 31, 2006.

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 July 25, 2006, The NASDAQ Stock Market LLC (''Exchange'' or ''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has filed this proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to conform the Rule 2000 and 3000 Series of Nasdaq's rules to certain changes made to the Rule 2000 and 3000 Series of the rules of National Association of Securities Dealers, Inc. (''NASD'') since approval of Nasdaq's rules by the Commission in January 2006, to make several minor modifications, and to correct certain typographical errors in the approved rules. Nasdaq proposes to implement the proposed rule change immediately.

The text of the proposed rule change is included below. Proposed new

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

language is *italicized*; deletions are [bracketed].

* * * * *

2111. Trading Ahead of Customer Market Orders

(a) Nasdaq members and persons associated with a member shall comply with NASD Rule 2111 as if such Rule were part of Nasdaq's rules.

(b) For purposes of this Rule, references to IM–2110–2, Rule 2320, *and* Rule 3110[, and Rule 6440] shall be construed as references to Nasdaq IM–2110–2, Nasdaq Rule 2320, *and* Nasdaq Rule 3110[, and Nasdaq Rule 6440].

(c) Nasdaq members and persons associated with a member relying upon the exemption set forth in NASD Rule 2111(f) shall comply with the provisions of the NASD Rule 4600 Series and 6400 Series cited therein as if such Rules were part of Nasdaq's Rules. Nasdaq and NASD Regulation, an affiliate of NASD, are parties to the Regulatory Contract pursuant to which NASD Regulation has agreed to perform certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Rule 2111(*f*) by complying with NASD Rule 2111(*f*) as written, including, for example, filing requirements and notifications. In addition, functions performed by NASD Regulation, NASD Regulation departments, and NASD Regulation staff under Nasdaq Rule 2111(*f*) are being performed by NASD Regulation on behalf of Nasdaq.

* * * * *

2520. Margin Requirements

(a) No change.

(b) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d–1 shall comply with the initial and maintenance margin requirements of Regulation T and the NASD Rule 2520 as if such Rules were part *of* Nasdaq's Rules.

(c) No change.

[(c)](*d*) Pursuant to the Rule 9600 Series, Nasdaq may exempt any member from the requirements contained in paragraph (e)(3) of NASD Rule 2520, as applied to Nasdaq members through Nasdaq Rule 2520, if the account referenced in paragraph (e)(3) of NASD Rule 2520 is confined exclusively to transactions and positions in exempted securities.

* * * * *

2810. Direct Participation Programs

(a) No change.

(b) For purposes of this Rule 2810:

(1)—(2) No change.

(3) for purposes of this Rule only, Nasdaq members and their associated persons shall comply with applicable provisions of NASD Rule 2710 as [of]*if* such Rule were part of Nasdaq's Rules.

(c) No change.

* * * * *

2852. Reporting Requirements

(a) Each member shall file with Nasdaq *Regulation* a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer account of the member, which has established an aggregate position of 100,000 index warrants on the same side of the market in an index warrant issue listed on Nasdaq, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market traded on Nasdaq or another national securities exchange.

(b) Such report shall identify the person or persons having an interest in such account and shall identify separately the total number of each type of index warrant that comprises the reportable position in such account. The report shall be in such form as may be prescribed by Nasdaq *Regulation* and shall be filed no later than the close of business on the next business day following the day on which the transaction or transactions necessitating the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the member filing such report shall file with Nasdaq *Regulation* such additional periodic reports with respect to such account as Nasdaq *Regulation* may from time to time prescribe.

2853. Liquidation of Index Warrant Positions

(a) Whenever Nasdaq *Regulation* determines that a person or group of persons acting in concert holds or controls an aggregate position (whether short or long) in index warrants overlying the same index in excess of the position limitations established by Rule 2850, it may, when deemed necessary or appropriate in the public interest and for the protection of investors, direct any member or all members carrying a position in index warrants overlying such index for such person or persons to liquidate such position or positions, or portions thereof, as expeditiously as possible and consistent with the maintenance of an orderly market, so as to bring such person or persons into compliance with the position limitations contained in Rule 2850.

(b) Whenever such a directive is issued by Nasdaq *Regulation* no member receiving notice thereof shall accept and/or execute for any person or persons named in such directive any order to purchase or sell short any index warrants based on the same index, unless in each instance express approval therefor is given by Nasdaq *Regulation*, or the directive is rescinded.

2854. [Trading Halts or Suspensions] *Reserved*

[(a) The trading in an index warrant on Nasdaq shall be halted whenever Nasdaq Regulation shall conclude that such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following:]

[(1) trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value;]

[(2) the current calculation of the index derived from the current market prices of the stocks is not available;]

[(3) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.]

[(b) Trading in index warrants that has been the subject of a trading halt or suspension may resume if Nasdaq Regulation determines that the conditions which led to the halt or suspension are no longer present or that the interests of a fair and orderly market are served by a resumption of trading. In either event, the reopening may not occur until Nasdaq Regulation has determined that trading in underlying stocks whose weighted value represents more than 50% of the index is occurring.]

* * * * *

IM–3010–1. Standards for Reasonable Review

(a) Nasdaq members and persons associated with a member shall comply with NASD Interpretive Material IM–3010–1 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) references to Rule 3010 shall be construed as references to Nasdaq Rule 3010; and

(2) references to ''NASD Rules'' shall be construed as references to ''Nasdaq Rules''.

IM–3010–*2.* Guidance on Heightened Supervision Requirements

Nasdaq members shall comply with NASD Notice to Members 97–19 as if such Rule were part of Nasdaq's Rules.

* * * * *

IM–3011–1. Independent Testing Requirements

Nasdaq members and persons associated with a member shall comply

with NASD Interpretive Material IM–3011–1 as if such Rule were part of Nasdaq's Rules. For purposes of this Rule, references to Rule 3011 shall be construed as references to Nasdaq Rule 3011.

IM–3011–2. Review of Anti-Money Laundering Compliance Person Information

Nasdaq members and persons associated with a member shall comply with NASD Interpretive Material IM–3011–2 as if such Rule were part of Nasdaq's Rules. For purposes of this Rule, references to Rule 3011 shall be construed as references to Nasdaq Rule 3011.

3012. Supervisory Control System

(a) Members and persons associated with a member shall comply with NASD Rule 3012 as if such Rule were part of Nasdaq's rules. *Nasdaq and NASD Regulation, an affiliate of NASD, are parties to the Regulatory Contract pursuant to which NASD Regulation has agreed to perform certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Rule 3012 by complying with NASD Rule 3012 as written, including, for example, filing requirements and notifications. In addition, functions performed by NASD Regulation, NASD Regulation departments, and NASD Regulation staff under Nasdaq Rule 3012 are being performed by NASD Regulation on behalf of Nasdaq.*

(b) No change.

* * * * *

3080. Disclosure to Associated Persons When Signing Form U[–]4

Nasdaq Members shall comply with NASD Rule 3080 as if such Rule were part of Nasdaq's Rules. In lieu of incorporating in the written statement the language in paragraph (2) of NASD Rule 3080, members shall include the following provision:

A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated under Nasdaq rules. Such a claim may be arbitrated under Nasdaq rules only if the parties have agreed to arbitrate it, either before or after the dispute arose. The rules of other arbitration forums may be different.

* * * * *

3110. Books and Records

(a)–(e) No change.

(f) Requirements When Using Predispute Arbitration Agreements With Customers

(1)–(2) No change.

(3)(A) A member shall provide a customer with a copy of any predispute arbitration clause or customer agreement executed between the customer and the member, or inform the customer that the member does not have a copy thereof, within ten business days of receipt of the customer's request. If a customer requests such a copy before the member has provided the customer with a copy pursuant to subparagraph (2)(B) of this [Rule]*paragraph*, the member must provide a copy to the customer by the earlier date required by this subparagraph (3)(A) or by subparagraph (2)(B).

(B) No change.

(4)–(7) No change.

(g)–(j) No change.

* * * * *

3130. Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties

(a) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d–1 shall comply with NASD Rule 3130 (except NASD Rule 3130(a)) as if such Rule were part *of* Nasdaq's Rules.

(b) No change.

IM–3130. Restrictions on a Member's Activity

(a) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d–1 shall comply with NASD Interpretive Material 3130 (except IM–3130(d)) as if *such* Rule were part of Nasdaq's Rules.

(b) No change.

* * * * *

3360. Short-Interest Reporting

(a) To the extent such information is not otherwise reported to the NASD in conformance with NASD Rule 3360, each member shall maintain a record of total ''short'' positions in all customer and proprietary firm accounts in securities listed on Nasdaq and shall regularly report such information to Nasdaq in such a manner as may be prescribed by Nasdaq. [For the purposes of this rule, the term ''customer'' includes a broker/dealer.] Reports shall be made as of the close of the settlement date designated by Nasdaq. Reports shall be received by Nasdaq no later than the second business day after the reporting settlement date designated by Nasdaq.

(b) For purposes of this Rule[,]*:*

(1) ''short'' positions to be reported are those resulting from ''short sales'' as that term is defined in SEC Rule 200[, under the Act]*of Regulation SHO*, with the exception of positions that meet the requirements of Subsections (e)(1), (6), (7), (8), and (10) of SEC Rule 10a–1 adopted under the Act[.]*; and*

(2) the term ''customer'' includes a broker-dealer.

* * * * *

3380. Order Entry and Execution Practices

No member or associated person may engage in conduct that has the intent or effect of splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind amount to be received by the member or associated person as a result of the execution of such orders or the transaction reporting of such executions. For purposes of this rule, ''monetary or in-kind amount'' shall be defined to include, but not be limited to, any credits, commissions, gratuities, payments for or rebates of fees, or any other payments of value to the member or associated person.

338[0]*1*. SEC Rule 19c–1—Governing Certain Off-Board Agency Transactions by Members of National Securities Exchanges

No rule, stated policy, or practice of this exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of any member acting as agent to effect any transaction otherwise than on this exchange with another person (except when such member also is acting as agent for such other person in such transaction), in any equity security listed on this exchange or to which unlisted trading privileges on this exchange have been extended.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is modifying its 2000 and 3000 Series Rules, which are based to a substantial extent on comparable NASD

Rules, to conform them to certain changes made to the Rule 2000 and 3000 Series of the rules of NASD since approval of Nasdaq's rules by the Commission in January 2006, to make several minor modifications, and to correct certain typographical errors in the approved rules. Specifically, Nasdaq is:

- Amending Nasdaq Rule 2111, which incorporates NASD Rule 2111 by reference, to reflect certain changes to the underlying text of that rule made by SR–NASD–2005–139.[5]
- Amending Nasdaq Rules 2852 and 2853 at the request of SEC staff to reflect that certain functions identified therein will be performed by Nasdaq Regulation staff.
- Deleting Nasdaq Rule 2854, governing trading halts and suspension of index warrants, so that it may be transferred to Nasdaq Rule 4120, which contains Nasdaq's other rules concerning trading halts and suspensions. The change to Nasdaq Rule 4120 will be made by a corresponding filing concerning technical amendments to the Nasdaq 4000 Series rules that Nasdaq will submit on or prior to August 1, 2006 on an immediately effective basis.
- Incorporating by reference NASD IM–3013–1, which was added to the NASD Rules by SR–NASD–2003–104,[6] and making a conforming change to the numbering of current Nasdaq IM–3010.
- Incorporating by reference NASD IM–3011–1 and IM–3011–2, which were added to the NASD Rules by SR–NASD–2005–066.[7]
- Amending Nasdaq Rule 3012, which incorporates NASD Rule 3012 by reference, to include language that reflects a filing requirement added to the NASD Rule by SR–NASD–2005–084.[8]
- Amending Nasdaq Rule 3360 to reflect minor changes made to the comparable NASD Rule by SR–NASD–2005–112.[9]
- Adopting new Nasdaq Rule 3380, which is based on NASD Rule 3380, and which was added to the NASD Rules by SR–NASD–2005–144,[10] and renumbering existing Nasdaq Rule 3380 as Nasdaq Rule 3381.
- Amending Nasdaq Rules 2520, 2810, 3080, 3110, 3130, and Nasdaq IM–3130 to correct typographical errors.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Section 6(b)(5) of the Act,[12] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change conforms the Rule 2000 and 3000 Series of Nasdaq's rules to certain changes made to the Rule 2000 and 3000 Series of NASD rules since approval of Nasdaq's rules by the Commission in January 2006, makes several minor modifications and corrects certain typographical errors in the approved rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[15]

Nasdaq has requested that the Commission waive the 30-day pre-operative period requirement for ''non-controversial'' proposals, based upon a representation that such waiver will allow Nasdaq to implement the rule changes, which have either recently been made effective as changes to NASD rules or are technical in nature, prior to the time when Nasdaq begins to operate as a national securities exchange. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative period will allow Nasdaq to implement these changes immediately so that they can be in place prior to the time Nasdaq begins to operate as a national securities exchange. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[16] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2006–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

[5] *See* Securities Exchange Act Release No. 52998 (December 22, 2005), 70 FR 77223 (December 29, 2005) (SR–NASD–2005–139).

[6] *See* Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR–NASD–2003–104).

[7] *See* Securities Exchange Act Release No. 53030 (December 28, 2005), 71 FR 632 (January 5, 2006) (SR–NASD–2005–066).

[8] *See* Securities Exchange Act Release No. 52799 (November 18, 2005), 70 FR 71573 (November 29, 2005) (SR–NASD–2005–084).

[9] *See* Securities Exchange Act Release No. 53224 (February 3, 2006), 71 FR 7101 (February 10, 2006) (SR–NASD–2005–112).

[10] *See* Securities Exchange Act Release No. 53371 (February 24, 2006), 71 FR 11008 (March 3, 2006).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] As required under Rule 19b–4(f)(6)(iii), Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date.

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–018. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASDAQ. 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–NASDAQ–2006–018 and should be submitted on or before August 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–12697 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54248; File No. SR–NASDAQ–2006–019]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Technical and Conforming Changes to Nasdaq's 4000 Series Rules

July 31, 2006.

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 July 28, 2006, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange requested the Commission to waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

Nasdaq proposes to conform the Rule 4000 Series of Nasdaq's rules to certain changes made to the Rule 4000 Series of the rules of the National Association of Securities Dealers, Inc. (''NASD'') since approval of Nasdaq's rules by the Commission in January 2006 and to correct certain errors in the approved rules. Nasdaq proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available on Nasdaq's Web site (*www.complinet.com/nasdaq*), at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, Nasdaq 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. Nasdaq 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 the Statutory Basis for, the Proposed Rule Change.

1. Purpose.

Nasdaq is modifying its 4000 Series Rules to conform them to certain changes made to the 4000 Series Rules of the NASD since approval of Nasdaq's rules by the Commission in January 2006 and to correct certain typographical errors in the approved rules.

Specifically, Nasdaq is:

- Amending Nasdaq Rule 4120 to reflect changes made by SR–NASD–2006–015[6] in connection with the implementation of the Nasdaq Halt Cross, and to add language concerning halts in Nasdaq index warrants that is being relocated from former Nasdaq Rule 2854.[7]
- Amending Nasdaq Rule 4120 to update contact information for Nasdaq's MarketWatch Department and amending Nasdaq IM–4120 and Nasdaq Rules 4310, 4320, and 4350 to remove superfluous and outdated contact information.
- Amending Nasdaq Rule 4305 to change a reference to the Nasdaq National Market to the Nasdaq Global Market, consistent with changes made through SR–NASDAQ–2006–007.[8]
- Amending Nasdaq Rule 4320 to eliminate phase-in dates that have already passed and rule text that has been superseded by the phased-in rules.[9]
- Amending Nasdaq Rule 4350 and adding Nasdaq IM–4350–8 to reflect an amendment made to NASD Rule 4350 by SR–NASD–2005–073.[10]
- Amending Nasdaq Rules 4510 and 4520, deleting Nasdaq IM–4500–3, and adding new Nasdaq IM–4500–4, to reflect changes made by SR–NASD–2005–143[11] and SR–NASD–2006–047.[12]
- Adding Nasdaq Rule 4613(a)(2) and (3) and Nasdaq IM–4613 to restore a pilot program for supplemental MPIDs that had lapsed at the time of the approval of Nasdaq's exchange registration application but that was

[6] Securities Exchange Act Release No. 53687 (April 20, 2006), 71 FR 24787 (April 27, 2006) (SR–NASD–2006–015). Nasdaq notes that a further amendment to Rule 4120 was approved by the Commission in Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR–NASDAQ–2006–001), but with an implementation date of August 28, 2006. Accordingly, Nasdaq will file a technical rule change prior to that date to reflect the difference between the version of the rule adopted in this filing for the period prior to August 28, and the version to take effect on that date.

[7] SR–NASDAQ–2006–018 (July 25, 2006).

[8] Securities Exchange Act Release No. 53799 (May 12, 2006), 71 FR 29195 (May 19, 2006) (SR–NASDAQ–2006–007).

[9] Securities Exchange Act Release No. 50753 (November 29, 2004), 69 FR 70486 (December 6, 2004) (SR–NASD–2004–147).

[10] Securities Exchange Act Release No. 53578 (March 30, 2006), 71 FR 17532 (April 6, 2006) (SR–NASD–2005–073).

[11] Securities Exchange Act Release No. 52997 (December 22, 2005), 70 FR 77222 (December 29, 2005) (SR–NASD–2005–143).

[12] Securities Exchange Act Release No. 53696 (April 21, 2006), 71 FR 25273 (April 28, 2006) (SR–NASD–2006–047).

restored under NASD rules in SR-NASD–2006–004.[13]

• Amending Nasdaq Rules 4613, 4701, 4710, 4901, and 4904 to reflect changes made to corresponding NASD rules by SR–NASD–2005–150 and SR–NASD–2006–054.[14]

• Amending Nasdaq Rule 4710 to reflect a change made to NASD Rule 4710 by SR–NASD–2006–019.[15]

• Adopting Nasdaq Rule 4703 to reflect the adoption the Nasdaq Halt Cross (NASD Rule 4703) in SR–NASD–2005–015,[16] and making conforming changes to Nasdaq Rule 4704.

• Adding Nasdaq Rule 4760, which reflects the recent adoption of the Nasdaq Crossing Network (NASD Rule 4716) in SR–NASD–2005–140.[17]

• Amending Nasdaq Rule 4813 to reflect changes made to NASD Rule 4813 by SR–NASD–2005–153.[18]

• Amending Nasdaq Rules 4714 and 4905 to reflect changes made to NASD Rules 4714 and 4905 by SR–NASD–2006–049.[19]

• Amending Nasdaq Rule 4912 to reflect changes made to NASD Rule 4912 by SR–NASD–2006–006.[20]

• Amending Nasdaq Rule 4953 to reflect changes made to NASD Rule 4953 by SR–NASD–2006–051 and SR–NASD–2006–017.[21]

• Amending Nasdaq Rule 4962 to reflect changes made to NASD Rule 4962 by SR–NASD–2006–054 and SR–NASD–2006–016.[22]

• Amending Nasdaq Rules 4360, 4410, 4450, 4619, 4620, and 4803 and Nasdaq IM–4351 to correct typographical errors.

2. Statutory Basis.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[23] in general, and with Section 6(b)(5) of the Act,[24] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change conforms the Rule 4000 Series of Nasdaq's rules to certain changes made to the Rule 4000 Series of the rules of NASD since approval of Nasdaq's rules by the Commission in January 2006 and corrects typographical errors in the approved rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[25] and Rule 19b–4(f)(6) thereunder[26] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A) of the Act[27] and Rule 19b–4(f)(6)[28] thereunder.

Nasdaq has requested that the Commission waive the 30-day operative delay.[29] The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative period will allow Nasdaq to implement these changes immediately so that they can be in place prior to the time when Nasdaq begins to operate as a national securities exchange. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[30]

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 the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[13] Securities Exchange Act Release No. 53192 (January 30, 2006), 71 FR 6302 (February 7, 2006) (SR–NASD–2006–004). Nasdaq notes that a further amendment to Rule 4613 was approved by the Commission in Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR–NASDAQ–2006–001), but with an implementation date of August 28, 2006. Accordingly, Nasdaq will file a technical rule change prior to that date to reflect the difference between the version of the rule adopted in this filing for the period prior to August 28, and the version to take effect on that date.

Nasdaq is not at this time restoring the pilot for multiple MPIDs in non-Nasdaq stocks, since rules relating to such stocks are not operational. Rather, as part of the technical rule change referenced above, Nasdaq will expand the language of the pilot in Rule 4613 to cover non-Nasdaq stocks.

[14] Securities Exchange Act Release No. 53017 (December 22, 2005), 70 FR 77225 (December 29, 2005) (SR–NASD–2005–150); Securities Exchange Act Release No. 53739 (April 26, 2006), 71 FR 25876 (May 2, 2006) (SR–NASD–2006–054).

Nasdaq notes that a further amendment to these rules was approved by the Commission in Securities Exchange Act Release No. 54155 (July 14, 2006) (SR–NASDAQ–2006–001), but with an implementation date of August 28, 2006. Accordingly, Nasdaq will file a technical rule change prior to that date to reflect the difference between the version of the rule adopted in this filing for the period prior to August 28, and the version to take effect on that date.

[15] Securities Exchange Act Release No. 53233 (February 2, 2006), 71 FR 7100 (February 10, 2006) (SR–NASD–2006–019).

[16] Securities Exchange Act Release No. 53687 (April 20, 2006), 71 FR 24878 (April 27, 2006) (SR–NASD–2006–015).

[17] Securities Exchange Act Release No. 54101 (July 5, 2006), 71 FR 39382 (July 12, 2006) (SR–NASD–2005–140).

[18] Securities Exchange Act Release No. 53067 (January 6, 2006), 71 FR 2965 (January 18, 2006) (SR–NASD–2005–153).

[19] Securities Exchange Act Release No. 53675 (April 18, 2006), 71 FR 23975 (April 25, 2006) (SR–NASD–2006–049).

[20] Securities Exchange Act Release No. 53187 (January 30, 2006), 71 FR 6116 (February 6, 2006) (SR–NASD–2006–006).

[21] Securities Exchange Act Release No. 53720 (April 25, 2006), 71 FR 25875 (May 2, 2006) (SR–NASD–2006–051); Securities Exchange Act Release No. 53316 (February 15, 2006), 71 FR 9401 (February 23, 2006) (SR–NASD–2006–017).

[22] Securities Exchange Act Release No. 53720 (April 26, 2006), 71 FR 25876 (May 2, 2006) (SR–NASD–2006–054); Securities Exchange Act Release No. 53203 (January 31, 2006), 71 FR 6300 (February 7, 2006) (SR–NASD–2006–016).

[23] 15 U.S.C. 78f.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6).

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–NASDAQ–2006–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–019. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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–NASDAQ–2006–019 and should be submitted on or before August 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Nancy M. Morris,

Secretary.

[FR Doc. E6–12703 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54242; File No. SR–NASD–2006–083]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Series 27 Examination Program

July 31, 2006.

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 July 14, 2006, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing revisions to the study outline and selection specifications for the Limited Principal—Financial and Operations (Series 27) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the duties and responsibilities of a financial and operations principal. NASD is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD.

The revised study outline is available on NASD's Web site (*http://www.nasd.com*), at NASD, and at the Commission.[6] The Series 27 selection specifications have been submitted to the Commission under separate cover with a request for confidential treatment pursuant to Rule 24b–2 under the Act.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

Section 15A(g)(3) of the Act[8] requires NASD to prescribe standards of training, experience, and competence for persons associated with NASD members. In accordance with that provision, NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

Pursuant to NASD Rule 1022(b), members that have a minimum net capital requirement of $250,000 under SEC Rules 15c3–1(a)(1)(ii)[9] and 15c3–1(a)(2)(i),[10] as well as members that have a minimum net capital requirement of $150,000 under SEC Rule 15c3–1(a)(8),[11] are required to designate as a Limited Principal—Financial and Operations those individuals associated with them who

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] NASD also is proposing corresponding revisions to the Series 27 question bank, but based upon instruction from the Commission staff, NASD is submitting SR–NASD–2006–083 for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder, and is not filing the question bank for Commission review. *See* letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation (''Division''), Commission, dated July 24, 2000. The question bank is available for Commission review.

[6] Telephone conversation between Mia Zur, Special Counsel, Division, Commission, and Afshin Atabaki, Counsel, NASD, dated July 19, 2006.

[7] 17 CFR 240.24b–2.

[8] 15 U.S.C. 78*o*–3(g)(3).

[9] 17 CFR 240.15c3–1(a)(1)(ii).

[10] 17 CFR 240.15c3–1(a)(2)(i).

[11] 17 CFR 240.15c3–1(a)(8).

are responsible for the members' financial and operational management, including, but not limited to, final approval and responsibility for the accuracy of financial reports submitted to regulators. In addition, Rule 1022(b) provides that the chief financial officer of such members must be a Limited Principal—Financial and Operations. The Series 27 examination is an NASD examination that qualifies an individual to function as a Limited Principal—Financial and Operations.

A committee of industry representatives, together with NASD staff, recently undertook a review of the Series 27 examination program. As a result of this review, NASD is proposing to make the following revisions to the study outline to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the duties and responsibilities of a financial and operations principal. NASD is proposing to add sections on Municipal Securities Rulemaking Board Rules G–8(g) (Transactions in Municipal Fund Securities), G–14 (Reports of Sales and Purchases), G–15(f) (Minimum Denominations), G–15(g) (Forwarding Official Communications), G–17 (Conduct of Municipal Securities Activities), G–37 (Political Contributions and Prohibitions on Municipal Securities Business) and G–32(b) (Inter-Dealer Disclosure Requirements). NASD is proposing to add a section on SEC Regulation SHO, including Rules 200 (Definition of ''Short Sale'' and Marking Requirements) [12] and 203 (Borrowing and Delivery Requirements).[13]

NASD also is proposing to add sections on NASD Rules 1150 (Executive Representatives), 2350 (Broker-Dealer Conduct on the Premises of Financial Institutions), 2370 (Borrowing from or Lending to Customers), 3012 (Supervisory Control System), 3013 (Annual Certification of Compliance and Supervisory Processes), 3510 (Business Continuity Plan) and 9800 (Temporary Cease and Desist Orders).

In addition, NASD is proposing to revise the study outline to remove the sections on NASD Rules 1110 (formerly Registration of Government Securities Principals and Representatives), 2320 (Best Execution and Interpositioning), 3370 (Purchases), 11100(d) (CUSIP Number), 11110 (Uniform Practice Committees), 11120 (Definitions), 11180 (formerly Use of Trade Acceptance and Reconciliation Service) and 11830 (formerly Mandatory Close-Out for Short Sales). Further, NASD is proposing to remove the following two subsections of the Insider Trading and Securities Fraud Enforcement Act of 1988 section: Investigatory Assistance to Foreign Securities Authorities and Cooperation with Foreign Authorities and International Organizations in Enforcement.

NASD also is proposing to remove the sections on Form X17F–1A (Report for Missing, Lost, Stolen, or Counterfeit Securities), NASD Certificate of Incorporation and certain articles (Articles VII, XII, XIII and XV) of the NASD By-Laws.

As a result of the revisions discussed above, the number of questions on several sections of the study outline were modified as follows: Keeping and Preservation of Records and Broker-Dealer Financial Reporting Requirements, decreased from 16 to 15 questions; Customer Protection, decreased from 37 to 36 questions; Municipal Securities Rulemaking Board Regulations, decreased from 10 to 9 questions; Uniform Practice Rules, decreased from 15 to 12 questions; and Other Relevant Regulations and Interpretations, increased from 15 to 21 questions. NASD also is proposing to change the title of Section 5 from ''Federal Reserve Board Regulations'' to ''Extension of Credit in the Securities Industry.''

NASD is proposing these changes to the entire content of the Series 27 examination, including the selection specifications and question bank. The number of questions on the Series 27 examination will remain at 145, and candidates will continue to have 31/2 hours to complete the exam. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

2. Statutory Basis

NASD believes that the proposed revisions to the Series 27 examination program are consistent with the provisions of Sections 15A(b)(6) [14] and 15A(g)(3) of the Act,[15] which authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [16] and Rule 19b–4(f)(1) thereunder,[17] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD proposes to implement the revised Series 27 examination program on August 15, 2006. NASD will announce the implementation date in a *Notice to Members* to be published on the same date as this filing.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASD–2006–083 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–083. 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

[12] 17 CFR 242.200.

[13] 17 CFR 242.203.

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] 15 15 U.S.C. 78*o*–3(g)(3).

[16] 15 U.S.C. 78s(b)(3)(A)(i).

[17] 17 CFR 240.19b–4(f)(1).

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 NASD. 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–NASD–2006–083 and should be submitted on or before August 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E6–12685 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54243; File No. SR–NASD–2006–084]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Series 28 Examination Program

July 31, 2006.

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 July 14, 2006, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing revisions to the study outline and selection specifications for the Limited Principal—Introducing Broker-Dealer Financial and Operations (Series 28) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the duties and responsibilities of an introducing broker-dealer financial and operations principal. NASD is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD.

The revised study outline is available on NASD's Web site (*http://www.nasd.com*), at NASD, and at the Commission.[6] The Series 28 selection specifications have been submitted to the Commission under separate cover with a request for confidential treatment pursuant to Rule 24b–2 under the Act.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

Section 15A(g)(3) of the Act[8] requires NASD to prescribe standards of training, experience, and competence for persons associated with NASD members. In accordance with that provision, NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

Pursuant to NASD Rule 1022(c), members that are subject to the net capital requirements of SEC Rule 15c3–1,[9] other than those members that are subject to the net capital requirements of SEC Rules 15c3–1(a)(1)(ii),[10] (a)(2)(i)[11] or (a)(8),[12] are required to designate as a Limited Principal—Introducing Broker-Dealer Financial and Operations those individuals associated with them who are responsible for the members' financial and operational management, including, but not limited to, final approval and responsibility for the accuracy of financial reports submitted to regulators. In addition, Rule 1022(c) provides that the chief financial officer of such members must be a Limited Principal—Introducing Broker-Dealer Financial and Operations. The Series 28 examination is an NASD examination that qualifies an individual to function as a Limited Principal—Introducing Broker-Dealer Financial and Operations.

A committee of industry representatives, together with NASD staff, recently undertook a review of the Series 28 examination program. As a result of this review, NASD is proposing to make the following revisions to the study outline to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the duties and responsibilities of an introducing broker-dealer financial and operations principal. NASD is

---

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] NASD also is proposing corresponding revisions to the Series 28 question bank, but based upon instruction from the Commission staff, NASD is submitting SR–NASD–2006–084 for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder, and is not filing the question bank for Commission review. *See* letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation (''Division''), Commission, dated July 24, 2000. The question bank is available for Commission review.

[6] Telephone conversation between Mia Zur, Special Counsel, Division, Commission, and Afshin Atabaki, Counsel, NASD, dated July 19, 2006.

[7] 17 CFR 240.24b–2.

[8] 15 U.S.C. 78*o*–3(g)(3).

[9] 17 CFR 240.15c3–1.

[10] 17 CFR 240.15c3–1(a)(1)(ii).

[11] 17 CFR 240.15c3–1(a)(2)(i).

[12] 17 CFR 240.15c3–1(a)(8).

proposing to add a section on Municipal Securities Rulemaking Board Rule G–37 (Political Contributions and Prohibitions on Municipal Securities Business). NASD also is proposing to add a section on SEC Regulation SHO, including Rules 200 (Definition of ''Short Sale'' and Marking Requirements) [13] and 203 (Borrowing and Delivery Requirements).[14]

NASD is proposing to add sections on NASD Rules 1150 (Executive Representatives), 2350 (Broker-Dealer Conduct on the Premises of Financial Institutions), 2370 (Borrowing from or Lending to Customers), 3012 (Supervisory Control System), 3013 (Annual Certification of Compliance and Supervisory Processes), 3510 (Business Continuity Plan) and 9800 (Temporary Cease and Desist Orders).

In addition, NASD is proposing to revise the study outline to remove the sections on NASD Rules 1100 (Foreign Associates), 1110 (formerly Registration of Government Securities Principals and Representatives) and 2320 (Best Execution and Interpositioning). NASD also is proposing to remove the sections on Form X17F–1A (Report for Missing, Lost, Stolen, or Counterfeit Securities), NASD Certificate of Incorporation and certain articles (Articles VII, XII, XIII and XV) of the NASD By-Laws.

Further, NASD is proposing to add a new section covering certain rules of the NASD Uniform Practice Code (''Uniform Practice Rules''). NASD is proposing to add the Uniform Practice Rules under Section 4 and to move the section on Other Relevant Regulations and Interpretations (formerly under Section 4) to Section 5, a new section.

As a result of the revisions discussed above, the number of questions on several sections of the study outline were modified as follows: Keeping and Preservation of Records and Broker-Dealer Financial Reporting Requirements, increased from 15 to 16 questions; Uniform Practice Rules (new section), 5 questions; and Other Relevant Regulations and Interpretations, increased from 24 to 28 questions.

NASD is proposing these changes to the entire content of the Series 28 examination, including the selection specifications and question bank. The number of questions on the Series 28 examination will increase from 85 to 95 questions. Candidates will continue to have 2 hours to complete the exam. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

2. Statutory Basis

NASD believes that the proposed revisions to the Series 28 examination program are consistent with the provisions of Sections 15A(b)(6) [15] and 15A(g)(3) of the Act,[16] which authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [17] and Rule 19b–4(f)(1) thereunder,[18] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD proposes to implement the revised Series 28 examination program on August 15, 2006. NASD will announce the implementation date in a *Notice to Members* to be published on the same date as this filing.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NASD–2006–084 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–084. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. 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–NASD–2006–084 and should be submitted on or before August 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Nancy M. Morris

Secretary.

[FR Doc. E6–12686 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 242.200.

[14] 17 CFR 242.203.

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78*o*–3(g)(3).

[17] 15 U.S.C. 78s(b)(3)(A)(i).

[18] 17 CFR 240.19b–4(f)(1).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54244; File No. SR–NASD–2006–085]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Series 39 Examination Program

July 31, 2006.

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 July 14, 2006, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing revisions to the study outline and selection specifications for the Limited Principal—Direct Participation Programs (Series 39) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the duties and responsibilities of a direct participation programs principal. NASD is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD.

The revised study outline is available on NASD's Web site (*http://www.nasd.com*), at NASD, and at the Commission.[6] The Series 39 selection specifications have been submitted to the Commission under separate cover with a request for confidential treatment pursuant to Rule 24b–2 under the Act.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

Section 15A(g)(3) of the Act[8] requires NASD to prescribe standards of training, experience, and competence for persons associated with NASD members. In accordance with that provision, NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

Pursuant to NASD Rule 1022(e), an associated person of a member who meets the definition of principal in Rule 1021 may register with NASD as a Limited Principal—Direct Participation Programs if: (1) The individual's activities in the investment banking and securities business are limited solely to the equity interests in or the debt of direct participation programs as defined in Rule 1022(e)(2); (2) the individual also is registered as either a General Securities Representative (Series 7) or a Limited Representative—Direct Participation Programs (Series 22); and (3) the individual passes the Series 39 qualification examination.

A committee of industry representatives, together with NASD staff, recently undertook a review of the Series 39 examination program. As a result of this review, NASD is proposing to make the following revisions to the study outline to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the duties and responsibilities of a direct participation programs principal. NASD is proposing to add a section on SEC Form S–1 registration. NASD also is proposing to add sections on NASD Rules 2370 (Borrowing from or Lending to Customers), 3012 (Supervisory Control System), 3013 (Annual Certification of Compliance and Supervisory Processes), 3510 (Business Continuity Plan) and 3520 (Emergency Contact Information).

In addition, NASD is proposing to revise the study outline to remove the sections on Section 4(3) (Transactions by a dealer) under the Securities Act of 1933[9] and SEC Rule 174 (Delivery of prospectus by dealers; exemptions under Section 4(3)).[10] Further, NASD is proposing to remove the sections on NASD Rules 1040 (Registration of Assistant Representatives and Proctors), 1110 (formerly Registration of Government Securities Principals and Representatives) and 2750 (Transactions with Related Persons), as well as to remove the section on NASD Certificate of Incorporation.

As a result of the revisions discussed above, the number of questions on each section of the study outline were modified as follows: Structure and Regulation of Direct Participation Program Offerings, decreased from 47 to 46 questions; Sales Supervision, General Supervision of Employees, Regulatory Framework of NASD, increased from 31 to 32 questions; and Compliance with Financial Responsibility Rules, increased from 17 to 22 questions.

NASD is proposing these changes to the entire content of the Series 39 examination, including the selection specifications and question bank. The number of questions on the Series 39 examination will increase from 95 to 100 questions, and candidates will now have 21/4 hours (135 minutes) to complete the exam. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] NASD also is proposing corresponding revisions to the Series 39 question bank, but based upon instruction from the Commission staff, NASD is submitting SR–NASD–2006–085 for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder, and is not filing the question bank for Commission review. *See* letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation (''Division''), Commission, dated July 24, 2000. The question bank is available for Commission review.

[6] Telephone conversation between Mia Zur, Special Counsel, Division, Commission, and Afshin Atabaki, Counsel, NASD, dated July 19, 2006.

[7] 17 CFR 240.24b–2.

[8] 15 U.S.C. 78*o*–3(g)(3).

[9] 15 U.S.C. 77d(3).

[10] 17 CFR 230.174.

2. Statutory Basis

NASD believes that the proposed revisions to the Series 39 examination program are consistent with the provisions of Sections 15A(b)(6) [11] and 15A(g)(3) of the Act,[12] which authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [13] and Rule 19b–4(f)(1) thereunder,[14] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD proposes to implement the revised Series 39 examination program on August 15, 2006. NASD will announce the implementation date in a *Notice to Members* to be published on the same date as this filing.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASD–2006–085 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–085. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. 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–NASD–2006–085 and should be submitted on or before August 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris

Secretary.

[FR Doc. E6–12688 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78*o*–3(g)(3).

[13] 15 U.S.C. 78s(b)(3)(A)(i).

[14] 17 CFR 240.19b–4(f)(1).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54245; File No. SR–NASD–2006–086]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Series 55 Examination Program

July 31, 2006.

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 July 14, 2006, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act [3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing revisions to the study outline and selection specifications for the Limited Representative—Equity Trader (Series 55) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the duties and responsibilities of an equity trader representative. NASD is not proposing any textual changes to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] NASD also is proposing corresponding revisions to the Series 55 question bank, but based upon instruction from the Commission staff, NASD is submitting SR–NASD–2006–086 for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder, and is not filing the question bank for Commission review. *See* letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation (''Division''), Commission, dated July 24, 2000. The question bank is available for Commission review.

By-Laws, Schedules to the By-Laws, or Rules of NASD.

The revised study outline is available on NASD's Web site (*www.nasd.com*), at NASD, and at the Commission.[6] The Series 55 selection specifications have been submitted to the Commission under separate cover with a request for confidential treatment pursuant to Rule 24b–2 under the Act.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

Section 15A(g)(3) of the Act[8] requires NASD to prescribe standards of training, experience, and competence for persons associated with NASD members. In accordance with that provision, NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

Pursuant to NASD Rule 1032(f), the Series 55 examination is required, with certain limited exceptions, for associated persons who are engaged in or directly supervise proprietary trading or the execution of transactions on an agency basis with respect to transactions in equity, preferred or convertible debt securities effected otherwise than on a securities exchange. There is an exception from the Series 55 examination requirement for any person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by, or is under common control with the member.

A committee of industry representatives, together with NASD staff, recently undertook a review of the Series 55 examination program. As a result of this review, NASD is proposing to make the following revisions to the study outline to reflect changes to the laws, rules and regulations covered by the examination and to better reflect the duties and responsibilities of an equity trader representative. NASD is proposing to add a section on Rules 600 (NMS Security Designation and Definitions),[9] 602 (Dissemination of Quotations in NMS Securities),[10] 604 (Display of Customer Limit Orders),[11] 605 (Disclosure of Order Execution Information),[12] 606 (Disclosure of Order Routing Information)[13] and 612 (Minimum Price Increments)[14] of SEC Regulation NMS. NASD also is proposing to add sections on NASD Rules 2111 (Trading Ahead of Customer Market Orders) and 3380 (Order Entry and Execution Practices). NASD further is proposing to modify the section on the NASDAQ Market Center—Execution Services to add specific references to NASD Rules 4701(Definitions), 4704 (Opening Process for NASDAQ-Listed Securities), 4706 (Order Entry Parameters), 4707 (Entry and Display of Quotes/Orders), 4709 (NASDAQ Closing Cross), 4710 (Participant Obligations in the NASDAQ Market Center), 4714 (Routing NASDAQ-Listed Securities), 4715 (Adjustment of Open Quotes and/or Orders) and 4719 (Anonymity).

NASD is proposing to add a section on the NASDAQ Initial Public Offering Process (NASDAQ Head Trader Alert 2005–096) and to modify the section on SEC Regulation SHO to add specific references to Rules 200 (Definition of ''Short Sale'' and Marking Requirements)[15] and 203 (Borrowing and Delivery Requirements).[16] Further, NASD is proposing to add references to the specific types of NASDAQ securities covered by the Series 55 examination, add two additional modifiers (.ST (Pre-Open and Aftermarket Trades Not Reported Within 90 Seconds) and .W (Stop Orders)) to the list of Trade Reporting Service modifiers and add a section on reporting cancelled trades.

In addition, NASD is proposing to revise the study outline to remove the following sections: SEC Rules 11Ac1–1 (formerly Dissemination of Quotations),[17] 11Ac1–4 (formerly Display of Customer Limit Orders),[18] 11Ac1–5 (formerly Disclosure of Order Execution Information)[19] and 11Ac1–6 (formerly Disclosure of Order Routing Information);[20] NASDAQ Levels 1, 2 and 3 Service; SEC Rule 10b–10 (Confirmation of Transactions);[21] and NASD Rules 3360 (Short Interest Reporting), 3370 (Purchases) and 4643 (Customer Confirmations).

As a result of the revisions discussed above, the number of questions on each section of the study outline were modified as follows: NASDAQ and Over-The-Counter Markets, decreased from 42 to 41 questions; NASDAQ Display, Execution and Trading Systems, increased from 15 to 17 questions; Trade Reporting Requirements, increased from 16 to 19 questions; and General Industry Standards, decreased from 27 to 23 questions.

NASD is proposing these changes to the entire content of the Series 55 examination, including the selection specifications and question bank. The number of questions on the Series 55 examination will remain at 100, and candidates will continue to have 3 hours to complete the exam. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

2. Statutory Basis

NASD believes that the proposed revisions to the Series 55 examination program are consistent with the provisions of Sections 15A(b)(6)[22] and 15A(g)(3) of the Act,[23] which authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[6] Telephone conversation between Mia Zur, Special Counsel, Division, Commission, and Afshin Atabaki, Counsel, NASD, dated July 19, 2006.

[7] 17 CFR 240.2–b–2.

[8] 15 U.S.C. 78*o*-3(g)(3).

[9] 17 CFR 242.600.

[10] 17 CFR 242.602.

[11] 17 CFR 242.604.

[12] 17 CFR 242.605.

[13] 17 CFR 242.606.

[14] 17 CFR 242.612.

[15] 17 CFR 242.200.

[16] 17 CFR 242.203.

[17] 17 CFR 240.11Ac1–1.

[18] 17 CFR 240.11Ac1–4.

[19] 17 CFR 240.11Ac1–5.

[20] 17 CFR 240.11Ac1–6.

[21] 17 CFR 240.10b–10.

[22] 15 U.S.C. 78*o*–3(b)(6).

[23] 15 U.S.C. 78*o*–3(g)(3).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[24] and Rule 19b–4(f)(1) thereunder,[25] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD proposes to implement the revised Series 55 examination program on August 15, 2006. NASD will announce the implementation date in a *Notice to Members* to be published on the same date as this filing.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASD–2006–086 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–086. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. 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–NASD–2006–086 and should be submitted on or before August 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Nancy M. Morris,

Secretary.

[FR Doc. E6–12704 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

[24] 15 U.S.C. 78s(b)(3)(A)(i).

[25] 17 CFR 240.19b–4(f)(1).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54256; File No. SR–NASD–2006–087]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NASD Rule 5110 and Certain Other NASD Rules Amended Pursuant to SR–NASD–2005–087

August 1, 2006.

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 July 20, 2006, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. The NASD filed the proposed rules change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. NASD proposes to make the proposed rule change operative on the date on which the Nasdaq Stock Market LLC (''Nasdaq Exchange'') commences operation as a national securities exchange for Nasdaq-listed securities.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to (1) amend NASD Rule 5110 to clarify that the rule is applicable to both Nasdaq and non-Nasdaq exchange-listed securities; and (2) make technical, non-substantive changes to certain other NASD rules that were amended by proposed rule change SR–NASD–2005–087.[6] Rule 5110 and the other amendments to NASD rules proposed by SR–NASD–2005–087 will become effective on the date upon which the Nasdaq Exchange operates as a national securities exchange for Nasdaq-listed securities. Currently, that date is projected to be August 1, 2006. The text of the proposed rule change is available on the NASD's Web site (*http://www.nasd.com*), at NASD's principal office, 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 NASD 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 NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] These securities will not include approximately 40 securities that are dually-listed on the New York Stock Exchange.

[6] The NASD filed SR–NASD–2005–087 on July 11, 2005 and Amendment No. 1 on June 15, 2006. The Commission approved SR–NASD–2005–087, as amended, on June 30, 2006. *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (''June 30 Approval Order'').

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 30, 2006, the Commission approved SR–NASD–2005–087.[7] Among other things, in SR–NASD–2005–087, the NASD proposed (1) amendments to the NASD Delegation Plan, NASD By-Laws and NASD rules to reflect a proposed phased implementation strategy for the operation of the Nasdaq Exchange as a national securities exchange with respect to Nasdaq-listed securities during a transitional period; and (2) rules for reporting transactions effected otherwise than on an exchange to the new Trade Reporting Facility. The NASD is filing this proposed rule change in anticipation of SR–NASD–2005–087 becoming effective to (1) amend Rule 5110 to clarify that the rule is applicable to both Nasdaq and non-Nasdaq exchange-listed securities; and (2) make technical, non-substantive changes to certain other NASD rules that were amended by SR–NASD–2005–087.

Amendments to Rule 5110

Pursuant to SR–NASD–2005–087, NASD proposed to renumber Rule 6440(i) as Rule 5110 and extend its application to Nasdaq exchange-listed securities. Currently, the rule prohibits members from executing, otherwise than on an exchange, a transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape.

As described in footnote 23 of the June 30 Approval Order, the NASD is proposing to amend Rule 5110 to delete the reference to dissemination of the opening transaction ''via the Consolidated Tape.'' Pursuant to SR–NASD–2005–087, Rule 5110 is intended to apply to both Nasdaq and non-Nasdaq exchange-listed securities. As such, the reference in the rule to the Consolidated Tape is too narrow given that transactions in securities listed on the Nasdaq Exchange are reported to the Nasdaq Unlisted Trading Privileges Plan.

Technical, Non-Substantive Amendments

NASD is proposing a number of grammatical and technical, non-substantive changes to certain NASD rules that were amended by SR–NASD–2005–087.

Rules 4120A, 4633 and 6431 give NASD authority to halt trading on the ADF and trading reported to the Trade Reporting Facility, with respect to Nasdaq-listed securities, and trading otherwise than on an exchange with respect to non-Nasdaq exchange-listed securities, respectively. These rules are intended to be consistent in their language and application. Accordingly, NASD is proposing to amend Rule 4633(a)(2)(C)(i) and (ii) and Rule 6431(a)(2)(C)(i) and (ii) by replacing the word ''believes'' with the word ''determines.'' The proposed change would conform the language of these rules to the language of Rule 4120A(a)(2)(C)(i) and (ii).[8]

NASD is also proposing to amend Rule 4633 to change references to trading halts ''on'' or ''in'' the Trade Reporting Facility to ''reported to'' the Trade Reporting Facility, to clarify that trades are not executed on the Trade Reporting Facility.

In addition, SR–NASD–2005–087 inadvertently renumbered subparagraphs (MM) through (PP) of Rule 2860(b)(2) as (KK) through (OO). These subparagraphs should have been renumbered (KK) through (NN). As a result, there currently is no subparagraph (OO). Therefore, the proposed rule change would renumber the rule's subparagraphs (PP) through (AAA) as (OO) through (ZZ).

Finally, several rule changes that were approved by the Commission and implemented subsequent to the filing of Amendment No. 1 to SR–NASD–2005–087 change the underlying or proposed text provided in Exhibit 5 of SR–NASD–2005–087. As a result, NASD is proposing changes to the rule text approved pursuant to SR–NASD–2005–087 to make it consistent with the other recently approved rule changes. These include the following rule changes along with the rules affected: SR–NASD–2000–023 amended Rules 6951 and 6954; SR–NASD–2005–098 amended Rule 6740 (renumbered as Rule 6640 pursuant to SR–NASD–2005–087); SR–NASD–2006–040 amended Rule 9610; and SR–NASD–2006–080 amended Rule 4901. In addition, the ''Nasdaq National Market'' was recently renamed the ''Nasdaq Global Market,'' and pursuant to SR–NASD–2006–068, a number of rules were amended to change ''Nasdaq National Market,'' ''NNM'' or ''Nasdaq National Market securities'' to ''Nasdaq Global Market,'' ''NGM'' or ''Nasdaq Global Market securities,'' respectively.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change relating to Rule 5110 will result in uniform regulation of securities that are subject to an initial public offering. In addition, NASD believes that the proposed rule change will enhance the integrity of the market by increasing the consistency and clarity of its rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act,[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change the Commission may summarily

[7] *Id.*

[8] Specifically, each rule grants NASD authority to halt trades in a particular security, including in the event of extraordinary market activity in the security. Rule 4120A(a)(2)(C)(i) and (ii) provides that NASD may exercise this authority if it ''determines'' that such activity is caused by the misuse or malfunction of a system operated by or linked to NASD or a national securities exchange. In otherwise identical provisions, Rule 4633(a)(2)(C)(i) and (ii) and Rule 6431(a)(2)(C)(i) and (ii) use the word ''believes'' instead of ''determines.''

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The NASD has asked the Commission to waive the 30-day pre-operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because it would allow the NASD to update and clarify its rules.[14] For this reason, the Commission designates the proposed rule change to be operative on the date that the Nasdaq Exchange begins operations as a national securities exchange for Nasdaq-listed securities.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–087 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–087. 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 NASD. 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–NASD–2006–087 and should be submitted on or before August 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–12738 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] As noted above, the Nasdaq Exchange is currently scheduled to commence operating as a national securities exchange with respect to Nasdaq-listed securities on August 1, 2006.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54258; File No. SR–NASD–2006–080]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Extend the Time for Non-Member Broker/Dealers To Access the Brut and INET Facilities

August 1, 2006.

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 July 3, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On July 5, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Nasdaq filed the proposed rule change as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to continue the participation of broker/dealers that are non-NASD members in Nasdaq's Brut and INET systems through the earlier of September 1, 2006, or the date Nasdaq becomes operational as a national securities exchange for the particular types of securities traded by those non-members in Nasdaq's INET and Brut systems. The purpose of the proposed rule change is to allow the non-NASD member broker/dealers to have continued access to the Brut and INET systems while they take actions to become members of The NASDAQ Stock Market LLC (''Nasdaq Exchange'').[6] Nasdaq would implement the proposed rule change immediately. The text of the proposed rule change is below. Proposed new language is in *italics*. Proposed deletions are in [brackets].

* * * * *

4901. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) through (h) No change

(i) The term ''Participant'' shall mean an NASD member that fulfills the obligations contained in Rule 4902 regarding participation in the System. The term ''Participant'' shall also include non-NASD broker/dealers that desire to use the System and otherwise meet all other requirements for System participation. Non-NASD member broker/dealers shall have access to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq revised the proposed rule text to conform it with the existing language of NASD Rule 4901.

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq has requested the Commission to waive the 30-day pre-operative delay required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii). *See* discussion *infra* Section III.

[6] The Commission recently approved Nasdaq's application for one of its proposed subsidiaries, The NASDAQ Stock Market LLC, to be registered as a national securities exchange under Section 6 of the Act. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131).

System until the earlier of either [July] *September* 1, 2006, or the date that Nasdaq becomes operational as a national securities exchange for the particular class of securities traded by the non-NASD member.

(j) through (w) No Change

* * * * *

4952. System Participant Registration

(a) Participation in INET requires current registration with the System and is conditioned upon the Participant's initial and continuing compliance with the following requirements:

(1)–(5) No Change.

(6) In addition to the above, all System Participants shall be members of the Association. Exception: Non-NASD member broker/dealers shall have access to System until the earlier of either [July] *September* 1, 2006, or the date that Nasdaq becomes operational as a national securities exchange for the particular class of securities traded by the non-NASD member.

* * * * *

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. Nasdaq 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, Proposed Rule Change

1. Purpose

Nasdaq states that, under current rules, broker/dealers that are not members of the NASD may use the Brut and INET systems until July 1, 2006. Nasdaq is proposing to modify this provision to allow non-NASD member broker/dealers to use the Brut and INET systems until the earlier of either September 1, 2006, or the date that Nasdaq becomes operational as a national securities exchange for the particular class of securities traded by the non-member. Nasdaq believes that this division of dates upon which non-NASD members must be members of the Nasdaq Exchange in order to continue to use Nasdaq's trading facilities is necessary because Nasdaq plans to become operational as a national securities exchange in two phases, with the first involving only Nasdaq securities and a second, subsequent phase involving securities listed by other national securities exchanges. Under the proposal, non-NASD members trading Nasdaq-listed securities would be required to be a Nasdaq Exchange member to continue to trade Nasdaq securities in Brut and INET on the date that Nasdaq becomes operational as a national securities exchange for Nasdaq issues, while entities trading other exchange-listed securities would be allowed continued access to the Brut and INET systems for such trading until such time as Nasdaq becomes operational as a national securities exchange for non-Nasdaq issues. Nasdaq states that in neither scenario would non-NASD member access to the Brut and INET systems extend beyond September 1, 2006 without a further extension.

Nasdaq states that this extension is intended to allow these non-NASD member broker/dealers to have continued access to Brut and INET while they take actions to become members of the recently-approved Nasdaq Exchange. Nasdaq notes that only 44 non-NASD member broker/dealers currently have access to its Brut and INET systems (4 in the Brut system and 40 in the INET system) and, as before, Nasdaq commits not to allow any additional non-NASD broker/dealers access during this extension period.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(6) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, and to remove impediments to a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq states that written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to thirty days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day pre-operative delay and the five-day pre-filing notice requirement and designate the proposed rule change to become effective upon filing. Nasdaq believes that waivers of such periods will allow continued uninterrupted access to the Brut and INET systems for non-member broker/dealers in the period of time immediately preceding Nasdaq's operation as a national securities exchange. The Commission believes that waiving the 30-day pre-operative delay and the five-day pre-filing notice requirement is consistent with the protection of investors and the public interest because it would facilitate the orderly transition of Nasdaq to become a national securities exchange, thus removing impediments to a free and open market and a national market system. In addition, the Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and the public interest because such waiver would allow non-NASD member broker/dealers to continue to participate in Brut and INET while they take actions to become members of the Nasdaq

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *See* 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

Exchange. For the foregoing reasons, the Commission designates the proposal to become effective and operative immediately.[13]

At any time within sixty 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 the furtherance of the purposes of the Act.[14]

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–NASD–2006–080 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–080. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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–NASD–2006–080 and should be submitted on or before August 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E6–12739 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] The effective date of the original proposed rule change is July 3, 2006, and the effective date of Amendment No. 1 is July 5, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on July 5, 2006, the date on which the Exchange submitted Amendment No. 1.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54232; File No. SR–NYSE–2004–56]

Self-Regulatory Organizations; New York Stock Exchange Inc. (n/k/a New York Stock Exchange LLC); Notice of Filing of Proposed Rule Change Relating to Amendments to Exchange Rule 611, ''Disqualification or Other Disability of Arbitrators''

July 27, 2006.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder, notice is hereby given that on October 12, 2004, the New York Stock Exchange Inc. (n/k/a New York Stock Exchange LLC) (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed amendments to its arbitration rules as described in Items I and II below, which items have been prepared by the Exchange. On May 26, 2006, the Exchange filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change, as amended, consists of amendments to Rule 611 concerning the disqualification of arbitrators.

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 the proposed rule change is available on the NYSE's Web site (*www.NYSE.com*), at the NYSE's principal office, and at the Commission's Public Reference Room. 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

Once an arbitrator has taken the Oath of Arbitrators for a particular case, NYSE rules do not currently provide for the Director of Arbitration to remove an arbitrator from serving on that case. The need for such action could arise if, for example, an item that should have been disclosed by the arbitrator pursuant to Exchange rules had inadvertently not been disclosed or a conflict arises after commencement of the hearing. Historically, when this situation has arisen, the remedy has been for the arbitrator to recuse himself or herself. Nevertheless, the Exchange believes that it would be prudent to give the Director of Arbitration the authority to remove an arbitrator should a conflict come to the attention of the parties or the Exchange that for whatever reason was not appropriately disclosed pursuant to NYSE rules.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(5)[4] of the Act in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] In Amendment No. 1, the Exchange amended the filing to note that the need to remove an arbitrator might arise not only for a failure to disclose an item that should have been disclosed, but also if a conflict arises after the commencement of the hearing. The Exchange also amended the filing and the rule text to remove the Director of Arbitration's discretion to limit the additional information requested of an arbitrator.

[4] 15 U.S.C. 78f(b)(5).

forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has 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 self-regulatory organization consents, the Commission will:

a. By order approve the proposed rule change, or

b. Institute proceedings to determine whether the proposed rule change should be disapproved.

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. We solicit specific comment on whether the language of the proposed rule, as amended, clearly indicates that conflicts arising after the commencement of the hearing could give rise to removal of an arbitrator by the Director of Arbitration. 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–2004–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2004–56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–56 and should be submitted on or before August 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Nancy M. Morris,

Secretary.

[FR Doc. E6–12702 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54251; File No. SR–NYSEArca–2006–18]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Relating to the Trading of the Index-Linked Securities of Barclays Bank PLC Linked to the Performance of the Goldman Sachs Crude Oil Total Return Index™ Pursuant to Unlisted Trading Privileges

July 31, 2006

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 May 16, 2006, NYSE Arca, Inc. (''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 27, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Through NYSE Arca Equities, the Exchange proposes to amend its rules governing NYSE Arca, L.L.C. (also referred to as the ''NYSE Arca Marketplace''), the equities trading facility of NYSE Arca Equities. Pursuant to NYSE Arca Equities Rule 5.2(j)(6), the Exchange proposes to trade pursuant to unlisted trading privileges (''UTP'') the Index-Linked Securities (''Securities'') of Barclays Bank PLC (''Barclays''), which are linked to the performance of the Goldman Sachs Crude Oil Total Return Index™ (''Index'').

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 III 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to NYSE Arca Equities Rule 5.2(j)(6), the Exchange proposes to trade pursuant to UTP the Securities of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified certain aspects of its proposal regarding the Securities and surveillance.

Barclays, which are linked to the performance of the Index. Barclays intends to issue the Securities under the name ''iPathSM Exchange-Traded Notes.'' A rule proposal for the original listing and trading of the Securities was filed with the Commission by the New York Stock Exchange, Inc. (''NYSE'')[4] and approved by the Commission.[5]

(a) The Securities and the Index

(i) The Securities

In August 2005, the Commission approved NYSE Arca Equities Rule 5.2(j)(6), which provides general standards for the listing and trading of ''Index-Linked Securities.''[6] Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. As permitted in NYSE Arca Equities Rule 5.2(j)(6), the Exchange is submitting this rule proposal to the Commission pursuant to Section 19(b)(2) of the Act, to obtain Commission approval to trade the Securities pursuant to UTP.

A description of the Securities and the Index is set forth in the NYSE Proposal.[7] The Securities are a series of medium-term debt securities of Barclays that provide for a cash payment at maturity, or upon earlier exchange at the holder's option, based on the performance of the Index subject to the adjustments described below.

The Securities will not have a minimum principal amount that will be repaid and, accordingly, payment on the Securities prior to or at maturity may be less than the original issue price of the Securities. In fact, the value of the Index must increase for the investor to receive at least the $50 principal amount per Security at maturity or upon exchange or redemption. If the value of the Index decreases or does not increase sufficiently to offset the investor fee,[8] the investor will receive less, and possibly significantly less, than the $50 principal amount per Security. In addition, holders of the Securities will not receive any interest payments from the Securities. The Securities will have a term of 30 years and are not callable.[9]

Holders who have not previously redeemed their Securities will receive a cash payment at maturity equal to the principal amount of their Securities times the index factor[10] on the Final Valuation Date[11] minus the investor fee on the Final Valuation Date.

Prior to maturity, holders may, subject to certain restrictions,[12] redeem their Securities on any Redemption Date[13] during the term of the Securities provided that they present at least 50,000 Securities for redemption, or they act through a broker or other financial intermediaries (such as a bank or other financial institution not required to register as a broker-dealer to engage in securities transactions) that are willing to bundle their Securities for redemption with other investors' Securities. If a holder chooses to redeem such holder's Securities, the holder will receive a cash payment on the applicable Redemption Date equal to the principal amount of such holder's Securities times the index factor on the applicable Valuation Date minus the investor fee on the applicable Valuation Date. To redeem their Securities, holders must instruct their broker or other person through whom they hold their Securities to follow certain procedures as described in the NYSE Proposal.[14]

If an event of default occurs and the maturity of the Securities is accelerated, Barclays will pay the default amount in respect of the principal of the Securities at maturity.[15] More information regarding default procedures, including a quotation period and an objection period, is set forth in the NYSE Proposal.

(ii) The Index

The Index is a sub-index of the GSCI® and reflects the excess returns that are potentially available through an unleveraged investment in the contracts comprising the relevant components of the Index (which currently includes only the West Texas Intermediate (''WTI'') crude oil futures contract traded on the New York Mercantile Exchange (''NYMEX'')), plus the Treasury Bill rate of interest that could be earned on funds committed to the trading of the underlying contracts.[16] The value of the Index, on any given day, reflects: (i) The price levels of the contracts included in the Goldman Sachs Crude Oil Total Return Index™ (which represents the value of the Goldman Sachs Crude Oil Total Return Index™); (ii) the ''contract daily return,'' which is the percentage change in the total dollar weight of the Goldman Sachs Crude Oil Total Return Index™ from the previous day to the current day; and (iii) the Treasury Bill rate of interest that could be earned on funds committed to the trading of the underlying contracts.

In addition to other criteria described in the NYSE Proposal, in order to qualify for inclusion in the Index the contract must be related to WTI crude oil. As presently constituted, the only contract used to calculate the Index is

[4] *See* Securities Exchange Act Release No. 53967 (June 9, 2006), 71 FR 34976 (June 16, 2006) (SR–NYSE–2006–19) (the ''NYSE Proposal'').

[5] *See* Securities Exchange Act Release No. 54177 (July 19, 2006), 71 FR 54177 (July 27, 2006) (the ''NYSE Order'').

[6] *See* Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR–PCX–2005–63).

[7] *See supra* note 4.

[8] The investor fee is equal to 0.75% per year times the principal amount of a holder's Securities times the index factor, calculated on a daily basis in the following manner. The investor fee on the date of issuance of the Securities will equal zero. On each subsequent calendar day until maturity or early redemption, the investor fee will increase by an amount equal to 0.75% times the principal amount of a holder's Securities times the index factor on that day (or, if such day is not a trading day, the index factor on the immediately preceding trading day) divided by 365. The investor fee is the only fee holders will be charged in connection with their ownership of the Securities.

[9] Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, on July 12, 2006.

[10] The ''index factor'' on any given day will be equal to the closing value of the Index on that day divided by the initial index level. The index factor on the Final Valuation Date will be equal to the final index level divided by the initial index level. The ''initial index level'' is the closing value of the Index on the date of issuance of the Securities (the ''Trade Date'') and the ''final index level'' is the closing value of the Index on the Final Valuation Date. Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, on July 14, 2006.

[11] The ''Final Valuation Date'' is the last Thursday before maturity of the Securities.

[12] Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, on July 13, 2006.

[13] A ''Redemption Date'' is the third business day following a Valuation Date (other than the Final Valuation Date). A ''Valuation Date'' is each Thursday from the first Thursday after issuance of the Securities until the last Thursday before the Final Valuation Date inclusive (or, if such date is not a trading day, the next succeeding trading day).

[14] If holders elect to redeem their Securities, Barclays may request that Barclays Capital Inc. (a broker-dealer) purchase the Securities for the cash amount that would otherwise have been payable by Barclays upon redemption. In this case, Barclays will remain obligated to redeem the Securities if Barclays Capital Inc. fails to purchase the Securities. Any Securities purchased by Barclays Capital Inc. may remain outstanding.

[15] That cost will equal: (i) The lowest amount that a qualified financial institution would charge to effect this assumption or undertaking, plus (ii) the reasonable expenses, including reasonable attorneys' fees, incurred by the holders of the Securities in preparing any documentation necessary for this assumption or undertaking.

[16] The Treasury Bill rate of interest used for purposes of calculating the index on any day is the 91-day auction high rate for U.S. Treasury Bills, as reported on Telerate page 56, or any successor page, on the most recent of the weekly auction dates prior to such day.

the WTI crude oil futures contract traded on the NYMEX.

The GSCI®, upon which the Index is based, is a proprietary index on a production-weighted basket of futures contracts on physical commodities traded on trading facilities in major industrialized countries. The GSCI® is designed to be a measure of the performance over time of the markets for these commodities. The commodities represented in the GSCI® are weighted, on a production basis, to reflect their relative significance (in the view of the Index Sponsor, in consultation with the Policy Committee)[17] to the world economy. The fluctuations in the value of the GSCI® are intended generally to correlate with changes in the prices of such physical commodities in global markets. The value of the GSCI® has been normalized such that its hypothetical level on January 2, 1970 was 100. Futures contracts on the GSCI®, and options on such futures contracts, are currently listed for trading on the Chicago Mercantile Exchange. More information regarding the operation, calculation methodology, weighting, and historical performance of the Index is set forth in the NYSE Proposal.

(b) Dissemination and Availability of Information

(i) The Intraday Indicative Value

According to the NYSE Proposal, an ''Intraday Indicative Value'' (or ''IIV'') meant to approximate the intrinsic economic value of the Securities will be calculated and published via the facilities of the Consolidated Tape Association (''CTA'') every 15 seconds from 9:30 a.m. to 4 p.m. Eastern Time (''ET'') on each day on which the Securities are traded on the NYSE.[18] Additionally, Barclays or an affiliate will calculate and publish the closing IIV of the Securities on each trading day at *http://www.ipathetn.com.* In connection with the Securities, the term ''IIV'' refers to the value at a given time determined based on the following equation: IIV = Principal Amount per Unit ($50) multiplied by (Current Index Level divided by Initial Index Level)[19] minus Current Investor Fee.[20]

The IIV will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and 4 p.m. ET. The value of the Securities may accordingly be influenced by non-concurrent trading hours between the Exchange and NYMEX. The WTI crude oil futures (the futures contracts underlying the Index) will trade on the NYMEX from 10 a.m. to 2:30 p.m. ET.

While the market for futures trading for each of the Index commodities is open, the IIV can be expected to closely approximate the redemption value of the Securities. However, during NYSE Arca Marketplace trading hours when the futures contracts have ceased trading, spreads and resulting premiums or discounts may widen, and therefore, increase the difference between the price of the Securities and their redemption value. The IIV should not be viewed as a real time update of the redemption value.

(ii) The Index

According to the NYSE Proposal, the Index Sponsor makes the official calculations of the GSCI®. At present, this calculation is performed continuously and is reported on Reuters page GSCI® (or any successor or replacement page) and is updated on Reuters at least once every 15 seconds[21] during business hours on each day on which the offices of the Index Sponsor in New York City are open for business (a ''GSCI Business Day'').[22] The settlement price for the Index is also reported on Reuters page GSCI® (or any successor or replacement page) on each GSCI Business Day between 4 p.m. and 6 p.m., New York time.

(c) UTP Trading Criteria

The Exchange will cease trading in the Securities if: (1) The listing market stops trading the Securities because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or a halt because the IIV or the value of the underlying Index is no longer available on at least a 15 second delayed basis; or (2) the listing market delists the Securities.[23] In the event that the Exchange is open for business on a day that is not a GSCI Business Day, the Exchange will not permit trading of the Securities on that day. Additionally, the Exchange may cease trading the Securities if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(d) Trading Rules

The Exchange deems the Securities to be equity securities, thus rendering trading in the Securities subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Securities on the NYSE Arca Marketplace will occur from 4 a.m. to 8 p.m. ET in accordance with NYSE Arca Equities Rule 7.34(a).[24] The Exchange has appropriate rules to facilitate transactions in the Securities during all trading sessions. The minimum trading increment for Securities on the Exchange will be $0.01.

Further, the Exchange has recently adopted new Commentary .01 to NYSE Arca Equities Rule 5.2(j)(6), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Securities to facilitate surveillance.[25] Commentary .01(b)–(c) to NYSE Arca Equities Rule 5.2(j)(6)

[17] The Index Sponsor has established a Policy Committee to assist it with the operation of the GSCI®. The Policy Committee is described in more detail in the NYSE Proposal.

[18] The IIV calculation will be provided for reference purposes only.

[19] The Current Index Level is the most recent published level of the Index as reported by the Index Sponsor, whereas the Initial Index Level is the Index level on the trade date for the Securities.

[20] The Current Investor Fee is the most recent daily calculation of the investor fee with respect to the Securities, determined as described above (which, during any trading day, will be the investor fee determined on the preceding calendar day).

[21] Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, on July 27, 2006 (clarifying that the Index value will be disseminated at least every 15 seconds, not every 3 minutes, during the time the Securities trade on the Exchange).

[22] Both NYSE, as the listing exchange, and NYSE Arca, will not permit trading in the Securities if certain information about the Index value is not disseminated on, for example, a date that is not a GSCI Business Day. *See supra.*

[23] E-mail between Janet Kissane, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, dated July 31, 2006 (clarifying that the Securities will cease trading during all trading hours).

[24] During all NYSE Arca Equities trading sessions, the Exchange represents that if the official Index Sponsor calculates an updated Index value, then such value will be updated and disseminated at least every 15 seconds during such trading session, and always will be so during the Exchange's core trading session (although during this session, the Exchange may rely on the listing exchange to monitor such calculation and dissemination). The Exchange represents that the official Index Sponsor calculates and disseminates the Index value from 8 a.m. to 4 p.m. ET. Because this product is not in continuous distribution, an IIV is not required to be disseminated at least every 15 seconds in all trading sessions; however, because of the weekly redemption process for this product, such dissemination of the IIV is required during the Exchange's core trading session. The Exchange may rely on the listing market to monitor such dissemination of the IIV during the Exchange's core trading session. Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2006.

[25] *See* Securities Exchange Act Release No. 54189 (July 21, 2006), 71 FR 43263 (July 31, 2006) (SR–NYSEArca–2006–17).

requires that the ETP Holder acting as a registered Market Maker in the Securities provide the Exchange with necessary information relating to its trading in the Index components, the commodities underlying the Index components, or options, futures or options on futures on the Index, or any other derivatives (collectively, ''derivative instruments'') based on the Index or based on any Index component or any physical commodity underlying an Index component. Commentary .01(d) to NYSE Arca Equities Rule 5.2(j)(6) prohibits the ETP Holder acting as a registered Market Maker in the Securities from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component (including the Securities). In addition, Commentary .01(a) to NYSE Arca Equities Rule 5.2(j)(6) prohibits the ETP Holder acting as a registered Market Maker in the Securities from being affiliated with a market maker in the Index components, the commodities underlying the Index components, or any derivative instruments based on the Index or based on any Index component or any physical commodity underlying an Index component unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Securities. Trading in the Securities may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Securities inadvisable. These may include: (1) The extent to which trading is not occurring in the Index components or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Securities will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule [26] or by the halt or suspension of the trading of the Index components.[27]

The Securities will be deemed ''Eligible Listed Securities,'' as defined in NYSE Arca Equities Rule 7.55, for purposes of the Intermarket Trading System (''ITS'') Plan and therefore will be subject to the trade through provisions of NYSE Arca Equities Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

(e) Surveillance

The Exchange will incorporate and rely upon existing surveillance procedures applicable to equities to monitor trading in the Securities. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Securities in all trading sessions and detect violations of Exchange rules, thereby deterring manipulation.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange is able to obtain information regarding trading in the Securities and the Index components through ETP Holders in connection with such ETP Holders' proprietary or customer trades that they effect on any relevant market. In addition, the Exchange has access to transaction information, including customer identity information with respect to all contracts traded on NYMEX and the COMEX, a subsidiary of the NYMEX, pursuant to the Exchange's information sharing agreement with NYMEX.

(f) Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Securities. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Securities (and that Securities are not individually redeemable but are redeemable only in aggregations of at least 50,000 Securities); (2) NYSE Arca Equities Rule 9.2(a),[28] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Securities; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Securities prior to or concurrently with the confirmation of a transaction; and (5) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Securities. The Exchange notes that investors purchasing Securities directly from Barclays will receive a prospectus. ETP Holders purchasing Securities from Barclays for resale to investors will deliver a prospectus to such investors.

The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical commodities, and that the Commission has no jurisdiction over the trading of physical commodities such as crude oil, or the futures contracts on which the value of the Securities is based.

The Information Bulletin will also discuss any exemptive or no-action relief, if granted, by the Commission staff from any rules under the Act.

2. Statutory Basis

The Exchange believes that the basis for this proposed rule change is consistent with the requirements under Section 6(b)(5) [29] of the Act that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

In addition, the Exchange believes that the proposal is consistent with Rule 12f–5 under the Act [30] because it deems the Securities to be equity securities, thus rendering the Securities subject to

[26] *See* NYSE Arca Equities Rule 7.12.

[27] *See* ''UTP Trading Criteria'' above for specific instances when the Exchange will cease trading the Securities.

[28] The Exchange recently amended NYSE Arca Equities Rule 9.2(a) (''Diligence as to Accounts'') to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the Rule provides that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders should make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives and any other information that they believe would be useful to make a recommendation. *See* Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR–PCX–2005–115).

[29] 15 U.S.C. 78s(b)(5).

[30] 17 CFR 240.12f–5.

the Exchange's rules governing the trading of equity securities.[31]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2006–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices 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–NYSEArca–2006–18 and should be submitted on or before August 28, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[32] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[33] which requires that an exchange have rules 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 a national market system, and in general to protect investors and the public interest.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[34] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[35] The Commission notes that it previously approved the listing and trading of the Securities on the NYSE.[36] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[37] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. NYSE Arca Equities rules deem the Securities to be equity securities, thus trading in the Securities will be subject to the Exchange's rules governing the trading of equity securities and the specific rules set forth herein for this product class.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[38] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In support of the portion of the proposed rule change regarding UTP of the Securities, the Exchange has made the following representations:

1. NYSE Arca Equities has appropriate rules to facilitate transactions in this type of security in all trading sessions.
2. NYSE Arca Equities surveillance procedures are adequate to properly monitor the trading of the Securities on the Exchange.
3. NYSE Arca Equities will distribute an Information Bulletin to its members prior to the commencement of trading of the Securities on the Exchange that explains the terms, characteristics, and risks of trading such securities.
4. NYSE Arca Equities will require a member with a customer who purchases newly issued Securities on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Bulletin.
5. The Exchange will cease trading in the Securities if: (1) The primary market stops trading the securities because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because the IIV or Index value are not disseminated at least every 15 seconds; or (2) if such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable; or (3) the primary market delists the Securities.

This approval order is conditioned on NYSE Arca Equities' adherence to these representations.

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously,

[31] Telephone conference between John Carey, Assistant General Counsel, NYSE Group, Inc., and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2006 (the Exchange requested that the Commission delete the word ''existing'' to clarify that the Securities will be subject to all applicable Exchange rules governing the trading of equity securities for the Securities).

[32] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78*l*(f).

[35] Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[36] *See* NYSE Order, *supra* note 5.

[37] 17 CFR 240.12f–5.

[38] 15 U.S.C. 78k–1(a)(1)(C)(iii).

the Commission previously found that the listing and trading of these Securities on the NYSE is consistent with the Act.[39] The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Securities.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (NYSEArca–2006–18), is hereby approved, as amended, on an accelerated basis.[40]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[41]

Nancy M. Morris,

Secretary.

[FR Doc. E6–12699 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54230; File No. SR–NYSEArca–2006–41]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Extend the Linkage Fee Pilot Program

July 27, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 7, 2006, the NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis for a pilot period through July 31, 2007.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE Arca is proposing to amend the NYSE Arca Options, Trade-Related Charges section of the Schedule of Fees and Charges (''Schedule'') in order to extend until July 31, 2007, the current pilot program regarding transaction fees charged for trades executed through the intermarket options linkage plan (''Linkage''). The text of the proposed rule change is available on the NYSE Arca's Web site at (*http://www.archipelago.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 III 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 purpose of this proposed rule change is to extend for one year the pilot program establishing NYSE Arca fees for Principal (''P'') Orders and Principal Acting as Agent (''P/A'') Orders executed through Linkage. The fees currently are effective for a pilot program set to expire on July 31, 2006, and this filing would extend the fees through July 31, 2007. Executions on NYSE Arca resulting from Linkage orders are subject to the same billing treatment as other broker-dealer (''BD'') executions. The present execution fee is $0.26, which is comprised of a $0.21 transaction fee and a $0.05 per contract comparison fee. These are the same fees that all NYSE Arca Option Trading Permit Holders pay for non-customer transactions executed on the Exchange. The Exchange does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

BD orders that are entered and executed electronically on NYSE Arca are presently subject to a $0.25 BD surcharge. Linkage orders that are electronically executed on the Exchange are subject to the same billing treatment as other BD transactions. The Exchange recently filed NYSEArca–2006–20,[3] which proposes a change to the Schedule to reflect that the $0.25 BD surcharge will also be applied to Linkage orders submitted and executed electronically on the Exchange. The extension of the existing Linkage fee pilot program proposed with this filing does not reflect the changes proposed to the Schedule pursuant to NYSEArca–2006–20.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that the proposed rule change provides 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 believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

---

[39] *See* NYSE Order, *supra* note 5.

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54130 (July 11, 2006) 71 FR 41305 (July 20, 2006).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–41. 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–NYSEArca–2006–41 and should be submitted on or before August 28, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[6] and, in particular, the requirements of Section 6(b) of the Act [7] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2007 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[9] for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSEArca–2006–41) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–12701 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54238; File No. SR–NYSEArca–2006–13]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto Relating to the Establishment of the OX Trading Platform

July 28, 2006.

I. Introduction

On May 2, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to establish the OX trading platform. The Exchange filed Amendments No. 1 and 2 to the proposed rule change on June 9, 2006 and June 15, 2006, respectively. The proposed rule change was published for comment in the **Federal Register** on June 23, 2006.[3] The Commission received one comment on the proposal.[4] On July 27, 2006, the Exchange filed Amendment No. 3 to the proposal.[5] This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2, grants accelerated approval to Amendment No. 3, and solicits comments from interested persons on Amendment No. 3.

II. Description of the Proposal

NYSE Arca proposes to establish rules for OX, a fully automated trading system for standardized equity options intended to replace NYSE Arca's current options trading platform, PCX Plus.[6] OX would provide an electronic order delivery, execution and reporting system for designated options listed and traded on NYSE Arca through which orders and quotes of Users [7] are consolidated for execution and display. Market Makers would be able to stream quotes to OX either from on the trading floor or remotely.

OX would be available for the entry and execution of quotes and orders to OTP Holders,[8] OTP Firms [9] and, through Sponsoring OTP Firms,[10] certain non-OTP Firms and Holders, known as Sponsored Participants [11] (collectively, ''Users''). In general, Users would be able to enter market orders, marketable limit orders and limit orders. Only Market Makers would be permitted to enter quotes on OX. As Users enter bids and offers (*i.e.*, orders and quotes) into the system, any non-marketable limit orders and quotes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53995 (June 15, 2006), 71 FR 36145 (''OX Notice'').

[4] *See* letter dated July 20, 2006 from Bryan Rule (''Rule Letter'').

[5] In Amendment No. 3, the Exchange: (i) Made certain representations about entering into a agreement with the NASD pursuant to Rule 17d–2 under the Act following approval of this proposed rule change; (ii) offered further analysis of why the proposal is not inconsistent with Section 11(a) of the Act; (iii) clarified that Satisfaction Orders would be handled in the same manner as they are handled on PCX Plus; (iv) submitted a rule that would require a three second exposure period before certain orders could be crossed; (v) represented that NYSE Arca Rule 11.3 would require an OX Market Maker to maintain information barriers that are reasonably designed to prevent the misuse of material, non-public barriers between ''side-by-side'' market makers; (vi) removed a reference to an ''Opening Only'' order type; (vii) clarified the price at which certain orders would be executed in the Working Order Process and made other technical corrections to the proposal. The complete text of Amendment No. 3 is available on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*), at the Commission's Public Reference Room, and at the Exchange.

[6] See NYSE Arca Rule 6.90.

[7] *See* proposed NYSE Arca Rule 6.1A(a)(19).

[8] *See* NYSE Arca Rule 1.1(q).

[9] *See* NYSE Arca Rule 1.1(r).

[10] *See* proposed NYSE Arca Rule 6.1A(a)(17).

[11] *See* proposed NYSE Arca Rule 6.1A(a)(16).

would be ranked in an electronic limit order file (the ''OX Book'') [12] according to price-time priority, such that within each price level, all bids and offers are organized by the time of entry. The OX Book (except for certain Working Orders[13] with conditional prices or sizes) would be displayed to all Users. For market orders or marketable limit orders, like-priced bids and offers would be matched by OX for execution at prices equal to or better than the NBBO pursuant to the following algorithm, which is based on price-time priority:

Step 1: All market orders and marketable limit orders would be matched against the displayed top of the OX Book.

Step 2: If an order has not been executed in its entirety pursuant to Step 1, then OX would match the order against any Working Orders, which are orders with a conditional or undisplayed size. Examples of Working Orders include a reserve order, an order with a portion of the size displayed, and a reserve portion of the size that is not displayed.

Step 3: If an order has not been executed in its entirety pursuant to Steps 1 and 2, the order would be routed to another Market Center [14] for execution (either through the intermarket options linkage (''Linkage'') or via a broker-dealer affiliated with NYSE Arca, Archipelago Securities) unless the User has designated that the order may not be routed to another Market Center. If an order that is routed to another Market Center is not executed in its entirety, the order would be ranked and displayed in the OX Book in accordance with the terms of such order and such order would be eligible for execution.

The OX rules also would permit the crossing of orders on the trading floor via open outcry. Specifically, the Exchange would provide rules governing regular-way, facilitation, and solicitation crosses and introduce the ability for OTP Holders and OTP Firms to execute Mid-Point Crosses [15] in accordance with one of the three crossing rules.

OTP Holders and OTP Firms meeting certain qualifications would be permitted to register as either Lead Market Makers (''LMMs'') or Market Makers in one or more option classes traded on OX.[16] In addition, LMMs would continue to be responsible for handling orders under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').[17]

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange [18] and, in particular, with the requirements of Section 6(b) of the Act.[19] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5) of the Act [20] in that it is designed to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

A. Access to OX

As noted briefly above, the Exchange proposes to expand the types of market participants eligible to trade on its options trading facility. OTP Holders and OTP Firms with access to PCX Plus at the time of this proposal would continue to have access to the Exchange through the OX platform. In addition, the Exchange proposes to permit entities that are neither OTP Holders nor OTP Firms to access the OX platform as ''Sponsored Participants.'' The Exchange proposes to define a Sponsored Participant as a person, such as an institutional investor, who has entered into a sponsorship agreement with a Sponsoring OTP Firm, that has been designated to execute, clear, and settle transactions on the Exchange for the Sponsored Participant.

The Sponsored Participant and its Sponsoring OTP Firm would be required to enter into a written agreement incorporating the provisions required by proposed NYSE Arca Rule 6.2(c). Specifically, the Sponsoring OTP Firm would acknowledge, among other things, that all orders entered by the Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring OTP Firm and that it is responsible for any and all actions taken by its Sponsored Participant. The Sponsoring OTP Firm also would be required to provide the Exchange notice that it is responsible for the actions of its Sponsored Participant(s). The Sponsored Participant, in turn, would agree, among other things, to comply with applicable NYSE Arca rules and procedures as if it were an OTP Firm and agree to take precautions to prevent unauthorized access to the Exchange. The Sponsored Participants would be required to establish and maintain an up-to-date list of persons permitted to obtain access to OX on behalf of the Sponsored Participant (*i.e.,* ''Authorized Traders'') [21] and to provide that list to the Sponsoring OTP Firm.

The Commission approved a substantially similar arrangement for trading on NYSE Arca's predecessor entity, the Pacific Exchange, when the Commission approved the establishment of the Archipelago Exchange (''ArcaEx'') [22] as the equities trading facility of PCX Equities, Inc.[23] The Commission believes that, like the arrangement that the Commission previously approved for ArcaEx, the proposed sponsorship arrangement is consistent with the Act.

B. Display Order and Working Order Processes

Users of OX would be able to submit orders to an electronic file of orders in the OX Book. The OX Book would feature two trading processes—the ''Display Order Process'' and the—Working Order Process.'' Bids and offers would be ranked, maintained, and executed generally according to price-time priority.[24]

[12] *See* proposed NYSE Arca Rule 6.1A(a)(14).

[13] *See* proposed NYSE Arca Rule 6.62A(e).

[14] *See* proposed NYSE Arca Rule 6.1A(a)(6).

[15] *See* proposed NYSE Arca Rule 6.47(d).

[16] Unless specified, or unless the context requires otherwise, the term ''Market Maker'' as used herein refers to both Market Makers and LMMs.

[17] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by the Philadelphia Stock Exchange, Inc. (''Phlx''), the Pacific Exchange, Inc. (''PCX''), and the Boston Stock Exchange, Inc., the Commission issued orders to permit these exchanges to participate in the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000), 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[18] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* proposed NYSE Arca Rule 6.1A(a)(1).

[22] NYSE Arca LLC is the successor entity to ArcaEx. *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006).

[23] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25).

[24] Under certain circumstances, an LMM would be guaranteed participation, after all customer orders ranked ahead of the LMM have been executed, in an order when the LMM is quoting the NBBO, but lacks time priority among Users bidding

Continued

1. Display and Rank of Orders in the Displayed and Working Order Processes

The Exchange would display all non-marketable Limit Orders in the Display Order Process of the OX Book. Limit Orders, with no other conditions, and quotes would be ranked based on the specified price and the time of original order or quote entry. The displayed portion of Reserve Orders [25] would be ranked in the Display Order Process at the specified limit price and the time of order entry. When the displayed portion of the Reserve Order is decremented completely, the displayed portion of the Reserve Order would be refreshed from the reserve amount for (1) The displayed amount or (2) the entire reserve amount, if the remaining reserve amount is smaller than the displayed amount. The refreshed quote would be submitted and ranked at the specified limit price and the new time that the displayed portion of the order was refreshed.

The reserve portion of Reserve Orders would be ranked in the Working Order Process based on the specified limit price and the time of original order entry. After the displayed portion of a Reserve Order is refreshed from the reserve portion, the reserve portion would remain ranked based on the original time of order entry while the displayed portion would be sent to the Directed Order Process with a new time stamp.

2. Execution of Orders in the Display and Working Order Processes

Once a booked order becomes marketable or upon a User's entry of a marketable order, all orders in OX would be matched generally based upon price-time priority, as described more fully below. OX first would attempt to match incoming marketable bids and offers against bids or offers in the Display Order Process at the display price of the resident bids or offers for the total amount of option contracts available at that price or for the size of the incoming order, whichever is smaller. NYSE Arca proposes to allocate incoming marketable bids and offers as follows:

If an LMM is quoting in the option series at the NBBO, an incoming marketable bid or offer would be matched against all Customer [26] orders at the NBBO ranked ahead of the LMM. The remaining balance of the incoming marketable bid or offer would be matched against the quote of the LMM for either: (1) An amount equal to 40% of the remaining balance of the incoming bid or offer up to the LMM's disseminated quote size or (2) the LMM's share in the order of ranking in the OX Book, whichever is greater. Any remaining balance of the incoming marketable bid or offer would be matched against remaining marketable orders and quotes in the Display Order Process in the order of their ranking. If the incoming marketable bid or offer has not been executed in its entirety, the remaining part of the order would be directed to the Working Order Process.

An incoming marketable bid or offer or portion thereof that fails to be executed in the Display Order Process, would be matched against orders within the Working Order Process in the order of their ranking.

3. Routing Away

If an incoming marketable order has not been executed in its entirety on OX and has been designated as an order type that is eligible to be routed away, the order would be routed either in its entirety or as component orders for execution to other Market Center(s) disseminating the NBBO, either through the Linkage or through the use of the OX Routing Broker, as described below. Where an order or portion of an order is routed away and is not executed either in whole or in part at the other Market Center, the order would be ranked and displayed in the OX Book in accordance with the terms of the order, and the order would be eligible for execution. If an order has been designated as an order type that is not eligible to be routed away, the order either would be placed in the OX Book or cancelled if the order would lock or cross the NBBO.

Further, the Working Order Process would provide a method for handling contingency orders as well as other order types, such as Reserve Orders. The Commission believes that the proposal is designed to avoid executions at prices inferior to the NBBO and is consistent with the Linkage Plan, NYSE Arca Rule 6.94 (Order Protection), and the Act.

C. New Order Types

The proposal would introduce several order types to NYSE Arca. In addition to the Reserve Order, described above, among the most significant order types that NYSE Arca is proposing to introduce are order types related to the routing away function. These new order types are designed to provide greater flexibility to Users to better control the execution of their orders.

1. Inside Limit Order

An ''Inside Limit Order'' is defined as a limit order, which, if routed away, would be routed to the market participant or participants with the best displayed price. Any unfilled portion of the order would not be routed to the next best price level until all quotes at the current best bid or offer are exhausted. If the order is no longer marketable, the order would be ranked in the OX Book pursuant to the ranking and display provisions described above.

2. NOW Order

A ''NOW Order'' is defined as a limit order that is to be executed in whole or in part on OX, with any remainder routed away only to one or more ''NOW Recipients'' for immediate execution. ''NOW Recipients'' would include any Market Center with which the Exchange maintains an electronic linkage and that provides instantaneous responses to NOW Orders routed from OX. Any portion of a NOW Order that is not immediately executed by the NOW Recipient would be cancelled. If a NOW Order is not marketable when it is submitted to OX, it would be cancelled.

3. PNP Order

A ''PNP (Post No Preference) Order'' is defined as a limit order to buy or sell that is to be executed in whole or in part on the Exchange, and the portion not so executed would be ranked in the OX Book, without routing any portion of the order to another Market Center. The Exchange would cancel any PNP Order that would lock or cross the NBBO.

D. Routing Broker and Linkage

1. Routing Broker

As described above, in the event that an order is not marketable on OX, but is marketable on another exchange, the Exchange would route the order to another Market Center for execution. Orders could be routed either through Linkage or through a broker-dealer affiliate of NYSE Arca that acts as an agent for routing orders entered into OX by Users (''Routing Broker''),[27] based on preset parameters in its automated routing algorithm, subject to NYSE Arca rules. Accordingly, orders that would be eligible for routing over Linkage (*e.g.*, public customer orders) could be routed to other Market Centers either as Principal Acting as Agent Orders (''P/A Orders'') [28] via Linkage or as customer

or offering the same price. *See* proposed NYSE Arca Rule 6.76B.

[25] *See* proposed NYSE Arca Rule 6.62A(e)(1).

[26] *See* proposed NYSE Arca Rule 6.1A(a)(4).

[27] NYSE Arca proposes to use Archipelago Securities LLC (''Archipelago Securities''), a wholly-owned subsidiary of Archipelago Holdings Inc. and a registered broker-dealer, as the Routing Broker.

[28] *See* NYSE Arca Rule 6.92(a)(12)(i).

orders via Archipelago Securities, based on the automated routing algorithm parameters. Generally, non-customer orders and NOW Orders [29] would be routed to other Market Centers via Archipelago Securities. As described above, certain order types, including Immediate or Cancel and PNP Orders, would not be eligible for routing away to other exchanges.

The OX order routing function of Archipelago Securities is an exchange ''facility.'' [30] As such, any proposed rule change relating to Archipelago Securities' order-routing function must be filed with the Commission, and must operate in a manner that is consistent with the provisions of the Act applicable to exchanges with NYSE Arca rules. In Amendment No. 3, the Exchange proposes to clarify that the NASD, a self-regulatory organization (''SRO'') unaffiliated with NYSE Arca or any of its affiliates, would continue to carry out oversight and enforcement responsibilities as the Designated Examining Authority designated by the Commission pursuant to Rule 17d–1 under the Act [31] with the responsibility for examining Archipelago Securities for compliance with the applicable financial responsibility rules.

Furthermore, in Amendment No. 3, the Exchange represents that it will enter into a new agreement with the NASD pursuant to Rule 17d–2 under the Act [32] (the ''NYSE Arca Agreement'') to expand the allocation to the NASD of regulatory responsibility to encompass all of the regulatory oversight and enforcement responsibilities with respect to Archipelago Securities, except for ''real-time market surveillance.'' NYSE Arca will submit the NYSE Arca Agreement to the Commission under Rule 17d–2 within 90 days of the Commission's approval of this proposed rule change.

The Commission notes that this representation is substantially similar to a representation the Exchange made when it amended the certificate of incorporation of PCX Holdings, Inc., certain rules of the Pacific Exchange, and the bylaws of Archipelago Holdings, Inc. (''Archipelago'') to facilitate the consummation of the merger between PCX Holdings, Inc. and its subsidiaries, and Archipelago (the ''Merger'').[33] The Commission believes that delegating the regulatory function for the oversight of its wholly-owned subsidiary should help to ensure independence in the regulatory oversight of Archipelago Securities.

2. Linkage Routing and Obligations

The OX system would facilitate the routing of P/A Orders to other Market Centers via Linkage using the account of the LMM assigned to the option class being routed. The OX system, however, would not automatically generate Principal Orders [34] on behalf of Market Makers; rather, Eligible Market Makers [35] would be required to route their own Principal Orders if they want their proprietary orders sent to other Market Centers via Linkage. Satisfaction Orders [36] would be handled in the same manner on OX as they are handled on PCX Plus.[37]

The existing NYSE Arca rules that apply to Linkage obligations, NYSE Arca Rules 6.92 through 6.96, would apply to OTP Holders and OTP Firms accessing the OX system. For example, those rules, in conjunction with the Linkage Plan, would continue to require: (1) OTP Holders and OTP Firms to avoid Trade-throughs and to adjust their quotes in the event of a locked or crossed market; and (2) for LMMs to handle inbound Linkage Orders. The Commission believes that the Exchange's proposed automated routing of certain Linkage Orders is consistent with the Linkage Plan.

E. Market Makers

1. Market Maker Obligations

The OX proposal provides for two types of market makers: LMMs and Market Makers. A Market Maker on OX would be an OTP Holder or OTP Firm registered with NYSE Arca for the purpose of submitting quotes electronically and effecting transactions as a dealer-specialist through the OX trading platform either from the trading floor or from off the trading floor. Market Makers would be designated as specialists on NYSE Arca for all purposes under the Act and rules and regulations thereunder. No more than one LMM would be appointed in each option class, and the Exchange would be required to appoint at least one LMM in each option class. The Exchange may appoint any number of Market Makers in each class, unless limited by quotation system capacity. However, the Exchange will not restrict access to any particular option class until the Commission approves objective standards for restricting such access.

A Market Maker would be required to, among other things, compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed, update market quotations in response to changed market conditions in all series of options classes within its appointed classes, honor its quotations, and submit quotations in accordance with maximum Exchange prescribed width requirements. In addition, LMMs and Market Makers would be required to provide continuous, two-sided quotes in their appointed issues for 99% and 60%, respectively, of the time the Exchange is open for trading in each issue. LMMs and Market Makers also would be required to trade at least 75% of their contract volume per quarter in classes within their appointment. Market Maker quotes would be ''firm'' for all orders that are routed to OX. The Exchange would evaluate Market Makers periodically to determine whether they have fulfilled performance standards relating to, among other things, quality of markets, competition among Market Makers, and ethical standards.

In transitioning to the OX platform from PCX Plus, the Exchange proposes to eliminate provisions for the appointment of ''Remote Market Makers'' and ''Supplemental Market Makers.'' Accordingly, the proposed rules for the OX platform do not direct where Market Makers must be physically located when effecting transactions on NYSE Arca and would eliminate ''in-person'' trading requirements applicable to Market Makers that trade on the floor.

Market Makers receive certain benefits for carrying out their duties. For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve system if the credit is to be used to finance the broker-dealer's activities as a specialist or market maker on a national securities exchange.[38] The Commission believes that a Market Maker must have an affirmative obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify this favorable treatment. In this regard, the Commission believes that OX rules are reasonably designed to impose such affirmative obligations on OX Market Makers.

[29] *See* proposed NYSE Arca Rule 6.62A(i).

[30] See 15 U.S.C. 78c(a)(2).

[31] 17 CFR 240.17d–1.

[32] 17 CFR 240.17d–2.

[33] *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90).

[34] *See* NYSE Arca Rule 6.92(a)(12)(ii).

[35] In Amendment No. 3, NYSE Arca proposed a technical change to its Rule 6.92(a)(7)(ii) to include certain OX Market Makers within the definition of ''Eligible Market Maker.''

[36] *See* NYSE Arca Rule 6.92(a)(12)(iii).

[37] *See* Amendment No. 3, *supra* note 5.

[38] *See* 12 CFR 221.5(c)(6).

2. Market Maker Authorized Traders

The Exchange is proposing to limit Market Maker access to OX to those OTP Holders or officers, partners, employees or associated persons of OTP Firms that are registered with the Exchange as Market Makers (''Market Maker Authorized Traders'' or ''MMATs''). MMAT candidates will be required to pass an examination to demonstrate knowledge of NYSE Arca rules prior to being approved by the Exchange as a Market Maker Authorized Trader. The proposal would also establish standards and procedures governing the suspension of registration of an MMAT. The Commission believes these requirements are reasonably designed to ensure that the Exchange is informed of the identities and qualifications of individuals accessing OX on behalf of Market Makers and are consistent with the Act.

3. Market Maker Risk Limitation

NYSE Arca is proposing to provide a mechanism for limiting Market Maker risk during periods of increased and significant trading activity. OX would activate the Market Maker Risk Limitation Mechanism in a Market Maker's appointed class whenever a designated number of executions (ranging between 5 and 100 executions) occurs within one second. Orders and quotes received by OX after the Mechanism is activated would not be executed against the Market Maker. The Commission believes that establishing a uniform one second standard in place of the existing variable ''n'' seconds standard on PCX Plus is consistent with the Act.

On the PCX Plus system, the Exchange disseminates a market on behalf of an LMM when there are no Market Makers quoting in a series and volume parameters are exceeded. The Exchange proposes that if the mechanism were activated under the OX system and there were no Market Makers quoting in a series, the Exchange would no longer generate two-sided quotes on behalf of the LMM. Instead, on OX, the best bids and offers residing in the OX Book would be disseminated as the BBO. If there were no orders in the OX Book in the issue at that time, OX would disseminate a bid of zero and an offer of zero. The Commission believes that the proposed approach is consistent with the Act.

4. Integrated Market Making

In Amendment No. 3, the Exchange represents that NYSE Arca Rule 11.3, which governs the use of material, non-public information, would apply to OTP Holders and OTP Firms trading on OX. The Exchange represents that this rule would require an OX Market Maker to maintain information barriers—reasonably designed to prevent the misuse of material, non-public information by such member—between the OX Market Maker and any of its affiliates that may act as specialist or market maker in any security underlying the options in which the Market Maker makes a market on OX. The Commission believes that requiring information barriers between the OX Market Maker and its affiliates with respect to transactions in the option and the underlying security are important to reduce the opportunity for unfair trading advantages or misuse of material, non-public information.[39]

F. Trading Auctions (Opening and Trading Halt)

The Exchange is proposing new procedures for initiating trading in a given options class (''Trading Auction''). The new procedures will apply to orders designated for inclusion in the opening auction process (''Auction Process'') and upon re-opening of trading after a trading halt. In particular, the OX system will accept Market Orders and Limit Orders and quotes for inclusion in the Trading Auction, up until the time the Trading Auction is initiated in that options series. Non-Market Makers would be able to submit orders for inclusion in the Trading Auction, and Market Makers would be able to submit two-sided quotes and orders. Contingency orders would not participate in the Auction Process. Any eligible open orders residing in the OX Book from the previous trading session would be included in the Auction Process.

After the primary market for the underlying security disseminates the opening trade or the opening quote, the related option series would be opened automatically at a single price. Among the most significant principles in the Trading Auction is that orders will have priority over Market Maker quotes. In addition, orders in the OX Book that are not executed during the Auction Process will be eligible for execution during the Core Trading Hours[40] immediately after the conclusion of the Opening Auction.

The opening price of a series would be the price, as determined by the OX system, at which the greatest number of contracts would trade at or nearest to the mid-point of the initial NBBO calculated by the Exchange from the quotes disseminated by Options Price Reporting Authority, if any, or the mid-point of the best quote bids and quote offers in the OX Book. Mid-point pricing would not occur if that price would result in an order or part of an order being traded through. Instead, the opening would occur at that limit price, or, if the limit price is superior to the quoted market, within the range of 75% of the best quote bid and 125% of the best quote offer. Orders and Marker Maker quotes that do not trade during the Trading Auction, but are marketable against the initial NBBO following the Trading Auction, would ''sweep'' through the OX Book and be executed in price/time priority. If the best price is at an away Market Center, orders would be routed away to the appropriate Market Center, pursuant to NYSE Arca rules.

The Commission believes that the proposed Trading Auction is reasonably designed to facilitate executions at the opening and following trading halts. The Commission further believes that the proposal is designed to avoid executions at prices inferior to the NBBO.

G. Crossing Rules

Under the proposal, OTP Holders and OTP Firms would be permitted to conduct crossing transactions on the floor of the Exchange. The Exchange is proposing to replace its existing crossing rule with a new NYSE Arca Rule 6.47, which would govern crosses effected on the trading floor. Consistent with the existing version of NYSE Arca Rule 6.47, the proposed amendment provides for non-facilitation (or ''regular way'') crosses, facilitation crosses, and solicitation crosses. In all cases, orders must be announced to the trading crowd in open outcry, and trading crowd participants would be given a reasonable time to respond with the prices and sizes at which they would be willing to participate in the cross. With respect to all crosses, a Trading Official would be available at each post on the trading floor to assist in the determination of what is a ''reasonable time,'' when necessary. Trading crowd participants who make bids or offers equal to or better than the proposed cross price would be permitted to participate in a cross. In addition, in no event would a cross occur that would trade through the NBBO or any bids or offers on the Book priced equal to or better than the proposed execution price.

Floor Brokers holding orders to buy and sell the same option contract may cross such orders after following the

[39] *See* Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129, 27137 (May 19, 2003) (SR–PCX–2002–36).

[40] *See* proposed NYSE Arca Rule 6.1A(a)(3).

non-facilitation (regular way) cross procedures. After requesting bids and offers in the option series from the trading crowd, the Floor Broker must bid above the highest bid in the crowd, or offer below the lowest offer in the crowd, by at least the MPV. The Floor Broker may then cross the orders at that price provided that the execution price is equal to or better than the NBBO and that the Floor Broker satisfies any bids or offers on the Book that are priced equal to or better than the proposed execution price.

With respect to facilitation crosses, which involve a Floor Broker holding a customer order and an order for the account of an OTP Holder, OTP Firm, or entity under the common control of a Market Maker representing the customer (''Facilitation Order''), the Floor Broker must be willing to facilitate the entire size of the customer order in order to utilize the mechanism, and the size of the customer order must be at least 50 contracts. After the Floor Broker exposes the customer order to the trading crowd for a reasonable period of time, if at the time of execution there is sufficient size to execute the entire customer order at an improved price (or prices), the customer order would be executed at the improved price, so long as such execution price is equal to or better than the NBBO.

If at the time of execution there is insufficient size to execute the entire customer order at an improved price (or prices), a Floor Broker would be permitted to participate in up to 40% of the balance of the order to be facilitated once bids or offers in the Book equal to or better than the proposed execution price, non-member bids and offers in the trading crowd at or better than the proposed execution price, and member bids and offers in the trading crowd priced better than the proposed execution price, have been satisfied.[41] Thereafter, Market Makers in the trading crowd who are bidding or offering the proposed execution price may participate in the balance of the customer order based upon price-time priority.[42] The balance of the unexecuted agency order, if any, would be executed against the remaining Floor Broker proprietary interest.

The proposal would also permit the crossing of solicited orders, which involve a Floor Broker holding an order for a customer of an OTP Holder or OTP Firm for which the Floor Broker solicits contra side interest in the trading crowd. Crosses involving Solicited Orders would be handled in a manner whereby superior priced and equal priced orders in the book and interest in the crowd which collectively is of sufficient size to execute against the original customer order would be executed before the Solicited Order. Customer orders, at a given price, would be executed before non-Customer orders at the same price.[43]

The Exchange also proposes to add a new category of cross order, the Mid-Point Crossing Order. A Floor Broker who holds a Mid-Point Crossing Order to buy and sell an option contract at the mid-point between the electronically disseminated BBO or better in the subject option series would be permitted to cross such an order in accordance with the procedures for regular way, facilitation or solicitation crosses, as applicable. The Mid-Point Cross will not occur if the price of the midpoint of the NYSE Arca BBO is inferior to the NBBO or if the mid-point does not fall on a standard increment.

In reviewing proposed crossing mechanisms, the Commission considers the potential that crosses will lock up large portions of order flow from intramarket price competition by granting certain market participants extensive participation guarantees, such as the guarantee granted to Floor Brokers in the proposed OX Facilitation cross. To that end, the Commission notes that the 40% participation guarantee that Floor Brokers would receive pursuant to the proposed Facilitation Procedure, as described above, is consistent with similar guarantees accorded to members effecting facilitation crosses on other exchanges.[44] The Commission believes that the proposed crossing procedures are reasonably designed to ensure that interest in the crowd and on the book is protected, in that all Customer interest at the same price (whether residing in the trading crowd or on the book) must be satisfied before other interest may be executed. The Commission also believes that these procedures should promote intramarket price competition by providing market makers and other market participants with a reasonable opportunity to compete for the proposed cross.

The Commission further notes that the proposed OX rules would not permit electronic crosses. In Amendment No. 3, the Exchanges proposes to clarify that Users seeking to effect certain orders as agent against their own principal account must ensure that either the agency order or the User's quote must be displayed on OX for three second seconds prior to execution. Specifically the proposed rule would provide, among other things, that Users may not execute as principal orders they represent as agent unless agency orders are first exposed on the Exchange for at least three seconds or the User has been bidding or offering on the Exchange for at least three seconds prior to receiving an agency order that is executable against such bid or offer. The Commission believes this proposed order exposure provision is substantially similar to the rules of other SRO rules that require members to wait three seconds before executing principal orders against an order they represent as agent.[45] In addition, the Commission expects that the Exchange will closely surveil to ensure that all crossing transactions are not effected without first being exposed to intramarket competition.

H. Section 11(a) of the Act

Section 11(a)(1) of the Act[46] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, ''covered accounts'') unless an exception applies.

Among the transactions excepted under Section 11(a)(1) are those by a dealer acting in the capacity of a market maker, bona fide arbitrage or hedge transactions, and transactions made to offset errors. In the proposed rule change, the Exchange has set forth its analysis of how the proposed rule change is consistent with Section 11(a) of the Act and the rules thereunder.

[41] When executing the customer order to be facilitated against such bids and offers, bids and offers representing customer orders would be required to be executed first. *See* proposed NYSE Arca Rule 6.47(b)(7). The Commission notes that NYSE Arca's facilitation cross procedures would allow all NYSE Arca members to avail themselves of the exception to Section 11(a) of the Act set forth in Section 11(a)(1)(G) of the Act and Rule 11a–1(T).

[42] The Floor Broker is responsible for determining the sequence in which Market Makers' bids or offers are vocalized. *See* NYSE Arca Rule 6.75(f)(1). In the event that the bids or offers of two or more Market Makers are made simultaneously, such bids or offers will be deemed to be on parity and priority will be afforded to them, insofar as practicable, on an equal basis. *See* NYSE Arca Rule 6.75(c).

[43] In Amendment No. 3, the Exchange clarified the Solicited Cross rule. Specifically, the Exchange represented that only orders that are represented by a Floor Broker as agent are eligible for crossing via the Solicited Order procedures. If the Floor Broker represents an order for a covered account, the member order must satisfy the requirements of Section 11(a) of the Act and the rules thereunder. The Commission further notes that the Exchange has represented that a member may not rely on the exception found in Section 11(a)(1)(G) of the Act when utilizing the solicited order procedures.

[44] *See, e.g,* International Securities Exchange (''ISE'') Rule 716(d).

[45] *See, e.g.,* ISE Rule 717.

[46] 15 U.S.C. 78k(a)(1).

Rule 11a2–2(T) Interpretive Request

Rule 11a2–2(T) under the Act,[47] known as the ''effect versus execute'' rule, provides exchange members with another exception from the general Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member (i) Must transmit the order from off the exchange floor; (ii) must not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[48] (iii) must not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in the connection with effecting the transaction except as provided in the rule. As described by the Commission, these four requirements—off-floor transmission, non-participation in order execution, execution through an unaffiliated member and non-retention of compensation for discretionary accounts—were ''designed to put members and non-members on the same footing, to the extent practicable, in light of the purposes of Section 11(a).''[49] If a transaction meets the requirements of the ''effect versus execute'' rule, it will be deemed to be ''consistent with the purpose of Section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly markets.''[50] The Exchange stated that given OX's automated matching and execution services, no Exchange member will enjoy any special control over the timing of execution or special order handling advantages for orders executed via OX, as all orders will be centrally processed for execution by computer, rather than being handled by a member through bids or offers made on the trading floor. The Exchange further stated that it believes that due to OX's open, electronic structure that is designed to prevent any Exchange members from gaining any time and place advantages, the Exchange believes that OX satisfies the four requirements of the ''effect versus execute'' rule as well as the general policy objectives of Section 11(a) of the Act.

1. Off-Floor Transmission

Rule 11a2–2(T) requires an order for a covered account to be transmitted from off the exchange floor. In considering the application of this requirement to a number of automated trading and electronic order-handling facilities operated by national securities exchanges, the Commission has deemed the off-floor requirement to be met if the order is transmitted from off the floor directly to the electronic order handling facility that compromises the exchange floor by electronic means.[51] Like these other automated systems, the Exchange has represented that orders sent to OX will be transmitted from remote terminals directly to the system by electronic means and that most member orders, except as described below, will be submitted to OX from off of the floor. Therefore, those members' orders sent to the OX system electronically from off the Exchange floor satisfy the off-floor transmission requirement for the purposes of the ''effect versus execute'' rule.

2. Non-Participation in Order Execution

The ''effect versus execute'' rule further provides that the exchange member and its associated person may not participate in the execution of the transaction once the order has been transmitted. The Exchange has represented that upon submission to OX, an order will enter the queue and be executed against another order in the OX Book based on an established matching algorithm. The execution depends not on whether an order is for the account of an Exchange member, but rather, upon what other orders are entered into OX at or around the same time as the subject order, what orders are resident in the OX Book and where the order is ranked based on the price-time priority ranking algorithm. Therefore, the Exchange stated that at no time following the submission of an order is an Exchange member able to acquire control or influence over the result or timing of its order's execution. As a result, the Commission believes that the non-participation requirement is met because OTP Holder or OTP Firm orders are matched and executed automatically in OX.

3. Execution Through Unaffiliated Member

The third requirement of Rule 11a2–2(T) is that the exchange member who executes the order be unaffiliated with the member initiating the order. The Commission has recognized, however, that this requirement may be met where automated exchange facilities are used. For example, in considering the operation of COMEX and PACE, among other systems, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems.[52] Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange floors, the Commission has stated or not objected to the Exchange's conclusion that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T) that the member not be affiliated with the executing broker.[53] The Exchange stated that this requirement is satisfied by the OX system because the design of OX ensures that members do not have any special or unique trading advantages in handling their orders after transmission. Accordingly, a transaction for a covered account that submitted directly by a member into OX, from off of the Exchange floor, for execution satisfies the unaffiliated member requirement.

4. Non-Retention of Compensation

Finally, Rule 11a2–2(T) requires that, in the case of a transaction effected for an account with respect to which an

[47] 17 CFR 240.11a2–2(T).

[48] The member may, however, participate in clearing and settling the transaction. The commenter raises concerns about whether the proposed OX system satisfies this prong of the ''effect versus execute'' rule. According to the commenter, the notice of the proposal states that ''NYSE Arca 'may not participate in the execution of the transaction once the order has been transmitted' '' and that ''[t]he NYSE Arca plan does interfere with the transmission and execution of options orders.'' To support this assertion, the commenter states that orders may be routed away to different exchanges for execution in certain circumstances. *See* Rule Letter, *supra* note 4. The Commission believes that the commenter mischaracterizes the discussion of this prong of the ''effect versus execute'' rule set forth in the notice of the proposal. The OX Notice states that the exchange member and its associated person (not NYSE Arca, as stated by the commenter) may not participate in the execution of the transaction once the order has been transmitted. The Commission believes that OX satisfies this prong, as discussed above.

[49] *See* Securities Exchange Act Release No. 14713 (April 27, 1978), 43 FR 18557, 18560 (May 1, 1978) (''1978 Release'').

[50] *See* Rule 11a2–2(T)(e) under the Act.

[51] *See* letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation (''Division''), Commission, to Edith Hallahan, Associate General Counsel, Phlx (March 24, 1999) (''VWAP Letter''); letter from Catherine McGuire, Chief Counsel, Division, Commission, to David E. Rosedahl, PCX (November 30, 1998) (''OptiMark Letter''); and letter from Brandon Becker, Director, Division, Commission, to George T. Simon, Partner, Foley & Lardner (November 30, 1994) (''Chicago Match Letter'').

[52] *See* Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release''). *See also* VWAP Letter, OptiMark Letter and Chicago Match Letter.

[53] *Id.*

exchange member or associated person thereof exercises investment discretion, neither the member or its associated persons may retain compensation in connection with effecting the transaction without the express written consent of the person authorized to transact business for the account, given in accordance with the rule. Exchange members relying on Rule 11a2–2(T) for transactions effected through OX must comply with this condition of the rule. The Commission notes that NYSE Arca would enforce this requirement pursuant to its obligation under Section 6(b)(1) of the Act [54] to enforce compliance with the federal securities laws.

In Amendment No. 3, the Exchange clarified its discussion regarding the application of Rule 11a2–2(T) found in Amendment No. 1. Specifically, the discussion in Amendment 1 was limited to the application of Rule 11a2–2(T) to orders for covered accounts sent electronically to the OX system directly by the member from off of the exchange for execution. The Commission notes that the Exchange's discussion in Amendment No. 1 did not address instances where a member on the physical floor of the Exchange submits an order for a covered account into the OX system from the physical floor by electronic means. Accordingly, to rely on the exception set forth in Rule 11a2–2(T), the Exchange clarified that members must ensure that they send their orders from off the floor to an unaffiliated member for execution, in addition to meeting the rules' other requirements. If a member sends its order from off of the floor to an affiliated member that is on the floor who then directs the order into the OX system for execution, the member may not rely on Rule 11a2–2(T) for an exception from Section 11(a) of the Act. If a member wishes to rely on the exception found in paragraph (G) of Section 11(a)(1) of the Act, its order may only be executed on the physical floor of the Exchange. Member proprietary orders that rely on the exception found in Section 11(a)(1)(G) of the Act may not be entered into the OX system for execution.[55]

I. Accelerated Approval of Amendment No. 3

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after publishing notice of Amendment No. 3 in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[56]

In Amendment No. 3, the Exchange represents that the NASD would continue to carry out oversight and enforcement responsibilities as the Designated Examining Authority designated by the Commission pursuant to Rule 17d–1 under the Act [57] with the responsibility for examining Archipelago Securities for compliance with the applicable financial responsibility rules. The Exchange also represented that it will enter into an agreement with the NASD pursuant to Rule 17d–2 under the Act [58] to provide that NYSE Arca will delegate to the NASD all regulatory oversight and enforcement responsibilities with respect to Archipelago Securities pursuant to applicable laws, except for real-time market surveillance, within 90 days of the Commission's approval of this proposed rule change. As discussed above, the Commission believes that these representations raise no new issues of regulatory concern.

As described in greater detail above, the Exchange also clarifies in Amendment No. 3 how the proposed OX trading platform and crossing procedures will comply with Section 11(a) of the Act and with the Linkage Plan. In the amendment, the Exchange also proposes to clarify its rules to incorporate an order exposure requirement comparable to similar rules adopted by the other options exchanges. The Exchange represents in Amendment No. 3 that NYSE Arca Rule 11.3 would require an OX Market Maker to maintain information barriers, that are reasonably designed to prevent the misuse of material, non-public information, with any affiliates that may act as specialist or market maker in any security underlying the options for which the OTP Holder/Firm acts as an OX Market Maker. In addition, the Exchange proposes to remove a reference to an ''opening only'' order type that the Exchange did not specifically propose.

In Amendment No. 3, NYSE Arca also proposed to clarify that incoming marketable orders would be matched against all Working Orders in the Working Order Process at the price of the displayed portion (for Reserve Orders) or at the limit price (for all other Working Order types).

The Commission notes that Amendment No. 3 is intended to reconcile apparent inconsistencies in other parts of the Exchange's proposed rules. The Commission believes that Amendment No. 3 raises no novel issues of regulatory concern, and is consistent with the Act. Therefore, the Commission finds good cause exists to accelerate approval of Amendment No. 3, pursuant to Section 19(b)(2) of the Act.[59]

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 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 *rules-comments@sec.gov.* Please include File No. SR–NYSEArca–2006–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to Amendment No. 3 to File No. SR–NYSEArca–2006–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted

[54] 15 U.S.C. 78f(b)(1).

[55] The Exchange represented to the Commission's staff that it will submit to the Commission promptly a proposed rule change pursuant to Rule 19b–4 under the Act to prohibit the entry of member orders that must rely on the exception found in Section 11(a)(1)(G) of the Act into the OX system. Telephone conversation among Janet Angstedt, Acting General Counsel, NYSE Arca, Kelly Riley, Assistant Director, Commission, Hong-Anh Tran, Special Counsel, Commission, Raymond Lombardo, Special Counsel, Commission, and Tim Fox, Special Counsel, Commission on July 25, 2006.

[56] 15 U.S.C. 78s(b)(2).

[57] 17 CFR 240.17d–1.

[58] 17 CFR 240.17d–2.

[59] 15 U.S.C. 78s(b)(2).

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 Amendment No. 3 to File No. SR–NYSEArca–2006–13 and should be submitted on or before August 28, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[60] that the proposed rule change (SR–NYSEArca–2006–13), as amended, be, and it hereby is, approved and Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[61]

Nancy M. Morris,

Secretary.

[FR Doc. E6–12705 Filed 8–4–06; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #10554; NEW YORK Disaster # NY–00024 Declaration of Economic Injury

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of New York , dated 07/30/2006.

Incident: Power Outage Precipitated by Extreme Heat and Rising Temperatures.

Incident Period: 07/17/2006 and continuing.

DATE: *Effective Date:* 07/31/2006.

EIDL Loan Application Deadline Date: 05/01/2007

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration on 07/31/2006, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Queens.

Contiguous Counties:

New York: Bronx, Kings, Nassau, New York.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 105540.

The State which received an EIDL Declaration # is New York.

(Catalog of Federal Domestic Assistance Number 59002).

Dated: July 31, 2006.

Steven C. Preston,

Administrator.

[FR Doc. E6–12730 Filed 8–4–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5484]

Culturally Significant Object Imported for Exhibition Determinations: ''Avery Preesman''

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 object to be included in the exhibition ''Avery Preesman'', imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Renaissance Society at The University of Chicago, Chicago, Illinois, from on or about September 17, 2006, until on or about October 29, 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, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8052). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 31, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–12765 Filed 8–4–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Electronic Funds Transfer (EFT) Market Research Study

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the ''Electronic Funds Transfer (EFT) Market Research Study.''

DATES: Written comments should be received on or before October 6, 2006.

ADDRESSES: Direct all written comments to Financial Management Service, Records and Information Management Branch, Room 135, 3700 East West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to Edita Rickard, EFT Strategy Division, 401 14th Street, SW., Room 418D, Washington, DC 20227, 202–874–7165.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Electronic Funds Transfer (EFT) Market Research Study.

OMB Number: 1510–0074.

Form Number: None.

Abstract: Study of Federal benefit recipients to identify barriers to significant increases in use of EFT for benefit payments.

Current Action: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,515.

[60] 15 U.S.C. 78s(b)(2).

[61] 17 CFR 200.30–3(a)(12).

Estimated Time Per Respondent: 3 hours and 29 minutes.

Estimated Total Annual Burden Hours: 764.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: July 27, 2006.

Michael Colarusso,

Acting Assistant Commissioner, Regional Operations.

[FR Doc. 06–6735 Filed 8–4–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–88–86]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–88–86 (TD 8458), Real Estate Mortgage Investment Conduits (§§ 1.860E–2(a)(5), 1.860E–2(a)(7), and 1.860E–2(b)(2)).

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Real Estate Mortgage Investment Conduits.

OMB Number: 1545–1276.

Regulation Project Number: FI–88–86.

Abstract: Internal Revenue Code section 860E(e) imposes an excise tax on the transfer of a residual interest in a real estate mortgage investment conduit (REMIC) to a disqualified party. The amount of the tax is based on the present value of the remaining anticipated excess inclusions. This regulation requires the REMIC to furnish, on request of the party responsible for the tax, information sufficient to compute the present value of the anticipated excess inclusions. The regulation also provides that the tax will not be imposed if the record holder furnishes to the pass-thru or transferor an affidavit stating that the record holder is not a disqualified party.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,600.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 525.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 17, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12668 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120, Schedule D, Schedule H, Schedule N, and Schedule PH

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120, Schedule D, Schedule H, Section 280H and Schedule N.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, Room 6512, 1111 Constitution Avenue, NW.,

Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: U.S. Corp. Income Tax Return, Schedule D, Capital Gains and Losses, Schedule H, Section 280H Limitations for a Personal Service Corporation (PSC), Schedule N, Foreign Operations of U.S. Corporations, and Schedule PH, U.S. Personal Holding.

OMB Number: 1545–0123.

Form Number: 1120, Schedule D, Schedule H, Schedule N and Schedule PH.

Abstract: Form 1120 is used by corporations to compute their taxable income and tax liability. Schedule D (Form 1120) is used by corporations to report gains and losses from the sale of capital assets. Schedule PH (Form 1120) is used by personal holding companies to figure the personal holding company tax under section 541. Schedule H (Form 1120) is used by personal service corporations to determine if they have met the minimum distribution requirements of section 280H. Schedule N (1120) is used by corporations that have assets in or business operations in a foreign country or a U.S. possession. The IRS uses these forms to determine whether corporations have correctly computed their tax liability.

Current Actions: There are changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business, or other for-profit organizations and farms.

Estimated Number of Respondents: 4,807,967.

Estimated Time Per Respondent: 77 hours, 9 minutes.

Estimated Total Annual Burden Hours: 370,939,155.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 21, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12669 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–46

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–25, Announcement of Rules to be Included in Final Regulations under Section 897(d) and (e) of the Internal Revenue Code.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Announcement of Rules to be Included in Final Regulations under Section 897(d) and (e) of the Internal Revenue Code.

Notice Number: 1545–2017.

Abstract: This notice announces that the IRS and Treasury Department will issue final regulations under section 897(d) and (e) of the Internal Revenue Code that will revise the rules under Temp. Treas. Reg. § 1.897–5T, Notice 89–85, and Temp. Treas. Reg. § 1.897–6T to take into account statutory mergers and consolidations under foreign or possessions law which may now qualify for nonrecognition treatment under section 368(a)(1)(A). The specific collections of information are contained in Temp. Treas. Reg. §§ 1.897–5T(c)(4)(ii)(C) and 1.897–6T(b)(1). These reporting requirements notify the IRS of the transfer and enable it to verify that the transferor qualifies for nonrecognition and that the transferee will be subject to U.S. tax on a subsequent disposition of the U.S. real property interest.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other-for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 1 minute.

Estimated Total Annual Reporting Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns a nd tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 25, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12670 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–IC–DISC, Schedules K and P

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–IC–DISC, Interest Charge Domestic International Sales Corporation Return, Schedule K (Form 1120–IC–DISC), Shareholder's Statement of IC–DISC Distributions, and Schedule P (Form 1120–IC–DISC), Intercompany Transfer Price or Commission.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 1120–IC–DISC, Interest Charge Domestic International Sales Corporation Return, Schedule K (Form 1120–IC–DISC), Shareholder's Statement of IC–DISC Distributions, and Schedule P (Form 1120–IC–DISC), Intercompany Transfer Price or Commission.

OMB Number: 1545–0938.

Form Numbers: 1120–IC–DISC, Schedules K and P.

Abstract: U.S. corporations that have elected to be an interest charge domestic international sales corporation (IC–DISC) file Form 1120–IC–DISC to report their income and deductions. The IC–DISC is not taxed, but IC–DISC shareholders are taxed on their share of IC–DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule K (Form 1120–IC–DISC) is used to report income to shareholders. Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report its dealings with related suppliers.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 168 hours, 49 minutes.

Estimated Total Annual Burden Hours: 230,168.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12671 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–33

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–33, Electronic Federal Tax Payment System (EFTPS).

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, Room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Federal Tax Payment System (EFTPS).

OMB Number: 1545–1546. Revenue Procedure Number: Revenue Procedure 97–33.

Abstract: The Electronic Federal Tax Payment System (EFTPS) is an electronic remittance processing system for making federal tax deposits (FTDs) and federal tax payments (FTPs). Revenue Procedure 97–33 provides

taxpayers with information and procedures that will help them to electronically make FTDs and tax payments through EFTPS.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 557,243.

Estimated Average Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 278,622.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 21, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12673 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Letter 109C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Letter 109C, Return Requesting Refund Unlocatable or Not Filed; Send Copy.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, Room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, Room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Return Requesting Refund Unlocatable or Not Filed; Send Copy.

OMB Number: 1545–0393.

Form Number: 109C.

Abstract: If a taxpayer inquires about not receiving a refund and no return is found, this letter is sent requesting the taxpayer to file another return. The taxpayer must complete an affidavit stating that if they receive a second refund check, it will be return to the IRS.

Current Actions: There are no changes being made to the letter at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions.

Estimated Number of Respondents: 18,223.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1,513.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 25, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12674 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–MISC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is

soliciting comments concerning Form 1099–MISC, Miscellaneous Income.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *RJoseph.Durbala@ird.gov*.

SUPPLEMENTARY INFORMATION:

Title: Miscellaneous Income.

OMB Number: 1545–0115.

Form Number: 1099–MISC.

Abstract: Form 1099–MISC is used by payers to report payments of $600 or more of rents, prizes and awards, medical and health care payments, nonemployee compensation, and crop insurance proceeds, $10 or more of royalties, any amount of fishing boat proceeds, certain substitute payments, golden parachute payments, and an indication of direct sales of $5,000 or more.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for profit organizations, individuals or households, not-for-profit institutions, farms, Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 79,480,844.

Estimated Time Per Recordkeeper: 18 min.

Estimated Total Annual Burden Hours: 24,639,062.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 11, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12675 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–T, Exempt Organization Business Income Tax Return.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, Room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, Room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION: *Title:* Exempt Organization Business Income Tax Return.

OMB Number: 1545–0687.

Form Number: Form 990–T.

Abstract: Form 990–T is used to report and compute the unrelated business income tax imposed on exempt organizations by Internal Revenue Code section 511 and the proxy tax imposed by Code section 6033(e). The form provides the IRS with the information necessary to determine that the tax has been properly computed.

Current Actions: There are changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 37,103.

Estimated Time Per Respondent: 142 hours, 4 minutes.

Estimated Total Annual Burden Hours: 5,271,224.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 21, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12676 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–978–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–978–86, Information Reporting by Passport and Permanent Residence Applicants (§ 301.6039E–1(c)).

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, Room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Information Reporting by Passport and Permanent Residence Applicants.

OMB Number: 1545–1359.

Regulation Project Number: INTL–978–86.

Abstract: This regulation requires applicants for passports and permanent residence status to report certain tax information on the applications. The regulation is intended to enable the IRS to identify U.S. citizens who have not filed tax returns and permanent residents who have undisclosed sources of foreign income to notify such persons of their duty to file United States Tax returns.

Current Actions: There are no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents for Passport Applicants: 500,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Number of Respondents for Permanent Residence Applicants: 500,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours for Permanent Residence Applicants: 250,000 hours.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 25, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12677 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5558

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5558, Application for Extension of Time To File Certain Employee Plan Returns.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Extension of Time To File Certain Employee Plan Returns.

OMB Number: 1545–0212.

Form Number: 5558.

Abstract: This form is used by employers to request an extension of time to file the employee plan annual information return/report (Form 5500 series) or the employee plan excise tax return (Form 5330). The data supplied on Form 5558 is used to determine if such extension of time is warranted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 335,000.

Estimated Time Per Response: 33 minutes.

Estimated Total Annual Burden Hours: 185,724.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 17, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12678 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 940 and 940–PR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, and Form 940–PR, Planilla Para La Declaracion Anual Del Patrono-La Contribucion Federal Para El Desempleo (FUTA).

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return (Form 940) and Planilla Para La Declaracion Anual Del Patrono-La Contribucion Federal Para El Desempleo (FUTA) (Form 940–PR).

OMB Number: 1545–0028.

Form Numbers: 940 and 940–PR.

Abstract: Internal Revenue Code section 3301 imposes a tax on employers based on the first $7,000 of taxable wages paid to each employee. The tax is computed and reported on Forms 940 and 940–PR (Puerto Rico employers only). IRS uses the information on Forms 940 and 940–PR to ensure that employers have reported and figured the correct FUTA wages and tax.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals, or households, and farms.

Estimated Number of Respondents: 1,569,920.

Estimated Time Per Respondent: 15 hr., 46 min.

Estimated Total Annual Burden Hours: 24,763,370.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 21, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12679 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8586

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8586, Low-Income Housing Credit.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form and instructions should be directed to Allan Hopkins, at at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit.

OMB Number: 1545–0984.

Form Number: 8586.

Abstract: Internal Revenue Code section 42 permits owners of residential rental projects providing low-income housing to claim a tax credit for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by the IRS to verify that the correct credit has been claimed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households, and business or other for-profit organizations.

Estimated Number of Response: 7,786.

Estimated Time Per Respondent: 11 hrs., 35 minutes.

Estimated Total Annual Burden Hours: 90,007.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 18, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12680 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Tax Exempt Hospitals Compliance Questionnaire

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Tax Exempt Hospitals Compliance Questionnaire.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tax Exempt Hospitals Compliance Check Questionnaire.

OMB Number: 1545–2015.

Abstract: This form is used to solicit information pertaining to the operation of tax exempt hospitals. Respondents will include hospitals claiming exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 545.

Estimated Time Per Respondent: 12 hrs.

Estimated Total Annual Burden Hours: 6,540.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 18, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12681 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for REG–109512–05 (TD 9268)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning REG–109512–05 (TD 9268), Information Returns Required with Respect to Certain Foreign Corporations and Certain Foreign-Owned Domestic Corporations.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Returns Required with Respect to Certain Foreign Corporations and Certain Foreign-Owned Domestic Corporations.

OMB Number: 1545–2020.

Form Number: TD 9268 (REG–109512–05).

Abstract: This document contains final and temporary regulations that provide guidance under sections 6038 and 6038A of the Internal Revenue Code. The final regulations under § 1.6038–2 are revised to remove and replace obsolete references to a form and IRS offices. The temporary regulations clarify the information required to be furnished regarding certain related party transactions of certain foreign corporations and certain foreign-owned domestic corporations. Specifically, in addition to the types of transactions listed in § 1.6038–2(f)(11), taxpayers are required to report the sales of tangible property other than stock in trade on Form 5471.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 5000.

Estimated Time Per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 1,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 17, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12682 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8872

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8872, Political Organization Report of Contributions and Expenditures.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Political Organization Report of Contributions and Expenditures.

OMB Number: 1545–1696.

Form Number: 8872.

Abstract: Internal Revenue Code section 527(j) requires certain political organizations to report contributions received and expenditures made after July 1, 2000. Every section 527 political organization that accepts a contribution or makes an expenditure for an exempt function during the calendar year must file Form 8872 except for: A political organization that is not required to file Form 8871, or a state or local committee of a political party or political committee of a state or local candidate.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 40,000.

Estimated Time Per Response: 10 hours, 47 minutes.

Estimated Total Annual Burden Hours: 431,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 17, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12683 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5227

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5227, Split-Interest Trust Information Return.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Split-Interest Trust Information Return.

OMB Number: 1545–0196.

Form Number: 5227.

Abstract: Form 5227 is used to report the financial activities of a split-interest trust described in Internal Revenue Code section 4947(a)(2), and to determine whether the trust is treated as a private foundation and is subject to the excise taxes under Chapter 42 of the Code.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 88,640.

Estimated Time Per Respondent: 84 hr., 24 min.

Estimated Total Annual Burden Hours: 7,480,960.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 21, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12684 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Employment and Training Administration; Internal Revenue Service

Proposed Collection; Comment Request for Forms 8635 and 9383

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8635, Federal Income Tax Products Order Blank, and Form 9383, Fax Order Blank for BPOL Reorders.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Form 8635, Federal Income Tax Products Order Blank, and Form 9383, Fax Order Blank for BPOL Reorders.

OMB Number: 1545–1222.

Form Number: Forms 8635, and 9383.

Abstract: Forms 8635 and 9383 allow banks, post offices and libraries to order tax forms and publications to distribute to taxpayers at convenient locations. Participation is on a voluntary basis and done as a public service for the Internal Revenue Service.

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 36,688.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 3,669.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 21, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12690 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Ruling 2000–33

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Ruling 2000–33, Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.

OMB Number: 1545–1695.

Revenue Ruling Number: Revenue Ruling 2000–33.

Abstract: Revenue Ruling 2000–33 specifies the conditions the plan sponsor should meet to automatically defer a certain percentage of its employees' compensation into their accounts in an eligible deferred compensation plan.

Current Actions: There are no changes being made to this revenue ruling at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 24, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12691 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106511–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–106511–00, Estate Tax Returns;

Form 706, Extension to File (20.6081–1(b)).

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202)622–2295, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Estate Tax Returns; Form 706, Extension to File.

OMB Number: 1545–1707.

Regulation Project Number: REG–106511–00.

Abstract: Section 6075(a) of the Internal Revenue Code (the Code) requires the executor of a decedent's estate to file the Federal estate tax return (Form 706, ''United States Estate (and Generation-Skipping Transfer) Tax Return'') within 9 months after the date of the decedent's death. Section 608(a) provides that the Secretary may grant a reasonable extension of time for filing any return; however, except in the case of executors who are abroad, no such extension may be for than 6 months. Executors currently request an extension of time to file Form 706 by filing Form 4768, ''Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.'' The regulation grants executors of decedents' estates an automatic 6-month extension of time to file the Form 706 and requires that executors continue to file Form 4768 to receive the automatic extension.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

The reporting burden contained in section 20.6081–1(b) is reflected in the burden of Form 4768, ''Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.''

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 21, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12692 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 990–PF and 4720

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation, and Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, (202) 622–3634, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 990–PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation, and Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code.

OMB Number: 1545–0052.

Form Numbers: 990–PF and 4720.

Abstract: Internal Revenue Code section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940–1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Form 990–PF is used for this purpose. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundations and certain related parties. Form 4720 is used by foundations and/or related persons to report prohibited activities in detail and pay the tax on them.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Non-profit institutions.

Estimated Number of Respondents: 54,000.

Estimated Time Per Response: 204 hours, 46 minutes.

Estimated Total Annual Burden Hours: 11,029,293.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection

of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 17, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12693 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for TD 9260

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning TD 9260, Application of Separate Limitations to Dividends From Noncontrolled Section 902 Corporations.

DATES: Written comments should be received on or before October 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application of Separate Limitations to Dividends From Noncontrolled Section 902 Corporations.

OMB Number: 1545–2014.

Form Number: TD 9260.

Abstract: The AJCA amended the foreign tax credit treatment of dividends from noncontrolled section 902 corporations effective for post-2002 tax years, and the GOZA permitted taxpayers to elect to defer the effective date of these amendments until post-2004 tax years. These regulations require a taxpayer making the GOZA election to file a statement to such effect with its next tax return, and they require certain shareholders wishing to make tax elections on behalf of their controlled foreign corporations or noncontrolled section 902 corporations to execute a joint consent (that is retained by one shareholder) and attach a statement to their tax returns. The respondents are primarily domestic corporations owning stock in foreign corporations.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 25.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 12, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–12694 Filed 8–4–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Loan Application Register (HMDA)

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before October 6, 2006.

ADDRESSES: Send comments, referring to the collection by title of the proposal or

by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Celeste Anderson, Senior Project Manager, Compliance and Consumer Protection, (202) 906–7990, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS, including whether the information will have practical utility;

b. The accuracy of OTS's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of the information collection on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Loan Application Register (HMDA).

OMB Number: 1550–0021.

Form Number: N/A.

Regulation requirement: 12 CFR 203.

Description: The Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801, requires this collection of information. In accordance with the HMDA, the Board of Governors of the Federal Reserve System (FRB) promulgates and administers HMDA regulations, which are prescribed as part of the FRB's Regulation C (12 CFR 203), implementing the HMDA (12 U.S.C. 2801–2810). HMDA forms as well as collection and recordkeeping requirements are approved under OMB Control No. 7100–0247. The FRB supporting statement forms the decisional basis for the OMB action. This submission discusses the burden imposed by Regulation C on the institutions OTS regulates.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 639 (loan application registers (LARs)).

Estimated Frequency of Response: Annually.

Estimated Burden Hours per Response: 0.03 hours per application (approximately 9,657 applications per LAR).

Estimated Total Burden: 185,125 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Date: August 1, 2006.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E6–12707 Filed 8–4–06; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Privacy of Consumer Financial Information

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before October 6, 2006.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an E-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an E-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Ella Allen, Program Analyst (Compliance), Compliance and Consumer Protection, (202) 906–6924, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS, including whether the information will have practical utility;

b. The accuracy of OTS's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of the information collection on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Privacy of Consumer Financial Information.

OMB Number: 1550–0103.

Form Number: N/A.

Regulation requirement: 12 CFR 573.

Description: The Gramm-Leach-Bliley Act (Pub. L. 106–102) mandates that the Federal banking agencies issue regulations as necessary to implement notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties. OTS's regulation is found at 12 CFR 573 (OTS). This collection of information is contained in that regulation.

OTS is proposing to extend OMB approval of the information collection associated with its privacy regulation. This submission involves no change to the regulation or to the information collection requirements.

The information collection requirements are as follows:

Section 573.4(a) requires a bank to provide an initial notice to consumers that accurately reflects its privacy policies and practices.

Section 573.5(a) requires a bank to provide a notice annually to customers during the continuation of the customer relationship that accurately reflects the bank's privacy policies and practices.

Section 573.7(a)(1) requires a bank to provide a clear and conspicuous notice that accurately explains the right to opt out. The notice must state that the bank discloses or reserves the right to disclose nonpublic personal information to nonaffiliated third parties; that the consumer has the right to opt out of that disclosure; and a reasonable means by which the consumer may exercise the opt out right. Section 573.10(c) states that a bank may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out (partial opt-out).

Section 573.8(a) requires a bank to provide consumers with a revised notice of the bank's policies and procedures and a new opt out notice, if the bank wishes to disclose information in a way that is inconsistent with the notices previously given to a consumer.

The regulation also identifies affirmative actions that consumers must take to exercise their rights. In order for consumers to prevent banks from sharing their information with nonaffiliated parties, they must opt out (§§ 573.7(a)(2)(ii), 573.10(a)(2), and 573.10(c)).

Consumers also have the right at any time during their continued relationship with the bank to change or update their opt out status with the bank (§§ 573.7(f) and (g)).

These information collection requirements ensure bank compliance with applicable Federal law.

Type of Review: Renewal.

Affected Public: Business or other for-profit; individuals.

Estimated annual number of institution respondents: Initial notice, 13; annual notice and change in terms, 863; opt-out notice, 166.

Estimated average time per response per institution: Initial notice, 80 hours; annual notice and change in terms, 8 hours; opt-out notice, 8 hours.

Estimated subtotal annual burden hours for institutions: 9,272 hours.

Estimated annual number of consumer respondents: 66,150.

Estimated average time per consumer response: 30 minutes.

Estimated subtotal annual burden hours for consumers: 33,075 hours.

Estimated total annual burden hours: 42,347 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: August 2, 2006.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E6–12786 Filed 8–4–06; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Monday,
August 7, 2006

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AD77

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise regulations governing the WIC food packages to align the WIC food packages with the 2005 Dietary Guidelines for Americans and current infant feeding practice guidelines of the American Academy of Pediatrics, better promote and support the establishment of successful long-term breastfeeding, provide WIC participants with a wider variety of food, provide WIC State agencies with greater flexibility in prescribing food packages to accommodate participants with cultural food preferences, and serve participants with certain qualifying conditions under one food package to facilitate efficient management of medically fragile participants. The revisions largely reflect recommendations made by the Institute of Medicine of the National Academies in its Report ''WIC Food Packages: Time for a Change,'' with certain cost containment and administrative modifications found necessary by the Department to ensure cost neutrality. The proposed improvements to the WIC food packages can be made without increasing the projected costs. The proposed rule would revise the maximum monthly allowances and minimum requirements for certain supplemental foods; revise the substitution rates for certain supplemental foods and allow additional foods as alternatives; redesign WIC food packages to enhance breastfeeding promotion and support; revise age specifications for assignment to infant food packages; add fruits and vegetables for WIC participants 6 months of age and older and eliminate juice from infants food packages; add whole grains to food packages for children and women and infant food meat for fully breastfed infants 6 through 11 months of age; revise the purpose, content, and requirements for the Food Package for the Medically Fragile, and address general provisions that apply to all food packages.

DATES: To be assured of consideration, comments must be postmarked on or before November 6, 2006.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Mail:* Send comments to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305–2746.
- *Web site:* Go to *http://www.fns.usda.gov/wic.* Follow the online instructions for submitting comments through the link at the Supplemental Food Programs Division Web site.
- *E-mail:* Send comments to *WICHQ-SFPD@fns.usda.gov.* Include ''Docket ID Number 0584–AD77, WIC Food Packages Rule,'' in the subject line of the message.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identities of the individuals or entities submitting the comments will be subject to public disclosure. All written submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday. FNS may also make the comments publicly available by posting a copy of all comments on the FNS Web site at *http://www.fns.usda.gov/wic.*

A regulatory impact analysis has been prepared for this rule. It follows this regulation as an Appendix.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305–2746, OR *Debbie.Whitford@fns.usda.gov.* A copy of the National Academies' Institute of Medicine report, ''WIC Food Packages: Time for a Change,'' which provides the scientific backdrop for this proposed rule, is available on the FNS Web site at *http://www.fns.usda.gov/oane/menu/Published/WIC/FILES/Time4AChange(mainrpt).pdf.*

SUPPLEMENTARY INFORMATION:

I. Overview

This proposed rule would implement the first comprehensive revisions to the WIC food packages since 1980. These revised food packages were developed to better reflect current nutrition science and dietary recommendations than do current food packages, within the parameters of current program costs. The proposal is based on the recommendations of the National Academies' Institute of Medicine (IOM), which was commissioned by FNS in September 2003, to independently review the WIC food packages. The IOM used current scientific information to assess the nutrient adequacy of the diets of WIC participants; assess the supplemental nutrition needs of the population served by WIC; look at the nutrient contributions of the current packages; propose priority nutrients and general nutrition recommendations; and make recommendations for specific changes to the WIC food packages. The IOM used various data sources including the 2005 Dietary Guidelines for Americans, the Dietary Reference Intakes, WIC participant data, food consumption and intake data (Continuing Survey of Food Intakes by Individuals (CSFII); National Health and Nutrition Examination Survey (NHANES)) and examined nutrition-related health risks to identify nutrients and food groups to try to increase or decrease in the food packages with the goal of improving the nutrition of WIC participants. The review of the WIC food packages was further informed by extensive comments made in response to an Advanced Notice of Proposed Rulemaking on revisions to the WIC food packages and by comments received by the IOM in public forums during its review.

Compared to current WIC packages, the proposal:

- *Provides greater consistency with the Dietary Guidelines for Americans.* The proposal adds fruits and vegetables, and whole grains to the packages for the first time. The revised packages include foods from each food group except oils and allow variety and choice within the groups. Reductions are made to the amounts provided for certain foods in the current packages in order to be more consistent with the amounts of these foods recommended in the 2005 Dietary Guidelines for Americans and WIC's role as a supplemental nutrition program.
- *Supports improved nutrient intakes.* The proposed additional foods and modified amounts of current foods support overall improvement in nutrient consumption and reduction in the

prevalence of inadequate or excessive nutrient intakes. Compared with the current food packages, the revised packages are estimated to provide greater amounts of nearly all the nutrients of concern with regard to inadequate intake identified by the IOM such as iron, fiber, and vitamin E. The revised food packages for women and children also provide less saturated fat, cholesterol, total fat and sodium than the current packages.

• *Provides greater consistency with established dietary recommendations for infants and children under 2, including encouragement and support for breastfeeding.* The revised infant food packages improve overall nutrient density compared to current packages while keeping caloric content the same or slightly lower. The revised packages change age specification for assignment as well as establish three feeding categories to better address current dietary recommendations of the American Academy of Pediatrics (AAP) and promote breastfeeding. The packages for breastfeeding infant-mother pairs are revised to provide stronger incentives for continued breastfeeding, including providing less formula to partially breastfed infants than current packages, and providing additional quantities/types of food for breastfeeding mothers. For older infants, the proposal delays the introduction of complementary foods, consistent with AAP, from four to six months of age and modifies formula amounts. Infant foods are added and juice eliminated in the packages for older infants in order to promote healthy dietary patterns.

• *Addresses emerging public health nutrition-related issues.* The prevalences of overweight and obesity in adults, adolescents, and children have increased dramatically, with direct implications for WIC participants. For example, childhood overweight has been linked to adverse health outcomes including elevated blood pressure, hyperinsulinemia, glucose intolerance, type 2 diabetes, dyslipidemia, and other early risks for chronic disease. The addition of fruits and vegetables and the emphasis on whole grains are consistent with recommendations for food patterns that may contribute to a health body weight. Compared to the current food packages, the revised food packages provide less saturated fat and cholesterol than the current packages for women and children. In addition, the revised food packages are designed to encourage breastfeeding and thus may contribute to a reduced risk of overweight in children.

• *Reinforces the nutrition education messages provided to participants.* The proposed food package more closely mirrors the 2005 Dietary Guidelines for Americans and dietary recommendations for infants and children under two and is more consistent with the nutrition education provided to participants.

• *Provides wide appeal to diverse populations.* The proposed additional foods are the foods most often requested over the years by a variety of stakeholders such as the National WIC Association, WIC participants, WIC State and local agencies, industry and health professionals, and would provide more participant choice and a wider variety of foods than the current food packages. The increased variety and choice will provide State agencies increased flexibility in prescribing culturally appropriate food packages.

II. Background

The WIC food packages provide supplemental foods designed to address the nutritional needs of low-income pregnant, breastfeeding, non-breastfeeding postpartum women, infants and children up to five years of age who are at nutritional risk. WIC food packages and nutrition education are the chief means by which WIC affects the dietary quality and habits of participants. WIC is a unique nutrition assistance program in that it also serves as an adjunct to good health care during critical times of growth and development to prevent the occurrence of health problems and to improve the health status of Program participants. WIC was never intended to be a primary source of food, nor of general food assistance. Rather, WIC food benefits are scientifically-based and intended to address the supplemental nutritional needs of a specific population—low income pregnant, breastfeeding, non-breastfeeding postpartum women, infants and children up to five years of age who are at nutritional risk. In addition to WIC, the Department administers a variety of other complementary nutrition assistance programs that work together to provide a more complete diet to low-income persons. Low-income families can, and frequently do, receive benefits from more than one of these programs. The largest of these programs, the Food Stamp Program, provides general food assistance intended to increase the food buying power of low-income households.

The ability of the WIC food packages to reinforce nutrition education messages provided to participants is critical to affecting the dietary quality and habits of infants, children and mothers served by WIC. The nutrition education provided by WIC enables participants to make informed decisions in choosing foods that, together with the supplemental foods contained in the WIC food packages, can meet their total dietary needs. The intent is to help participants to continue healthful dietary practices after leaving the Program.

Since the creation of the WIC Program in the 1970's, and the last major revision of the WIC food packages in the early 1980's, much has been learned about the nutritional needs of Americans, including WIC's target population of pregnant and postpartum women, infants, and preschool aged children. In recent years the ability of the WIC Program to address the supplemental nutritional needs of WIC participants through its food packages and nutrition education has received growing attention. Significant interest in updating the food packages based on new information about the needs of low-income, culturally diverse women, infants, and children has been voiced by WIC Program administrators, the medical and scientific communities, advocacy groups, and Congress.

A. Advanced Notice of Proposed Rulemaking (ANPRM)

On September 15, 2003, FNS published an ANPRM at 68 FR 53903 seeking comments on revisions to the food packages offered through the WIC Program. FNS solicited public comments to determine if the WIC food packages should be revised to better improve the nutritional intake, health and development of participants and, if so, what specific changes should be made to the food packages. In response to this ANPRM, the Department received 195 letters. Respondents represented the general public, State and local WIC agencies, the National WIC Association (NWA), State WIC associations, industry, independent health professionals, vendors, WIC participants, and others. Comments received from NWA included two published position papers [1, 2] that provided recommendations based on that organization's analysis of the needs of WIC participants.

B. Review of the WIC Food Packages by the Institute of Medicine

In September 2003, FNS contracted with the National Academies' Institute of Medicine (IOM) to independently review the WIC Food Packages in a 22-month study. FNS charged the IOM with reviewing the nutritional needs of the WIC population, and recommending changes to the WIC food packages. Recommendations were to be cost-

neutral, efficient for nationwide distribution and vendor checkout, non-burdensome to administration, and culturally suitable. FNS asked IOM to consider the supplemental nature of the WIC Program, burdens/incentives for eligible families, the role of WIC food packages in reinforcing nutrition education, breastfeeding, and chronic disease prevention, and public comments received from FNS' ANPRM.

Under this contract, IOM selected a Committee of experts in nutrition, health, risk assessment and economics to conduct this study in two phases. During Phase I, the committee developed the following criteria to guide its work. It also used various data sources to identify nutrients and food groups to try to increase or decrease in the food packages (*i.e.*, priority nutrients and priority food groups), with the goal of improving the nutrition of WIC participants.

Criteria for a WIC Food Package

FROM: ''WIC Food Packages; Time For A Change.'' The Institute of Medicine of the National Academies, The National Academies Press, 2005, page 37

1. The package reduces the prevalences of inadequate and excessive nutrient intakes in participants.
2. The package contributes to an overall dietary pattern that is consistent with the Dietary Guidelines for Americans, for individuals two years of age and older.
3. The package contributes to an overall diet that is consistent with established dietary recommendations for infants and children less than two years of age, including encouragement of and support for breastfeeding.
4. Foods in the package are available in forms suitable for low-income persons who may have limited transportation, storage, and cooking facilities.
5. Foods in the package are readily acceptable, widely available, and commonly consumed; take into account cultural food preferences; and provide incentives for families to participate in the WIC program.
6. Foods will be proposed giving consideration to the impacts that changes in the package will have on vendors and WIC agencies.

In Phase II, the Committee used these criteria and its review of the nutritional needs of WIC participants to develop recommendations for changing the WIC food packages. The IOM published these recommendations in a report, ''WIC Food Packages: Time for a Change'' (IOM Report), which was released on April 27, 2005). [3].

C. Cost Neutrality

Since the WIC Program receives a finite amount of funding annually to serve as many participants as this funding allows, it is important that revisions to the WIC food packages be cost neutral to protect the program's ability to serve the greatest number of eligible women, infants, and children.

The IOM conducted a cost analysis as part of its review and believes that its recommendations to revise the WIC food packages were relatively cost-neutral, given data available to the IOM at that time. However, based on updated data, the Department now estimates that implementing the IOM's recommendations in full would cost $1.3 billion above the cost-neutral level over 5 years. Therefore, the Department has modified two of the IOM's recommendations to achieve a cost neutral proposal consistent with statutory requirements. The Department carefully considered which of the IOM recommendations to modify to achieve cost neutrality, basing the decision on 3 criteria—relative cost, nutritional impact, and overall context of the IOM recommendations. To achieve cost neutrality, the Department is proposing a cash-value fruit and vegetable voucher that is $2 less per month than that recommended by the IOM, and is not proposing yogurt as an authorized alternative to milk.

The price of yogurt as compared to the price of milk would considerably increase the monthly cost of the food packages for children and women. Soy beverage and tofu also have higher per unit costs than milk; however, the estimated amount of tofu that would be purchased by WIC participants is substantially lower than that of yogurt. Soy beverage can serve as an alternative for all or part of the fluid milk for adult women, making it a more cost-effective substitute. For fruits and vegetables, the IOM's intent was to move WIC participants towards some amount of increased fruit and vegetable consumption and, at the same time, reinforce the role of the WIC food packages in nutrition education. The proposed $2 reduction in the cash-value fruit and vegetable voucher fulfills this intent while ensuring cost neutrality.

The Department believes that this proposed rule largely sets forth the scope of the IOM recommendations notwithstanding these necessary modifications. Commenters are encouraged to suggest alternative ways to achieve cost neutrality within the context of the overall IOM recommendations. State agencies will be responsible for determining how to fully implement the proposed provisions within their grants. Options available to State agencies include applying judicious use of currently authorized caseload management procedures, including the participant priority system in accordance with § 246.7(e)(4) of WIC regulations, or by implementing other cost containment measures. State agencies are also reminded that § 246.16a(g) authorizes State agencies to implement a cost containment system for any WIC food other than infant formula.

D. Stakeholder Comments

The comments FNS received from its ANPRM represented a wide range of perspectives. A majority of those who commented expressed general support for foods currently offered, but also proposed at least one change. Nearly three-fourths of those responding to FNS stated that fruits and vegetables should be added to the packages. Other comments addressed topics including priority nutrients, design and structure of the food package, amount of juice, amount of milk, choices of milk products, alternative sources of calcium, cereal and grain choices, physical forms of legumes (i.e., dried or canned beans or peas), peanut butter, eggs, tuna, alternative sources of protein, infant formula, medical foods regulations, cost, incentives to breastfeed, flexibility at the State agency level, and more variety and choice at the participant level. Comments may be viewed at *http://www.fns.usda.gov/wic/lawsandregulations/revfoodpkg-anprm.htm#publiccomments.* Similar themes were addressed in over 70 written and 30 oral public comments submitted directly to the IOM committee during its 22-month review of the WIC food packages.

E. Legislative Requirements

Sections 17(a) and (b)(14) of the Child Nutrition Act of 1966, as amended, (CNA) (42 U.S.C. 1786(a) and (b)(14)) clearly established the WIC Program as

''supplemental'' in nature; that is, the WIC supplemental foods are not intended to provide a complete diet but are designed to provide nutrients determined by nutritional research to be lacking in the diets of the WIC population. The law also directs the Secretary in Section 17(f)(11) of the CNA (42 U.S.C. 1786(f)(11)) to assure that, to the degree possible, the fat, sugar, and salt content of supplemental foods is appropriate. Section 203(a)(2) of Public Law 108–265 amended Section 17(b)(14) of the CNA by revising the definition of supplemental foods to include foods that promote health as indicated by relevant nutrition science, public health concerns, and cultural eating patterns.

Early legislation for the WIC Program, Public Law 92–433 (1972) through Public Law 94–105 (1975), specifically identified protein, iron, calcium and vitamins A and C as nutrients of particular concern for WIC participants. Public Law 95–627, enacted in November 1976, deleted reference to specific nutrients; however, the Department retained high-quality protein, iron, calcium, and vitamins A and C as the targeted nutrients in the WIC Program.

F. Current WIC Food Packages

WIC food package requirements appear in § 246.10 of the WIC Program regulations. The last major revision of the WIC Food Packages was in 1980 (45 FR 74854, November 12, 1980). The 1980 rule established six different monthly packages—Food Package I for infants 0–3 months; Food Package II for infants 4–12 months; Food Package III for children and women with special dietary needs; Food Package IV for children 1–5 years of age; Food Package V for pregnant and breastfeeding women; and Food Package VI for nonbreastfeeding postpartum women. The Department created an additional food package in 1992 (57 FR 56231, November 27, 1992). This enhanced food package, Food Package VII, was designed for breastfeeding women who elect not to receive infant formula through WIC for their infants.

Current WIC supplemental foods include iron-fortified infant formula, iron-fortified cereals, vitamin C-rich 100 percent fruit and/or vegetable juice, calcium/protein-rich milk and cheese, protein/iron-rich eggs, protein-rich peanut butter or dried beans/peas, and physician-prescribed formula/medical foods for participants with certain special dietary needs. The enhanced package for breastfeeding women increases allowable amounts of juice, cheese, peanut butter and dry beans/peas, and also allows protein-rich tuna fish and carrots that provide beta-carotene (precursor to vitamin A) and dietary fiber.

G. New Nutrient Recommendations

Over the past decade, knowledge of nutrient requirements has increased substantially, resulting in a set of new dietary reference values called the Dietary Reference Intakes (DRIs).[4–9] The DRIs replace the 1989 Recommended Dietary Allowances (RDAs) as nutrient reference values for the United States population. Based on the DRIs, many of the recommendations for nutrient intakes for individuals (RDAs) have changed substantially since the WIC food packages were originally formulated. Although basic concepts of nutrition have not changed, there has been a substantial increase in knowledge of specific concepts such as bioavailability, nutrient-nutrient interactions, and the distribution of dietary intake of nutrients across subgroups of the population. In addition to recommended intakes, the DRIs include appropriate standards to use in determining whether diets are nutritionally adequate without being excessive. The DRIs encompass more aspects of nutrition that did the earlier RDAs, as follows:

- DRIs consider reduction in the risk of chronic disease, as well as the absence of signs of deficiency.
- For most nutrients, DRIs include both RDA and Estimated Average Requirement (EAR) values.
- For some nutrients, insufficient data were available to set EAR and RDA values. For these nutrients, Adequate Intake (AI) values were estimated.
- DRIs include Tolerable Upper Intake Levels (ULs), which are used in the evaluation of the risk of adverse effects from excess consumption.
- DRIs specify appropriate ranges of macronutrient densities, which are called Acceptable Macronutrient Distribution Ranges (AMDRs).
- When adequate data are available, DRIs provide reference values for food components other than nutrients.

Assessing nutrient adequacy involves determining the extent to which the diets of WIC-income-eligible subgroups meet nutrient requirements without being excessive. In its Report, the IOM conducted analyses applying the DRIs and the recommended methods to assess the nutrient adequacy of the diets of WIC participants.

III. Priority Nutrients, Nutrition-Related Health Priorities, and Priority Food Groups Cited by the IOM Report [3]

The IOM Report cites fundamental changes that have occurred in the major health and nutrition risks faced by WIC's target population. The prevalences of underweight and iron-deficiency anemia have decreased. Diets have improved in many respects, and nutrients for which intakes often appeared to be low in the 1970s (calcium and vitamins A and C) are less problematic, particularly for children. Despite improved access to health care and health services, the prevalences of overweight and obesity in adults, adolescents, and children have increased dramatically, regardless of WIC participation. In addition, marked demographic changes have occurred, with both a dramatic increase in the number of persons served by WIC and a substantial shift in the ethnic composition of the WIC population. Hispanics now make up the largest share of WIC participants.[10]

A. Priority Nutrients

IOM designated a nutrient as a priority nutrient if the prevalence of dietary inadequacy was non-trivial, or the mean intake is below the AI, or there is a recognized nutrition-related health priority (e.g., observable levels of iron deficiency anemia). The methodology used to identify nutrients at high risk of inadequacy is described by the IOM in ''Dietary Reference Intakes: Applications in Dietary Assessment.'' [11] Based on detailed analyses,[1] the IOM Report cites the

[1] The IOM analyzed nutrient intake using nationally representative data for WIC children and for non-breastfed WIC infants. However, the IOM found that for breastfed infants 6 through 11 months of age, and for the women's groups, the nationally representative data did not provide adequate sample size of WIC participants for meaningful analysis. Consequently, the IOM used data for all infants 6 through 11 months and for all pregnant and lactating women. For non-breastfeeding postpartum women categorically eligible for WIC (up to six months postpartum), the IOM used data for all women within one year postpartum. The Department would have preferred to have adequate sample size to limit all of these analyses to the WIC actual groups, so that the recommendations could be completely tailored to the WIC population. Prior research using data from the Continuing Survey of Food Intakes by Individuals indicates that there are statistically significant differences in dietary intake between low income and higher income adults. For example, when controlling for a wide variety of independent factors, those adults with incomes below 130 percent of poverty have statistically lower usual mean intakes for food energy and almost all vitamins and minerals, and were less likely to meet either 70 percent or 100 percent of the RDA. (See Gleason P., A. Rangarajan and C. Olson. ''Dietary

Continued

following nutrients as high priority for WIC participants.

• *WIC infants under one year of age, non-breastfed:* No nutrients were identified with a high risk of inadequacy. Priority nutrients related to risk of excessive intakes in non-breastfed infants are zinc, preformed vitamin A, and food energy (calories).

• *Breastfed infants 6 through 11 months:* Priority nutrients identified as lacking in the diets of breastfed infants six months and older are iron and zinc.

• *WIC children 1 through 4 years of age:* Priority nutrients identified as lacking in the diets of young children are vitamin E, fiber, and potassium, and iron. Nutrients that may be excessive in the diets of young children are zinc, preformed vitamin A, sodium, food energy (calories), and saturated fat.

• *Pregnant, lactating, and non-breastfeeding postpartum women:* Priority nutrients identified as lacking are calcium, iron, magnesium, vitamin E, potassium, and fiber. Nutrients with moderate, but still high, levels of inadequacy are vitamins A, C, and B_6, and folate. Nutrients with lower levels of inadequacy are iron, zinc, thiamin, niacin, and protein. Sodium intakes and saturated fat intakes as a percentage of food energy intakes are excessive in the diets of pregnant, lactating, and non-breastfeeding postpartum women.

B. Nutrition-Related Health Priorities

In addition to analyses of nutrient adequacy, the IOM reviewed epidemiological evidence on body weight status, micronutrients of special concern during reproduction and early childhood, food allergies, and selected environmental risks to the health of women, infants, and children. Several concerns were identified by the IOM for all WIC subgroups—obesity, poor iron status, and contamination of food with dioxin and methylmercury. The IOM also determined that low folate intake is a concern for all women during their reproductive years because of its importance in preventing neural tube defects; insufficient calcium intake for pregnant and breastfeeding women may be associated with potential lead toxicity for the fetus and infant; low intake of vitamin D is a potential concern for women of reproductive age because of its importance in bone health; and inadequate zinc intake is a concern for breastfed infants 6 through 11 months of age because human milk does not provide recommended amounts of zinc for older infants.

C. Priority Food Groups

To determine whether specific foods or types of food should receive priority in the re-design of WIC food packages, the IOM reviewed information about dietary guidance, amounts of foods consumed by groups that potentially are eligible for the WIC Program, and the amounts of foods in current WIC food packages. The IOM's assessment gave major consideration to the Dietary Guidelines for Americans (DGA), which form the basis of Federal food and nutrition programs (Pub. L. 101–445, U.S. Congress, 1990). To do this, the IOM used the DGA 2005 [12] as the source of dietary guidance for children ages two years and older and widely accepted dietary guidance from professional groups, such as the American Academy of Pediatrics, for children under two years of age. The IOM Report cites the following concerns:

1. Children ages 2 through 4 years and women in the childbearing years:

• *Overall:* Intakes of whole grains, vegetable subgroups excluding potatoes and other starchy vegetables, fruits, milk and milk products, and meats are all lower than recommended on average;

• *Children ages 2 through 4:* Intakes tend to be low in whole grains and in dark green leafy vegetables, deep yellow vegetables, cooked dry beans and peas rather than vegetables in general; and

• *Women:* Intakes tend to be low in whole grains, dark green leafy vegetables, deep yellow vegetables, cooked dry beans and peas, and fruit and milk groups.

2. Infants and children younger than 2 years of age:

Dietary practices of most concern to the IOM include the short duration of breastfeeding, excessive consumption of fruit juice, early introduction of solid food and cow's milk, low consumption of fruits (other than juice) and vegetables, and infrequent exposure to new foods.

Exhibit A in this preamble, from the IOM Report,[3] summarizes nutrient and food group priorities that form the basis for the proposed revisions of the WIC food packages.

EXHIBIT A.—NUTRIENT AND FOOD GROUP PRIORITIES FOR PROPOSED REVISED WIC FOOD PACKAGES

[FROM "WIC Food Packages; Time For A Change." The Institute of Medicine of the National Academies, The National Academies Press, 2005, page 72]

Participant category	Nutrients of concern with regard to inadequate intake	Priority food groups	Nutrients of concern with regard to excessive intake	Nutrients and ingredients to limit in the diet
Infants, less than 1 y, non-breastfed.	No need identified to increase particular nutrients; maintain iron intakes and continue to provide a balanced set of essential nutrients.[a].	na	Decrease intakes of Zinc, Vitamin A, preformed,[b] and Food energy.	
Infants, 6–11.9 mo, breastfed.	Increase intakes of Iron and Zinc.	na.		
Children, 12–23.9 mo	Increase intakes of Iron, Potassium, Vitamin E, and Fiber.	Increase intakes of a variety of non-starchy vegetables.	Decrease intakes of Zinc, Vitamin A, preformed, [b] and Food energy.	

Intake and Dietary Attitudes Among Food Stamp Participants and Other Low-Income Individuals,'' United States Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition and Evaluation FSP–00–DI, Project Officer Sharron Cristofar, Alexandria, Virginia 2002.) However, the pattern of which nutrients more frequently have low intakes is very similar for the high- and low-income groups. For example, among the nine vitamins and five minerals studied, both the list and order of the six nutrients with the smallest portion of the population consuming 70% of the RDA is the same for the low- and high-income groups. Estimates based on too small a sample have an unacceptably high risk of inaccurately representing the true population mean and distribution. Therefore, for the purpose of comparing nutrient adequacy and excesses among a group of nutrients when the WIC sample is limited, use of the all-income sample is the best available alternative.

EXHIBIT A.—NUTRIENT AND FOOD GROUP PRIORITIES FOR PROPOSED REVISED WIC FOOD PACKAGES—Continued

[FROM "WIC Food Packages; Time For A Change." The Institute of Medicine of the National Academies, The National Academies Press, 2005, page 72]

Participant category	Nutrients of concern with regard to inadequate intake	Priority food groups	Nutrients of concern with regard to excessive intake	Nutrients and ingredients to limit in the diet
Children, 2–4.9 y	Increase intakes of Iron, Potassium, Vitamin E, and Fiber.	Increase intakes of whole grains, and a variety of non-starchy vegetables.	Decrease intakes of Zinc, Sodium, Vitamin A, preformed,[b] and Food energy.	Limit intakes of Saturated fat, Cholesterol, and Added sugars.
Adolescent and adult women of reproductive age.	Give highest priority to increasing intakes of Calcium, Iron, Magnesium, Potassium, Vitamin E, and Fiber. Also try to increase intakes of Vitamin A, Vitamin C, Vitamin D, Vitamin B_6, and Folate].	Increase intakes of whole grains, a variety of non-starchy vegetables, fruit, and fat-reduced milk products.	Decrease intakes of Sodium, Food energy, and Total fat.	

Note: na = not applicable; UL = Tolerable Upper Intake Level.

[a] Iron intakes are apparently adequate for non-breastfed infants, probably due in part to provision of iron-fortified formula in the current WIC food packages.

[b] The UL applies only to preformed vitamin A (i.e., retinol) ingested from the combined sources of animal-derived foods, fortified foods, and dietary supplements.(13)

[c] Trans fatty acids have not specifically been identified as a hazard for infants and children, and thus are shown in the table as nutrients to limit only in the diets of adolescents and adults.(8) However, the dietary guidance to limit trans fatty acids from processed foods in the diet is presumed to apply to all individuals regardless of age.

D. Identifying Foods To Reduce or Eliminate

Exhibit B in this preamble reflects the IOM's recommendations and rationale regarding foods in the current WIC food packages to be deleted or reduced in the proposed revised food packages.

EXHIBIT B.—FOODS IN THE CURRENT WIC FOOD PACKAGES TO BE DELETED OR REDUCED IN THE PROPOSED FOOD PACKAGES

[FROM "WIC Food Packages; Time For A Change." The Institute of Medicine of the National Academies, The National Academies Press, 2005, page 82]

Food	Change	Rationale
Infant formula	Reduce maximum amounts for partially breastfed infants.	The maximum amount provides approximately half the amount provided to fully formula fed infants to encourage the mother to breastfeed enough to provide at least half of the infant's nutritional needs and to make possible other improvements in the WIC food packages.
Infant formula	Reduce maximum amounts for fully formula fed infants ages 6–11.9 mo of age.	Since the food package for infants of this age provides greater amounts of nutrients through complementary foods, less formula is needed.
Juice	Delete juice for infants 4–11.9 mo of age; reduce amount of juice for children 1–4.9 y of age.	Meet AAP recommendations to delay introduction of juice for infants until after 6 mo of age; allow no more than 4–6 fl oz/day for infants above the age of 6 mo.(14) For infants age 6–11.9 mo, fruit juice has no nutritional benefit over whole fruit.(15)
Milk	Decrease maximum amounts allowed for children and adults.	Amounts provided need not exceed amounts recommended by DGA 2005.(12)
Cheese	Reduce maximum amount allowed in women's and children's packages.	Meets recommendation from DGA 2005(12) and recommendation from the IOM to reduce saturated fat and cholesterol intake.(8)
Eggs	Reduce maximum amount allowed	Protein is no longer a priority nutrient. Reduction in amount provided is consistent with DGA 2005(12) and with recommendation from the IOM to reduce cholesterol intake.(8)

Note: AAP = American Academy of Pediatrics; IOM = Institute of Medicine.

The full context of IOM's recommendations, including analyses, can be found in its report "WIC Food Packages: Time for a Change"(3) available at *http://www.fns.usda.gov/oane/menu/Published/WIC/WIC.htm.*

E. The IOM's Recommendations in the Context of this Proposed Rule

The IOM Report considered current recommendations for nutrient intakes and dietary patterns, the major diet-related health problems and risks faced by WIC's target population, the characteristics of the WIC Program, and the diversity of its participants. IOM's recommendations are intended to make the WIC food packages better meet the supplemental nutrition needs of participants and be more consistent

with national and professional dietary guidance and more consistent with nutrition education messages that promote healthful diets for the WIC population.

The IOM Report has provided FNS with a sound scientific basis for proposing a new set of food packages for the WIC Program. Except for certain cost containment and administrative modifications found necessary by the Department to ensure cost neutrality, FNS is largely setting forth IOM's recommendations in this proposed rule for public comment. However, FNS is aware that these proposed revisions represent substantial changes for the WIC Program, its participants, and authorized vendors. Implementation procedures, staff and vendor training, and the nature of the nutrition education provided are likely to influence the effectiveness of the proposed revised food packages. Commenters are encouraged to provide input that would assist FNS in assessing the training and technical assistance needs of WIC State agencies and WIC-authorized vendors in implementing these proposed changes.

IV. Re-Design of WIC Food Packages To Enhance Breastfeeding Promotion and Support

A. Current Breastfeeding Promotion and Support in WIC

WIC has historically promoted breastfeeding to all pregnant women as the optimal infant feeding choice, unless medically contraindicated. Current federal WIC regulations (§§ 246.7(e)(1)(iii), 246.7(g)(1)(iii), 246.10(c)(7), and 246.11(c)) contain provisions to encourage women to breastfeed and to provide appropriate nutritional support for breastfeeding participants, including:

- Information provided to WIC mothers choosing to breastfeed through counseling and breastfeeding educational materials;
- Follow-up support through peer counselors;
- Eligibility to participate in WIC longer than non-breastfeeding mothers;
- Enhanced food package for mothers who exclusively breastfeed their infants; and
- Breast pumps, breast shells or supplemental nursing systems to help support the initiation and continuation of breastfeeding.

In part as a result of strengthened WIC breastfeeding policy and program activities in the early 1990's, WIC breastfeeding rates have increased at a faster rate than in the non-WIC population in the United States in the last decade. Despite these gains, WIC participants lag behind the general population in progress toward meeting the breastfeeding objectives of Healthy People 2010.[16]

B. The IOM's Recommendations To Promote and Support Breastfeeding Via the WIC Food Packages

As described in the IOM Report, the proposed revised food packages for infants and women are designed to strengthen WIC's breastfeeding promotion efforts and provide additional incentives to assist mothers in making the decision to initiate and continue to breastfeed. Breastfeeding is the preferred method of infant feeding because of the nutritional value and health benefits of human milk.[15, 16, 17]

The IOM's three-pronged approach to better promote and support breastfeeding through the WIC food packages is proposed. The proposed approach focuses on the market value of the package for the mother/infant pair for the first year after birth, addresses differences in supplementary nutrition needs of breastfed and formula fed infants, and considers how to minimize early supplementation with infant formula through continued or increased efforts to promote and support the breastfeeding dyad.

Proposed changes to help support breastfeeding address packages for the infant as well as the mother since both are eligible to receive a WIC food package. According to the IOM, the perceived dollar value, from the mother's point of view, of the current food packages provided for formula-feeding infant-mother pairs is substantially larger than that of the packages for the fully breastfeeding pairs, especially during the first six months postpartum. The IOM believes that attractive packages for fully breastfeeding mother/infant pairs might act as an incentive for breastfeeding. The proposed revised food packages increase the value of the contents of the food packages for the fully breastfeeding mother/infant pairs while decreasing the relative value to mothers of the food packages for partially breastfeeding pairs and fully formula-feeding pairs.

As described by the IOM, the differences in the proposed packages for the mother-infant pairs are based on differences in nutritional needs. For example, fully breastfeeding women require additional calories per day during the first six months postpartum as well as higher levels of most vitamins and minerals. Thus, the package for fully breastfeeding women provides the most food energy and nutrients, and the package for fully formula-feeding women provides the least. Similarly, starting at age six months, the proposed package for fully breastfed infants includes commercial infant food meats to add a source of iron and zinc.

Because early supplementation may contribute to the short duration of breastfeeding, only two infant feeding options were recommended initially after delivery—either full breastfeeding or full infant formula-feeding. The IOM recommended this approach because physiology provides a strong basis for avoiding supplemental formula. The amount of milk a breastfeeding woman produces depends directly on how often and how long she nurses. Providing supplemental formula to a new breastfeeding mother may interfere with her milk production and success at continued breastfeeding.

These proposed food package changes, as recommended by the IOM, are intended to strengthen WIC's efforts to promote and support breastfeeding as the optimal infant feeding choice for WIC mothers.

V. Proposed Revisions to the WIC Food Packages

A. Use of Terms

For the purposes of discussion, this proposed rule uses the following terms.

WIC food categories refers to WIC formula (infant formula, exempt infant formula and WIC-eligible medical foods); milk and milk alternatives; eggs; peanut butter; legumes (dried beans and peas); infant cereal; breakfast cereal; canned fish; whole wheat bread or other whole grains; infant fruits and vegetables; infant meat; cheese; juice; and fruits and vegetables.

Food type refers to specific foods within a category, e.g., skim milk and soy-based beverages are types of food in the milk and milk alternatives category.

Physical form refers to the way in which the food is manufactured and/or packaged, e.g., dried, frozen; fresh; powder; liquid concentrate; fluid; evaporated, canned.

B. Revised Food Packages I and II for Infants

As recommended by the IOM, this rule proposes the following changes in Food Packages I and II for infants (currently § 246.10(c)(1) and (c)(2)).

- Revise age specifications for assignment to infant food packages;
- Establish 3 feeding options within each infant food package—fully breastfed, partially breastfed, or fully formula fed;
- Revise maximum monthly infant formula allowances;
- Add infant food fruits and vegetables in Food Package II;

- Eliminate juice from both infant food packages;
- Disallow provision of infant formula for breastfed infants during the first month after birth;
- Disallow low iron infant formula;
- Allow commercial infant food meat for fully breastfed infants in Food Package II; and
- Reassign infants with a qualifying condition to proposed revised Food Package III—Participants With Qualifying Conditions—and authorize the issuance of exempt infant formulas only in Food Package III.

The proposed revisions to Food Packages I and II for infants, as recommended by the IOM, are designed to better promote and support the establishment of successful long-term breastfeeding among women who choose that feeding method, address differences in nutritional needs of breastfed and formula fed infants, address developmental needs of infants, bring the infant food packages in line with current infant feeding practice guidelines from the AAP, and serve all participants with certain medical conditions under one food package to facilitate efficient management of medically fragile participants.

1. Reassignment of Infants With Qualifying Conditions to Food Package III

Medically fragile infants currently receive either Food Package I (§ 246.10(c)(1)) for infants 0–3 months of age or Food Package II (§ 246.10(c)(2)) for infants 4–12 months of age. The WIC formulas authorized for issuance to infants in Food Packages I and II include infant formula, exempt infant formula and WIC-eligible medical foods.

This rule proposes to revise § 246.10(c)(1) through (c)(3) of Program regulations for Food Packages I, II and III in order to develop a restructured Food Package III that would serve all categories of participants, including infants, who have certain diagnosed qualifying conditions. The revised title for this food package would be Food Package III—Participants with Qualifying Conditions. The rationale for including infants in Food Package III is to consolidate all medically fragile individuals with qualifying conditions into one package to facilitate efficient management and tracking of the benefits and costs of providing supplemental foods to these participants. Refer to section V.P. of this preamble, Revisions to Food Package III and their effect on Food Packages I and II, for further information.

2. Change in Age Specifications for Assignment to Food Packages I and II

As recommended by the IOM, this proposed rule would revise Food Package I to serve infants from birth through age 5 months and revise Food Package II to serve infants ages 6 months through 11 months. Currently, the assignment to Food Package II occurs at age four months.

3. Establishment of Infant Feeding Options

a. First Month After Birth. To support the successful establishment of breastfeeding, the proposed rule, as recommended by the IOM, would establish two infant feeding options for the first month after birth, either full breastfeeding or full formula-feeding. That is, formula would not be provided for fully or partially breastfeeding infants during the first month after birth. If a breastfeeding mother requests formula during the first month, the Department would advise WIC staff to continue to provide breastfeeding support for the mother, with special attention to the provision of peer counseling, breast pumps, consultation with lactation experts, and referrals to medical providers when appropriate. Anticipatory guidance for new mothers during the prenatal period would be important for the success of this approach. As is currently the case, the breastfeeding mother could ask to have the infant assigned to full formula feeding option at any time and WIC staff would reassign the infant's and the mother's food package accordingly.

b. Second Month After Birth Through Month Eleven. Beginning the second month after birth, a third infant feeding option is proposed—partial breastfeeding. As recommended by the IOM, this rule proposes that, for the purposes of assigning WIC food packages, a partially breastfed infant be defined as an infant who is breastfed but also receives formula from the WIC Program in an amount not to exceed approximately half the amount of formula allowed for a fully formula fed infant. Currently, there is not a food package for partially breastfed infants. Instead, breastfeeding infants may receive up to the maximum amount of infant formula authorized in Food Packages I and II. State agencies are currently encouraged to tailor the amount of infant formula provided based on the assessed needs of the breastfeeding infant. Under this proposal, breastfeeding mothers who request more than the amount of formula allowed for partially breastfed infants could receive up to the maximum amount of formula for the fully formula fed infant. In such instances, the infant's feeding option would be changed from partially breastfed to fully formula fed and the mother's food package adjusted accordingly.

4. Introduction of Complementary Foods at 6 Months of Age

As recommended by the IOM, the proposed Food Package I would provide only iron-fortified infant formula for partially breastfed and fully formula fed infants until an infant is six months old. As cited by the IOM, this change is consistent with recent position statements from the American Academy of Pediatrics emphasizing that the introduction of complementary feedings before six months of age only substitutes foods that lack the protective components of human milk and that exclusive breastfeeding should be used as the reference or normative model for feeding infants. Six months is the age at which most healthy infants are developmentally ready to handle complementary foods. Infants do not need complementary foods for nutritional reasons at younger ages—either breastmilk or iron-fortified infant formula would entirely meet the nutritional needs of most infants. Providing complementary foods beginning at age six months is consistent with common guidelines for clinical practice in the field of pediatrics.

5. Disallowance of Low-Iron Infant Formula in Food Packages I, II and III

It is well documented that iron-fortified infant formulas play an essential role in providing iron in the diets of non-breastfed infants. According to AAP, there are no known medical conditions warranting the use of a low-iron infant formula during infancy. In addition, the IOM recommends that the WIC Program continue to provide iron-fortified infant formula to prevent iron-deficiency anemia in infants. This proposed rule would revise WIC food package regulations to prohibit the issuance of all low-iron infant formulas to any infants.

6. Proposed Revisions and Maximum Monthly Allowances in Food Package I—Infants Less Than 6 Months of Age

As recommended by the IOM, under this proposed rule, Food Package I would provide iron-fortified infant formula only. Infant formula would continue to be authorized in liquid concentrate, powder, and ready-to-feed (RTF) physical forms. However, powder

infant formula would be recommended in Food Package I for partially breastfed infants ages one month through three months due to its longer shelf life, less waste and capability to mix the small amounts needed for the partially breastfed infant. Powder and RTF physical forms are substitutes or alternatives to liquid concentrate and may be substituted at amounts that provide the approximate number of reconstituted fluid ounces as the liquid concentrate form of the same infant formula. Currently, in both Food Packages I and II, infant formula allowances are expressed in terms of fluid ounces of liquid concentrate, pounds of powder, and fluid ounces of RTF. WIC State agencies have suggested to FNS that maximum monthly formula allowances for liquid concentrate and powder physical forms be expressed in terms of reconstituted fluid ounces. The Infant Formula Act of 1980 and its amendments standardized the nutrient content of infant formulas ensuring that infant formulas distributed in the United States contain certain minimum levels of calories and nutrients per reconstituted fluid ounce. Therefore, the Department is proposing to express maximum monthly allowances of infant formula of liquid concentrate and powder physical forms in reconstituted fluid ounces according to the mixing directions on the container for preparation for consumption. RTF liquid will continue to be expressed in fluid ounces.

a. Liquid Concentrate Infant Formula. All liquid concentrate infant formula currently marketed is packaged in 13 fluid-ounce cans, is designed to be mixed with an equal quantity of water (i.e., has a 1:1 dilution ratio) and provides the standard dilution of 20 kilocalories per fluid ounce reconstituted. Thus, 403 fluid ounces of liquid concentrate formula reconstitutes to 806 fluid ounces. The proposed maximum monthly formula allowances are evenly divisible by the 13-fluid-ounce cans of liquid concentrate infant formula.

b. Powder Infant Formula. The reconstituted yields for powder formulas vary according to types and brands of products. Powder milk-based infant formulas designed for healthy, full-term infants have among the highest yields when compared to soy-based infant formulas and exempt infant formulas. This proposed rule would revise the substitution rate for powder infant formula since the current substitution rate of 8 pounds powder per 403 fluid ounces liquid concentrate is no longer appropriate and could result in providing excess amounts of formula in some cases. The IOM recommended rounding to whole cans in order to reach recommended amounts of infant formula. Therefore, the proposed maximum monthly allowances of liquid concentrate and RTF are evenly divisible by the whole can sizes of infant formula currently available. However, none of the whole container sizes of powder infant formula commonly issued by State agencies would provide the same number of reconstituted fluid ounces as the liquid concentrate form of the same product in whole containers. The Department recognizes that powder is the most economical form for State agencies to issue. Therefore, in order to provide a nutritional benefit amount recommended by the IOM and to provide administrative flexibility for the issuance of infant formula, this proposal would authorize an amount of powder infant formula that would provide at least the maximum monthly allowance as the reconstituted liquid concentrate form of the same infant formula in the same food package and infant feeding option (fully formula fed or partially breastfed). State agencies would be required to provide at least the number of fluid ounces as the same reconstituted liquid concentrate infant formula up to the maximum monthly allowance for reconstituted powder infant formula. This would ensure that participants receive comparable nutritional benefit no matter which physical form of infant formula they receive. The Department recognizes that participants issued powder infant formula may receive a slightly higher amount of reconstituted fluid ounces than the other forms due to the currently available container sizes and reconstitution rates.

c. RTF Infant Formula. Proposed § 246.10(e)(1)(iv) lists the reasons that RTF formula may be authorized as a substitute for liquid concentrate. The maximum monthly allowance of RTF formula provides about the same number of fluid ounces as the reconstituted liquid concentrate form of the same infant formula. The proposed maximum monthly allowances are evenly divisible by the 8 and 32-ounce whole containers of RTF infant formula.

d. Maximum Monthly Allowances of Infant Formula. As recommended by the IOM, the maximum monthly allowance of infant formula would depend on the feeding option, physical form of infant formula provided (concentrated, powder, or ready-to-use), and the age of the infant, as summarized in Exhibit C of this preamble.

- Fully formula fed infants would receive the equivalent of about 806 fluid ounces reconstituted infant formula per month from birth through 3 months of age; thus, Food Package I is unchanged for fully formula fed infants from birth through 3 months of age. Fully formula fed infants 4 months through 5 months of age would receive the equivalent of about 884 fluid ounces of reconstituted infant formula per month;
- Juice and infant cereal would no longer be provided for infants ages 4 months through 5 months. Compared with the current package, the amount of infant formula is increased slightly for infants ages 4 months through 5 months to compensate in part for the decrease in nutrients and calories that results from the omission of juice and infant cereal;
- Partially breastfed infants ages 1 month through 3 months would receive the equivalent of about 364 fluid ounces reconstituted infant formula per month. Powder infant formula is recommended until the partially breastfed infants reaches four months of age due to its longer shelf life and to minimize waste; and
- Partially breastfed infants 4 months through 5 months of age would receive the equivalent of about 442 fluid ounces reconstituted infant formula per month.

Since infant formula is supplemental to breast milk for partially breastfed infants, the maximum allowance of infant formula for partially breastfed infants is approximately 50 percent of the maximum allowance for fully formula fed infants. According to the IOM, this approach is designed to encourage mothers who are using the combination feeding method (feeding both breast milk and infant formula) to aim for a greater contribution of breast milk to the infant's intake.

By definition, fully breastfed infants would not receive infant formula from the WIC Program. Instead, they would receive the benefit of breast milk, which provides the nutrients they need and a wide array of protective and health-promoting components in a safe form.

EXHIBIT C.—MAXIMUM MONTHLY ALLOWANCES FOR PROPOSED FOOD PACKAGE I FOR INFANTS AGES BIRTH TO 6 MONTHS, BY FEEDING OPTION

WIC food	Fully breastfed infants	Partially breastfed infants		Fully formula fed infants	
	0 through 5 months	1 through 3 months	4 through 5 months	0 through 3 months	4 through 5 months
Infant Formula	NA	364 fl oz reconstituted liquid concentrate*.	442 fl. oz. reconstituted liquid concentrate.	806 fl. oz. reconstituted liquid concentrate.	884 fl. oz. reconstituted liquid concentrate.

NA = not applicable.
*The maximum monthly allowance is specified in the liquid concentrate form; however, powder and RTF are allowable substitutes and the powder form is recommended for partially breastfed infants, ages 1 through 3 months of age.

7. Proposed Revisions and Maximum Monthly Allowances in Food Package II—Infants 6 Through 11 Months of Age

As recommended by the IOM, this proposed rule would revise Food Package II to include the following changes:

- Food Package II would be provided to infants from 6 through 11 months of age. This package would differ substantially by infant feeding option, as shown in Exhibit D in this preamble. Infant formula would be decreased for fully formula fed infants to 624 fluid ounces of reconstituted liquid concentrate infant formula per month and for partially breastfed infants to 312 fluid ounces of reconstituted liquid concentrate infant formula per month;
- Infant foods would be added to the food package to encourage healthy dietary patterns; and
- Juice would be omitted to help make possible the addition of infant food fruits and vegetables.

The amount of infant cereal in the package would be unchanged. The proposed decrease in the maximum allowance of infant formula is consistent with meeting nutritional requirements. The amount of infant formula proposed for partially breastfed infants reflects and encourages a greater contribution of breast milk to the infant's diet. Decreasing the maximum amount of infant formula and omitting juice makes possible needed enhancements. For example, the addition of infant food fruits and vegetables in the second six months of infancy introduces infants to a variety of nutritious foods at an age when almost all infants are developmentally ready for semisolid foods. The infant food meat for fully breastfed infants provides needed iron and zinc in forms with high bioavailability, and the larger quantities of infant food for fully breastfed infants may encourage some mothers to continue fully breastfeeding.

Long-standing WIC policy has not authorized infant cereals that included fruit or infant formula ingredients. However, this restriction was never incorporated into regulatory language. This proposed rule would clarify in WIC regulations that infant cereals with the added ingredients of infant formula, milk, fruit, or other non-cereal ingredients are not authorized based on recommendations of the AAP and cost concerns. The AAP recommends that single ingredient foods be introduced one at a time in an effort to isolate food sensitivities and possibly avert the development of food intolerances. Although cereal/fruit combinations may be appropriate once the risk of food sensitivity has diminished, these combination foods are more expensive than regular infant cereal. In reference to cereal/formula combinations, since infant formula is already provided in the food packages, it is not necessary to provide additional infant formula in combination with infant cereal. In addition, authorized infant cereals must continue to contain a minimum of 45 milligrams of iron per 100 grams of dry cereal.

a. Authorized Infant Foods.

- Any variety of commercial infant food (fruit or vegetable) without added sugars, starches, or salt (i.e., sodium). Texture may range from strained through diced; and
- Any variety, single ingredient, of commercial infant food meat with broth or with gravy. Texture may range from pureed through diced.

b. Maximum Monthly Allowance of Infant Foods (Fruits, Vegetables, and Meats) for Infant 6 through 11 months of age:

- *For fully formula fed infants.* 128 ounces of fruits and vegetables (e.g., 32 4-ounce jars);
- *For partially breastfed infants.* 128 ounces of fruits and vegetables (e.g., 32 4-ounce jars);
- *For fully breastfed infants.* 256 ounces of fruits and vegetables (e.g., 64 4-ounce jars); and
- *For fully breastfed infants.* 77.5 ounces of infant food meat (31 2.5-ounce jars.

Fresh banana may replace up to 16 ounces of infant food fruit at a rate of 1 pound of bananas per 8 ounces of infant food fruit. Fresh bananas for infants in Food Package II would be issued via the standard food instrument system.

As cited by the IOM Report, the rationale for providing a greater quantity of infant food fruits and vegetables in the package for fully breastfed infants is to provide added nutritional value to improve the parity with other infant packages, to provide sufficient fruits and vegetables to mix with infant food meats to increase the palatability of strained meats for older infants, and to encourage prolonged breastfeeding by adding to the convenience and monetary value of the food packages of the fully breastfeeding mother/infant pair.

EXHIBIT D.—MAXIMUM MONTHLY ALLOWANCES FOR PROPOSED FOOD PACKAGE II FOR INFANTS AGES 6 MONTHS TO 1 YEAR, BY FEEDING OPTION

	Fully breastfed infants	Partially breastfed infants	Fully formula fed infants
WIC Formula			
Infant Formula		312 fluid ounces of reconstituted liquid concentrate formula.	624 fluid ounces of reconstituted liquid concentrate formula.
WIC Food			

EXHIBIT D.—MAXIMUM MONTHLY ALLOWANCES FOR PROPOSED FOOD PACKAGE II FOR INFANTS AGES 6 MONTHS TO 1 YEAR, BY FEEDING OPTION—Continued

	Fully breastfed infants	Partially breastfed infants	Fully formula fed infants
Infant food (Fruits and Vegetables).	256 ounces of infant food fruits and vegetables.	128 ounces of infant food fruits and vegetables.	128 of ounces infant food fruits and vegetables.
Infant food (Cereal)	24 ounces of iron-fortified infant cereal.	24 ounces of iron-fortified infant cereal.	24 ounces of iron-fortified infant cereal.
Infant food (Meat)	77.5 ounces of infant food meat.		

c. Rounding Up of Infant Foods.

• *Infant Formula*

Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004, enacted on June 30, 2004, contains a provision that allows a State agency to round up to the next whole can of infant formula to allow all participants to receive the full-authorized nutritional benefit specified by regulation. This provision only applies to infant formula (not exempt infant formula or WIC-eligible medical foods) issued as a result from a solicitation bid on or after October 1, 2004. This proposal reflects this authority by calculating and dispersing the infant formula over the timeframe of the food package category and infant feeding option (fully formula fed or partially breastfed). This proposal would identify the full nutritional benefit (FNB) provided by infant formula as the maximum monthly allowance of reconstituted fluid ounces of liquid concentrate for the food package category and infant feeding option. This proposal would require State agencies to issue at least the FNB but not more than the maximum monthly allowance for the food package category and infant feeding option. This proposal would require State agencies that use the rounding up option to issue infant formula in whole containers of the same size for administrative ease and to use the methodology described herein to calculate the number of cans of infant formula for issuance to participants.

This proposal would require calculating and dispersing the infant formula over the timeframe of the food package category and infant feeding option (fully formula fed or partially breastfed). For example, a fully formula fed infant who participates in WIC from birth through eleven months of age would be issued infant formula in amounts provided by Food Package IA–FF from birth through 3 months of age, issued infant formula in amounts provided by Food Package IB–FF from four through five months of age, and issued infant formula in amounts provided by Food Package II–FF from 6 through eleven months of age. The timeframe or the total number of months that the participant will receive each food package is shown in Exhibit E.

EXHIBIT E.—FOOD PACKAGE TIMEFRAME

Food package	Maximum time frame
I A–FF	4 months.
I B–FF	2 months.
II–FF	6 months.

Exhibit F describes the methodology that State agencies must use to calculate the amount of infant formula dispersed over the timeframe of the food package category and infant feeding option, when using the rounding up option.

EXHIBIT F.—ROUNDING UP INFANT FORMULA METHODOLOGY

1	Multiply FNB by number of months in food package = Total amount of infant formula.
2	Determine yield (reconstituted fluid ounces) provided by the container issued by the State agency.
3	Divide total amount of infant formula by the container yield = total number of containers to issue.
4	Round up to the next whole same size container if the number of containers is not a whole number (e.g. 4.3 containers would round up to 5 containers).
5	Distribute the total containers across the food package timeframe as evenly as possible (e.g. 2,1,2,1).

For example, a fully formula fed infant participant born January 1, 2006, would receive Food Package IA—FF issuance amount rounded over a 4-month timeframe multiplied by the FNB (806 fluid ounces reconstituted) to equal 3224 fluid ounces reconstituted total amount of infant formula for the 4-month timeframe. The total amount, 3224 fluid ounces reconstituted, would then be divided by the yield of fluid ounces reconstituted provided by the authorized container to determine the total number of containers needed to provide 3224 fluid ounces reconstituted. The reconstituted fluid ounce yield provided by container varies depending on container size and the reconstitution rate. Currently, Enfamil Lipil infant formula in a 12.9 ounce can reconstitutes to about 94 fluid ounces per container, Similac Advance infant formula in a 12.9 ounce can reconstitutes to about 96 fluid ounces per container, and Nestle Good Start Supreme infant formula in a 12.0 ounce can reconstitutes to about 87 fluid ounces per container. Therefore, the 3224 fluid ounces would be divided by either 94, 96 or 87 respectively, for a rounded up total of 35 12.9 ounce cans of Enfamil Lipil, or 34 12.9 ounce cans of Similac Advance, or 38 cans of 12 ounce cans Nestle Good Start Supreme. Using Enfamil Lipil as the example, the 35 cans would be dispersed over 4 months as evenly as possible, such as 9 cans the first month, 8 cans the second month, and 9 cans each for months 3 and 4.

Exhibit G shows the number of powder infant formula containers that would be issued to an infant participant born January 1, 2006, for the fully formula fed infant food packages, using the rounding up methodology, for Enfamil Lipil, Similac Advance, or Nestle Good Start Supreme infant formulas for a 1-year certification timeframe.

EXHIBIT G.—NUMBER OF POWDER INFANT FORMULA CONTAINERS ISSUED TO AN INFANT PARTICIPANT BORN 01/01/2006, FOR FOOD PACKAGES I & II FULLY FORMULA FED (FF) USING ROUNDING UP

Approximate reconstitution amount per container		Mead Johnson's Enfamil Lipil (number of 12.9 oz. containers) 94 fl. oz.	Ross' Similac Advance (number of 12.9 oz. containers) 96 fl. oz.
Food Package I–FF A (FNB = 806 fl. oz. per month):			
January, age 0 months	9.0	9.0	10.0
February, age 1 month	8.0	9.0	10.0
March, age 2 months	9.0	8.0	9.0
April, age 3 months	9.0	8.0	9.0
Food Package I–FF A subtotal	35	34	38
Food Package I–FF B (FNB = 884 fl. oz. per month):			
May, age 4 months	10.0	10.0	11.0
June, age 5 months	9.0	9.0	10.0
Food Package I–FF B subtotal	19	19	21
Food Package II–FF (FNB = 624 fl. oz. per month):			
July, age 6 months	7.0	7.0	8.0
August, age 7 months	6.0	6.0	7.0
September, age 8 months	7.0	7.0	7.0
October, age 9 months	6.0	6.0	8.0
November, age 10 months	7.0	7.0	7.0
December, age 11 months	7.0	6.0	7.0
Food Package II–FF subtotal	40	39	44
Infant package total of formula issued	94	92	103

• Infant Foods

This proposed rule would allow State agencies to round up and disperse whole containers of infant foods (infant cereal, infant fruit and vegetables, and infant meat) over the timeframe of the food package category and infant feeding option (fully formula fed, fully breastfed or partially breastfed) to allow all participants to receive the maximum monthly allowance of infant foods as specified in regulations. This is consistent with the authority allowing State agencies to round up infant formula. Rounding up of infant foods provides administrative flexibility to State agencies since container sizes of infant foods vary and rounding ensures that infants would receive the full nutritional benefit recommended by the IOM.

This proposal would require State agencies that use the rounding up option for infant foods to use the same methodology proposed to calculate and disperse infant formula over the timeframe of the food package category and infant feeding option. Exhibit H describes the methodology that State agencies must use to calculate and disperse infant foods over the timeframe of the food package category and infant feeding option.

EXHIBIT H.—ROUNDING UP INFANT FOOD METHODOLOGY

1	Multiply maximum monthly allowance by number of months in food package = Total amount of infant food in ounces.
2	Determine the container size (e.g., ounces) of infant food issued by the State agency.
3	Divide total amount of infant food by the container size = total number of containers to issue.
4	Round up to the next whole same size container if the number of containers is not a whole number (e.g. 54.3 containers would round up to 55 containers).
5	Distribute the total containers across the food package timeframe as evenly as possible (e.g.10, 9, 9, 9, 9, 9).

For example, a fully formula fed infant participant born January 1, 2006, would receive Food Package II from July through December, for a 6-month total timeframe. The infant may receive 24 ounces infant cereal per month, multiplied by 6 months, to equal a total of 144 ounces infant cereal. Currently, authorized infant cereal is packaged in 8- and 16-ounce containers. Therefore, either 18 8-ounce containers or 9 16-ounce containers of infant cereal would be provided over the food package timeframe. The 18 8-ounce containers can be divided equally by the 6-month food package timeframe and results in 3 8-ounce containers of infant cereal issued each month. The 9 16-ounce containers must be dispersed across the food package timeframe as evenly as possible, for example, two containers per month issued for three months and one container per month issued for three months on alternating months (e.g. 2, 1, 2, 1, 2, 1) to equal the 9 total containers.

The Department is seeking comments on the proposed methodology to round up and disperse infant formula and infant foods.

d. Department Soliciting Input on changes to infant feeding packages. The proposed infant feeding options represent a dramatic change in infant food package issuance procedures. The procedural changes affect not only assignment to one of three feeding options but impact the delivery of other nutrition services as well. We are aware

that WIC State agencies will experience challenges in staff training, assessment of the mother-infant dyad, programming of management information systems, and the provision of participant nutrition education. Successful implementation of the infant feeding options may require enhanced nutrition education, peer counseling, and referral activities to support the successful establishment of breastfeeding.

The Department is soliciting input on the potential impacts of the proposed changes to Food Package I and II, and any comments or suggestions on alternative options for FNS to consider. Specifically, FNS would like comments regarding the following:

- The three infant feeding options;
- Impact of proposed changes on breastfeeding rates;
- Staff training and building support for proposed changes among WIC staff;
- The expression of monthly maximum amounts of infant formula in reconstituted fluid ounces;
- The methodology used to round up infant formula and infant foods;
- Participant nutrition education; and
- Administrative feasibility.

C. Overview of Revised Food Package IV for Children

Currently there is one package for children without special dietary needs, Food Package IV for children ages 1 to 5 years (currently § 246.10(c)(4)). This proposed rule would continue to provide Food Package IV to children ages 1 through 4 years. However, as recommended by the IOM, only whole milk would be authorized for children age one year (12 through 23 months), and only milk with a fat content not to exceed two percent would be authorized for children 2 years of age and older. Compared with the current package, the revised food package, as recommended by the IOM, would include smaller amounts of milk and juice but would add fruits, vegetables, and whole grains. Cheese would continue to be allowed as a partial substitute for milk; however, the maximum cheese substitution would be reduced from current WIC regulations. As recommended by the IOM, with proper medical documentation, soy-based beverage and tofu would be authorized as substitutes for milk. As cited by the IOM Report, these changes would make the entire food package for children more consistent with the DGA 2005 [(12)] and help ensure a more balanced nutrient intake for WIC participants.

D. Overview of Revised Food Packages V, VI, and VII for Women

Currently, there are three food packages for women without special dietary needs. These are Food Package V for pregnant and breastfeeding women; Food Package VI for nonbreastfeeding postpartum women; and Food Package VII for breastfeeding women who do not receive infant formula for their infants from the WIC Program (currently § 246.10(c)(5) through (c)(7)). As recommended by the IOM, this proposed rule would retain these food packages, but as discussed in section V.B. of this preamble, would add for the purposes of assigning a food package, a definition of partially breastfeeding. Currently, a woman is certified to be eligible for the Program as a breastfeeding woman if she is breastfeeding on the average of at least once a day and meets other WIC eligibility criteria. Under this proposed rule, a woman would continue to be certified eligible as a breastfeeding woman if she is breastfeeding on the average of at least once a day. However, whether or not she receives a food package and which food package she is assigned would be based on the amount of infant formula she requests and receives from WIC for her infant and the age of the infant.

Under this proposed rule, Food Package V would be provided for pregnant and partially breastfeeding woman (up to 1 year postpartum) whose infants participate in the WIC Program and receive infant formula in amounts that do not exceed the maximum allowances for the partially-breastfed infant food packages, as appropriate for the age of the infant.

Food Package VI would continue to be provided for non-breastfeeding postpartum women (up to 6 months). Food Package VI would also be provided to partially breastfeeding postpartum women (up to 6 months) whose infants are receiving more than the maximum allowances for the partially breastfed infant food package, as appropriate for the age of the infant. In terms of the variety of foods and amounts offered, Food Package V for partially breastfeeding women is more desirable than Food Package VI. Food Package V provides whole wheat bread or other whole grains, peanut butter in addition to legumes, and more milk and juice than Food Package VI. Food Package VI does not provide whole wheat bread or other whole grains, and provides the option of peanut butter or legumes, but not both. The incentive value of Food Package V may encourage a higher level of breastfeeding among mothers who both breastfeed and formula-feed their infants.

Food Package VII would continue to be provided to fully breastfeeding women whose infants do not receive infant formula from the WIC Program. In addition, based on estimates of increased nutrient and energy needs of women pregnant with more than one fetus, these women, as recommended by the IOM, would now receive Food Package VII rather than Food Package V. Women who are fully breastfeeding multiple infants would be prescribed 1.5 times the maximum amounts of Food Package VII to cover their higher needs for energy and nutrients. Women partially breastfeeding multiple infants would receive also Food Package VII. Further, all breastfeeding women would be prescribed Food Package VII during the first month postpartum because their infants would not be receiving any infant formula from the WIC Program.

As recommended by the IOM, under this proposed rule Food Package VII, for fully breastfeeding women, would provide the greatest variety and quantity of food; and Food Package VI for postpartum women, would provide the least. Compared with the current food packages, all 3 revised food packages for women would provide smaller amounts of milk products, eggs, and juice; the same amount of iron-fortified cereal; add a requirement that cereals be whole grain; and would add fruits and vegetables. Whole grain bread or other whole grains would be added to Food Packages V and VII. The food packages for women would no longer authorize whole milk, and would allow several alternatives to cow's milk to address calcium needs. Canned light tuna would continue to be allowed in Food Package VII; canned salmon and sardines would be authorized as substitutes for light tuna.

Women greater than 6 months postpartum whose infants do not meet the definition of a partially breastfed infant. The IOM recommends that a partially breastfeeding woman who requests, after the sixth month postpartum, more than the maximum amount of formula for a partially breastfed infant, no longer be certified for the WIC Program. However, FNS has determined that this approach is incongruous with the definition of breastfeeding in WIC regulations at § 246.2—the practice of feeding a mother's breastmilk to her infant(s) on the average of at least once per day. In WIC, this definition is used to determine Program eligibility, and allows all breastfeeding women, regardless of feeding pattern, to participate in the WIC Program, be

counted as a breastfeeding woman, and receive supplemental foods, breastfeeding promotion and support, and referrals to health care. The definition recognizes that any breastfeeding, even if only on an average of once a day, provides some immunological and nutritional benefits that would otherwise not be provided to an infant.

As such, rather than adopt IOM's recommendation in its entirety, FNS proposes to revise the definition for WIC ''participation'' at § 246.2. The definition would now include the number of breastfeeding women who receive no supplemental foods or food instruments but whose breastfed infant(s) receives supplemental food or food instruments. Counting these women, although they are not receiving a food package, is consistent with the current practice of counting the infants of exclusively breastfeeding women. Therefore, a partially breastfeeding woman who requests, after the sixth month postpartum, more than the maximum amount of formula for a partially breastfed infant would no longer receive a food package but would continue to count as a WIC participant and receive other Program benefits (nutrition education, including breastfeeding promotion and support, and referrals to health and social services). This would serve to meet the intent of IOM's recommendations within the context of WIC regulations.

E. Inclusion of Fruits and Vegetables in Food Packages III through VII

As recommended by the IOM, this proposed rule would add a variety of fruits and vegetables to Food Packages III, IV, V, VI, and VII (currently § 246.10(c)(3) through (c)(7)). The IOM Report states that the addition of fruits and vegetables to WIC food packages is consistent with a major recommendation of the DGA 2005 [12]—namely, to increase daily intake of fruits and vegetables. The IOM's basis for recommending the addition of fruits and vegetables was the substantial body of literature that supports the association of fruit and vegetable consumption with reduced risk of chronic disease including stroke and perhaps other cardiovascular diseases, some cancers, and type 2 diabetes. Evidence also suggests that increased fruit and vegetable consumption may be useful in programs to promote and sustain loss of body weight in overweight individuals. The IOM and FNS received many public comments from health professionals, consumers, WIC Program staff, WIC participants, and others, advocating for the inclusion of fruits and vegetables in the WIC food packages.

1. Authorized Fruits and Vegetables

As recommended by the IOM, this proposed rule would include fresh and processed (canned, frozen, and dried) fruits and vegetables. Fresh, canned, and frozen fruits and vegetables would be authorized for children and women in Food Packages III through VII. Dried fruits and dried vegetables would be authorized for women in Food Packages III and V through VII. As recommended by the IOM, dried fruit and dried vegetables would not be authorized for children in Food Packages III or IV to reduce the risk of choking.

As recommended by the IOM, to improve the consumption of fresh fruits and vegetables and the appeal of this option, especially for people of different cultural backgrounds, this proposed rule would place minimal restrictions on participant choice of fresh produce. Because a fresh produce option might not be practical in some situations, a processed option and a combined fresh and processed option for fruits and vegetables are also proposed.

As recommended by the IOM, for children and adults in Food Packages III–VII, different physical forms of fruit and vegetable offerings are proposed, as follows.

a. Fresh fruits and vegetables.

- Any variety of fresh whole or cut fruit without added sugars; and
- Any variety of fresh whole or cut vegetable, except white potatoes, without added sugars, fats, or oils.

b. Processed fruits and vegetables (canned, frozen, and dried).

- Any variety of canned fruits, including applesauce; juice pack or water pack without added sugars, fats, oils, or salt (i.e., sodium);
- Any variety of frozen fruits without added sugars;
- Any dried fruit or vegetable without added sugars, fats, oils, or salt (i.e., sodium); and
- Any variety of canned or frozen vegetables, except white potatoes (orange yams and sweet potatoes are allowed), without added sugars, fats, oils.

2. Restrictions on Authorized Fruits and Vegetables

This proposed rule would not authorize:

- White potatoes (orange yams and sweet potatoes are allowed);
- Catsup or other condiments;
- Pickled vegetables and olives; or
- Soups.

IOM's recommended restriction on white potatoes is based on the amounts suggested in DGA 2005 [12] for consumption of starchy vegetables; food intake data indicating that consumption of starchy vegetables meets or exceeds these suggested amounts; and food intake data showing that white potatoes are the most widely used vegetable.

Although not addressed by IOM, the Department is proposing further restrictions on fruits and vegetables; and therefore this proposal would also not authorize:

- Herbs or spices;
- Edible blossoms and flowers, e.g., squash blossoms (broccoli, cauliflower and artichokes are allowed);
- Creamed or sauced vegetables;
- Vegetable-grain (pasta or rice) mixtures;
- Fruit-nut mixtures;
- Breaded vegetables;
- Fruits and vegetables for purchase on salad bars;
- Ornamental and decorative fruits and vegetables such as chili peppers on a string, garlic on a string; gourds, painted pumpkins;
- Fruit baskets and party vegetable trays;
- Fruit leathers and fruit roll-ups;
- Peanuts;
- Juices (juices are provided as a separate WIC food category);
- Canned and dried mature legumes (these legumes are provided as a separate WIC food category); and
- Items such as blueberry muffins and other baked goods.

3. Maximum Monthly Allowances

The IOM recommended that fruits and vegetables be provided at levels of $10 per month for women and $8 per month for children. However, as discussed earlier in this preamble, to achieve cost neutrality, the Department has reduced this recommendation by $2 for both women and children. Therefore, this proposed rule establishes the value of fruit and vegetable vouchers at levels of $8 per month for women and $6 per month for children. The Department welcomes comments or suggestions from State agencies regarding cost-neutral options for providing vouchers at the IOM-recommended levels.

a. Fresh produce option. Because few fresh fruits and vegetables are sold in uniform weight units with uniform bar codes, and their prices vary considerably across seasons, regions, and stores, they cannot be prescribed in quantity terms and still control the overall cost of the WIC food packages. Therefore, this proposal would include cash-value food instruments at the level of $8 per month for women and $6 per month for children for fresh fruits and vegetables.

Cash-value food instruments will be set at $6 for children and $8 for women in the year in which the proposed food package revisions take effect. FNS will adjust the maximum value of the vouchers in whole dollar increments to reflect the sum of annual, un-rounded increases in inflation using the Bureau of Labor Statistics' Consumer Price Index for Fresh Fruits and Vegetables. In the fiscal year in which the whole dollar increment accrues, the Department would have the option to increase the value of the fruit and vegetable vouchers by the whole dollar increment. If the Department elects this option, it would request the funding necessary for the additional program costs.

The recommendation to use cash-value food instruments for fresh fruits and vegetables is based on input IOM received from vendors in public meetings. The IOM also cited two recent pilot studies in which cash-value vouchers for fresh fruits and vegetables were provided to WIC participants. [18, 19] The experience from both pilot studies, albeit unpublished at the present time, suggests that providing fresh produce to WIC participants using cash-value vouchers increased the intakes of fruits and vegetables, added variety to the diets of WIC participants, and was highly acceptable to WIC participants of various ethnic/cultural backgrounds.

Because of greater participant choice, lower cost in many States, and potentially greater nutrient contribution from fresh produce, State agencies are encouraged to offer fresh produce to the extent possible.

b. Processed fruit and vegetables option. As recommended by the IOM, this proposal would allow processed (canned, frozen, and dried) fruits and vegetables to be substituted when fresh produce is limited and to accommodate participant preference. The Department proposes to also provide the processed options via the $8 or $6 cash-value food instrument. State agencies would be authorized to allow the cash-value food instrument to be used to obtain any combination of fresh produce and processed fruits and vegetables, thereby providing maximum flexibility for the participant. In addition, the ability to combine all fruit and vegetable options on one type of cash-value food instrument should reduce the administrative complexity for State agencies and vendors.

State agencies are encouraged to allow participants the wide variety of choices within the authorized fresh and processed options. To ensure participant choice among the fresh and processed fruit and vegetables authorized by the State agency, § 246.12(g)(3)(i) would be revised to require that vendors authorized by the State agency carry a minimum of two varieties each of fruits and vegetables, in any combination of fresh and processed. However, it is the Department's expectation that more than two varieties each of fruits and vegetables be authorized by State agencies. The Department welcomes comments or suggestions on ways to provide the widest variety of choice without introducing undue program complexity or administrative burden.

4. Implementation of Fruit and Vegetable Options

Under this proposed rule, State agencies would be encouraged to issue small denomination, such as $2, cash-value fruit/vegetable food instruments. In consideration of the perishable nature of fresh fruits and vegetables, small denominations are needed so the participant can obtain small amounts of fresh product at various times during the month, lessening the chance of food spoilage and waste. Any combination of authorized fresh or processed fruit or vegetable would be allowed in quantities with a value up to the amount of the cash-value food instrument(s). The Department welcomes comments or suggestions on implementation of fresh fruit and vegetable options.

a. Operational requirements for cash-value fruits and vegetables food instruments. Under this proposed rule, cash-value food instruments for fruits and vegetables, as with any WIC food instrument, would be subject to the requirements in § 246.12—Food Delivery Systems. Section 246.12 sets forth design and operational requirements for food delivery systems, including vendor authorization, accountability, redemption and disposition of food instruments.

b. Benefit delivery. While most of the proposed food package changes could be administered via existing State benefit delivery systems, the cash-value food instruments for the purchase of fruits and vegetables differs from other WIC benefits which provide specified quantities of approved food items. The fruit and vegetable benefit would require changes to WIC benefit delivery systems to accommodate a more open-ended benefit determined by a cash value rather than a fixed quantity of a specific food item. States and vendors would have to modify operations and procedures to issue, transact, and process the redemption of a cash value benefit. The implementation of a cash value paper voucher or check may prove administratively burdensome and prohibitively expensive given additional processing costs that may be applied to each transaction, depending on a State's benefit processing arrangement. The cost and implications of these changes in the existing WIC benefit delivery system is an area that must be carefully considered.

The fruit and vegetable benefit may lend itself to electronic benefit delivery in line with current trends in commercial retail transaction processing and consistent with the FNS 5–Year Plan for Electronic Benefit Transfer (EBT). While the majority of State WIC agencies deliver benefits via paper checks or vouchers, 5 States are testing the feasibility of EBT and an additional State has adopted EBT statewide. These pilots are testing and evaluating the feasibility of smartcard and online technologies. By 2008, FNS hopes to identify national model(s) that are technically and financially viable for retail transaction processing for WIC EBT.

Although it will take a number of years to implement WIC EBT fully in all States, the fruit and vegetable benefit may provide opportunities for alternative forms of benefit delivery and allow some States to move toward limited electronic benefit processing prior to the implementation of EBT for all WIC purchases. These solutions could provide participants with greater flexibility in redeeming benefits by allowing them to spread their purchases out across the month, although some solutions will likely prove prohibitively costly in relation to the cash value of the proposed benefit. FNS will explore the range of possibilities for using existing commercial infrastructure to administer the fruit and vegetable benefit including WIC EBT smartcard and online solutions as well as commercial debit cards and other technologies.

FNS will assess the administrative burden, technical feasibility, advantages and costs of alternative approaches to delivering the cash value benefit for fruits and vegetables. We recognize that this benefit will pose challenges and added costs for the existing paper voucher and check system and that various technical approaches may also be costly and complicated to develop, implement, and operate. Since the implications of alternative solutions are likely to vary across State WIC agencies depending on their current participating vendor characteristics and benefit delivery systems, several different options may be needed to deliver the cash value benefit throughout the Program. FNS seeks to minimize the complexity and cost associated with administering this benefit and invites

comments and suggestions on alternative approaches and considerations.

c. Farmers' markets. The Department proposes to allow the State agency to authorize farmers at farmers' markets to accept the WIC cash-value food instrument for fruits and vegetables. Such markets would have to meet vendor selection criteria specified at § 246.12(g)(3) and would be subject to the vendor agreement requirements outlined in § 246.12(h)(3).

F. Addition of Peanut Butter in Food Package V

As recommended by the IOM, this proposed rule would add 18 ounces of peanut butter in Food Package V (currently § 246.10(c)(5)) to improve the intake of several nutrients, including iron, folate, Vitamin E, and fiber, in the diets of pregnant and breastfeeding women. At present, Food Package V allows peanut butter only as an alternative to dry beans and peas.

G. Addition of Legumes in Food Package VI

As recommended by the IOM, this proposed rule would add 1 pound of dried beans or peas or, as an alternative, 18 ounces of peanut butter, to Food Package VI for postpartum women (currently § 246.10(c)(6)). Currently Food Package VI does not provide legumes of any kind. This addition would improve the intake of several nutrients, including iron, folate, Vitamin E, and fiber, in the diets of these participants.

H. Addition of Canned Mature Legumes as an Optional Substitute for Dry Legumes in Food Packages III–VII

As recommended by the IOM, this proposed rule would allow the substitution of canned mature beans/peas for dry mature beans/peas in Food Packages III, IV, V, VI and VII (currently § 246.10(c)(3) through (c)(7)). This substitution, currently authorized for homeless persons, would be allowed under this proposed rule to increase flexibility and variety in food choices for participants receiving Food Packages III–VII.

1. Authorized Types of Canned Beans

This proposed rule would allow any type of mature dry beans in canned form. Examples include but are not limited to black beans (''turtle beans''), blackeye peas (cowpeas of the blackeye variety, ''cow beans''), garbanzo beans (chickpeas), great northern beans, kidney beans, lima beans (''butter beans''), pinto beans, navy beans, soybeans, split peas, and lentils. Baked beans may be provided for participants with limited cooking facilities, at the State agency's discretion.

2. Restrictions on Authorized Types of Canned Beans

This proposed rule would not authorize the following forms of canned beans:

- Soups;
- With the exception of baked beans, those containing added sugars, fats, meat or oils as purchased;
- Immature varieties of legumes, such as those used in canned green peas, green beans, snap beans, orange beans, and wax beans; or
- Baked beans with meat, e.g., beans and franks.

3. Maximum Monthly Substitution Rate

As recommended the by the IOM, this proposed rule would allow the substitution of 64 ounces (e.g., four 16-ounce cans) of canned mature beans/peas for 1 pound of dry mature legumes in Food Packages III–VII.

Although not addressed by IOM, the Department proposes to allow the following additional substitutions in Food Package V and VII:

- 1 pound dry and 64 ounces of canned beans/peas (and no peanut butter)

Or

- 2 pounds dry or 128 ounces of canned beans/peas (and no peanut butter)

Or

- 36 ounces of peanut butter (and no beans).

I. Addition of Whole Wheat Bread or Other Whole Grains to Food Packages III, IV, V, VII

As recommended by the IOM, this proposal would add whole wheat bread or other whole grains for children and pregnant and breastfeeding women in Food Packages III, IV, V and VII (currently § 246.10(c)(3) through (c)(5), and (c)(7)). This addition responds to recommendations of the DGA 2005 [12] to consume at least 3 servings per day of whole grains to reduce the risk of coronary heart disease and type 2 diabetes, to help with body weight maintenance, and to increase intake of dietary fiber.

1. Authorized Whole Grains

This proposed rule would include any bread that conforms to the Food and Drug Administration (FDA) standard of identity for whole grain bread as defined by 21 CFR 136.180 or that meets labeling requirements for making a health claim as a ''whole grain food with moderate fat content'' as defined by FDA in its December 9, 2003, *Health Claim Notification for Whole Grain Foods with Moderate Fat Content* at *http://www.cfsan.fda.gov/~dms/flgrain2.html* (e.g., must contain a minimum of 51% whole grains). Proposed allowable substitutions for whole grain bread would include brown rice, bulgur, oatmeal, and whole-grain barley without added sugars, fats, oils, or salt (i.e., sodium). Under this proposed rule, soft corn or whole wheat tortillas without added fats or oils would be allowed at the State agency's option. Using the minimum requirements and specifications in proposed § 246.10(e)(12), State agencies would determine which types and brands of whole grain products to allow on State food lists.

2. Maximum Monthly Allowance

As recommended by the IOM, this proposed rule would allow 2 pounds of whole grain bread or other whole grain options for children in Food Packages III and IV; and 1 pound of whole grain bread or other whole grain options for women in Food Packages III, V and VII.

J. Milk and Milk Alternatives

As recommended by the IOM, this proposed rule would continue to provide milk in food packages for children and women (currently § 246.10(c)(4) through (c)(7)) as an important and concentrated source of vitamin D and calcium. This proposed rule would also authorize State agencies to provide alternatives for milk for individuals with lactose maldigestion and for those who avoid milk for cultural, religious, or other reasons. To maintain the nutritional content and cost neutrality of the food packages, some alternatives for milk (i.e., calcium-set tofu and cheese) would be allowed in limited amounts.

1. Nomenclature

This proposed rule uses terminology for fat-reduced milk products as required by FDA on labeling for milk and milk products (21 CFR 101.62), i.e., ''reduced fat'' has two percent milk fat, ''low fat'' has one percent milk fat, and ''nonfat'' is skim or fat-free. The term ''fat-reduced'' is used in this proposal to refer to all varieties with two percent or less milk fat.

2. Authorized Milks

As long as a milk conforms to the FDA standard of identity for milk as defined by 21 CFR Part 131 and meets WIC Federal requirements, it is an authorized milk in Food Packages IV, V, VI, and VII (currently § 246.10(c)(4) through (c)(7)). WIC regulations also

require that all authorized milks must be pasteurized and contain at least 400 International Units of vitamin D per quart (100 IU per cup) and 2000 International Units of vitamin A per quart (500 IU per cup).

As recommended by the IOM, under this proposed rule, only whole milk (not less than 3.25% milk fat) is authorized for children less than 2 years of age in Food Package IV (currently § 246.10(c)(4)). For children two years of age and older and women (adolescent and adult) in Food Packages IV, V, VI, and VII (currently § 246.10(c)(4) through (c)(7)), this proposed rule would authorize only milk with no more than 2% milk fat.

3. Maximum Monthly Milk Allowances

The current maximum monthly allowances provide about 3.2 cups of milk a day for children and postpartum women and about 3.7 cups a day for pregnant and all breastfeeding women. As recommended by the IOM, this proposed rule would decrease the maximum monthly allowances for milk in all food packages. Reducing the amount of milk provided through WIC is consistent with recommended limits on saturated fat, total fat, and cholesterol consumption put forth in the DGA 2005 [12]. According to the IOM, amounts of milk provided by the WIC food packages need not exceed amounts recommended by DGA 2005 [12]. Therefore, this proposed rule would reduce the maximum monthly milk allowances for children 1 through 5 years and postpartum women from 24 quarts to 16 quarts, which would provide 2.1 cups per day. This proposed rule would reduce the maximum monthly milk allowances for pregnant and partially breastfeeding women from 28 to 22 quarts of milk (2.9 cups per day); and would reduce the maximum monthly milk allowances for fully breastfeeding women from 28 quarts to 24 quarts of milk (3.2 cups per day).

a. Substitution rates of evaporated milk. This proposed rule would change the substitution rate of evaporated milk for fluid milk in Food Packages IV, V, VI, and VII (currently § 246.10(c)(4) through (c)(7)). The current substitution rate is 13 fluid ounces of evaporated milk (or 26 fl. oz. reconstituted evaporated milk) per quart (or 32 fl. oz.) of fluid milk. This proposal would increase the substitution rate to 16 fluid ounces of evaporated milk per 32 fluid ounces of fluid milk or a 1:2 fluid ounce substitution ratio. This is based on a dilution rate of equal parts evaporated milk and water (i.e., 12 oz. can evaporated milk + 12 oz. water = 24 oz. reconstituted milk) and would ensure that participants issued evaporated milk would receive the same maximum monthly allowance of milk (reconstituted) as those issued fluid milk . The substitution rate is the same for both evaporated whole and evaporated fat reduced milks. When a combination of different milk physical forms (e.g., fluid plus evaporated) is provided, State agencies would have to ensure that the full maximum monthly allowances for milk are issued in Food Packages IV through VII.

b. Substitution rates of dry milks. This proposed rule would change how the substitution rates of dry milks for fluid milk issued in Food Packages IV, V, VI, and VII (§ 246.10(c)(4) through (c)(7)) are expressed. Currently the rates are stated as:

- 1 pound of nonfat or lowfat dry milk per 5 quarts of fluid whole milk; or
- 1 pound of dry whole milk per 3 quarts of fluid whole milk.

The Department proposes to express the new substitution rates in terms of reconstituted fluid ounce yields of dry milk to make it easier for State agencies to calculate the amount of dry milk to substitute for fluid milk. Although the container sizes commonly available for dry milks vary in weight, the reconstituted yields are consistent with the substitution ratios of dry milk to fluid milk stated above. For example, a 25.6 oz. box of nonfat dry milk reconstitutes to 8 quarts of fluid milk. This yield is consistent with the 1 pound of nonfat dry milk per 5 quarts of fluid whole milk WIC substitution ratio.

The proposed change will better accommodate the wide range of container sizes for dry milks now on the market and those that may be added in the future. When a combination of different milk physical forms (e.g., fluid plus nonfat dry) is provided, State agencies would have to ensure that the full maximum monthly milk allowances are issued in Food Packages IV–VII.

4. Authorized Substitutions for Milk (Cheese, Tofu, Soy-Based Beverage)

As recommended by the IOM to provide more flexibility for WIC State agencies and more variety and choice for WIC participants, this proposed rule would allow cheese to be substituted for milk for children at the rate of 1 pound of cheese per 3 quarts of milk. No more than 1 pound of cheese may be substituted for milk. State agencies could authorize, with medical documentation, amounts of cheese that exceed this substitution maximum for children in Food Package IV, up to the maximum allowance for fluid milk, in cases of lactose intolerance or other qualifying conditions.

For women, this proposed rule would allow cheese or calcium-set tofu to be substituted at the rate of 1 pound of cheese per 3 quarts of milk or 1 pound of tofu per 1 quart of milk. A maximum of 4 quarts of milk can be substituted in this manner in Food Packages V and VI; however, no more than 1 pound of cheese may be substituted for milk. A maximum of 6 quarts of milk can be substituted in this manner in Food Package VII; therefore, a maximum of two pounds of cheese may be substituted for milk in Food Package VII. State agencies could authorize, with medical documentation, amounts of cheese or calcium-set tofu that exceed these substitution maximums, up to the maximum allowance for fluid milk, in cases of lactose intolerance or other qualifying conditions.

This proposed rule would authorize soy-based beverage to be substituted for milk for women in Food Packages V, VI and VII at the rate of 1 quart of soy-based beverage for 1 quart of milk up to the total maximum allowance of milk. Under this proposed rule, soy-based beverage and tofu are not allowed as substitutes for milk for children in Food Package IV without medical documentation. The qualifying conditions may include, but are not limited to, milk allergy, severe lactose maldigestion, and vegan diets. Requiring medical documentation ensures that a child's medical provider is aware that the child may be at nutritional risk when milk is replaced by other foods. State agencies could authorize, with medical documentation, soy-based beverages to be substituted for milk for children in Food Package IV on a quart for quart basis up to the total maximum allowance of milk. Tofu may be substituted, with medical documentation, for milk for children in Food Package IV at the rate of 1 pound of tofu per 1 quart of milk up to the total maximum allowance of milk.

a. *Authorized cheese.* This proposed rule would clarify that a cheese that is a blend of authorized WIC cheeses (any combination of domestically produced, made with 100% pasteurized milk, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, part-skim or whole Mozzarella, pasteurized American processed) is a WIC-eligible food. This proposed rule would clarify that cheeses that are labeled low, free, reduced, less, or light in the nutrients sodium, fat, or cholesterol are WIC-eligible.

b. *Authorized tofu.* To be authorized, the tofu must be calcium-set (prepared with only calcium salts, e.g., calcium

sulfate), and may not contain added fats, sugars, oils or sodium. Under this proposed rule, tofu is not allowed as a substitute for milk for children in Food Package IV without medical documentation.

c. *Authorized soy-based beverages.* Section 102 of the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108–265) requires that nondairy beverages offered as an alternative to fluid milk in the National School Lunch Program and School Breakfast Program must be nutritionally equivalent to fluid milk and meet nutritional standards set by the Secretary of Agriculture. FNS believes that it is imperative for WIC and the school nutrition programs to use the same standards for defining allowable soy-based beverages as alternatives to fluid milk. In setting minimum nutritional standards for soy-based beverages, FNS considered the IOM recommendations and Food and Drug Administration (FDA) standards, and examined the nutrient levels found in various types of milk using the Nutrient Database for Dietary Studies. [20] IOM recommended allowing as milk alternatives only soy-based beverages that are fortified to contain nutrients in amounts similar to cow's milk. The IOM also recommended minimum levels per cup of 300 mg calcium and 120 International Units (IU) vitamin D. FDA, at 21 CFR Part 131, specifies that if added, milk should provide not less than 2000 IU vitamin A per quart (500 IU per cup) and 400 IU vitamin D per quart (100 mg per cup.) Among the varieties of fluid milk, whole milk (3.25% milkfat) typically provides the lowest levels of several nutrients. Since soy beverage may be allowed as a substitute for milk over a variety of fat content levels, a single, broadly applicable standard is needed. Further, FNS believes that the statutory requirement of Public Law 108–265 for nutritional equivalency takes precedence over the IOM recommendations for WIC. Therefore, whole milk was used as a benchmark for all nutrients except vitamins A and D, which already have Federally-established standards for fortification of fluid milk. The chosen levels of vitamins A and D derive from the milk fortification levels required by the FDA. Based on the above, this rule proposes that authorized soy-based beverages provide, at a minimum, the following nutrients:

	Per cup
Calcium	276 milligrams (mg).
Protein	8 grams.
Vitamin A	500 International Units (IU).
Vitamin D	100 IU.
Magnesium	24 mg.
Phosphorus	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B12	1.1 mcg.

K. Cereal (for Women and Children)

1. Nomenclature

This proposed rule would adopt the term ''breakfast cereal'' as a substitute for the terms ''cereal (hot or cold)'' and ''adult cereal (hot or cold)'' currently used in § 246.10(c). FDA regulations (21 CFR 170.3(n)(4)) define breakfast cereals as those including ready-to-eat and instant and regular hot cereals. This term is consistent with USDA's long-standing interpretation of WIC cereals (hot or cold) as meaning breakfast cereals that are either ready-to-eat or those cereals (e.g., oatmeal, grits, cream of wheat) that require the addition of a liquid (e.g., water or milk) and heating or cooking before being served.

2. Authorized Cereals

As recommended by the IOM, this proposal would add new minimum requirements for WIC breakfast cereals in Food Packages III, IV, V, VI, and VII (currently § 246.10(c)(3) through (c)(7)). To address current dietary guidance to increase whole grains and lower saturated fat and cholesterol, proposed authorized WIC breakfast cereals must meet labeling requirements for making a health claim as a ''whole grain food with moderate fat content'' as defined by FDA in its December 9, 2003, ''Health Claim Notification for Whole Grain Foods with Moderate Fat Content'' at *http://www.cfsan.fda.gov/dms/flgrain2.html* (e.g., must contain a minimum of 51% whole grains). In addition, all authorized WIC breakfast cereals must continue to contain a minimum of 28 mg per iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per dry ounce). In Food Package III, infant cereal may be substituted for breakfast cereal for children and women.

L. Eggs

This proposed rule would change the maximum monthly allowance for fresh shell eggs from the current 2 or 2½ to 1 dozen fresh shell eggs for children and women in Food Packages IV, V, and VI. This recommendation is consistent with recommendations of the IOM [8] and the DGA 2005 [12] to reduce cholesterol. In addition, the IOM determined that protein is no longer a priority nutrient for the WIC population. For fully breastfeeding women in Food Package VII, the maximum monthly allowance would be 2 dozen eggs. The quantity of eggs provided by the revised packages is comparable with the average amount of eggs consumed by children who are participating in the WIC Program. [21]

This proposed rule would allow the substitution of pasteurized liquid whole eggs, or dried egg mix for fresh shell eggs in these same food packages on an equivalent yield ready to eat versus weight or volume basis to accommodate differences among brands of these egg products. The proposed rule would authorize hard boiled eggs, where readily available for purchase in small quantities, for homeless participants.

M. Canned Fish

As recommended by the IOM, this proposed rule would authorize 30 ounces of a variety of canned fish that do not pose a mercury hazard, as identified by federal advisories of the Food and Drug Administration and the U.S. Environmental Protection Agency, [22] in Food Package VII for fully breastfeeding women (currently § 246.10(c)(7)). For ease of administration by State agencies, to accommodate participant preferences, and to minimize intake of mercury, this proposed rule would authorize the following varieties of canned fish—light tuna, salmon, and sardines. The Department seeks comments on additional canned fish to offer in Food Package VII. This proposed rule would clarify that fish packaged in foil bags (''pouches'') are WIC-eligible.

N. Juice

This proposed rule would clarify that authorized juices must be 100 percent unsweetened fruit/vegetable juice or blends of these juices, and contain a minimum of 30 milligrams of vitamin C per 100 milliliters of juice. This proposed rule would clarify that juices that are fortified with other nutrients may be allowed at the State agency's option. This proposed rule would also require that juices be pasteurized.

The Department acknowledges that 100 percent citrus juices (i.e., orange, grapefruit, tangerine and blends of these juices) should naturally contain at least 30 milligrams of vitamin C per 100 milliliters of juice. To ease the administrative burden on State agencies in approving juices, this proposed rule would not require the verification of vitamin C content for 100 percent citrus juices. However, verification of vitamin C content for non-citrus juices would be a requirement.

As recommended by the IOM, this proposed rule would change the maximum monthly allowance of juice for women and children in Food Packages IV, V, VI, and VII (currently § 246.10(c)(4) through (c)(7)). For children in Food Packages III and IV, the proposed maximum monthly allowance of juice is 128 fluid ounces of single strength juice (4.3 fluid ounces per day). For pregnant and partially breastfeeding women in Food Package V and fully breastfeeding women in Food Package VII, the proposed maximum monthly allowance of juice is 144 fluid ounces (4.8 fluid ounces per day). For postpartum women in Food Package VI, the proposed maximum monthly allowance of juice is 96 fluid ounces (3.2 fluid ounces per day).

In its Report, the IOM states that deleting or reducing the quantity of juice in the WIC food packages helps allow for the inclusion of whole fruits and vegetables while containing food costs. The reduction in the amount of juice provided for children to about 4 ounces per day is consistent with the AAP recommendation for that age group. [14] The AAP also notes that juice does not provide any additional nutritional benefit beyond that of whole fruit. The reduced amount of juice for women is consistent with the recommendation of the DGA 2005 [12] that whole fruits be used for a majority of the total daily amount of fruit.

In Food Packages III, IV, V, VI and VII, this proposed rule would allow the substitution of shelf-stable and frozen concentrated juices for single strength juice. The proposed rule would allow combinations of single strength and concentrated juices provided that the total volume does not exceed the maximum monthly allowance for single-strength juice.

O. Peanut Butter

This proposed rule clarifies that reduced fat peanut butter is an optional alternative for regular peanut butter in Food Packages III, IV, V, VI and VII (currently § 246.10(c)(3) through (c)(7)) provided that it meets the FDA standard of identity for peanut butter as defined by 21 CFR 164.150. That is, it must contain 90 percent peanuts by weight, contain no more than 10 percent by weight of seasonings and stabilizing ingredients, and contain no more than 55 percent of fat by weight.

P. Revisions in Food Package III and Their Effect on Food Packages I and II

Food Package III (currently § 246.10(c)(3)) was initially designed for women and children with special dietary needs. The IOM recommended that this unique aspect of Food Package III be retained; however, it recommended that infants with qualifying conditions be assigned to this food package to facilitate efficient management and tracking of the benefits and costs of providing supplemental foods to these participants. The IOM also recommended that the foods contained in Food Package III be restrictive only to the extent dictated by the participant?s health condition. This rule proposes these recommendations and, in addition, certain technical adjustments found necessary by the Department.

This rule proposes the following changes in Food Package III:

- Adds medically fragile infants to the population served;
- Revises the maximum monthly allowances for WIC formulas;
- Clarifies the purpose and the qualifying conditions that it serves;
- Includes other WIC food(s), when not medically contraindicated, up to the same maximum monthly allowance authorized for Food Packages II, and IV through VII; and
- Clarifies the physical forms of authorized WIC-eligible medical foods.

Over the years the Department has received numerous requests from WIC State agencies, advocates and participants to revise this food package to better meet the needs of the medically fragile. The Department recognizes that this nutritionally vulnerable segment of the nation's population has very special needs and WIC can assist in helping to address many of those nutritional needs. Some participants issued this food package may require a type of formula for which there is no substitute and their health would be seriously jeopardized if they did not receive this food package.

The Department is proposing to revise Food Package III to serve all medically fragile WIC participants under the same food package and to include other supplemental foods when not medically contraindicated. The Department estimates that the current subgroup of participants who have medical conditions to receive Food Package III is only about 1–2 percent of the total WIC caseload. The inclusion of other supplemental foods in this food package would provide flexibility in accommodating the wide range of different nutritional needs of the participants served by this food package.

1. Categories of Participants Served by Food Package III

Food Package III (currently § 246.10(c)(3)) serves only women and children who have a diagnosed medical condition when the use of conventional foods is precluded, restricted or inadequate to meet their nutritional needs. These medical conditions include, but are not limited to, metabolic disorders, inborn errors of amino acid metabolism, gastrointestinal disorders, malabsorption syndromes and food allergies.

Infants with qualifying medical conditions currently receive either Food Package I, which serves infants 0–3 months of age, or Food Package II for infants 4–12 months of age. These infants have the same diagnosed medical condition(s) cited for women and children who currently receive Food Package III.

The Department is proposing to revise § 246.10(c)(1) through (c)(3) of Program regulations for Food Packages I, II and III in order to serve all medically fragile participants with qualifying conditions, including infants, with Food Package III. The revised title for this food package would be ''Food Package III—Participants With Qualifying Conditions''. Under revised Food Package III, infants would receive exempt infant formula and appropriate supplemental foods for the age and feeding option of the infant, when not medically contraindicated; children and adults would receive WIC formula (WIC-eligible infant formula, exempt infant formula, or WIC-eligible medical food) and appropriate supplemental foods, when not medically contraindicated.

Infants who do not have a qualifying condition to receive exempt infant formula in Food Package III would continue to be served either under Food Package I or II, as deemed appropriate for their age and feeding option. Both Food Packages I and II would continue to authorize a variety of WIC-eligible infant formulas, consistent with Federal WIC regulations, State agency policies and authorization, and infant formula rebate contract agreements with manufacturers.

2. Qualifying Conditions Under Food Package III

The Department is aware that in the past some State agencies have experienced difficulty in determining which medical conditions qualify under Food Package III. For these reasons, this proposed rule would clarify the types of conditions that would qualify participants as medically fragile participants eligible to receive Food Package III. Food Package III would be reserved for participants who have one or more qualifying conditions and, as a result of the qualifying condition,

require a WIC formula (infant formula, exempt infant formula or WIC-eligible medical food) to supplement their nutrition needs as determined by the participant?s health care professional who is licensed to write medical prescriptions under State law. The WIC formulas prescribed in this food package provide nutritional support for specific conditions that are clinically serious or life-threatening and are generally required for long periods of time. The qualifying conditions include but are not limited to premature birth, low birth weight, failure to thrive, inborn errors of metabolism and metabolic disorders, gastrointestinal disorders, malabsorption syndromes, immune system disorders, severe food allergies that require an elemental formula, and life threatening disorders, diseases and medical conditions that impair ingestion, digestion, absorption or the utilization of nutrients that could adversely affect the participant?s nutrition status.

3. Restricted Uses of Food Package III

Under this proposed rule, Food Package III would not be authorized for infants whose only condition is:

- A diagnosed formula intolerance or food allergy to lactose, sucrose, milk protein, or soy protein that does not require the use of an exempt infant formula; or
- A non-specific formula or food intolerance.

Infants with these infant formula intolerances or food allergies would not receive revised Food Package III but instead would receive either revised Food Package I or II based on age and feeding option, as described in section V.B. of this preamble. Food Package I and II have collectively provided infant formulas that are soy-based, lactose-free, or sucrose-free to accommodate most food intolerances or food allergies. While commercially available infant formulas in the United States may vary by containing different ingredients to address such intolerances and allergies, these infant formulas are still considered to be infant formulas (as opposed to exempt infant formulas) as long as the definition and requirements of § 246.2 are met. Therefore, Food Packages I and II would continue to authorize a variety of infant formulas, consistent with State agency policies and infant formula rebate contract agreements with manufacturers for infants with food intolerances and/or food allergies who do not have qualifying conditions in order to receive exempt infant formulas.

Proposed Food Package III would not be authorized for a child or woman with a non-qualifying condition, such as a food dislike, or food intolerance (i.e. lactose intolerance) or a suspected but unconfirmed allergy (i.e. milk protein allergy). Currently other supplemental foods, such as cheese and lactose-free milk, are available and encouraged to address lactose intolerance. Proposed food packages IV–VII , described in sections V.C. and V.D. of this preamble, include new foods as substitutes or alternatives to milk, such as soy-based beverage and calcium-set tofu, that may provide more flexibility to the State and the participant, may be easier to obtain in retail establishments, and may be more appropriate to meet the nutritional needs of the participants who do not have a qualifying condition. The use of conventional foods when appropriate is important due to the additional nutrients, fiber and other benefits that conventional foods provide. WIC nutrition education supports the importance of obtaining nutrients from foods when appropriate and that a balanced diet remains the preferred overall source of nutrients.

4. Authorized Foods in Food Package III

Section 246.10(c)(3) of current regulations lists the authorized foods for children and women receiving Food Package III as WIC formula (infant formula, exempt infant formula and WIC-eligible medical foods), cereal and juice. As recommended by the IOM, this proposed rule would expand the WIC food categories offered in Food Package III of WIC formula, cereal and juice by adding milk and milk alternatives, fruits and vegetables, eggs, whole wheat bread, legumes and/or peanut butter, cheese, fish and infant foods, as medically appropriate and prescribed. Exempt infant formula would be the only WIC formula authorized for infants in revised Food Package III. Infant formula, exempt infant formula and WIC-eligible medical foods would be authorized for children and women in revised Food Package III.

5. Authorized WIC Formulas

Current authorized WIC formulas (infant formulas, exempt infant formulas, and WIC-eligible medical foods) are defined in § 246.2 of WIC regulations.

WIC formulas are generally described as follows:

- Infant formulas are food substitutes for human milk for generally healthy, full-term infants;
- Exempt infant formulas are food substitutes for human milk for both pre-term or full-term infants who have a nutritionally-related medical problem; and
- WIC-eligible medical foods are specifically formulated to provide nutritional support for participants with a diagnosed medical condition.

The Department proposes to revise the existing definition for ''WIC-eligible medical foods'' in § 246.2 to clarify that medical foods are designed for children (12 months and older) and adults. Infants served under Food Package III cannot receive WIC-eligible medical foods.

6. Products Not Authorized as WIC Formulas

Products not authorized as WIC formulas or foods in Food Package III or any other food package include, but are not limited to:

- Medicines or drugs, as defined and regulated under the Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), as amended;
- Parenteral or intravenous nutrition products;
- Enzymes;
- Flavoring and thickening agents;
- Oral rehydration fluids or electrolyte solutions;
- Sports or breakfast drinks; and
- Over-the-counter weight control/loss products.

In addition, all apparatus or devices (*e.g.*, feeding tubes, bags and pumps) designed to administer WIC formulas are not WIC-allowable costs.

7. Physical Forms of WIC Formulas

a. Current Physical Forms. WIC regulations for Food Packages I, II and III (§ 246.10(c)(1) through (c)(3)) identify the three physical forms of WIC formulas as concentrated liquid, powder and ready-to-feed (RTF) in liquid form.

b. Ready to Feed in Other Than Liquid Forms. New formulas and medical foods have been developed due to advancements in technology and these products do not strictly conform to the current physical form descriptions. While different forms of infant formula and exempt infant formula could be developed, it is anticipated that the largest variety of physical forms will be within the WIC-eligible medical foods category. The forms of WIC-eligible medical foods currently available include, but are not limited to, ready-to-feed bars, ready-to-eat puddings, and gels and capsules specifically designed for inborn errors of metabolism. The Department has determined that some of these products meet the minimum Federal WIC requirements for a WIC-eligible medical food, however the technical guidance regarding how to determine maximum monthly allowances is being considered in light of the IOM report recommendations that

powder and ready-to-feed forms may be substituted for liquid concentrate on an equivalent nutritional basis. Inclusion of these additional forms of WIC-eligible medical foods into Federal WIC regulations and their appropriate maximum monthly allowances would increase flexibility for State agencies to help meet the nutritional needs of the medically fragile participant. FNS is seeking comments on the appropriate equivalent standard to be used (*e.g.*, protein equivalent, kilocalorie equivalent, volumetric or weight equivalent, number of serving equivalents, and/or other type of equivalent) to determine maximum monthly allowances for WIC-eligible medical foods in these new physical forms (*e.g.*, bars, gels, and capsules) for those medically fragile participants served by Food Package III. Comments are also requested regarding how to determine maximum monthly allowances for WIC-eligible medical foods prescribed to children and women that are only available in ready-to-feed forms such as capsules or gels and therefore the liquid concentrate equivalent does not exist.

c. Restrictions for Issuing RTF Forms of WIC Formulas. Current regulations (§ 246.10(c)(1)(ii)) governing Food Packages I and II restrict the issuance of WIC formulas in RTF liquid form to only the following conditions:

- The participant's household has an unsanitary or restricted water supply or poor refrigeration.
- The participant or person caring for the participant may have difficulty in correctly diluting concentrated forms or reconstituting powder forms, or the WIC formula is only available in RTF form.

This proposed rule would continue to include these same restrictions for issuing a WIC formula in a RTF form issued under revised Food Package III. However, recognizing the needs of participants with qualifying conditions, this proposed rule would expand upon these restrictions to also authorize a RTF form in Food Package III when the product:

- Better accommodates the participant's medical condition (*e.g.*, RTF semi-solids for swallowing disorders and RTF forms to reduce the possibility of food contamination and risk of infection in cases of immune system disorders); or
- Improves the participant's compliance in consuming the prescribed formula (*e.g.*, improved taste of RTF solid bars versus RTF liquid forms of WIC-eligible medical foods).

This proposed rule would continue to authorize the WIC local agency competent professional authority, in consultation with the participant's attending health care provider when appropriate, to determine and document if a WIC formula in a RTF form is required.

8. Maximum Monthly Allowances for Food Package III

As recommended by the IOM, this proposed rule would revise Food Package III to serve medically fragile women, infants and children with qualifying conditions. These participants would receive up to the same maximum monthly amounts of supplemental foods unless medically contraindicated, as those same participant categories (infants, children, pregnant or partially breastfeeding women, non-breastfeeding postpartum women, and fully breastfeeding women) who do not have a qualifying condition.

a. Infants, ages birth through 11 months. Infants with a qualifying condition would receive exempt infant formula and infant foods in up to the same maximum monthly allowances as infants of the same age and feeding option with no qualifying condition who are issued Food Packages I or II unless medically contraindicated.

b. Children, ages 1 year through 4 years. A child with a qualifying condition would receive up to 455 fluid ounces in liquid concentrate form of WIC Formula (infant formula, exempt infant formula, or WIC-eligible medical food). Formulas in other forms, such as powder or RTF could be substituted by providing nutritional equivalent amounts. Unless medically contraindicated, the participant may receive any or all of the following supplemental foods in up to the maximum monthly amounts with medical documentation—milk and milk alternatives, juice, breakfast cereal (hot or cold), eggs, fruits and vegetables, whole wheat bread or other whole grains, legumes, or peanut butter.

c. Pregnant or partially breastfeeding. A pregnant, or partially breastfeeding woman, whose participating infant receives formula in amounts that do not exceed the maximum allowances provided by Food Packages I or II for partially breastfeeding infants, as appropriate for the age of the infant, and who has a documented qualifying condition would receive up to 455 fluid ounces in liquid concentrate form of WIC Formula (infant formula, exempt infant formula, or WIC-eligible medical food). Formulas in other forms, such as powder or RTF could be substituted by providing nutritional equivalent amounts. Unless medically contraindicated, the participant may receive any or all of the following supplemental foods up to the maximum monthly amounts with medical documentation—milk and milk alternatives, juice, breakfast cereal (hot or cold), eggs, fruits and vegetables, whole wheat bread or other whole grains, legumes, and peanut butter.

d. Postpartum. A non-breastfeeding postpartum woman (up to 6 months postpartum) or a breastfeeding postpartum woman (up to 6 months postpartum) whose partially breastfed infant receives formula in amounts that exceed the maximum allowances provided by Food Packages I or II for partially breastfeeding infants, as appropriate for the age of the infant, and who has a documented qualifying condition would receive up to 455 fluid ounces in liquid concentrate form of WIC Formula (infant formula, exempt infant formula or WIC-eligible medical food). Formulas in other forms, such as powder or RTF, could be substituted by providing nutritional equivalent amounts. Unless medically contraindicated, the participant may receive any or all of the following supplemental foods up to the maximum monthly amounts with medical documentation—milk and milk alternatives, juice, breakfast cereal (hot or cold), eggs, fruits and vegetables, legumes, or peanut butter.

e. Fully breastfeeding. A fully breastfeeding woman (up to 1 year postpartum) whose infant does not receive formula from WIC; all breastfeeding women during the first month postpartum; women pregnant with two or more fetuses; and women partially breastfeeding multiple infants (up to 1 year postpartum) with a qualifying condition would receive up to 455 fluid ounces in liquid concentrate form of WIC Formula (infant formula, exempt infant formula, or WIC-eligible medical food). Formulas in other forms, such as powder or RTF, could be substituted by providing nutritional equivalent amounts. Unless medically contraindicated, the participant may receive any or all of the following supplemental foods up to the maximum monthly amounts with medical documentation—milk and milk alternatives, juice, breakfast cereal (hot or cold), cheese, eggs, fruits and vegetables, whole wheat bread or other whole grains, fish (canned), legumes, and peanut butter. Women fully breastfeeding multiple infants (up to 1 year postpartum) with a qualifying condition would be prescribed 1.5 times the maximum amounts of supplemental foods provided by Food Package III with medical documentation.

The Department recognizes that the types of qualifying conditions

warranting Food Package III are varied and can impose different dietary restrictions on participants. For example, the presence of an inborn error of amino acid metabolism, such as phenylketonuria, known as PKU, would severely limit the types of traditional foods a participant could have, especially those high in protein. For these participants, the maximum monthly allowances of a WIC formula may be warranted to meet their special protein needs, but some of the food categories of the other allowable supplemental foods (e.g., eggs, legumes and fish) may be medically prohibited.

The combination of WIC food options made available under revised Food Package III would provide flexibility in accommodating the wide range of different nutritional needs of the participants served by this food package.

9. Coordination with Other Programs That Provide or Reimburse for Formulas

This proposal would require WIC State agencies to coordinate with other Federal, State, or local government agencies or with private agencies that operate programs that also provide or reimburse, or could provide or reimburse, for exempt infant formula and WIC-eligible medical food benefits that may be authorized by WIC State agencies.

Such coordination recognizes that WIC participants could fully participate in and benefit from other assistance programs. At a minimum, WIC State agencies would be required to coordinate with the Medicaid Program regarding the provision of exempt infant formulas and WIC-eligible medical foods prescribed for WIC participants who are also Medicaid recipients. The WIC State agency would be responsible for providing up to the maximum amount of exempt infant formulas and WIC-eligible medical foods under Food Package III in situations where reimbursement is not provided by another entity.

In coordinating with programs on the provision of WIC-authorized exempt infant formulas and WIC-eligible medical foods, the Department strongly encourages WIC State agencies to:

- Become knowledgeable of the participant eligibility criteria for receiving exempt infant formula and WIC-eligible medical foods benefits from other programs;
- Implement a formula agreement or memorandum of understanding with these other programs to share the responsibility of meeting the exempt infant formula and WIC-eligible medical foods need of mutual participants;
- Establish policies and procedures for issuing exempt infant formulas and WIC-eligible medical foods to WIC participants who are able to meet any portion of their exempt infant formula and WIC-eligible medical foods needs through these other programs; and
- Assist WIC participants in quickly obtaining from the other programs any exempt infant formula and WIC-eligible medical foods needs beyond the maximum monthly allowances that may be needed to meet the amount prescribed.

10. Infant Cereal in Food Package III

Longstanding policy has allowed infant cereal to be substituted for hot or cold cereal intended for children and adults in Food Packages III whenever infant cereal was needed to better meet participants' nutritional needs due to qualifying conditions. However, this provision was never incorporated into regulatory language for these food packages.

The iron content of infant cereal is higher and in a form that is better absorbed than the iron in adult cereal. In addition, infant cereal has a finer texture than adult cereal for easier swallowing. Therefore, women and children who have increased iron requirements, developmental delays, or swallowing disorders may benefit from receiving infant cereal in lieu of adult cereal.

This rule proposes to authorize only in Food Package III the substitution of 32 dry ounces of infant cereal for 36 dry ounces of adult cereal for children and women when the WIC competent professional authority or the supporting medical prescription documents that this provision is necessary. The Department believes that the vast majority of children and women who would require this cereal substitution would be served in Food Package III rather than the other food packages.

Q. Medical Documentation and Supervision Requirements for Food Packages I through VII

1. Current Requirements

Federal WIC regulations at § 246.10(c)(1)(iii)(A) through (c)(1)(iii)(D) require medical documentation for the issuance of any contract brand infant formula that does not meet the requirements of an iron fortified infant formula; any non-contract brand infant formula; any exempt infant formula; or any WIC-eligible medical food. The medical documentation is intended to verify that the participant has a medical condition that dictates the use of a WIC formula (infant formula, exempt infant formula or WIC-eligible medical food). The current medical documentation technical requirements (§ 246.10(c)(1)(v)(B)) are:

- The brand name of the WIC formula prescribed;
- Medical diagnosis warranting the WIC formula;
- Length of time the prescribed WIC formula is medically required by the participant; and
- The signature (or name, if the initial documentation was received by telephone) of the requesting health care provider.

Medical documentation may be provided as an original written document, electronically, by facsimile or by telephone to the competent professional authority who must promptly document the information. However, the receipt of medical documentation by telephone may only be used when absolutely necessary on an individual participant basis to prevent undue hardship to a participant or to prevent a delay in the provision of infant formula that would place the participant at increased nutritional risk. Section 246.10(c)(1)(v)(B) of current WIC regulations requires that this information be documented in writing and kept on file at the WIC local clinic. Therefore, receipt of medical documentation via the telephone must be followed by written documentation.

2. Proposed Requirements

This proposed rule would continue to require medical documentation for any contract brand infant formula that does not meet the requirements of an infant formula as specified in Table 4 of § 246.10(e)(12) of the proposed rule, any non-contract brand infant formula, any exempt infant formula, or any WIC-eligible medical food. In addition, medical documentation would be required for certain milk alternatives for children and women as described in section V.J. of this preamble and for any supplemental foods authorized in proposed Food Package III for participant's with certain qualifying conditions as described in section V.P. of this preamble. In addition to retaining all of the current medical documentation requirements, this proposed rule would add the following requirements to medical documentation:

- Contact information for the participant's healthcare provider who makes the medical determination;
- Date of medical determination;
- Name of specific supplemental food(s) to be prescribed;
- Amount prescribed per day;

- Medical determination of a qualifying condition which warrants the issuance of the specific supplemental food(s); and
- Length of time the specific supplemental food(s) is medically required.

All required medical documentation necessary for the issuance of supplemental foods including WIC formulas would continue to be received as an original written document, an electronic document, or received by facsimile or telephone and kept on file. This proposed rule would broaden the file requirement to allow electronic medical documentation files.

Medical documentation requirements for specific supplemental foods that do not usually require a prescription in order to obtain the food(s) are established to ensure that the participant's healthcare professional, licensed in the State to write prescriptions, has determined that the supplemental foods are not medically contraindicated by the participant's condition.

3. Roles of the State-Licensed Health Care Provider and WIC Competent Professional

Due to the nature of the health conditions of participants who would receive Food Package III, close medical supervision is essential for each participant's overall dietary management. The Department considers it appropriate that the responsibility for this close medical supervision remain with the participant's health care provider. This proposed rule would consider it the responsibility of the WIC competent professional authority to ensure that only the amounts of WIC formula and supplemental foods up to the regulatory maximum amounts prescribed by the participant's health care provider are issued in the participant's food package.

4. State Agency Guidance to Local Agencies

The Department encourages State agencies to develop guidance for their local agencies and clinic sites, including but not limited to guidance in the State's procedure manual, to use in assisting the participant to obtain the required medical documentation for receiving Food Package III or the milk alternatives for children and women in Food Packages IV–VII and for health care professionals in local communities. Such guidance should assist local agencies in identifying and understanding:

- Qualifying conditions;
- Maximum monthly allowances of WIC formula (meaning infant formula, exempt infant formula and WIC-eligible medical foods) and specific supplemental food(s) authorized; and
- Related State agency policies and procedures for issuing WIC formulas and specific supplemental foods(s) that require medical documentation.

State agencies are encouraged to develop a standardized form for health care professionals to use in prescribing Food Package III to help ensure that the WIC local clinics obtain the required medical documentation.

R. Flexibility and Variety

As recommended by the IOM, WIC State agencies are encouraged to allow as much variety and choice from the proposed authorized foods as is feasible considering cost constraints and availability. Providing more variety and choice will facilitate the tailoring of food packages to specific situations, especially for different ethnic or cultural groups.

This rule proposes that State agencies make available to participants at least two fruits and two vegetables from the category of fruits and vegetables (fresh or processed) in each authorized food package. However, it is the Department's expectation that more than two varieties each of fruits and vegetables be authorized by State agencies and encourages States to offer participants the widest variety of fruit and vegetable options practicable. This rule also proposes that State agencies make available to participants more than one food type from each WIC food category in each authorized food package, except for the categories of peanut butter and eggs.

S. Cultural Food Package Proposals

The IOM was charged with considering the cultural needs of WIC participants and its recommendations for revisions to the WIC food packages reflect those considerations. The IOM's recommendations, as put forth in this proposed rule, include allowing participants a broad selection of fruits and vegetables, tofu and soy-based beverages as substitutes for milk, participant choice for whole grains (including tortillas), and salmon and sardines as substitutions for tuna.

IOM's recommendations, as largely put forth in this proposed rule, include those foods that State agencies and participants have requested over the years to accommodate cultural needs of participants. In addition, the IOM recommendations reflect those put forth in NWA's Position Paper—''NWA WIC Culturally Sensitive Food Prescription Recommendations.'' [(2)] Developing, reviewing, and analyzing cultural food package proposals is a time consuming process for WIC State agencies and the Department. Because the increased variety and choice in the supplemental foods proposed in this rule will provide State agencies increased flexibility in prescribing culturally appropriate packages for diverse groups, the Department proposes to no longer consider WIC State agency proposals for cultural accommodations. While we acknowledge that the future demographics of WIC participants may change, WIC is a supplemental program, and is not intended to provide all of the foods that may meet cultural food preferences. Future reviews of the WIC food packages by the Department will be used to determine the need for additional cultural accommodations.

T. General Provisions That Affect All WIC Food Packages

1. State Authority to Determine Brands

This rule would clarify that State agencies have the authority to establish additional criteria for WIC-authorized foods that exceed Federal requirements. These State criteria could address, but not be limited to:

- Other nutritional standards;
- Competitive cost;
- State-wide availability; and
- Participant appeal.

2. Nutrition Tailoring

Nutrition tailoring is a process of modifying the standard food package to better meet the supplemental nutrition needs of participants. Nutrition tailoring entails making changes or substitutions to food types (e.g., dry beans vs. peanut butter), physical food forms (e.g. dry milk vs. fluid milk), and to quantities of foods.

Current FNS policy allows both categorical and individual nutrition tailoring of WIC food packages. Individual nutrition tailoring is based on the Competent Professional Authority's assessment of the participant's supplemental nutrition needs. Categorical nutrition tailoring for participant groups or subgroups with similar supplemental nutrition needs is based on scientific nutrition rationale and State established policies.

According to the IOM, the proposed revised food packages have the potential to address current nutrient inadequacies and excesses; discrepancies between dietary intake and dietary guidance; and current and future health-related problems in WIC's target population. The IOM recommends that the revised food packages be provided to each

participant in full, except to the extent that the packages are tailored to the needs of individual WIC participants. Therefore, this proposed rule would prohibit categorical nutrition tailoring, but continue to allow individual nutrition tailoring based on the Competent Professional Authority's assessment of a participant's supplemental nutrition needs.

Provisions of less than the maximum monthly allowances of supplemental foods to an individual WIC participant would be appropriate when:

- Medically or nutritionally warranted (e.g., to eliminate a food due to a food allergy);
- A participant refuses or cannot use the supplemental foods; or
- The quantities necessary to supplement another program's contribution to fill a medical prescription would be less than the maximum monthly allowances.

Consistent with current FNS policy, reductions in amounts of supplemental foods could not be made for cost-savings, administrative convenience, caseload management, or to control vendor abuse. However, State agencies could continue to make administrative adjustments for economic purposes. Acceptable administrative adjustments decrease cost while maintaining the nutrition integrity of the food packages and include such decisions as eliminating expensive brands, packaging or physical forms of WIC supplemental foods.

3. Homeless Participants

This proposal clarifies that State agencies would continue to have the authority to make food package adjustments to better accommodate homeless participants.

4. Individual Use by Participants

The WIC food packages are individual food prescriptions that, in order to have the full effect on improving a participant's nutritional status, are intended to be consumed only by the participant and not by other family members.

5. Settings for Participant Use of Supplemental Foods

Under this proposal, State or local agencies would have to advise participants that the supplemental foods issued are only for their personal use. Supplemental foods would not be authorized for participant use while hospitalized on an in-patient basis. In addition, consistent with § 246.7(n)(1)(i)(B), supplemental foods would not be authorized for use in the preparation of meals served in a communal food service. This restriction would not preclude the provision or use of supplemental foods for an individual participant in a:

- Non-residential setting (e.g., child care facility, family day care home, school, or other educational program);
- Homeless facility; or
- At the State agency's discretion, a residential institution (e.g., home for pregnant teens, prison, or residential drug treatment center) that meets the requirements currently set forth in § 246.7(n)(1) and (n)(2).

U. Implementation of Revised Food Packages

The proposed revisions to the WIC food packages will result in substantial changes to all aspects of program operations including management information systems, nutrition education and counseling, vendor authorization, training and management, and, breastfeeding promotion and support. The Department seeks comments from State agencies on the type and scope of administrative burden that may be associated with implementing the provisions in this proposed rule.

In its report, the IOM identified certain proposed changes that were so significant that it recommended pilot testing or limited application of the changes before full-scale implementation by all State agencies. As such, the Department seeks comments on the following proposed implementation plan that is designed to address the IOM recommendation for testing of certain provisions while allowing State agencies sufficient time and broad flexibility to implement the majority of the food packages.

1. Pregnant Women—The most significant changes to the food package for pregnant women include the addition of the $8.00 cash value voucher for fresh fruits and vegetables and whole wheat bread (or other whole grain options). Also, pregnant women may receive soy-based beverage or tofu in addition to cheese as a substitute for milk. The Department is proposing a one-year implementation timeframe for these changes.

2. Postpartum Women—The primary changes to the food package for postpartum women include the addition of the $8.00 cash value voucher for fresh fruits and vegetables and the option to receive soy-based beverage or tofu in addition to cheese as a substitute for milk. The Department is proposing a one-year implementation timeframe for these changes.

3. Breastfeeding Women—The proposed food package changes subdivide breastfeeding women as either fully breastfeeding or partially breastfeeding. For fully and partially breastfeeding women, the most substantial food package changes include the addition of the $8.00 cash value voucher for fresh fruits and vegetables and whole wheat bread (or other whole grain options). Also, fully and partially breastfeeding women may receive soy-based beverage or tofu in addition to cheese as a substitute for milk. Recognizing that the ''fully breastfeeding woman'' is likely to be the same individual who under the current food package system receives Food Package VII, the enhanced breastfeeding package, the Department believes that a one-year implementation timeframe for these changes is appropriate.

For partially breastfeeding women, the IOM recommends changes that strengthen and support breastfeeding as the optimal infant feeding choice and that support WIC's breastfeeding promotion efforts. However, the IOM was concerned about the impact of the food package changes that support and promote breastfeeding on the mother/infant dyad, particularly not allowing partially breastfeeding status during the infant's first month of life. While there is empirical evidence that shows early supplementation with infant formula is associated with shorter duration of breastfeeding, particularly exclusive breastfeeding, some mothers who might otherwise try breastfeeding may choose formula feeding to be sure they can obtain formula from WIC if they run into breastfeeding difficulties. Recognizing the potential impacts associated with proposed changes to the partially breastfeeding woman's package, the Department is proposing to analyze and assess the proposed changes before proceeding to full implementation. The Department believes that an experimental design with random assignment of mother-infant dyads is impractical. Therefore, the Department proposes to limit to not more than 4 sites within up to eight State agencies (32 total local sites) the ability to implement the partially breastfeeding food package changes. After the Department has had an opportunity to examine the effects of the revised changes on the initiation and duration of breastfeeding (based on a comparison of the experiences in the test sites to comparison sites in the selected State agencies), the Department will determine when all State agencies can implement the revised partially breastfeeding women's food package. The State agencies will be selected based on willingness and ability to

cooperate with evaluation data collection and design protocols (including identification of appropriate comparison sites for the 4 test sites within the State), past breastfeeding rates in the State (the Department proposes to seek a range of high, medium and low past breastfeeding rates), adequacy of the infrastructure in place to provide the necessary support to breastfeeding mothers (the Department proposes to seek both ''best case'' and ''average case'' levels of infrastructure), ability of the management information system to provide requested data on the impact of the food package changes, and diversity of the population to receive the new food package.

4. Infants—The proposed food package changes subdivide infants as fully formula fed, fully breastfed or partially breastfed. In addition, the food packages for fully formula fed infants are designated as birth through 3 months; 4 through 5 months; and 6 through 11 months. The food packages for partially breastfed infants are designated as 1 through 3 months, 4 through 5 months, and 6 through 11 months. The infant food packages for fully breastfed infants are designated as birth through 5 months, and 6 through 11 months.

For the fully formula fed infant, the amount of infant formula has been reduced for the 6 through 11 month old. This reduction has been offset by the addition of infant food fruits and vegetables. However, the amount of infant formula has been increased for the 4 through 5 month old. Also, juice has been eliminated. The Department proposes a six-month timeframe to implement the elimination of juice and a one-year timeframe to implement the remaining changes in the fully formula fed package.

For the partially breastfed infant category, the most significant change is the inability to receive any WIC infant formula during the first month following birth. In the first month after birth there are only two feeding options—fully formula fed or fully breastfed. The other changes include a reduction of the amount of infant formula that can be received from WIC, elimination of juice and the addition of infant food fruits and vegetables. As noted above, the IOM was concerned about the impact of the recommended food package changes on the breastfeeding mother/infant dyad. Therefore, the Department proposes to limit the ability to implement the partially breastfed infant food packages changes to not more than 32 sites within up to eight State agencies selected to implement the partially breastfeeding woman's food package. After the Department has had an opportunity to examine the effects of the revised changes on the initiation and duration of breastfeeding (based on a comparison of the experiences in the test sites to comparison sites in the eight State agencies), the Department will determine when all State agencies can implement the revised partially breastfed infant food package. The State agencies will be selected based on willingness and ability to cooperate with evaluation data collection and design protocols (including identification of appropriate comparison sites for the test sites), past breastfeeding rates in the State (the Department proposes to seek a range of high, medium and low past breastfeeding rates), adequacy of the infrastructure in place to provide the necessary support to breastfeeding mothers (the Department proposes to seek both ''best case'' and ''average case'' levels of infrastructure), ability of the management information system to provide requested data on the impact of the food package changes, and diversity of the population to receive the new food package.

For the fully breastfed infant, the most significant change is the addition of infant fruits and vegetables, and infant meats. The Department believes that a one-year implementation timeframe for these changes is appropriate.

5. Children—The most significant changes to the child's food package include the addition of the $6.00 cash value voucher for fresh fruits and vegetables and whole wheat bread (or other whole grain options), and the reductions in the amounts of milk and juice. Also, children 2 years of age and older may no longer receive whole milk. Cheese remains a substitute for milk. The Department is proposing a one-year implementation timeframe for these changes.

6. Participants with Qualifying Conditions—The most significant changes to the food package that address the dietary needs of participants' with certain qualifying conditions is the addition of other supplemental food(s), when not medically contraindicated, and serving all medically fragile participants under one food package (Food Package III). Women, infants and children with qualifying conditions would receive the same maximum monthly amounts of supplemental foods, with medical documentation, as those same participant categories that do not have a qualifying condition. The Department is proposing a one-year implementation timeframe for these changes.

The following chart summarizes the proposed implementation timeframes on which the Department is seeking comments. As noted, in most instances State agencies will have one year to implement the new food packages. During the one-year phase-in period, State agencies would be required to issue food benefits based on either the new food packages or current food packages but could not combine the two. For example, a State agency could not add whole wheat bread and fresh fruits and vegetables to the current foods and quantities available under the children's food package. The State agency may, however, phase-in the new food packages on a participant category basis. To minimize participant and vendor confusion, the Department proposes that once the State agency begins issuing the new food packages, it must be done on a Statewide basis.

PROPOSED TIMELINES FOR IMPLEMENTATION OF FOOD PACKAGE CHANGES

Food package category	Who may implement	Timeframe for implementation
Pregnant Women	All State Agencies	One Year from Publication of Interim Rule.
Postpartum Women	All State Agencies	One Year from Publication of Interim Rule.
Fully Breastfeeding Women	All State Agencies	One Year from Publication of Interim Rule.
Partially Breastfeeding Women	Not More Than 32 sites (4 sites within each of up to 8 State agencies)	One Year from Publication of Interim Rule (The selected sites will have authority to issue the revised packages for no more than 3 years.)
Fully Formula fed Infants	All State Agencies	One Year from Publication of Interim Rule.
Partially Breastfed Infants	The sites selected for the Partially Breastfeeding Women's Package	One Year from Publication of Interim Rule (The selected sites will have authority to issue the revised packages for no more than 3 years.)

PROPOSED TIMELINES FOR IMPLEMENTATION OF FOOD PACKAGE CHANGES—Continued

Food package category	Who may implement	Timeframe for implementation
Fully Breastfed Infants	All State Agencies	One Year from Publication of Interim Rule.
Juice Elimination from Infant Food Packages.	All State Agencies	Six months from Publication of Interim Rule.
Children	All State Agencies	One Year from Publication of Interim Rule.
Participants with Certain Medical Conditions (Women, Infants and Children)	All State Agencies	One Year from Publication of Interim Rule.

VI. Endnotes

(1) NAWD (National Association of WIC Directors) 2000. ''NAWD WIC Food Prescription Recommendations, 2000.'' Copies may be purchased by telephoning the National WIC Association at (202) 232–5492.

(2) NWA (National WIC Association). 2003. ''NWA WIC Culturally Sensitive Food Prescription Recommendations.'' Position Paper No. 03–001. Copies may be purchased by telephoning the National WIC Association at (202) 232–5492.

(3) Institute of Medicine, National Academy of Sciences. ''WIC Food Packages: Time for a Change,'' 2005. Available at Internet site: *http://www.fns.usda.gov/oane/menu/Published/WIC/FILES/Time4AChange(mainrpt).pdf.*

(4) Institute of Medicine, National Academy of Sciences, 1997. Dietary Reference Intakes for Calcium, Phosphorus Magnesium, Vitamin D, and Fluoride. Washington, DC: National Academy Press.

(5) Institute of Medicine, National Academy of Sciences, 1998. Dietary Reference Intakes for Thiamin, Riboflavin, Niacin, Vitamin B_6, Folate, Vitamin B_{12}, Pantothenic acid, Biotin and Choline. Washington, DC: National Academy Press, 1998.

(6) Institute of Medicine, National Academy of Sciences, 2000. Dietary Reference Intakes for Vitamin C, Vitamin E, Selenium, and Carotenoids. Washington, DC: National Academy Press.

(7) Institute of Medicine, National Academy of Sciences, 2001. Dietary Reference Intakes for Vitamin A, Vitamin K, Arsenic, Boron, Chromium, Copper, Iodine, Iron, Manganese, Molybdenum, Nickel, Silicon, Vanadium, and Zinc. Washington, DC: National Academy Press.

(8) Institute of Medicine, National Academy of Sciences, 2002a. Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids. Washington, DC: National Academy Press.

(9) Institute of Medicine, National Academy of Sciences, 2004. Dietary Reference Intakes for Water, Potassium, Sodium, Chloride, and Sulfate. Washington, DC: National Academies Press.

(10) USDA/FNS. WIC Participant and Program Characteristics, 2002. Executive Summary. Available at Internet site: *http://www.fns.usda.gov/oane/MENU/Published/WIC/FILES/PC2002ExecSum.pdf.*

(11) Institute of Medicine, National Academy of Sciences, 2000. ''Dietary Reference Intakes: Applications in Dietary Assessment.'' National Academy Press.

(12) U.S. Department of Health and Human Services/U.S. Department of Agriculture, Dietary Guidelines for Americans, 2005. Available at Internet site: *http://www.healthierus.gov/dietaryguidelines/.*

(13) Institute of Medicine, National Academy of Sciences, 2001. ''Dietary Reference Intakes for Vitamin A, Vitamin K, Arsenic, Boron, Chromium, Cooper, Iodine, Iron, Manganese, Molybdenum, Nickel, Silicon, Vanadium, and Zinc.'' National Academy Press.

(14) American Academy of Pediatrics, Committee on Nutrition. ''The use and misuse of fruit juice in pediatrics.'' ''Pediatrics'' 107(5):1210–1213, May 2001. Available at Internet site: *http://www.aap.org/policy/re0047.html.*

(15) American Academy of Pediatrics, Committee on Nutrition, 2004. ''Pediatric Nutrition Handbook.'' 5th edition.

(16) U. S. Department of Health and Human Services, ''Healthy People 2010: Understanding and Improving Health, 2nd edition.'' U.S. Government Printing Office. Available at Internet site: *http://www.healthypeople.gov/document.*

(17) American Academy of Pediatrics, Section on Breastfeeding, 2005. ''Breastfeeding and the use of human milk.'' ''Pediatrics'' 115(2):496–596. Available at Internet site: *http://aappolicy.aappublications.org/cgi/content/full/pediatrics;115/2/496.*

(18) Herman, DR. ''Are economic incentives useful for improving dietary quality among WIC participants and their families'' Presentation at the public forum on Impact of Changes in the WIC Food packages. Committee to Review the WIC Food Packages, Institute of Medicine,. Los Angeles, CA , July 22, 2004.

(19) Runnings, S. ''Mother Infant and Child Harvest (MICH): Fruit and Vegetable Pilot Program.'' Presentation at the workshop on Impact of Changes in the WIC Food Packages. Committee to Review the WIC Food Packages, Institute of Medicine. Los Angeles, CA, July 22, 2004.

(20) U.S. Department of Agriculture, Agricultural Research Service. USDA Nutrient Database for Standard Reference, Release 17, 2004. Nutrient Data Laboratory Home Page at *http://www.nal.usda.gov/fnic/foodcomp/.*

(21) Oliveira, V., Chandran, R. ''Children's Consumption of WIC-Approved Foods.'' Food Assistance and Nutrition Research Report No. 44. Available at Internet site: *http://www.ers.usda.gov/publications/fanrr44/fanrr44.pdf.*

(22) Environmental Protection Agency/Food and Drug Administration. ''What You Need to Know About Mercury in Fish and Shellfish.'' EPA and FDA Advice for: Women Who Might Become Pregnant, Women Who Are Pregnant, Nursing Mothers, and Young Children. 2004. Available at Internet site: *http://www.cfsan.fda.gov/dms/admehg3.html.*

VII. Procedural Matters

Executive Order 12866

This proposed rule has been determined to be economically significant and was reviewed by the Office Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required for all rules that have been designated as Significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this proposed rule. It follows this regulation as an Appendix. The conclusions of this analysis are summarized below.

Need for Action. As the population served by WIC has grown and become more diverse over the last 20 years, the nutritional risks faced by participants have changed, and though nutrition science has advanced, the WIC supplemental food packages have remained largely unchanged. A rule is needed to implement recommended changes to the WIC food packages based on the current nutritional needs of WIC participants and advances in nutrition science.

Benefits. Benefits of this rule include bringing the WIC food packages in line with the 2005 Dietary Guidelines for Americans and current infant feeding practice guidelines of the American Academy of Pediatrics, better promoting and supporting the establishment of successful long-term breastfeeding, providing WIC participants with a wider variety of food, providing WIC State agencies with greater flexibility in prescribing food packages to accommodate participants with cultural food preferences, and serving all participants with certain medical conditions under one food package to facilitate efficient management of medically fragile participants.

Costs. FNS estimates that the provisions in this proposed rule will have minimal impact on total costs over 5 years.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Pursuant to that review, Eric M. Bost, Under Secretary, Food, Nutrition and Consumer Services, has determined that this rule will not have a significant economic impact on a substantial number of small entities. State and local agencies and WIC recipients will be most affected by the rule and WIC authorized vendors and the food industry may be indirectly affected. The proposed rule would provide State and local agencies with increased flexibility in meeting food package requirements for the Program. Vendors and the food industry would realize increased sales of some foods and decreases in other foods, with an overall neutral effect on sales nationally.

Although not required by the Regulatory Flexibility Act, FNS has prepared an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of this proposed rule on small entities. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments as provided in the Dates section. Additional analysis of the regulatory flexibility considerations of this proposed rule may be found in the Regulatory Impact Analysis section of this preamble and the cited RIA itself.

Need for, and Objectives of, the Proposed Rule

This proposed rule would revise regulations governing the WIC food packages to change the maximum monthly allowances and minimum requirements for certain supplemental foods, and add new foods such as fruits, vegetables and whole grains. The revisions largely reflect recommendations made by the Institute of Medicine of the National Academies in its Report ''WIC Food Packages: Time for a Change''. These revisions would bring the WIC food packages in line with the 2005 Dietary Guidelines for Americans and current infant feeding practice guidelines of the American Academy of Pediatrics, better promote and support the establishment of successful long-term breastfeeding, provide WIC participants with a wider variety of food, and provide WIC State agencies with greater flexibility in prescribing food packages to accommodate participants with cultural food preferences.

Description and Estimate of Number of Small Entities to Which the Proposed Rule Would Apply

This proposed rule would have a direct application only to WIC State agencies with respect to their selection of foods to be included on their food lists. As a result, vendors and the food industry would realize increased sales of some foods and decreases in other foods, with an overall neutral effect on sales nationally. The rule may have an indirect economic affect on certain small businesses because they may have to carry a larger variety of certain foods to be eligible for authorization as a WIC vendor. Currently, approximately 45,000 stores are authorized to accept WIC food instruments, some of which are small businesses. With the high degree of State flexibility allowable under this proposed rule, small vendors will be impacted differently in each State depending upon how that State chooses to meet the proposed requirements. It is therefore not feasible to accurately estimate the rule's impact on small vendors. Since neither FNS nor the State agencies regulate food producers under the WIC program, it is not known how many small entities within that industry may be indirectly affected by the proposed rule. However, such entities are encouraged to comment on this IRFA and the proposed rule and their comments will be considered in the development of the final rule.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This proposed rule provides State agencies with greater flexibility in prescribing food packages to WIC participants. The information collection burden estimated for this proposal is 14,598 hours. The burden reflects requirements associated with medical documentation for the issuance of any supplemental foods issued to participants who receive Food Package III; any authorized soy-based beverage or tofu issued to children who receive Food Package IV; and, any additional authorized tofu and cheese issued to women who receive Food Packages V and VII that exceeds the maximum substitution rate.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

FNS has considered significant alternatives in developing this proposed rule including those that may reduce impact on small business. These considerations include (among others) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; the use of performance, rather than design, standards; and an exemption from coverage of the rule, or any part thereof, for small entities.

In general, the alternatives of exempting small entities from the requirements proposed in this rule or altering the requirements for small entities were rejected. The WIC food packages provide supplemental foods designed to address the nutritional needs of low-income pregnant, breastfeeding, non-breastfeeding postpartum women, infants and children up to age five who are at nutritional risk. Exempting small entities from providing the specific foods intended to address the nutritional needs of participants or altering the requirements for small entities would undermine the purpose of the WIC Program and endanger the health status of participants.

FNS has, however, modified the new food provision in an effort to mitigate the impact on small entities. Currently, State agencies must establish minimum requirements for the variety and quantity of foods that a vendor must stock in order to receive WIC Program authorization. This proposal would add new food items, such as fruits and vegetables and whole grain breads, which may require some WIC vendors, particularly smaller stores, to expand the types and quantities of food items stocked in order to maintain their WIC authorization. In addition, vendors would also have to make available more than one food type from each WIC food category, except for the categories of peanut butter and eggs, which may be a change for some vendors. To mitigate the impact of the fruit and vegetable requirement, the proposal allows canned, frozen and dried fruits and vegetables to be substituted for fresh produce.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

There are no federal rules that may duplicate, overlap, or conflict with the provisions of this proposed rule.

Public Law 104–4, Unfunded Mandates Reform Act of 1995 (UMRA)

Title II of the UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance under No. 10.557. For reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29114, June 24, 1983), this Program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With WIC State and Local Agency Officials

Over the years the Department has received numerous requests from WIC State and local agencies to modify the current food packages to permit greater substitution of foods or introduction of additional foods. These requests have come from formal and informal discussions and with State and local officials on an ongoing basis regarding program implementation and food package policy issues, and from written proposals and comments submitted to FNS by WIC State and local agencies to allow modifications and/or substitutions to the WIC food packages. Requests for revisions to the WIC food packages have also been received from Congress, participants, and organizations with interests in the welfare of WIC participants.

Examples of the different forums and methods FNS has used over the years to solicit WIC State and local agency staff input on the WIC food packages include the following.

- Publishing an advanced notice of public rulemaking (ANPRM) in 2003 to solicit comments to determine if the WIC food packages should be revised to better improve the nutritional intake, health and development of participants; and, if so, what specific changes should be made to the food packages. In response to the ANPRM, FNS received 195 total comments;
- Commissioning the National Academies' Institute of Medicine (IOM) to independently review the WIC Food Packages. IOM solicited public comment on revisions to the WIC food packages, via 3 public hearings, letters and e-mail, throughout its 22-month study period. IOM considered these comments, as well as comments the Department received in response to the ANPRM, in developing recommendations to revise the WIC food packages. IOM published its reports of these recommendations on April 27, 2005: ''WIC Food Packages: Time for a Change.'' (3) This proposed rule incorporates IOM?s recommendations;
- Holding nine public outreach sessions across the nation as part of FNS' development of its 2004 reauthorization proposals. Interested parties, including WIC State and local staff, offered oral testimony and written statements on the WIC food packages as well as on a variety of other WIC issues;
- Hosting annual meetings (1977-present) of the National Advisory Council on Maternal, Infant and Fetal Nutrition that includes WIC staff as members of the Council; the Council develops recommendations for FNS on how to improve operations of the WIC and Commodity Supplemental Food Programs, including aspects related to the authorized foods and food packages; and
- Consulting and collaborating with NWA on a wide variety of WIC issues, including those related to the WIC food packages (1983-present). NWA is a non-profit organization that was founded in 1983 by State and local agencies that administer the WIC Program. As of June 1, 2005, its paid membership included 73 of the 89 WIC State agencies, 675 local agencies, 4 State WIC Associations, and 18 sustaining members (*i.e.*, for-profit and non-profit businesses or organizations). Functioning as a coalition of WIC agencies, NWA is dedicated to maximizing WIC resources through effective management practices. NWA also serves in a leadership role for WIC agencies by developing position papers on issues of concern to the WIC community.

Nature of Concerns and the Need To Issue This Rule

- Congress has requested a WIC food package rule that includes fruits and vegetables and allows for cultural food accommodations. Starting in fiscal year 2001, Congress has directed the Department, in language accompanying WIC appropriations bills, to move expeditiously to publish a proposed food package rule for public comment;
- The National Advisory Council on Maternal, Infant, and Fetal Nutrition, in its 1992, 1996 and 2002 Reports to Congress, recommended better accommodation of the nutritional and cultural needs of WIC participants through the WIC food packages; and
- In 1999, NWA (then the National Association of WIC Directors (NAWD)) published a position paper entitled ''NAWD WIC Food Prescription Recommendations'' (1) and in 2003, NWA published a position paper entitled ''NWA WIC Culturally Sensitive Food Prescription Recommendations.'' (2) NWA's major recommendations in these two reports were to reframe the WIC food packages to be consistent with the Dietary Guidelines for Americans and allow State agencies flexibility to accommodate cultural eating patterns.

Based upon the need to address the nutritional needs of the WIC population given current scientific information and consumption patterns as exemplified by the concerns and recommendations of NWA, and others, FNS was aware of the need to revise the WIC food packages.

Extent to Which We Meet Those Concerns

FNS has considered the impact of the proposed rule on State and local agencies. FNS believes that the recommendations in the IOM Report, which are largely laid out in this proposed rule, are responsive to the expressed concerns and requests of

commenters representing State and local concerns.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the DATES paragraph of the preamble of the interim rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of WIC Program applicants and participants, FNS has determined that it does not have a deleterious effect on the participation of protected individuals in the WIC Program. All data available to FNS indicate that protected individuals have the same opportunity to participate in the WIC Program as non-protected individuals. FNS specifically prohibits State and local agencies operating the WIC Program from discrimination based on race, color, national origin, sex, age, or disability. Section 246.8(a) of WIC regulations requires State agencies to ensure that no person will be excluded from participation based on race, color, national origin, age, sex or disability. Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at § 246.8.

This rule merely addresses revisions to the WIC food packages to bring them into line with the DGA 2005 [(12)] and current infant feeding recommendations from the American Academy of Pediatrics. Several provisions are specifically designed to better accommodate WIC's highly diverse population. This proposed rule provides WIC State agencies with greater flexibility in prescribing food packages to accommodate participants with cultural food preferences, including allowing participants a broad selection of fruits and vegetables; tofu and soy-based beverages as substitutes for milk; participant choice for whole grains (including tortillas); and salmon and sardines as substitutions for tuna. This proposed rule also makes provisions to better accommodate the special dietary needs of high-risk participants served in Food Package III, helping to protect the health and well-being of this nutritionally vulnerable subset of WIC participants.

Paperwork Reduction Act (60-Day Notice)

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This proposed rule contains information collections that are subject to review and approval by OMB; therefore, FNS has submitted an information collection which contains the changes in burden from adoption of the proposals in the rule, for OMB's review and approval.

Comments on the information collection in this proposed rule must be received by October 6, 2006.

Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC, 20503. Please also send a copy of your comments to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302. For further information, or for copies of the information collection requirements, please contact Debra Whitford at the address indicated above.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: WIC Food Packages.

OMB Number: Not Assigned.

Expiration Date: Not Yet Determined.

Type of Request: New.

Abstract: This rule proposes revisions to the food packages to bring them in line with the 2005 Dietary Guidelines for Americans and current infant feeding practice guidelines of the American Academy of Pediatrics. The revisions would also: better promote and support the establishment of successful long-term breastfeeding, provide WIC participants with a wider variety of foods, provide WIC State agencies with greater flexibility in prescribing food packages to accommodate participants with cultural preferences, and serve participants with certain qualifying conditions under one food package to facilitate efficient management of medically fragile participants.

The average burden per response and the annual burden hours are explained below and summarized in the chart which follows.

Respondents for this Rule: Individuals or households and State, Local or Tribal Governments.

Estimated Number of Respondents: 152,783.

Estimated Number of Responses per Respondent: 2.

Estimate Average Hours per Response: 0.05.

Estimated Total Annual Burden on Respondents: 14,598 Hours.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section of regulations	Annual number of respondents	Number responses per respondent	Average burden per response	Annual burden hours
Reporting Burden:				
§ 246.10(d)	142,783	2	0.05	14,728
Recordkeeping Burden:				

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN—Continued

Section of regulations	Annual number of respondents	Number responses per respondent	Average burden per response	Annual burden hours
§ 246.10(d)	10,000	2	0.016	320
Total Reporting and Recordkeeping Burden in the Proposed Rule	152,783	2	0.05	14,598

1. Reporting

Sections 246.10(d) would require medical documentation for the issuance of any supplemental foods issued to participants who receive Food Package III; any authorized soy-based beverage or tofu issued to children who receive Food Package IV; and, any additional authorized tofu and cheese issued to women who receive Food Packages V and VII that exceeds the maximum substitution rate.

In addition, the content of the medical documentation would be expanded to include: (1) Contact information for the participant's healthcare provider making the medical determination; (2) date of medical determination; (3) the specific supplemental foods to be prescribed; (4) amount prescribed per day; (5) the medical determination of the qualifying conditions which warrants the supplemental foods; and (6) the length of time the supplemental foods is medically required.

FNS estimates that approximately 1 percent of participants (86,375) will be issued supplemental foods under Food Package III; 1 percent of children (42,408) will be authorized soy-based beverage or tofu under Food Package IV; and, 1 percent of women (14,000) will be authorized tofu and cheese in excess of the maximum substitution rate under Food Packages V and VII. Further, FNS estimates that it will take three minutes (0.05 person hours) for the documentation required to issue the authorized foods. Thus, the estimated reporting burden is 14,278 (142,783 total participants × 0.05 person hours × 2 certification periods per year).

2. Recordkeeping

FNS estimates that it will take one minute (0.016 per record) for each clinic (10,000 clinics) to file the required medical documentation provided by participants, for an estimated burden of 320 hours (10,000 clinics × 0.016 hours per record × 2 times per year).

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Penalties, Reporting and recordkeeping requirements, Women.

For reasons set forth in the preamble, 7 CFR part 246 is proposed to be amended as follows:

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

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

Authority: 42 U.S.C. 1786.

2. In § 246.2:

a. Revise the definition of ''Participation''; and

b. Amend the definition of ''WIC-eligible medical foods'' by removing the words ''for individuals with a diagnosed medical condition'' and adding in their place the words ''for women or children with a qualifying condition'', and by revising the second sentence.

The revisions read as follows:

§ 246.2 Definitions.

* * * * *

Participation means the sum of:

(1) The number of persons who received supplemental foods or food instruments during the reporting period;

(2) The number of infants who did not receive supplemental foods or food instruments but whose breastfeeding mother received supplemental foods or food instruments during the report period; and

(3) The number of breastfeeding women who did not receive supplemental foods or food instruments but whose infant received supplemental foods or food instruments during the report period.

* * * * *

WIC-eligible medical foods * * * Such WIC-eligible medical foods must serve the purpose of a food, meal or diet (may be nutritionally complete or incomplete) and provide a source of calories and one or more nutrients; be designed for enteral digestion via an oral or tube feeding; and may not be a conventional food, drug, flavoring, or enzyme.* * *

3. Revise § 246.10 to read as follows:

§ 246.10 Supplemental foods.

(a) *General.* This section prescribes the requirements for providing supplemental foods to participants. The State agency must ensure that local agencies comply with this section.

(b) *State agency responsibilities.* (1) State agencies may:

(i) Establish criteria in addition to the minimum Federal requirements in Table 4 of paragraph (e)(12) of this section for the supplemental foods in their States. These State criteria could address, but not be limited to, other nutritional standards, competitive cost, State-wide availability, and participant appeal; and

(ii) Make food package adjustments to better accommodate participants who are homeless. At the State agency's option, these adjustments would include, but not be limited to, issuing authorized supplemental foods in individual serving-size containers to accommodate lack of food storage or preparation facilities.

(2) State agencies must:

(i) Identify the brands of foods and package sizes that are acceptable for use in the Program in their States in accordance with the requirements of this section. State agencies must also provide to local agencies a list of acceptable foods and their maximum monthly allowances as specified in Tables 1 through 3 of paragraphs (e)(9) through (e)(11) of this section; and

(ii) Ensure that local agencies:

(A) Make available to participants the maximum monthly allowances of authorized supplemental foods, except as noted in paragraph (c) of this section, and abide by the authorized substitution rates for WIC food substitutions as specified in Tables 1 through 3 of paragraphs (e)(9) through (e)(11) of this section;

(B) Make available to participants more than one food from each WIC food

category except for the categories of peanut butter and eggs, and at least two fruits and two vegetables from the category of fruits and vegetables (fresh or processed) in each authorized food package as listed in paragraph (e) of this section;

(C) Authorize only a competent professional authority to prescribe the categories of authorized supplemental foods in quantities that do not exceed the regulatory maximum and are appropriate for the participant, taking into consideration the participant's age and nutritional needs; and

(D) Advise participants or their caretaker, when appropriate, that the supplemental foods issued are only for their personal use. However, the supplemental foods are not authorized for participant use while hospitalized on an in-patient basis. In addition, consistent with § 246.7(n)(1)(i)(B), supplemental foods are not authorized for use in the preparation of meals served in a communal food service. This restriction does not preclude the provision or use of supplemental foods for individual participants in a nonresidential setting (e.g., child care facility, family day care home, school, or other educational program); a homeless facility that meets the requirements of § 246.7(n)(1); or, at the State agency's discretion, a residential institution (e.g., home for pregnant teens, prison, or residential drug treatment center) that meets the requirements currently set forth in § 246.7(n)(1) and (n)(2).

(c) *Nutrition tailoring.* The full maximum monthly allowances of all supplemental foods in all food packages must be made available to participants if medically or nutritionally warranted. Reductions in these amounts cannot be made for cost-savings, administrative convenience, caseload management, or to control vendor abuse. Reductions in these amounts cannot be made for categories, groups or subgroups of WIC participants. The provision of less than the maximum monthly allowances of supplemental foods to an individual WIC participant in all food packages is appropriate only when:

(1) Medically or nutritionally warranted (e.g., to eliminate a food due to a food allergy);

(2) A participant refuses or cannot use the maximum monthly allowances; or

(3) The quantities necessary to supplement another programs' contribution to fill a medical prescription would be less than the maximum monthly allowances.

(d) *Medical documentation*—(1) *Supplemental foods requiring medical documentation.* Medical documentation is required for the issuance of the following supplemental foods:

(i) Any non-contract brand infant formula;

(ii) Any infant formula prescribed to a child or adult who receives Food Package III;

(iii) Any exempt infant formula;

(iv) Any WIC-eligible medical food;

(v) Any authorized supplemental food issued to participants who receive Food Package III;

(vi) Any authorized soy-based beverage or tofu issued to children who receive Food Package IV;

(vii) Any additional authorized cheese issued to children who receive Food Package IV that exceeds the maximum substitution rate;

(viii) Any additional authorized tofu and cheese issued to women who receive Food Packages V and VII that exceeds the maximum substitution rate; and

(ix) Any contract brand infant formula that does not meet the requirements in Table 4 of paragraph (e)(12) of this section.

(2) *Supplemental foods not requiring medical documentation.* (i) State agencies may authorize local agencies to issue a non-contract brand infant formula that meets the requirements in Table 4 of paragraph (e)(12) of this section without medical documentation in order to meet religious eating patterns; and

(ii) The State agency has the discretion to require medical documentation for any contract brand infant formula and may decide that some contract brand infant formula may not be issued under any circumstances.

(3) *Medical Determination.* For purposes of this program, medical documentation means that a health care professional licensed to write medical prescriptions under State law has:

(i) Made a medical determination that the participant has a qualifying condition as described in paragraphs (e)(3) through (e)(7) of this section that dictates the use of the supplemental foods, as described in paragraph (d)(1) of this section; and

(ii) Provided the written documentation that meets the technical requirements described in paragraphs (d)(4)(ii) and (d)(4)(iii) of this section.

(4) *Technical Requirements*—(i) *Location.* All medical documentation must be kept on file (electronic or hard copy) at the local clinic. The medical documentation kept on file must include the initial telephone documentation, when received as described in paragraph (d)(4)(iii)(B) of this section.

(ii) *Content.* All medical documentation must include the following:

(A) The name of the authorized WIC formula (infant formula, exempt infant formula, WIC-eligible medical food) prescribed, including amount needed per day;

(B) The authorized supplemental food(s) appropriate for the qualifying condition(s) and their prescribed amounts;

(C) Length of time the prescribed WIC formula and/or supplemental food is required by the participant;

(D) The qualifying condition(s) for issuance of the authorized supplemental food(s) requiring medical documentation, as described in paragraphs (e)(3) through (e)(7) of this section; and

(E) Signature, date and contact information (or name, date and contact information), if the initial medical documentation was received by telephone and the signed document is forthcoming, of the health care professional licensed by the State to write prescriptions in accordance with State laws.

(iii) *Written confirmation*—(A) *General.* Medical documentation must be written and may be provided as an original written document, an electronic document, by facsimile or by telephone to a competent professional authority until written confirmation is received.

(B) *Medical documentation provided by telephone.* Medical documentation may be provided by telephone to a competent professional authority who must promptly document the information. The collection of the required information by telephone for medical documentation purposes may only be used until written confirmation is received from a health care professional licensed to write medical prescriptions and used only when absolutely necessary on an individual participant basis. The local clinic must obtain written confirmation of the medical documentation within a reasonable amount of time (i.e., one or two week's time) after accepting the initial medical documentation by telephone.

(5) *Medical supervision requirements.* Due to the nature of the health conditions of participants who are issued supplemental foods that require medical documentation, close medical supervision is essential for each participant's dietary management. The responsibility remains with the participant's health care provider for this medical oversight and instruction. This responsibility cannot be assumed by personnel at the WIC State or local

agency. However, it would be the responsibility of the WIC competent professional authority to ensure that only the amounts of supplemental foods prescribed by the participant's health care provider are issued in the participant?s food package.

(e) *Food packages.* There are seven food packages available under the Program that may be provided to participants. The authorized supplemental foods must be prescribed from food packages according to the category and nutritional needs of the participant. The food packages are as follows:

(1) *Food Package I—Infants birth through 5 months*—(i) *Participant category served.* This food package is designed for issuance to infant participants from birth through age 5 months who do not have a condition qualifying them to receive Food Package III.

(ii) *Infant feeding categories*—(A) *Birth through one month.* Two infant feeding options are available during the first month after birth—fully breastfeeding, i.e., the infant receives no infant formula from the WIC Program, or fully formula-feeding. Infant formula is not provided during the first month after birth to fully breastfed infants to support the successful establishment of breastfeeding.

(B) *Two through 5 months.* Three infant feeding options are available from 2 months through 5 months—fully breastfeeding, fully formula-feeding, or partially breastfeeding, i.e., the infant is breastfed but also receives infant formula from the WIC Program in an amount not to exceed approximately half the amount of infant formula allowed for a fully formula fed infant.

(iii) *Infant formula requirements.* This food package provides iron-fortified infant formula that is not an exempt infant formula. The issuance of any contract brand or noncontract brand infant formula that contains less than 10 milligrams of iron per liter at standard dilution (i.e., approximately 20 kilocalories per fluid ounce of prepared formula) is prohibited. Except as specified in paragraph (d) of this section, local agencies must issue a contract brand infant formula that meets the requirements in Table 4 of paragraph (e)(12) of this section.

(iv) *Physical forms.* Local agencies must issue all WIC formulas (WIC formulas mean all infant formula, exempt infant formula and WIC-eligible medical foods) in concentrated liquid or powder physical forms. Ready-to-feed WIC formulas may be authorized when the competent professional authority determines and documents that:

(A) The participant's household has an unsanitary or restricted water supply or poor refrigeration;

(B) The person caring for the participant may have difficulty in correctly diluting concentrated or powder forms; or

(C) The WIC infant formula is only available in ready-to-feed.

(v) *Authorized category of supplemental foods.* Infant formula is the only category of supplemental foods authorized in this food package. Exempt infant formulas and WIC-eligible medical foods are authorized only in Food Package III.

(2) *Food Package II—Infants 6 through 11 months*—(i) *Participant category served.* This food package is designed for issuance to infant participants from 6 through 11 months of age who do not have a condition qualifying them to receive Food Package III.

(ii) *Infant feeding options.* Three infant feeding options are available—fully breastfeeding, fully formula-feeding, or partially breastfeeding.

(iii) *Infant formula requirements.* The requirements for issuance of infant formula in Food Package I, specified in paragraphs (e)(1)(iii) and (e)(1)(iv) of this section, also apply to the issuance of infant formula in Food Package II.

(iv) *Authorized categories of supplemental foods.* Infant formula, infant fruits and vegetables, infant meat, and infant cereal are the categories of supplemental foods authorized in this food package.

(3) *Food Package III—Participants with qualifying conditions*—(i) *Participant category served and qualifying conditions.* This food package is reserved for issuance to women, infants and child participants who have a documented qualifying condition that requires the use of a WIC formula (infant formula, exempt infant formula or WIC-eligible medical food) because the use of conventional foods is precluded, restricted, or inadequate to address their special nutritional needs. Medical documentation must meet the requirements described in paragraph (d) of this section. Participants who are eligible to receive this food package must have one or more qualifying conditions, as determined by a health care professional licensed to write medical prescriptions under State law. The qualifying conditions include but are not limited to premature birth, low birth weight, failure to thrive, inborn errors of metabolism and metabolic disorders, gastrointestinal disorders, malabsorption syndromes, immune system disorders, severe food allergies that require an elemental formula, and life threatening disorders, diseases and medical conditions that impair ingestion, digestion, absorption or the utilization of nutrients that could adversely affect the participant's nutrition status. This food package may not be issued solely for the purpose of enhancing nutrient intake or managing body weight.

(ii) *Non-authorized issuance of Food Package III.* This food package is not authorized for:

(A) Infants whose only condition is:

(*1*) A diagnosed formula intolerance or food allergy to lactose, sucrose, milk protein or soy protein that does not require the use of an exempt infant formula ; or

(*2*) A non-specific formula or food intolerance.

(B) Women and children who have a food intolerance to lactose or milk protein that can be successfully managed with the use of one of the other WIC food packages (i.e., Food Packages IV–VII); or

(C) Any participant solely for the purpose of enhancing nutrient intake or managing body weight without an underlying qualifying condition.

(iii) *Restrictions on the issuance of WIC formulas in ready-to-feed (RTF) forms.* WIC State agencies must issue WIC formulas (infant formula, exempt infant formula and WIC-eligible medical foods) in concentrated liquid or powder physical forms unless the requirements for issuing RTF are met as described in paragraph (e)(1)(iv) of this section. In addition to those requirements, there are two additional conditions which may be used to issue RTF in Food Package III:

(A) If a ready-to-feed form better accommodates the participant's condition; or

(B) If it improves the participant's compliance in consuming the prescribed WIC formula.

(iv) *Unauthorized WIC costs.* All apparatus or devices (*e.g.*, enteral feeding tubes, bags and pumps) designed to administer WIC formulas are not allowable WIC costs.

(v) *Authorized categories of supplemental foods.* The supplemental foods authorized in this food package require medical documentation for issuance and include infant formula (for children or women), exempt infant formula, WIC-eligible medical foods (for children and women), infant cereal, infant food fruits and vegetables, milk and milk alternatives, cheese, eggs, canned fish, fruits and vegetables, breakfast cereal, whole wheat bread or other whole grains, juice, legumes and/or peanut butter.

(vi) *Coordination with medical payors and other programs that provide or*

reimburse for formulas. WIC State agencies must coordinate with other Federal, State or local government agencies or with private agencies that operate programs that also provide or could reimburse for exempt infant formulas and WIC-eligible medical foods benefits to mutual participants. At a minimum, a WIC State agency must coordinate with the State Medicaid Program for the provision of exempt infant formulas and WIC-eligible medical foods that are authorized or could be authorized under the State Medicaid Program for reimbursement and that are prescribed for WIC participants who are also Medicaid recipients. The WIC State agency is responsible for providing up to the maximum amount of exempt infant formulas and WIC-eligible medical foods under Food Package III in situations where reimbursement is not provided by another entity.

(4) *Food Package IV—Children 1 through 4 years*—(i) *Participant category served.* This food package is designed for issuance to participants 1 through 4 years of age who do not have a condition qualifying them to receive Food Package III.

(ii) *Authorized categories of supplemental foods.* Milk, breakfast cereal, juice, fruits and vegetables, whole wheat bread or other whole grains, eggs, and legumes or peanut butter are the categories of supplemental foods authorized in this food package. Cheese may be substituted for milk in amounts described in Table 2 of paragraph (e)(10) of this section. Substitutions exceeding the maximum substitution allowance of cheese, up to the maximum allowance for fluid milk, may be allowed with medical documentation of the qualifying condition. Soy-based beverages and tofu can be substituted for milk only with medical documentation in this food package, in amounts described in Table 2 of paragraph (e)(10) of this section. A health care professional licensed by the State to write prescriptions must make a medical determination and provide medical documentation that a child cannot drink milk and requires soy-based beverage, tofu, or additional cheese as a substitute for milk. Such determination can be made for situations that include, but are not limited to, milk allergy, severe lactose maldigestion, and vegan diets. Medical documentation must meet the requirements described in paragraph (d) of this section.

(5) *Food Package V—Pregnant and partially breastfeeding women*—(i) *Participant category served.* This food package is designed for issuance to women participants with singleton pregnancies who do not have a condition qualifying them to receive Food Package III. This food package is also designed for issuance to breastfeeding women participants, up to 1 year postpartum, who do not have a condition qualifying them to receive Food Package III and whose partially breastfed infants receive formula from the WIC program in amounts that do not exceed the maximum allowances described in Table 1 of paragraph (e)(9) of this section. Women participants breastfeeding more than one infant, and women participants pregnant with more than one fetus, are eligible to receive Food Package VII as described in paragraph (e)(7) of this section.

(ii) *Authorized categories of supplemental foods.* Milk, breakfast cereal, juice, fruits and vegetables, whole wheat bread or other whole grains, eggs, legumes and peanut butter are the categories of supplemental foods authorized in this food package. Cheese or calcium-set tofu may be substituted for milk in amounts described in Table 2 of paragraph (e)(10) of this section. Amounts of cheese or calcium-set tofu exceeding the maximum substitution allowances may be allowed with medical documentation of the qualifying condition, up to the maximum allowance for fluid milk. A health care professional licensed by the State to write prescriptions must make a medical determination and provide medical documentation that a woman cannot drink milk and requires additional cheese or calcium-set tofu. Such determination can be made for situations that include, but are not limited to, milk allergy or severe lactose maldigestion. Medical documentation must meet the requirements described in paragraph (d) of this section.

(6) *Food Package VI—Postpartum women*—(i) *Participant category served.* This food package is designed for issuance to women up to 6 months postpartum who are not breastfeeding their infants, and to breastfeeding women up to 6 months postpartum whose participating infant receives more than the maximum amount of formula allowed for partially breastfed infants as described in Table 1 of paragraph (e)(9) of this section.

(ii) *Authorized categories of supplemental foods.* Milk, breakfast cereal, juice, fruits and vegetables, eggs, and legumes or peanut butter are the categories of supplemental foods authorized in this food package. Cheese or calcium-set tofu may be substituted for milk in amounts described in Table 2 of paragraph (e)(10) of this section. Amounts of cheese or calcium-set tofu exceeding the maximum substitution allowances may be allowed with medical documentation of the qualifying condition, up to the maximum allowance for fluid milk. A health care professional licensed by the State to write prescriptions must make a medical determination and provide medical documentation that a woman cannot drink milk and requires additional cheese or calcium-set tofu. Such determination can be made for situations that include, but are not limited to, milk allergy or severe lactose maldigestion. Medical documentation must meet the requirements described in paragraph (d) of this section.

(7) *Food Package VII—Fully breastfeeding (enhanced)*—(i) *Participant category served.* This food package is designed for issuance to breastfeeding women up to 1 year postpartum whose infants do not receive infant formula from WIC (these breastfeeding women are assumed to be fully breastfeeding their infants), and to all breastfeeding women during the first month postpartum. This food package is also designed for issuance to women participants pregnant with two or more fetuses, and women participants partially breastfeeding multiple infants. Women participants fully breastfeeding multiple infants receive 1.5 times the supplemental foods provided in Food Package VII.

(ii) *Authorized categories of supplemental foods.* Milk, cheese, breakfast cereal, juice, fruits and vegetables, whole wheat bread or other whole grains, eggs, legumes, peanut butter, and canned fish are the categories of supplemental foods authorized in this food package. Cheese or calcium-set tofu may be substituted for milk in amounts described in Table 2 of paragraph (e)(10) of this section. Amounts of cheese or calcium-set tofu exceeding the maximum substitution allowances may be allowed with medical documentation of the qualifying condition, up to the maximum allowance for fluid milk. A health care professional licensed by the State to write prescriptions must make a medical determination and provide medical documentation that a woman cannot drink milk and requires additional cheese or calcium-set tofu. Such determination can be made for situations that include, but are not limited to, milk allergy or severe lactose maldigestion. Medical documentation must meet the requirements described in paragraph (d) of this section.

(8) *Supplemental Foods—Maximum monthly allowances, options and substitution rates, and minimum requirements.* Tables 1 through 3 of

paragraphs (e)(9) through (e)(11) of this section specify the maximum monthly allowances of foods in WIC food packages and identify WIC food options and substitution rates. Table 4 of paragraph (e)(12) of this section describes the minimum requirements and specifications of supplemental foods in the WIC food packages.

(9) *Maximum monthly allowances of supplemental foods for infants.* The maximum monthly allowances, options and substitution rates of supplemental foods for infants in Food Packages I, II and III are stated in Table 1 as follows:

TABLE 1.—MAXIMUM MONTHLY ALLOWANCES OF SUPPLEMENTAL FOODS FOR INFANTS IN FOOD PACKAGES I, II AND III

Foods [1]	Fully formula fed (FF)		Partially breastfed (BF/FF)	Fully breastfed (BF)		
	Food packages I–FF & III–FF A: 0 through 3 months B: 4 through 5 months	Food packages II–FF & III–FF 6 through 11 months	Food packages I–BF/FF & III BF/FF A: 1 through 3 months [2] B: 4 through 5 months	Food packages II–BF/FF & III BF/FF 6 through 11 months	Food package I–BF 0 through 5 months	Food package II–BF & III BF 6 through 11 months
Infant formula [3 4 5 6] and Exempt Infant formula.	A: 806 fl. oz. reconstituted liquid concentrate or 800 fl. oz. RTF or 870 fl. oz. reconstituted powder.	624 fl. oz. reconstituted liquid concentrate or 640 fl. oz. RTF or.	A: 364 fl. oz. reconstituted liquid concentrate or 364 fl. oz. RTF or 435 fl. oz. reconstituted powder.	312 fl. oz. reconstituted liquid concentrate or 320 fl. oz. RTF or.		
	B: 884 fl. oz. reconstituted liquid concentrate or 896 fl. oz. RTF or 960 fl. oz. reconstituted powder.	696 fl. oz. reconstituted powder.	B: 442 fl. oz. reconstituted liquid concentrate or 448 fl. oz. RTF or 522 fl. oz. reconstituted powder.	384 fl. oz. reconstituted powder.		
Infant cereal [7]	.....	24 oz	.....	24 oz	.....	24 oz.
Infant food [7 8] fruits and vegetables	.....	128 oz	.....	128 oz	.....	256 oz.
Infant food meat.						77.5 oz.

Table 1 Footnotes: (abbreviations in order of appearance in table): FF = fully formula fed; BF/FF = partially breastfed (i.e., the infant is breastfed but also receives formula from the WIC Program in an amount not to exceed approximately half the amount of formula allowed for a fully formula fed infant); BF = fully breastfed (i.e., the infant receives no formula through the WIC program).

[1] Table 4 of paragraph (e)(12) of this section describes the minimum requirements and specifications for the supplemental foods.

[2] The powder form is the form recommended for partially breastfed infants, ages 1 through 3 months in Food Package I.

[3] The maximum monthly allowance is specified in reconstituted fluid ounces for liquid concentrate, ready-to-feed (RTF) liquid, and powder forms of infant formula and exempt infant formula. Reconstituted fluid ounce is the form prepared for consumption as directed on the container.

[4] Only infant formula may be issued for infants in Food Packages I and II. Exempt infant formula may only be issued for infants in Food Package III.

[5] If powder infant formula is provided, State agencies must provide at least the number of reconstituted fluid ounces as the maximum allowance for the liquid concentrate form of the same product in the same Food Package up to the maximum monthly allowance for powder. State agencies must issue whole containers that are all the same size.

[6] State agencies may round up and disperse whole containers of infant formula over the food package timeframe to allow participants to receive the full authorized nutritional benefit (FNB). State agencies must use the methodology described in accordance with paragraph (h)(1) of this section.

[7] State agencies may round up and disperse whole containers of infant foods (infant cereal, fruits and vegetables, and meat) over the Food Package timeframe. .State agencies must use the methodology described in accordance with paragraph (h)(2) of this section.

[8] Fresh banana may replace up to 16 ounces of baby food fruit at a rate of 1 pound of bananas per 8 ounces of baby food fruit.

(10) *Maximum monthly allowances of supplemental foods in Food Packages IV through VII.* The maximum monthly allowances, options and substitution rates of supplemental foods for children and women in Food Package IV through VII are stated in Table 2 as follows:

TABLE 2.—MAXIMUM MONTHLY ALLOWANCES OF SUPPLEMENTAL FOODS FOR CHILDREN AND WOMEN IN FOOD PACKAGES IV, V, VI AND VII

Foods [1]	Children	Women		
	Food package IV: 1 through 4 years	Food package V: Pregnant and partially breastfeeding (up to 1 year postpartum) [2]	Food package VI: Postpartum (up to 6 months postpartum) [3]	Food package VII: Fully breastfeeding (enhanced), (up to 1 year postpartum) [4 5]
Juice, single strength [6]	128 fl oz	144 fl oz	96 fl oz	144 fl oz.
Milk, fluid	16 qt [7 8 9 10]	22 qt [7 8 11 12]	16 qt [7 8 11 12]	24 qt [7 8 11 12]
Breakfast cereal	36 oz	36 oz	36 oz	36 oz.
Cheese	N/A	N/A	N/A	1 lb.
Eggs	1 dozen	1 dozen	1 dozen	2 dozen.

TABLE 2.—MAXIMUM MONTHLY ALLOWANCES OF SUPPLEMENTAL FOODS FOR CHILDREN AND WOMEN IN FOOD PACKAGES IV, V, VI AND VII—Continued

Foods [1]	Children	Women		
	Food package IV: 1 through 4 years	Food package V: Pregnant and partially breastfeeding (up to 1 year postpartum) [2]	Food package VI: Postpartum (up to 6 months postpartum) [3]	Food package VII: Fully breastfeeding (enhanced), (up to 1 year post-partum) [4 5]
Fruits and vegetables [13 14]	$6.00 in cash value vouchers.	$8.00 in cash value vouchers.	$8.00 in cash value vouchers.	$8.00 in cash value vouchers.
Whole wheat bread or other whole grains [15].	2 lb	1 lb	N/A	1 lb.
Fish (canned)	N/A	N/A	N/A	30 oz.
Legumes, dry [16]	1 lb	1 lb	1 lb	1 lb.
And/or Peanut butter	Or 18 oz	And 18 oz	Or 18 oz	And 18 oz.

Table 2 Footnotes: N/A = the supplemental food is not authorized in the corresponding food package.

[1] Table 4 of paragraph (e)(12) of this section describes the minimum requirements and specifications for the supplemental foods.

[2] Food Package V is issued to two categories of WIC participants: Women participants with singleton pregnancies and breastfeeding women whose partially breastfed infants receive formula from the WIC Program in amounts that do not exceed the maximum formula allowances for Food Packages I–BF/FF–A, I–BF/FF–B, or II–BF/FF, as appropriate for the age of the infant.

[3] Food Package VI is issued to two categories of WIC participants: Non-breastfeeding postpartum women and breastfeeding postpartum women whose partially breastfed infants receive more than the maximum infant formula allowances for Food Packages I–BF/FF–A, I–BF/FF–B, or II–BF/FF, as appropriate for the age of the infant.

[4] Food Package VII is issued to 4 categories of WIC participants: Fully breastfeeding women whose infants do not receive formula from the WIC Program; all breastfeeding women during the first month postpartum; women pregnant with two or more fetuses; and women fully or partially breastfeeding multiple infants.

[5] Women fully breastfeeding multiple infants are prescribed 1.5 times the maximum allowances.

[6] Combinations of single-strength and concentrated juices may be issued provided that the total volume does not exceed the maximum monthly allowance for single-strength juice.

[7] Whole milk, as specified in FDA standards, is the only type of milk allowed for 1-year-old children (12 through 23 months). Reduced fat milks, as specified in FDA standards, i.e., 2% milk fat, are the only types of milk allowed for children ≥ 24 months of age and women.

[8] Evaporated milk may be substituted at the rate of 16 fluid ounces of evaporated milk per 32 fluid ounces of fluid milk or a 1:2 fluid ounce substitution ratio. Dry milk may be substituted at an equal reconstituted rate to fluid milk. When a combination of different milk forms is provided, the full maximum monthly fluid milk allowance must be provided.

[9] For children, cheese may be substituted for milk at the rate of 1 pound of cheese per 3 quarts of milk. No more than 1 lb. of cheese may be substituted for milk. With medical documentation, additional amounts of cheese may be substituted in cases of lactose intolerance or other qualifying conditions, up to the maximum allowance for fluid milk.

[10] For children, soy-based beverage and calcium-set tofu may be substituted for milk only with medical documentation for qualifying conditions. Soy-based beverages may be substituted for milk, with medical documentation, for children in Food Package IV on a quart for quart basis up to the total maximum allowance of milk. Tofu may be substituted for milk, with medical documentation, for children in Food Package IV at the rate of 1 pound of tofu per 1 quart of milk up to the total maximum allowance of milk.

[11] For women, cheese or calcium-set tofu may be substituted for milk at the rate of I pound of cheese per 3 quarts of milk or 1 pound of tofu per 1 quart of milk. A maximum of 4 quarts of milk can be substituted in this manner in Food Packages V and VI; however, no more than 1 pound of cheese may be substituted for milk. A maximum of 6 quarts of milk can be substituted in this manner in Food Package VII; therefore, no more than 2 lbs. of cheese may be substituted for milk. With medical documentation, additional amounts of cheese or tofu may be substituted, up to the maximum allowances for fluid milk, in cases of lactose intolerance or other qualifying conditions.

[12] For women, soy-based beverage may be substituted for milk at the rate of 1 quart of soy-based beverage for 1 quart of milk up to the total maximum monthly allowance of milk.

[13] Processed (canned, frozen, dried) fruits and vegetables may be substituted for fresh fruits and vegetables. Dried fruit and dried vegetables are not authorized for children in Food Package IV.

[14] The maximum value of the vouchers may be adjusted in whole dollar increments to reflect accrued annual, un-rounded inflationary increases.

[15] Brown rice, bulgur, oatmeal, whole-grain barley, soft corn or whole wheat tortillas may be substituted for whole wheat bread on an equal weight basis.

[16] Canned legumes may be substituted for dried legumes at the rate of 64 oz of canned beans for 1 lb dried beans. Under Food Packages V and VII, two additional combinations of dry or canned beans/peas are authorized: 1 lb. Dry and 64 oz. Canned beans/peas (and no peanut butter); or 2 lb. Dry or 128 oz. Canned beans/peas (and no peanut butter) or 36 oz. peanut butter (and no beans).

(11) *Maximum monthly allowances of supplemental foods for children and women with qualifying conditions in Food Package III.* The maximum monthly allowances, options and substitution rates of supplemental foods for participants with qualifying conditions in Food Package III are stated in Table 3 as follows:

TABLE 3.—MAXIMUM MONTHLY ALLOWANCES OF SUPPLEMENTAL FOODS FOR CHILDREN AND WOMEN IN FOOD PACKAGE III

Foods [1]	Children	Women		
	1 through 4 years	Pregnant and partially breastfeeding (up to 1 year postpartum) [2]	Postpartum (up to 6 months postpartum) [3]	Fully breastfeeding (enhanced), (up to 1 year post-partum) [4 5]
Juice, single strength [6]	128 fl. oz	144 fl. oz	96 fl. oz	144 fl. oz.
WIC Formula [7 8]	455 fl. oz. liquid concentrate.	455 fl. oz. liquid concentrate.	455 fl. oz. liquid concentrate.	455 fl. oz. liquid concentrate.
Milk	16 qt [9 10 11 12]	22 qt [9 10 13 14]	16 qt [9 10 13 14]	24 qt. [9 10 13 14]
Breakfast cereal [15]	36 oz	36 oz	36 oz	36 oz.

TABLE 3.—MAXIMUM MONTHLY ALLOWANCES OF SUPPLEMENTAL FOODS FOR CHILDREN AND WOMEN IN FOOD PACKAGE III—Continued

Foods [1]	Children	Women		
	1 through 4 years	Pregnant and partially breastfeeding (up to 1 year postpartum) [2]	Postpartum (up to 6 months postpartum) [3]	Fully breastfeeding (enhanced), (up to 1 year post-partum) [4 5]
Cheese	N/A	N/A	N/A	1 lb.
Eggs	1 dozen	1 dozen	1 dozen	2 dozen.
Fruits and vegetables [16 17]	$6.00 in cash value voucher.	$8.00 in cash value vouchers.	$8.00 in cash value vouchers.	$8.00 in cash value vouchers.
Whole wheat bread [18]	2 lb	1 lb	N/A	1 lb.
Fish (canned)	N/A	N/A	N/A	30 oz.
Legumes, dry [19]	1 lb	1 lb	1 lb	1 lb.
And/or Peanut butter	Or 18 oz	And 18 oz	Or 18 oz	And 18 oz.

Table 3 Footnotes: N/A= the supplemental food is not authorized in the corresponding food package

[1] Table 4 of paragraph (e)(12) of this section describes the minimum requirements and specifications for the supplemental foods.

[2] Issued to two categories of WIC participants—women participants with singleton pregnancies and breastfeeding women whose partially breastfed infants receive formula from the WIC Program in amounts that do not exceed the maximum formula allowances for Food Packages I–BF/FF–A, I–BF/FF–B, or II–BF/FF, as appropriate for the age of the infant as described in Table 1 of paragraph (e)(9) of this section.

[3] Issued to two categories of WIC participants—non-breastfeeding postpartum women and breastfeeding postpartum women whose partially breastfed infants receive more than the maximum formula allowances for Food Packages I–BF/FF–A, I–BF/FF–B, or II–BF/FF, as appropriate for the age of the infant as described in Table 1 of paragraph (e)(9) of this section.

[4] Issued to 4 categories of WIC participants—fully breastfeeding women whose infants do not receive formula from the WIC Program; all breastfeeding women during the first month postpartum; women pregnant with two or more fetuses; and women fully or partially breastfeeding multiple infants.

[5] Women fully breastfeeding multiple infants are prescribed 1.5 times the maximum allowances.

[6] Combinations of single-strength and concentrated juices may be issued provided that the total volume does not exceed the maximum monthly allowance for single-strength juice.

[7] WIC formula means infant formula, exempt infant formula, or WIC-eligible medical food.

[8] Powder and Ready-to-Feed may be substituted at rates that provide comparable nutritive value.

[9] Whole milk (not less than 3.25% milk fat) is the only type of milk allowed for 1-year-old children (12 through 23 months). Reduced fat milks (up to 2% milk fat) are the only types of milk allowed for children ≥24 months of age and women.

[10] Evaporated milk may be substituted at the rate of 16 fluid ounces of evaporated milk per 32 fluid ounces of fluid milk or a 1:2 fluid ounce substitution ratio. Dry milk may be substituted at an equal reconstituted rate to fluid milk. When a combination of different milk forms is provided, the full maximum monthly fluid milk allowance must be provided.

[11] For children, cheese may be substituted for milk at the rate of 1 pound of cheese per 3 quarts of milk. No more than 1 lb. of cheese may be substituted for milk. With medical documentation, additional amounts of cheese may be substituted in cases of lactose intolerance or other qualifying conditions, up to the maximum allowance for fluid milk.

[12] For children, soy-based beverage and tofu may substituted for milk only with medical documentation for qualifying conditions. Soy-based beverages may be substituted for milk, with medical documentation, for children in Food Package IV on a quart for quart basis up to the total maximum allowance of milk. Tofu may be substituted for milk, with medical documentation, for children in Food Package IV at the rate of 1 pound of tofu per 1 quart of milk up to the total maximum allowance of milk.

[13] For women, cheese or calcium-set tofu may be substituted for milk at the rate of l pound of cheese per 3 quarts of milk or 1 pound of tofu per 1 quart of milk. A maximum of 4 quarts of milk can be substituted in this manner in Food Packages V and VI; however, no more than 1 pound of cheese may be substituted for milk. A maximum of 6 quarts of milk can be substituted in this manner in Food Package VII; therefore, no more than 2 lbs. of cheese may be substituted for milk. With medical documentation, additional amounts of cheese or tofu may be substituted, up to the maximum allowances for fluid milk, in cases of lactose intolerance or other qualifying conditions.

[14] For women, soy-based beverage may be substituted for milk at the rate of 1 quart of soy-based beverage for 1 quart of milk up to the total maximum monthly allowance of milk.

[15] 32 dry ounces of infant cereal may be substituted for 36 ounces of breakfast cereal.

[16] Processed (canned, frozen, dried) fruits and vegetables may be substituted for fresh fruits and vegetables. Dried fruit and dried vegetables are not authorized for children.

[17] The maximum value of the vouchers may be adjusted in whole dollar increments to reflect accrued annual, un-rounded inflationary increases.

[18] Brown rice, bulgur, oatmeal, whole-grain barley barley, soft corn or whole wheat tortillas may be substituted for whole wheat bread on an equal weight basis.

[19] Canned legumes may be substituted for dried legumes at the rate of 64 oz of canned beans for 1 lb dried beans. Issuance of two additional combinations of dry or canned beans/peas is authorized for the Pregnant and Partially Breastfeeding (up to 1 year postpartum) category and Fully Breastfeeding (Enhanced) (up to 1 year postpartum) category: 1 lb. Dry and 64 oz. Canned beans/peas (and no peanut butter); or 2 lb. Dry or 128 oz. Canned beans/peas (and no peanut butter) or 36 oz. Peanut butter (and no beans).

(12) *Minimum requirements and specifications for supplemental foods.* Table 4 describes the minimum requirements and specifications for supplemental foods in all food packages:

TABLE 4.—MINIMUM REQUIREMENTS AND SPECIFICATIONS FOR SUPPLEMENTAL FOODS

Categories/foods	Minimum requirements and specifications
WIC formula:	
Infant formula	All authorized infant formulas must (1) meet the definition for an infant formula in section 201(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)) and meet the requirements for an infant formula under section 412 of the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 350a) and the regulations at 21 CFR parts 106 and 107; (2) be designed for enteral digestion via an oral or tube feeding; (3) provide at least 10 mg iron per liter (at least 1.8 mg iron/ 100 kilocalories) at standard dilution;

TABLE 4.—MINIMUM REQUIREMENTS AND SPECIFICATIONS FOR SUPPLEMENTAL FOODS—Continued

Categories/foods	Minimum requirements and specifications
	(4) provide at least 67 kilocalories per 100 milliliters (approximately 20 kilocalories per fluid ounce) at standard dilution. (5) not require the addition of any ingredients other than water prior to being served in a liquid state.
Exempt infant formula	All authorized exempt infant formula must (1) meet the definition and requirements for an exempt infant formula under section 412(h) of the Federal Food, Drug, and Cosmetic Act as amended (21 U.S.C. 350a(h)) and the regulations at 21 CFR parts 106 and 107; and (2) be designed for enteral digestion via an oral or tube feeding.
WIC-eligible medical foods [1]	Certain enteral products that (1) are specifically formulated to provide nutritional support for woman or children with a qualifying condition when the use of conventional food is precluded, restricted or inadequate; (2) must serve the purpose of a food, meal or diet (may be nutritionally complete or incomplete) and provide a source of calories and one or more nutrients; (3) must be designed for enteral digestion via an oral or tube feeding; (4) may not be a conventional food, drug, flavoring or enzyme; and (5) include many but not all products that meet the definition of medical foods in Section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)).
Milk and milk alternatives:	
Cow's milk	Must conform to FDA standard of identity for whole, reduced fat, low-fat, or non-fat milks (21 CFR 131.110). Must be pasteurized and contain at least 400 IU of vitamin D per quart (100 IU per cup) and 2000 IU of vitamin A per quart (500 IU per cup). May be flavored or unflavored. May be fluid, shelf-stable, evaporated (21 CFR 131.130), or dried (i.e., powder) (21 CFR 131.147).[2] Cultured Milks. Must conform to FDA standard of identity for cultured milk (21 CFR 131.112—cultured buttermilk, kefir cultured milk, acidophilus cultured milk).
Goat Milk	Must conform to FDA standard of identity for whole, reduced fat, low-fat, or non-fat milks (21 CFR 131.110). Must be pasteurized and contain at least 400 IU of vitamin D per quart (100 IU per cup) and 2000 IU of vitamin A per quart (500 IU per cup) following FDA fortification standards (21 CFR 131). May be flavored or unflavored. May be fluid, shelf-stable, evaporated (21 CFR 131.130), or dried (i.e., powdered) (21 CFR 131.147).[2]
Cheese	Domestic cheese made from 100 percent pasteurized milk. Must conform to FDA standard of identity (21 CFR 133); Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, part-skim or whole Mozzarella, pasteurized processed American, or blends of any of these cheeses are authorized. Cheeses that are labeled low, free, reduced, less or light in the nutrients of sodium, fat or cholesterol are WIC-eligible.[3]
Tofu	Calcium-set tofu prepared with only calcium salts (e.g., calcium sulfate). May not contain added fats, sugars, oils, or sodium.
Soy-based beverage	Must be fortified to meet the following nutrient levels: 276 mg calcium per cup, 8 g protein per cup, 500 IU vitamin A per cup, 100 IU vitamin D per cup, 24 mg magnesium per cup, 222 phosphorus per cup, 349 mg potassium per cup, 0.44 mg riboflavin per cup, and 1.1 mcg vitamin B12 per cup, in accordance with fortification guidelines issued by FDA.
Juice	Must be pasteurized 100% unsweetened fruit juice. Must conform to FDA standard of identity (21 CFR Part 146) or vegetable juice must conform to FDA standard of identity (21 CFR Part 156) and contain at least 30 mg of vitamin C per 100 mL of juice. With the exception of 100 percent citrus juices, State agencies must verify the vitamin C content of all State-approved juices. Juices that are fortified with other nutrients may be allowed at the State agency's option. Juice may be fresh, from concentrate, frozen, canned, or shelf-stable. Vegetable juice may be regular or lower in sodium.[3]
Breakfast cereal	Breakfast cereals as defined by FDA in 21 CFR 170.3(n)(4) for ready-to-eat and instant and regular hot cereals. Meet labeling requirements for making a health claim as a "whole grain food with moderate fat content": [4] (1) contain a minimum of 51% whole grains (using dietary fiber as the indicator); (2) meet the regulatory definitions for "low saturated fat" at 21 CFR 101.62 (≤1 g saturated fat per RACC) and "low cholesterol" (≤20 mg cholesterol per RACC); (3) bear quantitative trans fat labeling; and (4) contain ≤6.5 g total fat per RACC and ≤0.5 g trans fat per RACC. Contain a minimum of 28 mg iron per 100 g dry cereal. Contain ≤21.2 g sucrose and other sugars per 100 g dry cereal (≤6 g per dry oz).
Eggs	Fresh shell domestic hens' eggs or dried eggs mix. Must conform to FDA standard of identity in 21 CFR 160.105 or pasteurized liquid whole eggs (must conform to FDA standard of identity in 21 CFR 160.115). Hard boiled eggs, where readily available for purchase in small quantities, may be provided for homeless participants.
Fruits and Vegetables (fresh and processed)	Any variety of fresh whole or cut fruit without added sugars.[5] Any variety of fresh whole or cut vegetable, except white potatoes, without added sugars, fats, or oils (orange yams and sweet potatoes are allowed).[5] Any variety of canned [6] fruits (must conform to FDA standard of identity (21 CFR 145); including applesauce; juice pack or water pack without added sugars, fats, oils, or salt (i.e., sodium). Any variety of frozen fruits without added sugars.[7]

TABLE 4.—MINIMUM REQUIREMENTS AND SPECIFICATIONS FOR SUPPLEMENTAL FOODS—Continued

Categories/foods	Minimum requirements and specifications
	Any variety of canned[6] or frozen vegetables (must conform to FDA standard of identity (21 CFR Part 155)) except white potatoes (orange yams and sweet potatoes are allowed); without added sugars, fats, or oils. May be regular or lower in sodium.[3 7] Any type of dried fruits or dried vegetable without added sugars, fats, oils, or salt (i.e., sodium).[5]
Whole wheat bread or other whole grains	Whole wheat bread (must conform to FDA standard of identity (21 CFR 136.180)). OR Meet labeling requirements for making a health claim as a ''whole grain food with moderate fat content'':[4] (1) contain a minimum of 51% whole grains (using dietary fiber as the indicator); (2) meet the regulatory definitions for ''low saturated fat'' at 21 CFR 101.62 (≤1 g saturated fat per RACC) and ''low cholesterol''(≤20 mg cholesterol per RACC); (3) bear quantitative trans fat labeling; and (4) contain ≤6.5 g total fat per RACC and ≤0.5 g trans fat per RACC. Brown rice, bulgur, oatmeal, whole-grain barley without added sugars, fats, oils, or salt (i.e., sodium). May be instant-, quick-, or regular-cooking. Soft corn or whole wheat tortillas without added fats or oils may be allowed at the State agency's option.
Canned fish[6]	Canned only: light tuna (must conform to FDA standard of identity (21 CFR 161.190)); salmon (must conform to FDA standard of identity (21 CFR 161.170)); Sardines. May be packed in water or oil. Pack may include bones or skin. May be regular or lower in sodium content.[3]
Mature legumes (dry beans and peas)	Any type of mature dry beans, peas, or lentils in dry-packaged or canned[6] forms. Examples include but are not limited to black beans (''turtle beans''), blackeye peas (cowpeas of the blackeye variety, ''cow beans''), garbanzo beans (chickpeas), great northern beans, kidney beans, lima beans (''butter beans''), navy beans, pinto beans, soybeans, split peas, and lentils. All categories exclude soups. May not contain added sugars, fats, oils or meat as purchased. Canned legumes may be regular or lower in sodium content.[3 8] Baked beans may be provided for participants with limited cooking facilities.[8]
Peanut butter	Peanut butter and reduced fat peanut butter (must conform to FDA Standard of Identity (21 CFR 164.150)); creamy or chunky, regular or reduced fat, salted or unsalted[3] forms are allowed.
Infant Foods:	
Infant cereal	Infant cereal, must contain a minimum of 45 mg of iron per 100 g of dry cereal.[9]
Infant fruits	Any variety of single ingredient commercial infant food fruit without added sugars, starches, or salt (i.e., sodium). Texture may range from strained through diced.[10]
Infant vegetables	Any variety of single ingredient commercial infant food vegetables without added sugars, starches, or salt (i.e., sodium). Texture may range from strained through diced.[11]
Infant meat	Any variety of single ingredient commercial infant food meat without added sugars, starches, vegetables or salt (i.e., sodium). Broth (unsalted, i.e., without added sodium) may be an ingredient. Texture may range from pureed through diced.[12]

Table 4 Footnotes: FDA = Food and Drug Administration of the U.S. Department of Health and Human Services; RACC = reference amount customarily consumed.

[1] The following are not considered a WIC eligible medical food: Formulas used solely for the purpose of enhancing nutrient intake, managing body weight, addressing picky eaters or used for a condition other than a qualifying condition (e.g., vitamin pills, weight control products, etc.); medicines or drugs, as defined by the Food, Drug and Cosmetic Act (21 U.S.C. 350a) as amended; enzymes, herbs, or botanicals; oral rehydration fluids or electrolyte solutions; flavoring or thickening agents; and feeding utensils or devices (e.g., feeding tubes, bags, pumps) designed to administer a WIC-eligible formula.

[2] All authorized milks must confirm to FDA, DHHS standards of identity for milks as defined by 21 CFR Part 131 and meet WIC's requirements for vitamin fortification as stated above. Additional authorized milks include, but are not limited to: calcium-fortified, lactose-reduced and lactose-free, acidified, and UHT pasteurized milks. Other milks are permitted at the State agency's discretion provided that the State agency determines that the milk meets the minimum requirements for an authorized milk.

[3] Any of the following lower sodium forms are allowable: *Sodium-free*—less than 5 mg sodium per serving; *Very low sodium*—35 mg sodium or less per serving or, if the serving is 30 g or less or 2 tablespoons or less, 35 mg sodium or less per 50 g of the food; *Low-sodium*—140 mg sodium or less per serving or, if the serving is 30 g or less or 2 tablespoons or less, 140 mg sodium or less per 50 g of the food; *Light in sodium*—at least 50 percent less sodium per serving than average reference amount for same food with no sodium reduction; *Lightly salted*—at least 50 percent less sodium per serving than reference amount (If the food is not ''low in sodium,'' the statement ''not a low-sodium food'' must appear on the same panel as the Nutrition Facts panel.); and *Reduced or less sodium*—at least 25 percent less sodium per serving than reference food.

[4] Food and Drug Administration (FDA), *Health Claim Notification for Whole Grain Foods with Moderate Fat Content* at *http://www.cfsan.fda.gov/dms/flgrain2.html*

[5] Herbs or spices; edible blossoms and flowers, e.g., squash blossoms (broccoli, cauliflower and artichokes are allowed); creamed or sauced vegetables; vegetable-grain (pasta or rice) mixtures; fruit-nut mixtures; breaded vegetables; fruits and vegetables for purchase on salad bars; peanuts; ornamental and decorative fruits and vegetables such as chili peppers on a string; garlic on a string; gourds; painted pumpkins; fruit baskets and party vegetable tray; and items such as blueberry muffins and other baked goods are not authorized. Mature legumes (dry beans and peas) and juices are provided as separate food WIC categories and are not authorized under the fruit and vegetable category.

[6] ''Canned'' refers to processed food items in cans or other shelf-stable containers, e.g., jars, pouches.

[7] Excludes white potatoes; catsup or other condiments; pickled vegetables, olives; soups; juices; and fruit leathers and fruit roll-ups.

[8] The following canned mature legumes are not authorized: soups; immature varieties of legumes, such as those used in canned green peas, green beans, snap beans, orange beans, and wax beans; baked beans with meat; e.g., beans and franks; and beans containing added sugars (with the exception of baked beans), fats, meat, or oils.

[9] Infant cereals containing infant formula, milk, fruit, or other non-cereal ingredients are not allowed.

[10] Mixtures with cereal or infant food desserts (e.g., peach cobbler) are not authorized; however, combinations of single ingredients (e.g., apple-banana) are allowed.

[11] Combinations of single ingredients (e.g., peas and carrots) are allowed.

[12] No infant food combinations (e.g., meat and vegetables) or dinners (e.g., spaghetti and meatballs) are allowed.

(f) *USDA purchase of commodity foods.* (1) At the request of a State agency, the Department may purchase commodity foods for the State agency using funds allocated to the State agency. The commodity foods purchased and made available to the State agency must be equivalent to the foods specified in Table 4 of paragraph (e)(12) of this section.

(2) The State agency must:

(i) Distribute the commodity foods to its local agencies or participants; and

(ii) Ensure satisfactory storage facilities and conditions for the commodity foods, including documentation of proper insurance.

(g) *Infant formula manufacturer registration.* Infant formula manufacturers supplying formula to the WIC Program must be registered with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.). Such manufacturers wishing to bid for a State contract to supply infant formula to the program must certify with the State health department that their formulas comply with the Federal Food, Drug, and Cosmetic Act and regulations issued pursuant to the Act.

(h) *Rounding up.* State agencies may round up to the next whole container for either infant formula or infant foods (infant cereal, fruits, vegetables and meat). State agencies that use the rounding up option must calculate the amount of infant formula or infant foods provided according to the requirements and methodology as described in this section.

(1) *Infant Formula.* State agencies must use the maximum monthly allowance of reconstituted fluid ounces of liquid concentrate infant formula as specified in Table 1 of paragraph (e)(9) of this section as the full nutritional benefit (FNB) provided by infant formula for each food package category and infant feeding option (e.g., Food Package I A fully formula fed, IA–FF). When using the rounding up option for infant formula, State agencies must issue whole containers that provide at least the FNB but not more than the maximum monthly allowances as specified in Table 1 of paragraph (e)(9) of this section.

(i) State agencies that use rounding up of infant formula must:

(A) Use the methodology described in paragraph (h)(1)(iii) of this section for calculating and dispersing the rounding up option;

(B) Issue infant formula in whole containers that are all the same size; and

(C) Disperse the number of whole containers as evenly as possible over the timeframe (the number of months the participant will receive the food package).

(ii) The methodology to calculate rounding up and dispersing infant formula to the next whole container over the food package timeframe is as follows:

(A) Multiply the FNB amount for the appropriate food package and feeding option (e.g. Food Package I A fully formula fed, IA–FF) by the timeframe the participant will receive the food package to determine the total amount of infant formula to be provided. The timeframe will vary depending on the food package category and infant feeding option.

(B) Divide the total amount of infant formula provided by the yield of the container (in reconstituted fluid ounces) issued by the State agency to determine the total number of containers to be issued during the timeframe that the food package is prescribed.

(C) If the number of containers to be issued does not result in a whole number of containers, the State agency must round up to the next whole container in order to issue whole containers.

(2) *Infant foods.* (i) State agencies may use the rounding up option to the next whole container of infant food (infant cereal, fruits, vegetables and meats) when the maximum monthly allowance cannot be issued due to varying container sizes of authorized infant foods.

(ii) State agencies that use the rounding up option for infant foods must:

(A) Use the methodology described in paragraph (h)(2)(iii) of this section for calculating and dispersing the rounding up option;

(B) Issue infant foods in whole containers; and

(C) Disperse the number of whole containers as evenly as possible over the timeframe (the number of months the participant will receive the food package).

(iii) The methodology to round up and disperse infant food is as follows:

(A) Multiply the maximum monthly allowance for the infant food by the timeframe the participant will receive the food package to determine the total amount of food to be provided.

(B) Divide the total amount of food provided by the container size issued by the State agency (e.g., ounces) to determine the total number of food containers to be issued during the timeframe that the food package is prescribed.

(C) If the number of containers to be issued does not result in a whole number of containers, the State agency must round up to the next whole container in order to issue whole containers.

In § 246.12, paragraph (g)(3)(i) is revised to read as follows:

§ 246.12 Food delivery systems.

* * * * *

(g) * * *

(3) * * *

(i) *Minimum variety and quantity of supplemental foods.* The State agency must establish minimum requirements for the variety and quantity of supplemental foods that a vendor applicant must stock to be authorized. These requirements must include that the vendor stock at least two varieties of fruits and vegetables authorized by the State agency. The State agency may not authorize a vendor applicant unless it determines that the vendor applicant meets these minimums. The State agency may establish different minimums for different vendor peer groups.

* * * * *

Dated: July 20, 2006.

Eric M. Bost,

Under Secretary for Food, Nutrition and Consumer Services.

Appendix

Note: This appendix will not be published in the Code of Federal Regulations.

Regulatory Impact Analysis

7 CFR 246: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages

Proposed Rule

Executive Summary

The WIC program addresses the supplemental nutritional needs of at-risk groups through the distribution of supplemental food packages, and a program of nutrition education that includes counseling, health and social service referrals, and breastfeeding promotion and support. WIC nutrition education provisions are governed by broad regulatory language that allows nutrition education provided to participants to respond to the supplemental nutrition needs of participants in light of changes in dietary and health research. In contrast, WIC supplemental food packages are defined very specifically in the regulatory language. Consequently, as the population served by WIC has grown and become more diverse over the last 20 years and as food consumption habits have changed, the

nutritional risks faced by participants have changed. Also, though nutrition science has advanced, the WIC supplemental food packages have remained largely unchanged. A rule is needed to implement recommended changes to the WIC food packages based on the current supplemental nutritional needs of WIC participants and advances in nutrition science.

The proposed rule would revise regulations governing the WIC food packages to revise the maximum monthly allowances and minimum requirements for certain supplemental foods; revise the substitution rates for certain supplemental foods and allow additional foods as alternatives; revise age specifications for assignment to infant food packages; add foods to children and women food packages; and address general provisions that apply to all food packages. The revisions reflect recommendations made by the Institute of Medicine of the National Academies in its Report ''WIC Food Packages: Time for a Change,'' and certain administrative revisions found necessary by the Department.

The revisions would also bring the WIC food packages in line with the 2005 Dietary Guidelines for Americans and current infant feeding practice guidelines of the American Academy of Pediatrics: better promote and support the establishment of successful long-term breastfeeding; provide WIC participants with a wider variety of food; provide WIC State agencies with greater flexibility in prescribing food packages to accommodate participants with cultural food preferences; and, serve all participants with certain medical provisions under one food package to facilitate efficient management of participants with special dietary needs.

Significant changes in the food packages include: the classification of infants in Food Packages I and II and mothers in Food Packages V, VI, and VII according to breastfeeding practice; eliminating juice from Food Packages I and II; adding infant foods and meat for fully breastfed infants in Food Package II; adding whole grains, and fruits and vegetables to food packages for children (IV) and women (V and VII only); and, revising the purpose, content and requirements for Food Package III, currently for children and women with special dietary needs.

Under the proposed rule, revisions to the WIC food packages are cost-neutral to the Federal Government. Specifically, FNS estimates that the changes will result in a cost savings of $34 million dollars over five years, a negligible amount relative to the program's annual cost of more than $5 billion.

Table of Contents

Action
Nature
Need
Affected Parties
Effects
Background
Current WIC Food Packages and Changing Nutritional Priorities
Changing Demographics of the WIC Population
Institute of Medicine's Recommendations
Summary of Rule and Benefits
Food Package I
Package II
Food Package III
Food Package IV
Food Package V
Food Package VI
Food Package VII
Other Provisions
Summary of Key Provisions
Costs
Proposed Rule
Major Cost Drivers
Fruit and Vegetables Option
Cost Estimate Methodology
Food Costs
Prescriptions
Infant Formula and Rounding
Redemption Rates
Food Prices
Participant Projections
Phased Implementation
State Cost Variation
Administrative Costs
Uncertainties
Price Volatility in the Dairy Market
Reduce Assumed Preference for Soy Beverage
Alternatives
Include Yogurt as a Milk Substitute for Food Packages IV–VII
More Restrictive Dark Green and Orange Vegetable Rule
No Infant food Fruits, Vegetables or Meats for Infants 6 Mos and Older
Drop the Whole Grain Requirement for Both Bread and Cereal
Market Share Analysis
Appendix: Additional Cost Estimate Assumptions

Date: July 17, 2006.
Agency: USDA, Food and Nutrition Service.
Contact: Cindy Long.
Phone: (703) 305–2340.
Fax: (703) 305–2576.
E-mail: cindy.long@fns.usda.gov.
Title: 7 CFR 246: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages.

Action

A. Nature

Proposed Rule.

B. Need

The WIC program addresses the supplemental nutritional needs of at-risk groups through the distribution of age and condition specific food packages, and a program of nutrition education that includes counseling, health and social service referrals, and breastfeeding promotion and support. WIC nutrition education provisions are governed by broad regulatory language that allows nutrition education provided to participants to respond to changes in dietary and health research. In contrast, WIC supplemental food packages are defined very specifically in the regulatory language. Consequently, as the population served by WIC has grown and become more diverse over the last 20 years, the nutritional risks faced by participants have changed, and though nutrition science has advanced, the WIC supplemental food packages have remained largely unchanged. This rule is needed to implement recommended changes to the WIC food packages based on the current supplemental nutritional needs of WIC participants and advances in nutrition science.

C. Affected Parties

The program affected by this rule is the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The parties affected by this regulation are the USDA's Food and Nutrition Service (FNS), State and local agencies that administer the WIC Program, retail vendors, and WIC participants.

Effects

The following analysis describes the potential economic impact of this proposed rule. This rule is needed due to changes in the population served by WIC, and advances in nutrition and knowledge about the supplemental nutritional needs of those served by WIC. The changes in this rule are significant to the costs or overall operations to the program. The potential effects of these changes are highlighted below.

A. Background

The WIC program was established in the 1970s to address the special supplemental nutritional needs of low-income pregnant and postpartum women, infants, and children up to age five who are determined to be at nutritional risk. Regulations governing the WIC program recognize a broad range of nutritionally related medical conditions for purposes of establishing program eligibility. These include anemia, low birth weight, chronic infections, overweight, underweight, and similar manifestations of poor nutrition suitable for direct measurement or diagnosis.[1] WIC regulations also recognize that personal medical histories, dietary patterns, and economic circumstances may put otherwise healthy women or children at nutritional risk. Certification may therefore be extended to women facing high-risk pregnancies, pregnant women or mothers who abuse alcohol or drugs, homeless women and children, and infants and children with congenital malformations that may interfere with adequate nutrient intake or absorption.[2] WIC addresses the supplemental nutritional needs of at-risk groups through the distribution of age and condition-specific food packages, and a program of nutrition education that includes counseling, social service referrals, and breastfeeding promotion and support.

WIC's nutrition education provisions are governed by broad regulatory language that seeks to promote ''proper nutrition,'' ''optimal use'' of WIC's supplemental foods, and appropriate advice concerning non-WIC foods.[3] Compliance with this regulatory mandate presumes that nutrition education will respond to the supplemental nutrition needs of participants based on advances in

[1] 7 CFR 246.7(e).
[2] *Id.*
[3] 7 CFR 246.11.

dietary and health research. The U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS) provides provision of nutrition education to WIC participants that is consistent with the 2005 Dietary Guidelines for Americans.

WIC's supplemental food packages, by contrast, are defined by regulation with specificity. The regulatory flexibility that characterizes WIC nutrition education does not extend to the prescription of individual food packages. The list of WIC-approved foods focused to provide select nutrient-rich foods; allowed substitutions provide only limited room for participant-specific food package tailoring.

The population served by the WIC program has grown in size and diversity over time and the frequency of nutritional risks faced by WIC participants have changed. Most important, the content of existing WIC food packages no longer reflects the leading views of current nutrition science.

1. Current WIC Food Packages and Changing Nutritional Priorities

Supplemental foods are offered to WIC participants in one of seven packages designed for the special supplemental nutritional needs of the following sub-populations:

I. Infants under four months old
II. Infants from four to twelve months old
III. Children and women with special dietary needs
IV. Children from one to five years old
V. Pregnant and breastfeeding women
VI. Non-breastfeeding postpartum women
VII. Exclusively breastfeeding women

Inadequate nutrition was the prime motivating factor behind enactment of the WIC program.[4] Nutrition research in the 1970's pointed to calcium, iron, high quality protein, and vitamins A and C as nutrients most likely to be lacking in the diets of low-income women, infants, and children. Current WIC food packages reflect that early research. Today's packages include some combination of: Iron-fortified infant formulas, iron-fortified cereals, vitamin C rich juice, vitamin A and D fortified milk, eggs, cheese, dried beans or peas, peanut butter, tuna, and carrots. Other factors that contributed to the selection of these foods are their nutrient density, modest cost, wide availability, and broad acceptance by the WIC-eligible population.

The nutritional risks faced by the low-income population of the 1970s have changed. Although inadequate intake of some nutrients remains a concern,[5] improved diets have reduced the prevalence of once relatively common deficiency diseases and underweight in at-risk groups. A WIC program that now assists nearly eight million individuals monthly, including about half of the nation's infants,[6] supplements the diets of an at-risk population with the very types of iron-fortified, nutrient-dense foods associated with this changed health picture. WIC's current food packages, little modified since the 1970s, were appropriately designed to address the recognized nutritional priorities of that time. But today's WIC population, like the U.S. population as a whole, faces a reordered set of priorities. Excessive intakes of some nutrients, including saturated fat, and of food energy have taken a place among the nation's top public health concerns.[7] Other nutrients, including folate, vitamin E, and fiber, have since been identified as lacking in the diets of WIC-eligible sub-populations.[8] While current WIC food packages continue to address important health risks of undernutrition, they do not target all identified inadequacies, and they may contribute to the risks associated with excessive intake of some nutrients.

Medical consequences of improper diets include fetal or infant lead toxicity tied to low calcium intake by pregnant and breastfeeding women, birth defects caused by inadequate folate consumption during pregnancy, iron-deficiency anemia, and heart disease, diabetes, stroke, and cancer, all linked to obesity and excessive intake of saturated fat.[9] Adjustments to the WIC food packages that move the levels of these priority nutrients closer to Recommended Dietary Allowances (RDAs) and Adequate Intake (AIs) levels of the Institute of Medicine's Dietary Reference Intakes may reduce the nutrition-related medical health risks of WIC participants.

2. Changing Demographics of the WIC Population

The population served by WIC has grown more diverse over time. (See Figure 1.) White and Black participants represented 72% of the WIC population in 1992; by 2004, just 56% of WIC participants fell into one of those two racial/ethnic groups.[10] WIC's Hispanic population, itself a diverse group, has grown from the third largest to the largest over the same period. Greater ethnic diversity increases the demand for additional food options consistent with cultural preferences. The introduction of new foods and substitution options should broaden the appeal of WIC food packages and increase the effectiveness of WIC's educational message. Ultimately, wider acceptance of WIC-approved diets should improve the nutrition of underserved at-risk groups.

[4] See 42 USC 1786(a).

[5] National Academies, Institute of Medicine (IOM). *WIC Food Packages: Time for a Change*, Washington, D.C.: The National Academies Press, 2005. pp. 31, 64.

[6] U.S. department of Agriculture, Food and Nutrition Web site, July 2005. *www.fns.usda.gov/wic/FAQs/FAQ.HTM.*

[7] See U.S. Department of Health and Human Services and U.S. Department of Agriculture, *Dietary Guidelines for Americans*, 2005, 6th edition, Washington D.C.: U.S. Government Printing Office, January 2005. (USDHHS/USDA, 2005).

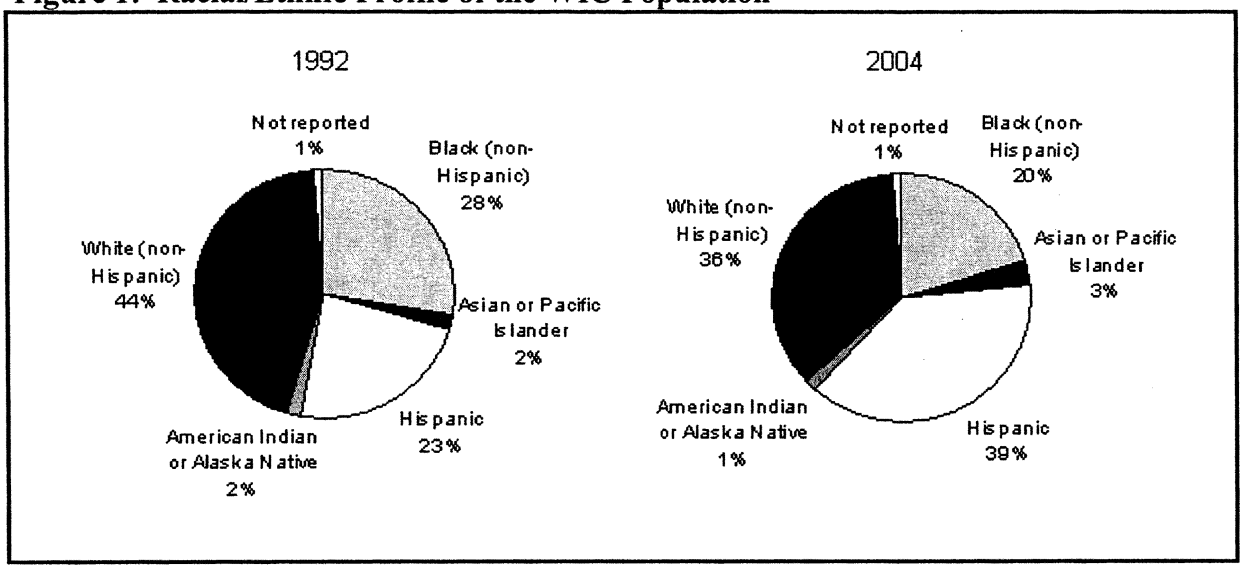
[8] IOM, p.59. Note, however, that these conclusions are based on self-reported food consumption data from the Continuing Survey of Food Intakes by Individuals (1994–1996 and 1998.) Underreporting of food intakes is suspected by women involved in the survey. And, the data do not include nutrients consumed in the form of dietary supplements. These factors may overstate the problem of nutrient inadequacies, and may understate the problem of excessive intakes.

[9] See IOM, p. 63; see also ''High Costs of Poor Eating Patterns in the States,'' Elizabeth Frazão, in *America's Eating Habits: Changes and Consequences*, Elizabeth Frazão, ed., Economic Research Service, U.S. Department of Agriculture, Washington, D.C., 1999.

[10] U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition and Evaluation, WIC Participant and Program Characteristics 1992, Abt. Associates. Alexandria, VA: 1994.

U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition and Evaluation, WIC Participant and Program Characteristics 2004, Abt. Associates. Alexandria, VA: 2005. The program characteristics studies performed prior to 1992 did not include participant data from Alaska, Hawaii, Puerto Rico, or U.S. territories. The racial/ethnic breakdowns from those earlier reports should not be directly compared to the ones contained in reports from 1992 forward.

Figure 1: Racial/Ethnic Profile of the WIC Population



3. Institute of Medicine's Recommendations

FNS contracted with the National Academies' Institute of Medicine (IOM) in 2003 to assess the nutritional health profile of the current WIC population, and to recommend changes in the content of the program's food packages. IOM examined the Continuing Survey of Food Intakes of Individuals (CSFII) food consumption survey data (see footnote 9) to evaluate the nutritional content of the diets of WIC-eligible and potentially WIC-eligible populations.[11] IOM identified and prioritized a list of micro- and macro-nutrients [12] whose consumption by the targeted populations fell outside of acceptable ranges.[13] (See Table 1.)

TABLE 1.—PRIORITY NUTRIENTS IDENTIFIED BY THE INSTITUTE OF MEDICINE (IOM) AS POSSIBLY INADEQUATE OR EXCESSIVE IN THE DIETS OF WIC SUB-POPULATIONS

WIC subpopulation	Inadequate (grouped by relative levels of inadequacy)			Excessive
	Highest	High	Moderate	
WIC infants:				
Non-breastfed under age one				Zinc, preformed vitamin A, food energy.
Breastfed, 6 to 11 months	Iron, zinc.			
WIC children:				
Ages 1 to 4	Vitamin E, fiber, potassium.			Zinc, preformed vitamin A, food energy, saturated fat.
Women:				
Pregnant, breastfeeding, non-breastfeeding postpartum.	Calcium, magnesium, vitamin E, potassium, fiber.	Vitamins A, C, B_6, and folate.	Iron, zinc, thiamin, niacin, protein.	Sodium and saturated fat (as a percent of food energy).

IOM then recommended specific changes to the current WIC food packages to improve the nutritional balance of the diets of the WIC population. IOMs recommendations were guided by the following criteria: [14]

1. Reducing the prevalence of inadequate or excessive nutrient intake by WIC participants,

2. Helping WIC participants achieve dietary patterns consistent with the 2005 Dietary Guidelines for Americans for individuals two years of age and older,[15]

3. Bringing the diets of infants and children under age two into closer conformity with accepted recommendations; encouraging and supporting breastfeeding,

4. Including foods in the WIC packages that are available in forms suitable for individuals with limited means of transportation, storage, or cooking,

5. Including foods in the WIC packages that are commonly consumed and widely available, accommodate cultural preferences, and encourage WIC participation, and

6. Giving consideration to the impact that the proposed changes will have on vendors, and on state and local WIC agencies.

B. Summary of Rule and Benefits

With few changes, the recommendations of the IOM have been adopted as this proposed rule. The provisions of the rule and the potential benefits of these changes are summarized below.

1. Food Package I—Infants Under Six Months

Proposed rule: Tie maximum infant formula prescriptions to breastfeeding practice.

• Establish fully breastfed, partially breastfed, and fully formula-fed categories, and set maximum formula allowances for each. Food Package I currently specifies a

[11] See IOM, p. 46. IOM used CSFII data for infants and children enrolled WIC. To maintain a sufficient sample size, IOM used CSFII results for all pregnant, breastfeeding, and non-breastfeeding postpartum women.

[12] Micro-nutrients are nutrients the body requires in small amounts, e.g. vitamins and minerals. Macro-nutrients are nutrients that constitute the majority of an individual's diet, e.g. carbohydrates, proteins, and fats.

[13] See IOM, pp. 46 through 60.

[14] IOM, p. 37.

[15] IOM, p. 153–154, 156–157.

single maximum formula amount for all Package I recipients; local WIC staff may tailor the amount of formula to reflect with individual participant needs, based on frequency of breastfeeding. The new rule sets a maximum formula amount for partially breastfed infants that is roughly half the maximum provided to fully formula fed infants.

• Powder formula alone is recommended for partially breastfed infants. Powder and non-powder options remain available for fully formula fed infants.

Rationale and Benefits:

• The infant breastfeeding categories are intended to promote breastfeeding. Breastfeeding provides important nutritional and health benefits beyond that provided by formula feeding; it is the AAPs recommended method of infant feeding.[16] It is also proposed that the infants breastfeeding status be used to assign mothers to their own food packages. Mothers of fully formula fed infants under six months of age are assigned to Food Package VI; partially breastfeeding mothers of infants under six months are assigned to Package V which is relatively more attractive than Package VI for postpartum women due to the inclusion of additional foods and higher maximum allowances for the same foods that are provided in Package V.

• Classification of infants by breastfeeding status makes it easier to ensure that partially breastfed infants are prescribed only powder formula, the option recommended by IOM to give parents greater control over the amount of formula prepared. This should reduce waste and contribute to safer formula use.

Proposed rule: Delay introduction of complementary foods. Extend the age range of infants covered by Food Package I by two months. Currently, Food Package I supplements the diets of infants from birth through three months. Under the proposed rule, Food Package I would be provided to infants through five months of age. Under both the current and proposed rules, Food Package I contains no complementary foods. Extending the age range of infants served by Food Package I removes complementary foods (juice and infant cereal) from the food packages for four and five month old infants.

Rationale and Benefits: Delaying the introduction of complementary foods until the infant reaches six months is consistent with the current recommendations of the American Academy of Pediatrics (AAP).

Proposed rule: Increase maximum formula prescription at four months. Increase the maximum amount of formula allowed for four and five-month-old infants (relative to the amount allowed under current rules.)

Rationale and Benefits: Calories lost through elimination of juice and infant cereal from Food Package I are replaced, in part, with increased formula prescription amounts. The package better meets the nutritional needs of the infant through to month 6.

Proposed rule: No partially breastfed category for infants under one month. Do not provide formula to breastfed infants under one month old. Infants under one month will be recognized as either fully breastfed or fully formula-fed. No infant will be prescribed formula in the amount specified by Food Package I for partially breastfed infants until he or she reaches one month.

Rationale and Benefits: By not offering a partially breastfed option for infants under one month old, the proposed rule intends to encourage mothers to continue a practice of breastfeeding that may have begun at the hospital. Additionally, the amount of milk a breastfeeding woman produces depends directly on how often and how long she nurses. Providing supplemental formula to a new mother may interfere with her milk production and success at continued breastfeeding.

Proposed rule: No low iron formula. Discontinue the prescription of low iron infant formula for infants of all ages.

Rationale and Benefits: Iron fortified formulas continue to play an important role in preventing iron deficiency in infants. The AAP recognizes no medical condition that would justify the feeding of low iron formula to infants.

Proposed rule: Reclassify prescriptions of exempt infant formula under Package III. Administer exempt formulas, other than those prescribed for common food allergies, under Food Package III. Currently, all infants are classified as recipients of Food Packages I or II. This proposal would simply reclassify certain Package I (and II) recipients as Package III recipients; it is not intended to alter the types of foods prescribed to infants with qualifying conditions.

Rationale and Benefits: Currently, only children and adults prescribed special medical foods are classified as Package III recipients. Grouping together all recipients of medical foods and exempt formulas is meant to increase management efficiency, and facilitate the tracking of the costs and benefits of medical and exempt food prescriptions.

2. Food Package II—Infants 6 Through 11 Months

Proposed rule: Delay introduction of complementary foods. Delay the age at which infants become eligible for Food Package II. Infants are currently made eligible for Food Package II and its complementary foods at four months of age. The proposed rule would make infants eligible for Package II foods at six months of age.

Rationale and Benefits: Delaying the introduction of complementary foods until the infant reaches six months is consistent with the current recommendations of the AAP.

Proposed rule: Tie maximum formula prescription to breastfeeding practice. Establish fully breastfed, partially breastfed, and fully formula-fed categories, and set maximum formula allowances for each. The new rule sets a maximum formula amount for partially breastfed infants that is roughly half the maximum provided to fully formula-fed infants.

Rationale and Benefits: Like the corresponding proposal under Food Package I, Package II breastfeeding categories will be used to assign mothers to their own food packages. However, once an infant reaches six months of age, the consequences of the infants breastfeeding status on the mothers food package eligibility are greater. Mothers whose infants are prescribed no more formula than the maximum allowed for a partially breastfed infant will remain eligible for Food Package V. Mothers who accept more formula will be considered non-breastfeeding, and will be eligible for no food package at all. The proposed rule encourages mothers to continue breastfeeding beyond six months postpartum. Increasing the rate and duration of breastfeeding is a recommendation of the AAP.[17]

Proposed rule: Reduce maximum formula prescription amounts. Reduce the amount of formula, relative to current rules, for partially breastfed and fully formula-fed infants.

Rationale and Benefits: With the addition of infant foods (see below), the revised Package II provides close to the recommended levels of priority nutrients without excess food energy. Reducing formula prescriptions should encourage parents to introduce complementary foods to their infants beginning at six months of age.[18]

Proposed rule: Replace juice with fruits and vegetables.

• Eliminate juice from Food Package II. Add infant food fruits and vegetables to the package. Allow fresh bananas as a substitute for a portion of the infant food fruits and vegetables.

• Provide more infant food fruits and vegetables to fully breastfed infants than to partially breastfed or fully formula-fed infants.

Rationale and Benefits:

• Increased fruit and vegetable consumption is among the major recommendations of the 2005 Dietary Guidelines for Americans; commonly consumed fruits and vegetables provide several of the priority nutrients identified by the IOM.[19] The introduction of fruits and vegetables at an early age may promote acceptance and increased consumption.[20]

• Juice does not provide nutritional benefit beyond that available from whole fruits and vegetables.[21]

• Eliminating juice offsets the cost of providing infant food fruits and vegetables.

• Providing more infant food fruits and vegetables to fully breastfed infants encourages the continuation of breastfeeding by increasing the value of the fully breastfed package.[22] It also seeks to provide an amount sufficient to mix with infant food meat to improve palatability and acceptance of that food. (See below.)

Proposed rule: Provide infant food meat to fully breastfed infants. Add infant food meat to Package II for fully breastfed infants.

Rationale and Benefits: Infant food meat supplies iron and zinc for infants age six months and older, that breast milk alone does not supply. Increasing the value of the fully breastfed package is also intended to encourage continued breastfeeding.

[16] IOM, pp. 5, 6, 69.

[17] IOM, p. 69.

[18] IOM, pp. 94, 113.

[19] IOM, p. 100.

[20] *Id.*

[21] IOM, p. 103.

[22] IOM, p. 94.

Proposed rule: No low iron formula. Discontinue the prescription of low iron infant formula.

Rationale and Benefits: Iron fortified formulas continue to play an important role in preventing iron deficiency in infants. The AAP recognizes no medical condition that would justify the feeding of low iron formula to infants.

Proposed rule: Reclassify prescriptions of exempt infant formula under Package III. Administer exempt formulas to infants under Food Package III.

Rationale and Benefits: Grouping together all recipients of medical foods and exempt formulas is meant to increase management efficiency, and facilitate the tracking of the costs and benefits of medical and exempt food prescriptions.

Proposed rule: Disallow prescription of infant cereal with added ingredients. Infant cereal with added fruit, milk, formula, or other non-grain foods may not be prescribed under Food Package II.

Rationale and Benefits: As recommended by IOM, the proposed rule formalizes federal policy [23] which states that cereal combinations are not allowed. The Department's policy is based on recommendations of the American Academy of Pediatrics and costs concerns. The American Academy of Pediatrics recommends that single ingredient foods be introduced one at a time in an effort to isolate food sensitivities and possibly avert the development of food intolerances. Although cereal/fruit combinations may be appropriate once the risk of sensitivity has diminished, these combination foods are more expensive than regular infant cereal. Therefore, in an effort to contain the cost of the food packages, the Department has not authorized them. In reference to cereal/formula combinations, since infant formula is already provided in the food packages, the Department does not believe it is necessary to provide additional infant formula in combination with infant cereal.

3. Food Package III—Medically Fragile Participants

Proposed rule: Administer exempt formulas to infants with qualifying conditions under Package III.

Infants with a qualifying condition (see below) who currently receive exempt infant formulas would be moved from Package I or Package II to Package III.

Rationale and Benefits: The current system, which assigns infants with special dietary needs to either Packages I or II, while women and children with special dietary needs are placed in Package III, makes it difficult to track participation and costs associated with providing medical foods. Grouping infants with qualifying conditions with the category of women and children receiving medical foods is expected to increase management efficiency and facilitate the tracking of the costs and benefits of serving this segment of the WIC population.

Proposal: Clarify language governing Package III's purpose and scope.

- The proposed rule would provide additional guidance to states on the nature of medical conditions that qualify a WIC participant for Package III medical foods.
- Prescription of a medical food would also require additional justification and instructions by a licensed health care professional.
- The proposal would also clarify the definition of WIC-eligible medical foods.

Rationale and Benefits: The threshold of eligibility for Package III medical foods is currently unclear. The distinction between conventional foods marketed to the medically needy and WIC authorized medical foods can also be difficult to make. The proposed rule will provide guidance to state agencies that should promote efficiency and reduce the costs of restricting Package III to participants with qualifying medical conditions.

Proposed rule: Make non-Package III foods available to Package III recipients. In addition to the medical foods and exempt formulas currently prescribed to Package III recipients, the proposed rule would offer these individuals all of the foods in the packages to which they would have been eligible in the absence of their special medical needs.

Rationale and Benefits: Provides Package III recipients access to the same set of nutrients as other WIC recipients at the same life stage. An individual's health constraints, not his or her administrative status as a Package III recipient, are all that should limit the prescription of foods from a standard WIC package.

4. Food Package IV—Children From Age One Up to Age Five

Proposed rule: Reduce the prescribed amount of milk; modify substitution options.

- The amount of milk that may be prescribed to children would be reduced from 24 quarts to 16 quarts per month.
- Under current rules, cheese may be prescribed as a substitute for up to 12 quarts of milk. The proposed rule would allow cheese to replace up to three quarts of milk. The substitution rate of one pound of cheese for three quarts of milk would remain unchanged.
- Soy products will be allowed as a milk substitute on a restricted basis; soy may only be prescribed to children with a documented medical need.

Rationale and Benefits:

- Reducing the amount of milk provided to children brings the prescribed amounts into conformance with recommended limits on saturated fat and total fat consumption by children as a percent of food energy and with the 2005 Dietary Guidelines for Americans, and reduces the prevalence of inadequate and excessive nutrient intakes. Reduced intake of saturated fat is associated with decreased risk of coronary heart disease; total fat intake in excess of 35% of food energy makes it difficult to limit total calories to recommended levels.[24] As noted by IOM, the revised amount of fat-reduced milk and milk products in Food Package IV are approximately the amount recommended in the 2005 Dietary Guidelines for Americans or other dietary guidance.[25]
- Reducing the amount of cheese that may be substituted for milk will reduce saturated fat and total fat intake by children age two and older. (See next proposal on fat reduced milk.) This proposal will also offset costs, allowing for the addition of other foods.
- The 2005 Dietary Guidelines for Americans stresses the importance of milk consumption in the development of bone mass in children.[26] While soy products may be an appropriate choice for children who cannot consume milk, the IOM does not believe that soy should be made available to satisfy participant preference in the absence of medical need.
- IOM recommended yogurt as an alternative to fluid milk. To ensure cost neutrality yogurt was omitted as a fluid milk substitution. (See discussion of yogurt as a milk substitute on page 51.)

Proposed rule: Provide only fat-reduced milk to older children. Prescribe only fat-reduced milk to children age two and above. Prescribe only whole milk to children under age two.

Rationale and Benefits: Increases the likelihood that the amount of total fat and saturated fat in the diets of children age two and over will be consistent with the 2005 Dietary Guidelines for Americans. This is also consistent with the recommendations of the American Academy of Pediatrics.

Proposed rule: Modify/clarify reconstitution rates for dry and evaporated milk. The reconstitution rate for evaporated milk is changed from 13 to 16 ounces of evaporated milk per reconstituted quart. The reconstitution rate for powdered milk is restated in terms of fluid ounces rather than quarts; this change does not alter the reconstitution rate itself.

Rationale and Benefits: The proposed reconstitution rate for evaporated milk reflects its degree of concentration. Restatement of the reconstitution rate of powdered milk is intended to assist state agencies in making reconstitution calculations for a growing range of powdered milk container sizes.

Proposed rule: Reduce juice prescriptions; add fruits and vegetables.

- Reduce monthly maximum juice prescription from 288 fluid ounces to 128. Clarify that juice must be 100% unsweetened fruit or vegetable juice, that it contain a minimum of 30 milligrams of vitamin C per 100 milliliters, and that it be pasteurized.
- Add a $6 monthly voucher to the package for the purchase of any combination of fresh or processed fruits and vegetables.

Rationale and Benefits:

- Increased fruit and vegetable consumption is among the major recommendations of the 2005 Dietary Guidelines for Americans; commonly consumed fruits and vegetables provide several of the priority nutrients identified by the IOM. Evidence also suggests that fruit and vegetable consumption is associated with reduced incidence of some chronic

[23] November 12, 1980 final rule.

[24] USDHHS/USDA, 2005, p. 29.

[25] IOM, p. 153.

[26] USDHHS/USDA, 2005, p. 24.

diseases.[27] And the introduction of fruits and vegetables at an early age may promote acceptance and increased consumption.

• Juice does not provide nutritional benefit beyond that available from whole fruits and vegetables.

• A voucher, rather than a more narrowly defined fruit and vegetable option, offers flexibility, ensures participant access, and minimizes costs of compliance by administrative agencies and WIC-approved vendors. Allowing participants to choose any variety of fruits or vegetables[28] is intended to increase consumption by accommodating individual and culturally based preferences. The voucher form also ensures that some variety of fresh or processed fruits and vegetables will be available, year-round, at most food stores. And state and local WIC agencies need not tailor specific fruit and vegetable prescriptions to participants, nor will they be burdened with additional rules governing substitution between fresh and processed forms.

• Reducing juice partially offsets the cost of providing fruit and vegetable vouchers.

• IOM recommended cash-value food instruments for fruits and vegetables at the level of $8 per month for children. To ensure cost neutrality, cash-value food instruments for fruits and vegetables was decreased to $6 per month. (See discussion of fruit and vegetable option on page 36.)

Proposed rule: Add whole grain breads; add whole grain requirement to cereal.

• Add two pounds of whole grain bread to the food package. Only bread meeting U.S. Food and Drug Administration (FDA) standards for whole grain labeling would be allowed.[29]

• Several whole grain products would be allowed as substitutions for bread. These include brown rice, bulgur, and whole grain barley without added sugar, fat, oil, or sodium. Soft corn or whole wheat tortillas would be allowed as an additional substitute at the option of state agencies. States may limit or completely eliminate substitutes if needed to control food costs.

• Require that WIC authorized breakfast cereals[30] meet the same whole grain requirements as bread.

Rationale and Benefits:

• This proposal is consistent with current recommendations that Americans consume at least three ounce equivalents of whole grain foods daily as stated in the 2005 Dietary Guidelines for Americans.[31] Whole grains provide dietary fiber, a priority nutrient identified by the IOM. Consumption of recommended amounts of whole grain foods can reduce the risk of chronic disease, and may help individuals control their weight.[32]

• Allowing a variety of substitutes for whole grain bread increases the likelihood of participant acceptance by accommodating individual taste and cultural preference.

Proposed rule: Reduce maximum egg prescription. Reduce the maximum egg prescription from two and one-half dozen per month[33] to one dozen.

Rationale and Benefits: This reduction is consistent with the 2005 Dietary Guidelines for Americans and with IOM's recommendation that dietary levels of cholesterol be reduced, where possible, consistent with an adequate diet. Protein is no longer a priority nutrient for supplementation.[34]

Proposed rule: Allow canned beans as a substitute for dry beans. Allow canned beans as a substitute for dry at the rate of sixty-four ounces per pound.

Rationale and Benefits: Accommodates participant preference and may encourage consumption because canned beans can be prepared more quickly than dried beans.

5. Food Package V—Pregnant and Partially Breastfeeding Women Up to One Year Postpartum

Proposed rule: Condition eligibility for Package V on breastfeeding practice. Mothers who request, and are prescribed, more than the maximum amount of formula allowed for partially breastfed infants will no longer be eligible for Food Package V. Currently, women who breastfeed at least once per day are eligible for this package. Reclassified as non-breastfeeding for purposes of WIC eligibility, these women will be assigned Food Package VI up to six months postpartum; they will receive no food package after six months.

Rationale and Benefits: This is consistent with the proposed rule governing the breastfeeding status of infants (see explanation under sections 1 and 2). The rule provides an incentive for mothers to breastfeed their infants. This provision is designed to better promote and support the establishment of successful long-term breastfeeding among women and encourages a greater contribution of breast milk to the infant's diet.

Proposed rule: Reduce the prescribed amount of milk; introduce new substitution options.

• The maximum amount of milk that may be prescribed to Package V recipients would be reduced from 28 quarts to 22 quarts per month.

• Under current rules, cheese may be prescribed as a substitute for up to 12 quarts of milk. The proposed rule would allow cheese to replace just three quarts of milk. The substitution rate of one pound of cheese for three quarts of milk would remain unchanged.

• Calcium-set tofu[35], and calcium and vitamin D fortified soy beverage would be introduced as new milk substitutes. Each pound of tofu would replace one quart of milk. For most women, cheese and tofu, combined, could replace no more than four quarts of milk; women with documented medical needs may be prescribed these substitutes in amounts that exceed the four quart maximum. No more than one pound of cheese may be substituted for milk.

• Soy beverage would be allowed as a substitute for Package V's entire milk allowance.

• IOM recommended yogurt as an alternative to fluid milk. To ensure cost neutrality yogurt was omitted as a fluid milk substitution. (See discussion of yogurt as a milk substitute on page 51.)

• States may limit allowable milk substitutes to soy beverage if needed to control food costs.

Rationale and Benefits:

• Reducing the amount of milk provided through WIC is consistent with recommended limits on saturated fat, total fat, and cholesterol consumption by American adults put forth in the 2005 Dietary Guidelines for Americans. Reduced intake of saturated fat is associated with decreased risk of coronary heart disease; and total fat intake in excess of 35% of food energy makes it difficult to limit total calories to recommended levels.[36] As noted by IOM, the revised amount of fat-reduced milk and milk products in Food Package V are approximately the amount recommended in the 2005 Dietary Guidelines for Americans.[37]

• Reducing the amount of cheese that may be substituted for milk may reduce saturated fat and total fat intake by participants. Limiting substitutions of cheese and tofu to four quarts of milk will reduce costs. This permits the addition of other food and substitution options to the package.

• Allowing tofu and soy beverage as substitutes for milk may help ensure adequate calcium intake by individuals who do not or cannot consume milk. These products are culturally preferable to milk within some groups, and may be consumed by individuals with lactose maldigestion.

Proposed rule: Reduce maximum juice prescription; add fruits and vegetables.

• Reduce monthly maximum juice prescription from 288 fluid ounces to 144. Clarify that juice must be 100% unsweetened fruit or vegetable juice, that it contain a minimum of 30 milligrams of vitamin C per 100 milliliters, and that it be pasteurized.

• Add an $8 monthly voucher to the package for the purchase of any combination of fresh or processed fruits and vegetables.

Rationale and Benefits:

• (The rationales and benefits for this proposal are the same as those for the introduction of fruits and vegetables to Food Package IV. See explanation under section 4.)

• IOM recommended cash-value food instruments for fruits and vegetables at the level of $10 per month for women. To ensure cost neutrality, cash-value food instruments for fruits and vegetable was decreased to $8 per month. (See discussion of fruit and vegetable option on page 36.)

Proposed rule: Add whole grain breads.

[27] IOM, p. 100.

[28] Limited exceptions to individual choice include white potatoes, herbs, breaded vegetables, soups, salad bar items, pickles, juice, edible blossoms, decorative gourds and painted pumpkins.

[29] See 21 CFR Part 136, Section 136.180, and FDA's *Health Claim Notification for Whole Grain Foods with Moderate Fat Content* at *www.cfsan.fda.gov/~dms/flgrain2.html.*

[30] The proposed rule would also replace the existing terms ''cereal (hot or cold)'' and ''adult cereal (hot or cold)'' with ''breakfast cereal'' in 7 CFR 246.10(c).

[31] USDHHS/USDA, 2005, p. 25.

[32] *Id.*

[33] Some states currently allow just two dozen as the monthly maximum.

[34] IOM, pp. 82, 108.

[35] Tofu prepared with only calcium salts.

[36] USDHHS/USDA, 2005, p. 29.

[37] IOM, p. 153.

• Add one pound of whole grain bread to the food package. Only bread meeting FDA standards for whole grain labeling would be allowed.

• Several whole grain products would be allowed as substitutions for bread. These include brown rice, bulgur, and whole grain barley without added sugar, fat, oil, or sodium. Soft corn or whole wheat tortillas would be allowed as an additional substitute at the option of state agencies. States may limit or completely eliminate substitutes if needed to control food costs.

Rationale and Benefits: (See discussion for comparable proposal under section 4.)

Proposed rule: Reduce maximum egg prescription. Reduce the maximum egg prescription from two and one-half dozen per month to one dozen.

Rationale and Benefits: This reduction is consistent with the 2005 Dietary Guidelines for Americans and with IOM's recommendation that dietary levels of cholesterol be reduced, where possible, consistent with an adequate diet. In addition, the IOM determined that protein is no longer a priority nutrient for the WIC population.

Proposed rule: Allow canned beans as a substitute for dry beans. Allow canned beans as a substitute for dry at the rate of sixty-four ounces per pound.

Rationale and Benefits: Accommodates participant preference and may encourage consumption because canned beans can be prepared more quickly than dried beans.

Proposed rule: Increase total amount of peanut butter and beans Peanut butter is currently offered as a substitute for dry beans. The proposal would provide both one pound of dry beans and 18 ounces of peanut butter to Package V recipients. The rule also clarifies that Package V recipients may replace both dry beans and peanut butter with canned beans.

Rationale and Benefits: This adds food energy and priority nutrients to the diets of breastfeeding women, including iron, folate, Vitamin E, and fiber.

6. Food Package VI—Postpartum Women (Up to Six Months Postpartum)

Proposed rule: Reduce the prescribed amount of milk; introduce new substitution options.

• The maximum amount of milk that may be prescribed to Package VI recipients would be reduced from 24 quarts to 16 quarts per month.

• Under current rules, cheese may be prescribed as a substitute for up to 12 quarts of milk. The proposed rule would allow cheese to replace just three quarts of milk. The substitution rate of one pound of cheese for three quarts of milk would remain unchanged. Calcium-set tofu, and calcium and vitamin D fortified soy beverage would be introduced as new milk substitutes. Each pound of tofu would replace one quart of milk. For most women, cheese and tofu, combined, could replace no more than four quarts of milk; women with documented medical needs may be prescribed these substitutes in amounts that exceed the four quart maximum. No more than one pound of cheese may be substituted for milk.

• Soy beverage would be allowed as a substitute for Package VI's entire milk allowance.

• IOM recommended yogurt as an alternative to fluid milk. To ensure cost neutrality yogurt was omitted as a fluid milk substitution. (See discussion of yogurt as a milk substitute on page 51.)

• States may limit allowable milk substitutes to soy beverage if needed to control food costs.

Rationale and Benefits:

• As noted by IOM, the revised amount of fat-reduced milk and milk products in Food Package VI includes more than two thirds of the 2005 Dietary Guidelines for Americans recommended amounts.[38]

• (See the discussion for the comparable proposal under section 5.)

Proposed rule: Reduce maximum juice prescription; add fruits and vegetables.

• Reduce monthly maximum juice prescription from 192 fluid ounces to 96. Clarify that juice must be 100% unsweetened fruit or vegetable juice, that it contain a minimum of 30 milligrams of vitamin C per 100 milliliters, and that it be pasteurized.

• Add an $8 monthly voucher to the package for the purchase of any combination of fresh or processed fruits and vegetables.

Rationale and Benefits:

• (See the discussion for the comparable proposal under section 4.)

• IOM recommended cash-value food instruments for fruits and vegetables at the level of $10 per month for women. To ensure cost neutrality, cash-value food instruments for fruits and vegetable was decreased to $8 per month. (See discussion of fruit and vegetable option on page 36.)

Proposed rule: Reduce maximum egg prescription. Reduce the maximum egg prescription from two and one-half dozen per month to one dozen.

Rationale and Benefits: This reduction is consistent with the 2005 Dietary Guidelines for Americans and with IOM's recommendation that dietary levels of cholesterol be reduced, where possible, consistent with an adequate diet.

Proposed rule: Add beans and peanut butter to the food package. One pound of dry beans or 18 ounces of peanut butter would be added to Package VI. The same canned bean substitution option added to Packages IV, V, and VII would be extended to Package VI recipients as well.

Rationale and Benefits: The proposal would supplement the diets of postpartum women with several priority nutrients, including iron, folate, Vitamin E, and fiber.

7. Food Package VII—Exclusively Breastfeeding Women

Proposed rule: Reduce the prescribed amount of milk; introduce new substitution options.

• The maximum amount of milk that may be prescribed to Package VII recipients would be reduced from 28 quarts to 24 quarts per month.

• Under current rules, cheese may be prescribed as a substitute for up to 12 quarts of milk. The proposed rule would allow cheese to replace just six quarts of milk. The substitution rate of one pound of cheese for three quarts of milk would remain unchanged.

• Calcium-set tofu, and calcium and vitamin D fortified soy beverage would be introduced as new milk substitutes. Each pound of tofu would replace one quart of milk. For most women, cheese and tofu, combined, could replace no more than six quarts of milk; women with documented medical needs may be prescribed these substitutes in amounts that exceed the six quart maximum. No more than two pounds of cheese may be substituted for milk.

• Soy beverage would be allowed as a substitute for Package VII's entire milk allowance.

• IOM recommended yogurt as an alternative to fluid milk. To ensure cost neutrality yogurt was omitted as a fluid milk substitution. (See discussion of yogurt as a milk substitute on page 51.)

• States may limit allowable milk substitutes to soy beverage if needed to control food costs.

Rationale and Benefits:

• As noted by IOM, the revised amount of fat-reduced milk and milk products in Food Package VII approximately meets the 2005 Dietary Guidelines for Americans recommended amount.[39] The maximum milk prescription under Package VII is reduced by just 14%; the comparable reductions under Packages V and VI are 21% and 33%, respectively. In addition, Package VII recipients are permitted to substitute up to six quarts of milk with tofu and cheese; the other women's packages limit milk substitutes to four quarts. Package VII, which currently provides more food energy and nutrients than do Packages V and VI, is made more attractive relative to these other packages as a result of this proposal. This is consistent with the general aim of the rule to encourage the incidence and duration of breastfeeding in the WIC population and to meet the supplemental nutritional needs of breastfeeding women.

• (See the discussion for the comparable proposal under section 5.)

Proposed rule: Reduce maximum juice prescription; add fruits and vegetables.

• Reduce monthly maximum juice prescription from 336 fluid ounces to 144. Clarify that juice must be 100% unsweetened fruit or vegetable juice, that it contain a minimum of 30 milligrams of vitamin C per 100 milliliters, and that it be pasteurized.

• Add an $8 monthly voucher to the package for the purchase of any combination of fresh or processed fruits and vegetables.

• Eliminate the separate prescription of carrots.

Rationale and Benefits:

• (See the discussion for the comparable proposal under section 4.)

• IOM recommended cash-value food instruments for fruits and vegetables at the level of $10 per month for women. To ensure cost neutrality, cash-value food instruments for fruits and vegetable was decreased to $8 per month. (See discussion of fruit and vegetable option on page 36.)

[38] IOM, p. 153.

[39] IOM, p. 153.

Proposed rule: Add whole grain breads.

• Add one pound of whole grain bread to the food package. Only bread meeting FDA standards for whole grain labeling would be allowed.

• Several whole grain products would be allowed as substitutions for bread. These include brown rice, bulgur, and whole grain barley without added sugar, fat, oil, or sodium. Soft corn or whole wheat tortillas would be allowed as an additional substitute at the option of state agencies. States may limit substitutes if needed to control food costs.

Rationale and Benefits: (See discussion for comparable proposal under section 4.)

Proposed rule: Reduce maximum egg prescription. Reduce the maximum egg prescription from two and one-half dozen per month to one dozen.

Rationale and Benefits: This reduction is consistent with the 2005 Dietary Guidelines for Americans and with IOM's recommendation that dietary levels of cholesterol be reduced, where possible, consistent with an adequate diet.

Proposed rule: Allow canned beans as a substitute for dry. Allow canned beans as a substitute for dry at the rate of sixty-four ounces per pound. Also clarifies that Package VII recipients may replace both dry beans and peanut butter with canned beans.

Rationale and Benefits: Accommodates participant preference and may encourage consumption.

Proposed rule: Modify Package VII's canned fish provision.

• Increase the maximum canned fish prescription to 30 ounces. Clarify that fish packaged in foil pouches meets WIC requirements.

• Allow three varieties of canned fish that do not pose a mercury hazard as identified by federal advisories of the Food and Drug Administration and the U.S. Environmental Protection Agency for breastfeeding women.

Rationale and Benefits:

• For ease of administration by State agencies, to accommodate participant preferences, and to minimize intake of mercury, the proposed rule would allow only canned light tuna, salmon and sardines.

• Increasing quantity provides breastfeeding women with more protein and omega-3 fatty acids.

8. Other Provisions (Non Food-Package Specific)

Proposed rule: Clarifies the right of states to impose restrictions on WIC foods. States retain the right to exclude particular products, by brand or variety, from the food packages distributed to their residents. States are authorized to set standards for WIC approval that are more restrictive than those set by the federal government; they may not authorize the prescription of foods that do not meet minimum WIC-eligibility requirements set forth in regulations. The states may take into account issues of cost, nutrition, statewide availability, and participant appeal in setting these restrictions.

Rationale and Benefits: Federal specifications for WIC-approved foods are designed to ensure minimum standards of nutrition in food packages that appeal broadly to American consumers and can be provided at a reasonable cost. Permitting the states to set additional criteria consistent with their own market and population profiles encourages the development of state-approved food lists that meet or exceed nutritional standards, maintain participant acceptance, and control costs.

Proposed rule: Ends the state practice of categorical nutritional tailoring. States will no longer be permitted to construct their own standardized set of food packages for WIC subpopulations with common supplemental nutritional needs. The full maximum monthly allowances of all foods in all packages must be made available to participants if medically or nutritionally warranted.

Rationale and Benefits: The IOM identified several nutrients, including saturated fat, and identified food energy, that are overconsumed by some WIC-eligible subpopulations. Long before the IOM report, however, overweight and obesity in the U.S. were recognized as public health issues. Categorical nutritional tailoring is the state practice of formalizing these modifications into a standard set of food packages that are prescribed in place of the USDA-designed packages. The revisions to the WIC packages proposed by this rule make categorical tailoring unnecessary and inappropriate. The revised packages are designed to deliver an appropriate set of nutrients when foods are prescribed at the specified maximums. Participants may still refuse amounts of or entire foods, and foods that pose a risk to the participant's health (*e.g.*, a food that causes an allergic reaction) should not be prescribed. Additionally, individual nutritional tailoring, based on the Competent Professional Authority's assessment of a participant's nutrition needs, is still allowed. This provision would not preclude state agencies from making administrative adjustments for economic and administrative convenience, i.e., requiring least expensive brands, packaging or physical forms of WIC supplemental foods.

Proposed rule: Prohibit states from petitioning the USDA for new food package substitutions. A process is currently in place to accept and evaluate requests by state WIC agencies to add new foods to the program's list of allowed substitutes. This process is designed to permit appropriate consideration of the cultural norms and preferences of the diverse client populations of the different state WIC agencies.

Rationale and Benefits: Since 1980, the Department has only received 10 food package petitions. Developing, reviewing, and analyzing cultural food package proposals is a time consuming process for WIC State agencies and the Department. The increased variety and choice in the supplemental foods proposed in the rule will provide state agencies increased flexibility in prescribing culturally appropriate packages for diverse groups without the need to petition the Department for such changes. The IOM was charged with considering the cultural needs of WIC participants and its recommendations for revisions to the WIC food packages reflect those considerations.

Proposed rule: Rounding up for infant food and infant cereal. A state agency would be allowed to round up to the next whole container of infant foods (i.e., infant cereal, fruits, vegetables and meats) if needed to provide at least the maximum authorized amount of these foods. The proposal requires calculating and dispersing the infant formula over the timeframe of the food package category and infant feeding option.

Rationale and Benefits: This is consistent with the provision in Pub. L. 108–265 that allows states to round up to the next whole can of infant formula so that participants may receive the full authorized nutritional benefit. This proposal would require state agencies to issue at least the full nutritional benefit but not more than the maximum monthly allowance for the food package category and infant feeding option.

C. Summary of Key Provisions

The expected impact of the proposed rules on the Federal Government, state and local WIC agencies, vendors, manufacturers, and program participants is summarized in Table 2. Overall economic effects are noted with a ''+$'' for cost increases, and a ''−$'' for cost savings. A more detailed examination of strictly economic effects follows Table 2.

TABLE 2.—SUMMARY OF KEY PROVISIONS

Current and proposed rules	Effect of proposed rule on			
	USDA/federal gov't	State/local agencies	Vendors/industry	WIC participants
Current rule:				

TABLE 2.—SUMMARY OF KEY PROVISIONS—Continued

Current and proposed rules	Effect of proposed rule on			
	USDA/federal gov't	State/local agencies	Vendors/industry	WIC participants
1. Food Package I serves infants from birth through three months. Formula is the only food prescribed under Package I. 2. Infants from four through eleven months are eligible for juice and infant cereal, in addition to formula, under Package II. The maximum formula prescription in packages I and II are the same. Proposed rule: 1. Expand Food Package I to serve infants up to six months. Delay the introduction of complementary foods by two months. 2. Increase formula prescriptions at four months to offset lost food energy. −$	Reduces cost of infant food packages. Proposed packages for four and five month old infants (which reduce calories slightly) are less expensive than current Food Package II.	Changes to current rules will require the implementation of new state and local administrative procedures.	May increase the sale of infant formula at the expense of juice and infant cereal.	Provides a food package that conforms more closely to the diet recommended by health professionals for four and five month old infants.
Current rule: Under Food Package I, an infant can receive up to the maximum for the package. Since the rule does not separate partially and fully formula fed infants, a single package maximum applies to all partially and fully formula-fed infants from birth through three months. Proposed rule: Provide no infant formula to mothers who breastfeed during the infant's first month. −$ Current rule:	May slightly reduce the costs of providing infant formula to mothers during their infants' first month. However, a sustained increase in breastfeeding during an infant's first year will affect the food package eligibility of both the mother and the infant. Although the economic effect of such a sustained increase is dependent on both breastfeeding duration and on the relative rates of partial and exclusive breastfeeding, the net economic effect is likely to be a reduction in cost.	State and local agencies must develop new guidelines to implement and communicate this policy.	Negligible effect on the sale of infant formula for newborn infants. But, the rule provides an incentive to breastfeed, which may ultimately reduce formula sales beyond the infants' first month. But, the rule may slightly increase infant food sales to fully breastfed WIC infants 6 months of age and older, and may increase the sale of other WIC foods to breastfeeding mothers.	Encourages breastfeeding. Additional support provided to new mothers by WIC staff may successfully increase breastfeeding rates. This is consistent with the recommendations of nutrition experts. However, it is uncertain whether this will have a significant impact on the number of WIC women who breastfeed.

TABLE 2.—SUMMARY OF KEY PROVISIONS—Continued

Current and proposed rules	Effect of proposed rule on			
	USDA/federal gov't	State/local agencies	Vendors/industry	WIC participants
The current infant food packages do not distinguish between fully and partially formula-fed infants. Infants receive infant formula based on an assessment of their supplemental nutritional needs, subject to a single package maximum.Food Package V is provided to pregnant women and to all new mothers, up to one year postpartum, if they breastfeed at least once per day.	If the proposed rule has no effect on the initiation and duration of breastfeeding, the cost of providing food packages to women will drop; the cost of providing infant formula will remain unchanged. If breastfeeding increases enough to keep an infant classified as partially breastfed who would have been classified as fully formula fed otherwise, then formula costs are reduced and there is no change in the mother's status. Both result in cost reductions.	State and local agencies must conform to a new definition of breastfeeding for WIC food package purposes. Will also encourage changes in the approach to nutrition education; places greater emphasis on breastfeeding promotion. Implementing new procedures will initially increase administrative burden.	Negligible effect in the absence of changes in breastfeeding behavior. Increased breastfeeding would reduce formula sales but might modestly increase the sale of infant food fruits, vegetables and meat to WIC's fully breastfed population.	Encourages breastfeeding consistent with the best advice of nutrition science. Will reduce the WIC benefit received by women who do not fully breastfeed.
Proposed rule: Infants and mothers will be assigned food packages based on the mother's reported breastfeeding practice. The corresponding amount of formula prescribed will distinguish infants between partially breastfed and fully formula-fed. The rule would provide a full formula-feeding package to some infants currently considered partially breastfed; it would move some mothers from Package V to Package VI, or to no package at all, depending on the amount of formula requested. −$				
Current rule: Currently, the definition of breastfeeding in WIC regulations allows women who breastfeed once a day to be eligible for the WIC program and receive supplemental foods.	The net effect of this change is minimal. These women will be included in participation numbers and State agencies will be provided NSA funds, but there are very few of them and they will not be receiving food.	State agencies will be provided NSA funds for a very small number of women who are receiving WIC benefits (nutrition education/ breastfeeding support and referrals to health and social services), but not receiving supplemental foods.	Negligible effect because the few women who once received supplemental foods will no longer be eligible for these foods.	Encourages more intensive breastfeeding for WIC women.
Proposed rule: Revise the definition for WIC participation to include the number of breastfeeding women who receive no supplemental foods or food instruments but whose breastfed infant(s) receives supplemental foods or food instruments. −$				
Current rule:				

TABLE 2.—SUMMARY OF KEY PROVISIONS—Continued

Current and proposed rules	Effect of proposed rule on			
	USDA/federal gov't	State/local agencies	Vendors/industry	WIC participants
Infants from 4–11 months are eligible for Food Package II. That food package includes juice and infant cereal, as well as formula.	The net effect of these changes increases the cost of Food Package II.	Implementing new procedures, such as setting state policy on allowed varieties of infant food, will increase short-term administrative burden.	May increase sales of infant food and decrease sales of juice and formula if participants were not already using the quantities proposed in the rule. Some vendors may need to stock additional infant food varieties that meet the specific specifications set by the states. Vendors will need to train personnel to identify the newly WIC-eligible infant foods.	Restructures the infant package according to the recommendations of current nutrition science. Encourages good infant feeding practices. Encourages consumption of fruits and vegetables.
Proposed rule: The following changes are made to Food Package II: 1. Change age eligibility to 6–11 months. 2. Eliminate juice. 3. Add infant food fruits and vegetables. 4. Reduce maximum formula amount. +$				
Current rule: All infants are eligible for the same amounts of formula, juice, and infant cereal under Food Package II.	The cost of the fully breastfed package for infants age six months and older is increased significantly.	Implementing new procedures, such as setting state rules on permissible varieties of infant food meat, will increase short-term administrative burden.	Increase in sales of infant food meat is likely to be negligible. The number of fully breastfed WIC infants age six months and over is small. Vendors will need to train personnel to identify the newly WIC-eligible infant foods.	Provides added iron and zinc to the diet of fully breastfed infants age six months and older. Also encourages breastfeeding. Both are consistent with the recommendations of current nutrition science.
Proposed rule: Provide relatively more infant food fruit and vegetables to fully breastfed infants at six months than to partially breastfed or fully formula-fed infants. Also provide infant food meat to this group. +$				
Current rule: 1. Low iron infant formula may be prescribed with medical documentation.	These changes are expected to have little effect on the foods actually prescribed to WIC infants. The infant cereal rule simply formalizes what has been federal policy since 1980.	The states will incur minimal short-term administrative burden as they implement these minor rule changes.	Sales of low iron formula and certain infant cereal varieties will be reduced slightly, if at all, by these rules.	Disallowing the prescription of low iron formula is supported by medical research. Disallowing infant cereal with added ingredients is consistent with current, though not formalized, federal policy. There should be little if any change in what participants can purchase.
2. Infant cereal must be iron-fortified; WIC regulations contain no other specifications.				

TABLE 2.—SUMMARY OF KEY PROVISIONS—Continued

Current and proposed rules	Effect of proposed rule on			
	USDA/federal gov't	State/local agencies	Vendors/industry	WIC participants
Proposed rule: 1. Disallow the prescription of low iron infant formula. 2. Disallow the prescription of infant cereal with added ingredients. (minimal economic effect)				
Current rule: Children and women with special dietary needs are prescribed WIC-eligible medical foods under Food Package III. Infants with special dietary needs are provided exempt infant formula under Food Packages I or II. Proposed rule: Serve infants with special dietary needs who receive exempt infant formulas under Food Package III. −$	The rule is intended to reduce administrative costs and facilitate program management.	The rule is intended to facilitate program management. It may also allow improved service to WIC beneficiaries.	No impact.	No direct impact. Improved service at the state and local level may result, to the benefit of WIC participants.
Current rule: Current practice allows some women and children with certain dietary restrictions, but without serious medical conditions, to be prescribed medical foods under Food Package III. Proposed rule: Clarify language governing the purpose and scope of Package III eligibility. −$	Clarifies who is eligible for Food Package III and what foods may be distributed as part of that package. These clarifications are generally aimed at tightening these criteria. Will, if anything, reduce Package III costs by moving some participants to food packages more appropriate for their needs. But, given the size of the current Package III population (roughly 1% of all WIC participants) these savings will be small.	The rule may reduce administrative burden by eliminating Package III eligibility issues. But, it may require state efforts to develop educational materials for local WIC officials, WIC participants, and health care professionals on the eligibility criteria. Will require local agencies to assist WIC-eligible individuals in obtaining the necessary medical documentation for Package III.	Possible minimal reduction in the sale of medical foods due to eligibility requirements.	Some current participants receiving Package III may be served under food packages more appropriate to their needs.
Current rule: Package III recipients are prescribed medical foods only; they do not receive any of the standard food package foods. Proposed rule: Make other WIC foods available to Package III recipients. +$ Current rule:	This rule will increase costs in those cases where Food Package III recipients are able to consume the foods contained in the regular WIC food packages to which they would otherwise be eligible. But, the Package III population is small. The costs will be modest.	Administrative burden of implementing the new rule will be incurred in the short run.	May have a small positive effect on the sale of some secondary WIC foods. Will not affect sales of infant formula.	For those Package III recipients able to consume at least some non-Package III WIC foods, this rule will provide them with additional food.

TABLE 2.—SUMMARY OF KEY PROVISIONS—Continued

Current and proposed rules	Effect of proposed rule on			
	USDA/federal gov't	State/local agencies	Vendors/industry	WIC participants
Food Packages IV through VII provide WIC beneficiaries with 24 to 28 quarts of milk per month. Cheese may be substituted for milk at a rate of one pound per three quarts; cheese may replace a total of 12 quarts of milk.	The net effect of this provision will be a reduction in overall cost, due to the reduction in quantities allowed and reduced substitution amounts.	The states will need to establish new specifications and restrictions for the new milk substitutes. They will also incur administrative burden in implementing changes to reflect reduced milk prescription maximums and substitution limits.	The rule may result in reduced milk and cheese sales to WIC participants. It may lead to increased sales of tofu and soy beverage. Vendors may need to stock new items that match the specific product requirements set by the states. Rule proposes nutritional standards for soy milk that are currently not met by many products on the market. Because these standards will also apply to the school meals programs, vendors are likely to change fortification so that the variety of available soy beverages that can be authorized improves over time.	WIC participants with lactose maldigestion may benefit most by the addition of these new substitutes. Others with individual or cultural preferences will also benefit by the added choices. All WIC participants will benefit from a package lower in saturated and total fat, consistent with the recommendations of current nutrition science.
Proposed rule: Reduce maximum milk prescription amounts to WIC children and women. Add new milk substitution options (tofu, cheese and soy beverage), but reduce the maximum amount of cheese substitution allowed.				
−$				
Current rule: Juice may be prescribed under Food Packages IV through VII at maximum levels that range from 192 to 336 fl. oz. per month.	The fixed dollar values of the proposed fruit and vegetable vouchers are greater than the offsetting savings that will be realized through reduced juice amounts.	States will need to authorize and develop a structure to distribute and redeem for fruit and vegetable vouchers, which will be a new component of the programs. This administrative burden will be on-going but part of the current banking and MIS systems. State and local agencies will incur administrative burden in developing educational messages for WIC participants concerning the selection of nutritious fruits and vegetables.	Juice sales to WIC participants may decline. Sales of fruits and vegetables may increase. Costs will be incurred by vendors as they learn to accommodate the new WIC vouchers. Some WIC authorized vendors may need to add fruits and vegetables to their stocks in fresh, frozen, or canned form. Emphasis on fresh fruits and vegetables may encourage states to authorize and participants to shop at farmers markets more often. (See Market Analysis discussion on page 57).	The addition of fruits and vegetables to the WIC food packages responds to the recommendations of nutrition science. And the flexibility of a voucher will provide access to a variety of fruits and vegetables, in some form, year round, in all markets.
Proposed rule:				

TABLE 2.—SUMMARY OF KEY PROVISIONS—Continued

Current and proposed rules	Effect of proposed rule on			
	USDA/federal gov't	State/local agencies	Vendors/industry	WIC participants
Reduce maximum juice prescription amounts in food packages for children and women. Add a voucher for fruits and vegetables to those packages. +$				
Current rule: Eggs are provided under Food Packages IV through VII. States may set their monthly maximums at either 2 or 2½ dozen per month. Proposed rule: 1. Reduce maximum egg prescription in all food packages for women and children. −$	Reducing the maximum egg prescription will produce a modest reduction in food package costs. That reduction is used to help offset costs of new foods and substitution options.	State and local administrative burden will be incurred in the short term as new procedures are put in place.	Market effects will be minimal.	This proposal reduces both the food energy and fat content of the WIC food packages. The changes are consistent with the advice of current nutrition science. The reduction in food energy also makes room for the introduction of new foods that address priority nutrient needs.
Current rule: There are no restrictions on the fat content allowed in milk. Proposed rule: 1. Provide only fat reduced milk to women as well as children age two and older. 2. Provide only whole milk to children one year of age. −$	Prescribing only fat reduced milk to women and children age two and older will have a negligible effect on cost.	State and local administrative burden will be incurred in the short term as new procedures are put in place.	Market effects will be minimal. Vendors will need to train personnel to identify the newly WIC-eligible foods.	This proposal reduces fat content of the WIC food packages. The change is consistent with the advice of current nutrition science.
Current rule: Grains are included in the current food packages for women and children in the form of breakfast cereal. Current regulations do not specify a minimum whole grain content for that product. Proposed rule: 1. Add whole grain bread to Food Packages IV, V, and VII. Allow substitutions of other whole grain foods for bread. 2. Require that breakfast cereal for children and women meet FDA standards for classification as whole grain food.	The addition of whole grain bread to Packages IV, V, and VII increases the cost of those packages. The whole grain requirement for the existing cereal component of all food packages for children and women will have, at most, a minor effect on cost.	State and local agencies will incur administrative burden to implement the new rules. States will incur administrative burden in establishing specifications and restrictions for the new foods and substitution options and local clinics will incur additional administrative burden to explain food options to participants.	Manufacturers may respond by reformulating popular WIC-approved cereals in whole grain form rather than forfeiting the WIC market. Smaller vendors may need to modify stocks to include whole grain bread and cereal varieties. All vendors will need to train personnel to readily identify WIC-eligible breads and grains.	The addition of whole grains to the WIC packages is consistent with 2005 Dietary Guidelines for Americans that encourage increased consumption of these foods.

TABLE 2.—SUMMARY OF KEY PROVISIONS—Continued

Current and proposed rules	Effect of proposed rule on			
	USDA/federal gov't	State/local agencies	Vendors/industry	WIC participants
+$				
Current rule: Dry beans are included in Food Packages IV, V, and VII. Canned beans may be prescribed, instead of dry, to WIC participants who lack cooking facilities. Proposed rule: 1. Allow canned beans as a substitute for dry in all food packages for children and women. 2. Allow both Package V and Package VII recipients to replace both their dry bean and peanut butter allocations with canned beans.	At the proposed rate of substitution between canned and dry beans, the new option will increase costs. However, the cost of beans in the food packages is relatively small and this change will have a relatively modest effect on overall program cost.	The proposed option will prompt states to set specifications and restrictions. Other short-term administrative burden will be incurred as the new rule is put in place.	Market effects will be minimal. But, as with the addition of any WIC substitution option, small vendors may need to add new items to their stocks, and all vendors will need to train personnel to identify the newly-eligible WIC foods.	By adding variety and convenience, the canned bean option should increase the appeal of that food. It may also encourage greater consumption, replacing less healthy foods in the diets of WIC participants.
+$				
Current rule: Beans and peanut butter are not included in Food Package VI. Package V currently provides a pound of dry beans; those can be replaced with 18 oz of peanut butter. Proposed rule: 1. Add one pound of beans, with an 18 oz peanut butter substitution option, to Food Package VI. 2. Increase the amount of beans and peanut butter allowed under Food Package V; allow the prescription of both one pound of beans and 18 oz of peanut butter.	The costs of food packages V and VI are increased.	Neither of these changes introduce foods not already included in other WIC packages. The administrative burden should be minimal.	Minimal market impact.	These changes supplement the diets of breastfeeding and postpartum women with several of the priority nutrients identified by the IOM.
+$				
Current rule: 26 oz of tuna is made available to exclusively breastfeeding women in Food Package VII. White, light, or dark tuna, packed in water or oil, is allowed. Proposed rule: Authorize a variety of canned fish that do not pose a mercury hazard to fully breastfeeding women. Slightly increase the maximum amount allowed to 30 ounces.	Costs will increase slightly. While the new substitution option may increase the cost of individual prescriptions, the number of WIC participants eligible for Food Package VII is very small.	States and local agencies will incur administrative burden in implementation. State agencies will adopt specifications and restrictions for the new substitution option.	Minimal market impact. But, may force small vendors to stock additional types of canned fish and will require all vendors to train personnel to identify newly-eligible WIC foods.	These changes add new choices that may encourage consumption. The rule also responds to medical advice that breastfeeding women avoid fish species that are high in mercury.
+$				
Current rule:				

TABLE 2.—SUMMARY OF KEY PROVISIONS—Continued

Current and proposed rules	Effect of proposed rule on			
	USDA/federal gov't	State/local agencies	Vendors/industry	WIC participants
State WIC agencies impose restrictions on some foods by brand or variety in order to limit cost or ensure statewide product availability. The practice is accepted but not formally authorized by regulation.	This simply clarifies what is already accepted policy. The policy is an effective way to control costs. Since the rule represents no change from current practice, it results in no economic impact.	The states are given formal approval for current practice. The states should incur little or no administrative burden in implementation.	If states adopt restrictions on the brands or varieties of foods newly added to the WIC food packages, then participants who already purchase those foods may switch their selection of brands or varieties to the WIC-approved choices. A measurable shift in consumption by brand or variety may result.	WIC participants may need to switch brands or varieties of foods that they currently consume to brands and varieties consistent with those added to the WIC packages.
Proposed rule: Clarifies the right of states to restrict WIC foods by variety or brand. (minimal economic impact)				
Current rule: States are permitted to prescribe foods to WIC participants in quantities that are less than the package maximums when nutritionally warranted. The states may also standardize these reductions and apply the reduced amounts consistently to like groups of WIC participants. Such categorical food package tailoring may be done for nutritional reasons, but not to achieve cost reductions.	Assures more consistent WIC benefits are delivered across states.	The rule reduces the level of work currently undertaken by state officials. Administrative burden will decrease to the extent that states will not undertake their own review of WIC prescription maximums in response to the federal revisions to the WIC food packages. In the absence of this rule, the states may have incurred administrative burden.	Minimal effect on vendors and producers.	Assures more consistent WIC benefits are delivered across states. IOM has based food prescription quantities on current nutritional science rendering food package tailoring unnecessary.
Proposed rule: Ends the practice of categorical tailoring of WIC food packages by the states.				
Proposed rule: Allow state agencies to round up to the next whole container of infant foods if needed to provide the maximum authorized amount of these foods.	Minimal cost given the small container sizes involved. Rounding up is likely to require the addition of little jarred infant food to the food packages; containers are typically just 4 oz. The current infant cereal maximum of 24 oz is a multiple of a commonly prescribed package size; 8 oz boxes are among the standard package sizes.	States may incur some administrative burden to implement, particularly if manufacturers change container sizes in response to this rule.	Unless manufacturers change container sizes to achieve greater product sales, no impact is expected.	Will ensure WIC participants get the full nutritional benefit authorized.
Proposed rule:				

TABLE 2.—SUMMARY OF KEY PROVISIONS—Continued

Current and proposed rules	Effect of proposed rule on			
	USDA/federal gov't	State/local agencies	Vendors/industry	WIC participants
End state practice of requesting additional package substitutions. A process is currently in place to accept and evaluate requests by state WIC agencies to add new foods to the program's list of allowed substitutes.	Will reduce administrative costs of considering proposals but little affect on program costs since very few package substitutions have ever been approved.	Because of the proposed rule's flexibility in food offerings, states will no longer have as much, if any, need to request substitutions to meet cultural preferences. Administrative savings will accrue for those states that would have pursued substitutions in the absence of this rule.	Minimal since very few food package substitutions have ever been permitted.	Minimal since very few food package substitutions have ever been permitted.

D. Costs

1. Proposed Rule

Under the proposed rule, FNS estimates that the revisions to the WIC food packages will be cost-neutral. Specifically, FNS estimates that the changes will result in a cost savings of $34 million dollars over five years.

The economic effects of the proposed rule on the federal government over a five-year period are summarized in Table 3, which presents the impacts of the revisions by food package type. These figures are limited to food costs; no additional funds will be provided to states or local clinics to implement this rule. The costs have been adjusted for the rule's phased-implementation schedule. Current and proposed food package costs are provided in Tables A1–A3 in the appendix.

TABLE 3.—PROJECTED COST OF WIC FOOD PACKAGE REVISIONS

[In millions]

Food package	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2007–FY 2011
I	−$15.1	−$31.6	−$33.2	−$34.7	−$36.3	−$150.9
II	34.7	91.3	96.3	100.8	105.4	428.5
III	8.1	18.6	19.6	20.5	21.5	88.3
IV	−47.9	−115.1	−128.0	−140.7	−154.3	−586.0
V	15.7	32.9	32.0	30.8	43.8	155.3
VI	2.5	4.5	3.4	2.1	8.1	20.6
VII	1.1	2.1	1.9	1.7	3.1	10.0
Total	−0.8	2.7	−7.9	−19.5	−8.7	−34.2

Negative values are cost reductions.

Table 4 shows the major cost drivers for each food package; provisions listed do not reflect total food costs and savings. Total costs are for FY07–FY11 and have not been adjusted for the rule's phased implementation.

TABLE 4.—MAJOR COST DRIVERS OF WIC FOOD PACKAGES

Food package	Major cost drivers
I	• Formula is reduced for partially breastfed infants and eliminated for fully breastfed infants (−$367 million post rebate).
II	• Infants fruits, vegetables and meats is added for fully breastfed infants(+ $1,033 million). • Formula is reduced for fully formula and partially breastfed infants and is eliminated for fully breastfed infants (−$128 million post rebate). • Juice is eliminated for all infants (−$164 million).
III	Package III recipients are eligible for foods in the other packages. Package III costs mirror the costs and savings reflected in other packages.
IV	• $6 cash-value instruments for fruits and vegetables is added (+ $1,372 million). • Milk is reduced (−$956 million). • Juice is reduced (−$948 million). • Whole grains added (+ $639 million). • Cheese is reduced (−$638 million). • Eggs are reduced (−$290 million). • Beans added (+ $130 million).

TABLE 4.—MAJOR COST DRIVERS OF WIC FOOD PACKAGES—Continued

Food package	Major cost drivers
V	• $8 cash-value instruments for fruits and vegetables is added (+$556 million). • Juice is reduced (−$333 million). • Cheese is reduced (−$268 million). • Milk is reduced (−$236 million). • Beans (+ $107 million). • Eggs are reduced (−$102 million).
VI	• $8 cash-value instruments for fruits and vegetables is added (+$282 million). • Milk is reduced (−$162 million). • Juice is reduced (−$122 million). • Cheese is reduced (−$109 million).
VII	• Juice is reduced (−$53 million). • $8 cash-value instruments for fruits and vegetables is added (+ $47 million). • Milk is reduced (−$31 million).

Negative values (−) are cost reductions, positive values (+) are cost increases.

2. Fruit and Vegetable Option

Due to the seasonal fluctuation in price and availability of fresh fruits and vegetables, and the inability to purchase them in uniform weight units, it is difficult to set quantity terms for fruits and vegetables and still estimate the cost of the WIC food packages. In order to accurately capture the cost of providing fresh fruits and vegetables in WIC Food Packages III–VII, the proposed rule includes fruit and vegetable vouchers. Due to the administrative ease of implementation, the IOM recommended cash-value instruments be issued.[40] The IOM also recommended that states provide fruit and vegetable vouchers at the level of $10 per month for women and $8 per month for children. However, to achieve cost neutrality with the proposed changes, FNS set the vouchers at the level of $8 per month for women and $6 per month for children in the year in which the proposed food package revisions take effect. The maximum amount of the vouchers would be adjusted to reflect inflation in whole dollar increments.

3. Cost Estimate Methodology

a. Food costs. i. *Prescriptions.* The states report participant-level food prescription data to FNS on a biennial basis. A statistical sample drawn from those state records was used in preparing this cost estimate. At the time of this analysis, the 2002 prescription dataset was the most current available. The dataset records the April, 2002 prescription of WIC foods to each participant who received a package that month.[41] FNS used the 2002 prescription data to establish a baseline food cost and to estimate the costs of the proposed package revisions. Actual participant-level prescriptions provide a useful starting point for this analysis. Data at the participant level captures the preferences and dietary restrictions of the current WIC population. Assuming little change in the distribution of the WIC population by life stage, food preference, or supplemental dietary need over the short term, the 2002 prescription data offers the best opportunity for estimating likely prescription amounts under the revised food package rules. FNS will use later year data to project cost changes if it becomes available before the final rule. FNS developed a micro-simulation program to model participant-specific prescription amounts for each of the foods in the proposed packages other than infant formula. The following assumptions guided this analysis:[42]

• For foods that are part of both the current WIC packages and the revised packages:

• WIC participants currently prescribed none of that food will continue to be prescribed none.

• If the participant's current prescription exceeds the proposed maximum for the item, then the participant will be prescribed the new maximum amount.

• If the participant's current prescription is less than the proposed maximum, then the participant's prescription will remain unchanged.

• For foods newly added to the WIC packages by the proposed rule:

• Generally, prescription rates are set to observed rates for comparable foods already contained in the WIC packages.[43]

• Foods newly added to the WIC packages as substitutes for standard WIC foods were prescribed to a subset of the WIC population equal to the percent of all low income U.S. households that currently purchase those items.[44] For example, market consumption data indicates that about 3% of U.S. households with WIC-eligible incomes purchased tofu, so 3% of WIC participants are assumed to be prescribed tofu.[45] Participants prescribed one of the new substitutes will be provided with the maximum allowed under the proposed rule given any other substitutions allowed.

• Fruit and vegetable vouchers are assumed to be prescribed to all participants at the full amount.

This methodology tends to produce prescription estimates that are at or near the maximum quantities allowed under the revised packages. (See Table 5.) That outcome is consistent with the proposed rule?s recommendation that participants be issued prescriptions at the package maximums. It is also consistent with the rule that would end categorical tailoring.

ii. Infant Formula and Rounding. In this analysis, infant formula and infant foods were treated slightly differently than the other foods. Using a micro-simulation program with PC2002 data to model prescription amounts for infant formula and foods would not account for ''rounding up''. Rounding up refers to the ability of state agencies to round up to the next whole container to provide the maximum infant formula allowance. This option is only available for state agencies which renew its infant formula contract on or after October 1, 2004. The proposed rule extends this rounding option to infant foods (cereal, fruit and vegetables, and meat).

Since the PC2002 data do not reflect the costs of states rounding up, the cost estimates of the current and proposed packages use a different approach to factor in the cost of states rounding up. Given current container sizes, rounding up is only required when issuing powder infant formula and infant fruit and vegetables. The maximum allowances for liquid concentrate infant formula, ready-to-feed infant formula, infant cereal and infant meat are evenly divisible by whole containers. To capture the effect of rounding, the following assumptions have been made:

• Current Food Packages I and II

• Estimated prescription infant formula amounts for Packages I and II BF/FF (partially breastfed) and I and II BF (breastfed) do not incorporate rounding as the estimated amounts fall below the

[40] 40 IOM, p. 172.

[41] The Participant Characteristics, ''PC2002'', dataset contains prescription data from 49 states, PR, D.C., several U.S. territories, and separately administered Native American WIC agencies.

[42] The description that follows is a simplification of the process used to develop the estimated prescriptions.

[43] Prescription rates for whole grain bread and bread substitutes are set to the observed prescription rates for cereal; the April 2002 Food Package IV cereal prescription rate was applied to Package IV bread prescriptions, the Package V cereal prescription rate was applied to Package V bread prescriptions, etc.

[44] Market consumption data is based on 2003 AC Nielsen Homescan survey data.

[45] This method of identifying general consumer preferences for particular items cannot be used to estimate the share of the infant population that consumes fresh bananas. It is assumed, then, that infants will be prescribed bananas as a substitute for jarred infant food fruits and vegetables at the average prescription rate for all foods across all food packages.

maximum amounts. Estimated prescription amounts for Packages I and II FF (fully formula-fed) are set at the maximum amounts of 806 reconstituted liquid ounces for liquid concentrate and ready to feed infant formulas; for powder infant formula the current 8 pound limit is used.

• The reconstituted fluid ounces from powder infant formula is a weighted average of the powder container yield for the three infant formula brands with which state agencies have rebate contracts: Mead Johnson, Ross and Nestle (as determined by state agency contracts as of January 2006).

• Total infant formula allowance for each package is weighted by the percentage of infants receiving each of the three forms (liquid concentrate, ready to feed, and powder) as distributed in the PC2002 data.

• Proposed Food Packages I and II

• Infant Formula:

• All packages are set at the maximum monthly allowance for liquid concentrate, ready to feed and powder infant formulas as detailed in the proposed rule.

• Powder infant formula is rounded to meet the maximum monthly reconstituted liquid concentrate allowance, but to not exceed the maximum monthly powder infant formula limit.

• The reconstituted fluid ounces from powder infant formula is a weighted average of the powder container yield for the three formula brands with which state agencies have rebate contracts: Mead Johnson, Ross and Nestle (as determined by state agency contracts as of January 2006).

• Proposed Food Package I BF/FF–A assumes 100 percent powder infant formula. This is consistent with IOM recommendations.

• Total infant formula allowance for each package is weighted by the percentage of infants receiving each of the three forms (liquid concentrate, ready to feed, and powder) as distributed in the PC 2002 data.

• Infant Foods:

• Only Package II has infant foods. Container sizes are based on IOM assumptions: infant fruits and vegetables amounts are determined using Gerber container sizes weighted over the 6 month package period; current infant cereal containers (8 oz) and infant meat containers (2.5 oz) meet maximum monthly allowance without the need to round up.[46]

• Bananas are allowed to be substituted for infant fruit at the rate of 2 pounds per 16 ounces of fruit. The proposed packages cost estimate assumes 1.8 pounds of bananas as substitution.

The proposed rule requires state agencies to issue at least the full nutritional benefit of infant formula but not more than the maximum monthly allowance for the food package category and infant feeding option. However, rounding up to the whole container to meet the maximum monthly allowance provides more containers per month, which in turn results in higher costs. In addition, under both the current and proposed packages, the roundup provision is assumed to apply in all states at full implementation beginning in FY07. Therefore, this analysis provides the most conservative estimate of the additional cost due to rounding, as there is no way to accurately determine which states will elect to include a roundup provision in their infant formula rebate contract.

iii. *Redemption rates.* Tables 5 and 6 show the maximum amount per food category and estimated average prescribed amounts used to calculate costs for the food packages under the proposed rule and under the current rule, respectively. Each table includes the individual food package component and its corresponding unit of measurement.

WIC foods are provided by quantity, except for the fruit and vegetable voucher. As stated in the proposed rule, participants will be given a fruit and vegetable voucher with a fixed dollar value which can be used to purchase fruit and vegetables. Because the proposed fruit and vegetable voucher provides WIC benefits in a different form than is currently used, different redemption behavior is to be expected. Therefore, in developing a cost estimate for the rule, it is assumed that these vouchers will be redeemed at a rate of 87.5 percent, which is consistent with an evaluation of a WIC fruit and vegetable intervention in Los Angeles in 2004.[47] Per participant, a redemption value of $5.25 for children and $7.00 for women was included in the cost of the respective food package.

All other WIC foods are assumed to be redeemed at a 100% rate. The assumption of 100% redemption rates for other WIC foods reflects research findings which indicate that redemption rates for current WIC foods are high and vary little by food item (ranging from 94–99 percent).[48] Variation in the quantity of foods purchased by participants is reflected in the prescription rates. Thus a simplifying assumption of 100 percent redemption rates was used for WIC food prescribed by quantity.

TABLE 5.—PRESCRIPTION ESTIMATES UNDER PROPOSED RULE[49]

Food package	Units[50]	Maximum amount per food category	Estimated average prescribed amount
Infants: Food Package I			
I–FF–A (0–3.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	806	829.01
I–FF–A (partially breastfed, 0–.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	96	0.00
I–FF–B (4–5.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	884	917.10
I–BF/FF–A (1–3.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	384	386.09
I–BF/FF–B (4–5.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	442	461.57
I–BF–A (0–3.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	0	0.00
I–BF–B (4–5.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	0	0.00
Infants: Food Package II			
II–FF (6–11.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	624	647.37
Cereal	oz	24	20.10

[46] The prescription rates for infant cereal, fruit and vegetables, and meat are set to the average prescription rate of juice across all of the women's food packages. Only infant fruit and vegetables were subject to rounding up due to the current container sizes; that factor is reflected in the estimated prescribed amount.

[47] Herman, Dena and Harrison, Gail, ''Are Economic Incentives Useful for Improving Dietary Quality among WIC participants and their Families?'' ERS, USDA, 2004. DRAFT.

[48] Food and Nutrition Service, U.S. Department of Agriculture, ''National Survey of WIC Participants'', October 2001.

TABLE 5.—PRESCRIPTION ESTIMATES UNDER PROPOSED RULE [49]—Continued

Food package	Units [50]	Maximum amount per food category	Estimated average prescribed amount
Baby fruits & vegetables	oz	128	108.21
Bananas	lb		1.80
II–BF/FF (6–11.9 mo):			
Formula (post-rebate)	reconstituted fluid oz	312	344.04
Cereal	oz	24	20.93
Baby fruits & vegetables	oz	128	108.21
Bananas	lb		1.80
II–BF (6–11.9 mo):			
Cereal	oz	24	22.27
Baby fruits & vegetables	oz	256	228.06
Bananas	lb		1.80
Infant food meat	oz	77.5	73.06
Children: Food Package IV			
IV–A (1–1.9 yrs):			
Juice	oz	128	127.59
Milk (whole)	qt	16	13.01
Cheese	lb		0.96
Cereal	oz	36	34.39
Eggs	oz	1	1.00
Whole grain bread	lb	2	1.22
Other grains	lb		0.69
Beans, dried	lb	1	0.30
Beans, canned	oz		19.54
Peanut butter	oz		6.27
Fruit and vegetable voucher [51]	voucher ($)	6.00	6.00
IV–B (2–4.9 yrs):			
Juice	oz	128	127.59
Milk, fat-reduced	qt	16	13.01
Cheese	lb		0.96
Cereal	oz	36	34.39
Eggs	doz	1	1.00
Whole grain bread	lb	2	1.22
Other grains	lb		0.69
Beans, dried	lb	1	0.30
Beans, canned	oz		19.54
Peanut butter	oz		6.27
Fruit and vegetable voucher [51]	voucher ($)	6.00	6.00
Women: Food Package V			
V:			
Juice	oz	144	143.40
Milk, fat-reduced	qt	22	16.90
Soy beverage	qt		1.66
Tofu	lb		0.05
Cheese	lb		0.97
Cereal	oz	36	35.09
Eggs	doz	1	1.00
Whole grain bread	lb	1	0.63
Other grains	lb		0.35
Beans, dried	lb	1	0.56
Beans, canned	oz		36.06
Peanut butter	oz	18	13.86
Fruit and vegetable voucher [51]	voucher ($)	8.00	8.00
Women: Food Package VI			
VI:			
Juice	oz	96	95.54
Milk, fat-reduced	qt	16	11.68
Soy beverage	qt		1.29
Tofu	lb		0.02
Cheese	lb		0.95
Cereal	oz	36	34.70
Eggs	doz	1	0.95
Beans, dried	lb	1	0.23
Beans, canned	oz		14.69
Peanut butter	oz		9.06

TABLE 5.—PRESCRIPTION ESTIMATES UNDER PROPOSED RULE [49]—Continued

Food package	Units [50]	Maximum amount per food category	Estimated average prescribed amount
Fruit and vegetable voucher [51]	voucher ($)	8.00	8.00
Women: Food Package VII			
VII:			
Juice	oz	144	143.64
Milk, fat-reduced	qt	24	17.51
Soy beverage	qt		1.46
Tofu	lb		0.01
Cheese	lb		1.60
Cheese	lb	1	1.00
Cereal	oz	36	35.87
Eggs	doz	2	1.98
Whole grain bread	lb	1	0.63
Other grains	lb		0.35
Canned fish	oz	30	
Tuna	oz		22.44
Salmon	oz		6.11
Beans, dried	lb	1	0.60
Beans, canned	oz		38.63
Peanut butter	oz	18	13.41
Fruit and vegetable voucher [51]	voucher ($)	8.00	8.00

TABLE 6.—PRESCRIPTION ESTIMATES FOR CURRENT FOOD PACKAGES

Food package	Units [52]	Maximum amount per food category	Estimated average prescribed amount
Infants: Food Package I			
I—Fully breast-fed:			
Formula	reconstituted fluid oz	806	49.08
I—Partially breast-fed:			
Formula	reconstituted fluid oz	806	479.75
I—Fully formula-fed:			
Formula	reconstituted fluid oz	806	876.99
Infants: Food Package II			
II—Fully breast-fed 4–6 mo:			
Formula	reconstituted fluid oz	806	42.17
Juice	oz	96	34.09
Cereal	oz	24	20.63
II—Partially breast-fed 4–6 mo:			
Formula	reconstituted fluid oz	806	521.24
Juice	oz	96	53.80
Cereal	oz	24	16.60
II—Fully formula-fed 4–6 mo:			
Formula	reconstituted fluid oz	806	876.99
Juice	oz	96	41.93
Cereal	oz	24	16.99
II—Fully breast-fed 7–12 mo:			
Formula	reconstituted fluid oz	806	41.36
Juice	oz	96	81.15
Cereal	oz	24	22.28
II—Partially breast-fed 7–12 mo:			
Formula	reconstituted fluid oz	806	596.89
Juice	oz	96	69.30
Cereal	oz	24	21.08
II—Fully formula-fed 7–12 mo:			
Formula	reconstituted fluid oz	806	876.99
Juice	oz	96	76.42
Cereal	oz	24	20.27
Children: Food Package IV			
IV:			

TABLE 6.—PRESCRIPTION ESTIMATES FOR CURRENT FOOD PACKAGES—Continued

Food package	Units [52]	Maximum amount per food category	Estimated average prescribed amount
Juice	oz	288	232.77
Milk	qt	24	16.58
Cheese	lb		1.57
Cereal	oz	36	34.39
Eggs	doz	2.5	1.83
Beans, dried	lb	1	0.61
Peanut butter	oz		6.27
Women: Package V			
V:			
Juice	oz	288	267.83
Milk	qt	28	20.94
Cheese	lb		1.84
Cereal	oz	36	35.09
Eggs	doz	2.5	1.99
Beans, dried	lb	1	0.55
Peanut butter	oz		7.29
Women: Package VI			
VI:			
Juice	oz	192	185.54
Milk	qt	24	17.15
Cheese	lb		1.65
Cereal	oz	36	34.70
Eggs	doz	2.5	1.78
Women: Package VII			
VII:			
Juice	oz	336	319.32
Milk	qt	28	22.28
Cheese as milk substitute	lb		1.65
Cheese	lb	1	1.00
Cereal	oz	36	35.87
Eggs	doz	2.5	2.00
Beans, dried	lb	1	1.20
Peanut butter	oz	18	13.41
Tuna	oz	26	24.75
Carrots	lb	2	1.99

iv. Food prices. For each of the food items in the current or proposed packages, FNS estimated the average price paid by households with WIC-eligible incomes. These prices are based on 2003 retail sales data collected by AC Nielsen.[53] All prices are averages weighted by the relative purchase volumes of the selected product varieties.

Product descriptions captured by Nielsen sometimes lack the detail necessary to separate WIC-eligible items from non-eligible items. For this reason, the selection of products from the Nielsen datasets necessitates some compromise. The average prices computed by FNS and a brief description of FNS' product selection criteria are shown in Table 7.

Food prices obtained from AC Nielsen Homescan data are inflated to FY 2004 levels with CPI estimates published by Bureau of Labor statistics.[54] Food item or category specific inflation estimates were used, when available. For years after FY 2004, food costs are inflated by the Office of Management and Budget's June, 2005 Thrifty Food Plan (TFP) index except for the fruit and vegetable vouchers which are inflated by the USDA's agricultural baseline projections for retail fruit and vegetable prices. (See Tables B and C in the Appendix for more detail.)

In each case, prices are computed only for products in container sizes consistent with current WIC regulations, typical state agency requirements, or the proposed rule. Products identified as organic were excluded; states typically disallow organic varieties for cost reasons. FNS also adjusted the WIC food prices for fiscal years 2005 and 2006 to account for changes in the infant formula market (e.g., many State agencies are now prescribing infant formulas enhanced with DHA/ARA, which have tended to cost WIC more than non-enhanced infant formulas).

[49] The only significant change to Food Package III in the proposed rule is the proposed addition of foods to these recipients' packages when their medical circumstances allow it. The PC2002 data set indicates that about 1 percent of WIC participants receive Food Package III. FNS assumes that half of them will be able to and will choose to receive all of the other foods available to them under the proposed rule. Therefore, we do not calculate prescription rates for Food Package III.

[50] Units are expressed in: Fluid ounces (fluid oz); ounces (oz); pounds (lb); quarts (qt); and, dozens (doz).

[51] Prescribed amount for fruit and vegetable vouchers is the redemption rate as discussed in 4a(iii) within this section.

[52] Units are expressed in fluid ounces (fluid oz), ounces (oz), pounds (lb), quarts (qt), and dozens (doz).

[53] FNS computed average prices for all food items other than infant formula from calendar year 2003 AC Nielsen Homescan data. A price for infant formula was estimated from FY 2004 Nielsen supermarket scanner data. Prices displayed below are inflated to FY 2004 levels using Bureau of Labor statistics CPI estimates.

[54] 2004 price data became available in 2006 after this analysis was completed.

TABLE 7.—WIC FOODS: FOOD ITEM, SELECTION CRITERIA, UNITS, AND PRICES PER UNIT

Food item	Retail sales database selection criteria	Units	Price per unit (inflated to FY 04)
Infant formula (post rebate):			
Powdered	Standard and enhanced formula[55] in powdered, liquid concentrate, and ready-to-feed forms.	oz	$0.026
Weighted average of all forms		oz	0.031
Infant cereal	Dry grains without added fruit or other flavors	oz	0.174
Infant food fruit and vegetables	Any texture; plain fruits or vegetables	oz	0.115
Infant food meat	All plain meat varieties	oz	0.319
Bananas	Fresh	lb	0.436
Milk:			
Whole	Fresh dairy milk only, ½ gallon or gallon containers. Reduced fat includes skim milk and milk identified as 2% or lower milkfat.	qt	0.746
Reduced fat		qt	0.675
Cheese	Processed American and domestic natural cheddar, colby, mozzarella, brick, Monterey jack. Sliced or unsliced varieties.	lb	3.557
Tofu	Plain varieties	lb	1.689
Soy beverage	Quart or larger sizes. Plain varieties	qt	1.940
Juice	Apple, grape, orange, grapefruit, tomato. Unsweetened 100% juice.	oz	0.031
Adult cereal:			
Whole grain	Name brands (and their generic versions) commonly prescribed by state WIC agencies.	oz	0.151
Current WIC cereals	Hot or ready-to-eat	oz	0.154
Eggs	Large or medium, white. One doz containers only	doz	1.186
Beans:			
Dry	Most varieties, excluding string beans and immature peas. Not mixed with other foods.	lb	0.728
Canned		oz	0.034
Peanut butter	All forms and varieties. Not mixed with jelly	oz	0.094
Whole grain bread	Wheat or grain bread	lb	1.251
Brown rice	Instant or regular	lb	1.239
Tuna	Chunk light, canned	oz	0.090
Salmon	Canned	oz	0.102
Carrots	Fresh, frozen, canned	lb	0.901

v. Participant Projections. The estimated level of WIC participation through FY 2011 are those used in developing WIC program costs for the President's FY06 Midsession Budget. Those projections assume continued participant growth at the average rate observed over the past four years. Consistent with the IOM assumptions, we do not assume any changes in participation under the proposed rule due to potential participants finding the revised package more or less attractive. (For more detail on participation levels by food package see Tables D and E in the Appendix.)

Many of the proposed package changes were intended to encourage breastfeeding. However, it is important to note that this analysis does not provide an estimate of the increase in the number infants or the additional length of time that infants will be breastfed. Due to the complex set of factors (demographic, clinical, etc.) that influence breastfeeding duration, we are unable to estimate the number of infants/mother pairs that will switch food packages as their feeding practices change. This is consistent with the analysis provided by IOM.

The assumption of no change in breastfeeding patterns yield the most conservative cost estimate, as the net impact of increases in breastfed infants and breastfeeding women participants reduces the costs of this proposal. IOM conducted a sensitivity analysis by simulating possible shifts in participation rates. Shifting infant/mother pairs from the fully formula-fed package to the breastfeeding packages has the effect of moving infant/mother pairs from the most expensive set of packages to less expensive ones. A constant shift of 30 percent for one to 11 months of age from partial to full breastfeeding and a smaller range of shifts from full formula feeding to full breastfeeding (with an appropriate shift in the mother's classification) decreased the average package cost by nearly two percent.[56]

vi. Phased implementation. The analysis assumes the rule takes effect on November, 2006. State agencies would be required to issue food benefits based on either the new food packages or current food packages but could not combine the two. State agencies may also phase-in new food packages on a participant category basis.

As shown in Table F in the Appendix, most of the rule's provisions are phased-in over the course of a year. The elimination of juice from the infant food packages, however, is phased-in six months from publication of the rule.

The IOM recommended pilot testing or limited application of certain changes before full scale implementation. The limited application option was chosen because FNS does not have the authority to conduct pilots that waive current regulations. The rule's implementation plan addresses the IOM recommendation for testing of certain provisions while allowing State agencies sufficient time and broad flexibility to implement the majority of the food packages.

Key provisions of the rule intended to promote breastfeeding will be implemented initially in no more than 32 local test sites in up to eight states. Those provisions will not be implemented nationwide until FNS has evaluated their effectiveness at the test sites. One such provision is that breastfed infants under one month old do not receive formula from the WIC Program. Another is the provision that conditions eligibility for Food Packages V and VI on the level of infant formula prescribed to the mother. However as noted, the breastfeeding promotion provisions of the rule cannot be estimated with confidence. Due to the indefinite

[55] The term ''standard infant formula'' refers to both milk-based and soy-based infant formulas, excluding specialized infant formula (i.e. formula for infants or children with special dietary needs). ''Enhanced formula'' are formulas that have been enhanced with two fatty acids, DHA and ARA.

[56] See IOM, p. 140.

timeline for full implementation for the test sites ensure that the near term cost of the breastfeeding promotion provisions will be minimal, the key provisions in the rule intended to promote breastfeeding have been factored into this rule with the same phase-in schedule as the other provisions.

All phase-in effects are reflected in the cost estimates contained in Table 3. Juice prescriptions under the revised infant food packages will be reduced linearly from current levels to zero in the six months following the rule's effective date. Nationwide, the juice prescription over that six month period will average half the level that would have been forecast under existing WIC rules. Elimination of juice from the infant food packages would reduce program costs by $30.1 million in FY 2007 if the provision were made fully effective upon implementation of the rule. The six month phased elimination of juice will reduce those FY 2007 savings by an estimated $8.3 million.

This analysis assumes that the remaining provisions of the rule will be phased-in over the course of the year that begins November, 2006. It is assumed, as above, that states will implement the provisions of the rule throughout the phase-in period; the effective rate of implementation is assumed to average 50% over the year.[57] The rule's phase-in schedule reduces these costs by half in FY 2007 to $21.1 million. FY 2008 costs are reduced by an estimated $0.3 million.

vii. State cost variation. This analysis is based on national average prescription and price data, which indicates that program-wide, the proposed changes are cost neutral. States may vary somewhat in their implementation experiences, depending on how closely their prescription practices and prices correspond to the national averages. WIC funding rules help address these implementation issues. The food funding formula provides mechanisms for transferring funds from states which are not fully utilizing their grants to those with need for additional funding, and these mechanisms have been successfully used in the past to address variations in states' funding needs.

b. Administrative costs. WIC state agencies receive an annual nutrition services and administration (NSA) grant to help pay the administrative costs of operating the WIC program. Each state agency's NSA grant is determined by a statutorily-defined formula that is adjusted annually for inflation and other factors. This rule does not propose any change to the NSA funding formula. FNS expects State and local agencies to implement this rule without receiving NSA funds beyond what they would have received in the absence of this rule. However, we believe that the administrative burden associated with implementing this rule can be absorbed within current funding constraints.

As part of its analysis, IOM held open sessions to solicit State and local agencies, practitioners and experts for comment on the current and proposed packages. Participants supported the changes in the food packages, but also acknowledged the administrative burden that may arise. Specific administrative burden for each proposed revision is identified in the Summary of Key Provisions on page 23 of this analysis.

FNS does not have data on the current administrative costs incurred by state and local agencies. Therefore, we are unable to quantify the potential increases in administrative burden due to the proposed revisions. The proposed rule asks for comments from State and local agencies on the scale of the administrative burden associated with implementation of the revisions.

Generally, states and local clinics may need to reprioritize or postpone some initiatives to undertake some of the start-up activities associated with this rule, as well as adapt to certain ongoing administrative requirements resulting from the rule. Initially, State and local agencies will need to revise state lists of authorized foods and prescribed amounts, develop food package combinations, and create a fruit and vegetable cash-value voucher to accompany the standard WIC instruments. State agencies will need to review and update all of their guidance materials regarding authorized supplemental foods. Significant time during implementation will be required in order to train staff on the changes in the WIC food packages. Staff will need to work with manufacturers and vendors to evaluate newly-eligible foods for nutrient content, determine minimum stock requirements, identify any special needs for carrying foods, such as increased shelf space or refrigerator space, and ensure systems are in place to accept the fruit and vegetable vouchers. State and local agencies will need to modify their existing WIC food management information systems to allow the new foods to be prescribed and to process the fruit and vegetable vouchers. Expenditures related to management information systems, and the degree to which any this impact is one-time or ongoing, will vary based on the State and local agency's current database structure.

In addition to the administrative efforts associated with initial implementation of the rule, there may be some ongoing administrative requirements to ensure that WIC staff, vendors and participants understand and properly implement the changes. States will need to continuously review all of the food package changes and consider a broader range of issues in determining their strategies for containing costs. The increase in the number of food items and flexibility afforded to participants will impact time spent on providing education and support materials on food selection, storage and preparation. Many of the changes in this rule are designed to support breastfeeding and local clinics may make ongoing changes in staffing and materials to reinforce the changes in the food packages with breastfeeding counseling and support. In addition, time will be spent communicating with and monitoring vendors to ensure compliance may increase.

WIC vendors will also be affected. Vendors will need to train their personnel to recognize the newly WIC-eligible foods and to handle the new fruit and vegetable vouchers. Training time may increase due to the expanded lists of foods, and management information system changes may be necessary. Vendors may also need to revise their practices to meet the stocking requirements dictated by the new food packages. Most large vendors already carry all of the newly-eligible foods; however, some smaller vendors may decide that it is not worth participation in WIC to stock the newer foods. We do not believe that these expenditures will be significant enough to cause many current vendors to discontinue their voluntary participation in the WIC program.

E. Uncertainties

The estimate developed above is sensitive to changes in several key assumptions. A few of the most significant are discussed here.

1. Price Volatility in the Dairy Market

Instability in dairy prices over the last several years presents a major element of uncertainty in the cost estimate. However, the maximum amount of milk available in each of the food packages is reduced. The total amount of milk that can be replaced with more expensive substitutes has been reduced as well. These factors make the revised food packages less sensitive to dairy price fluctuations than the current WIC packages. A 10% increase in the price of milk and cheese would alter the cost of the revised food packages as follows:

TABLE 8.—PROJECTED COST OF WIC FOOD PACKAGE REVISIONS, ASSUMING A 10% INCREASE IN DAIRY PRICES

[In $ millions]

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	Total
Total Cost of Rule with Alternate Assumption	−21.0	−42.9	−56.0	−69.7	−61.3	−250.9
Total Cost of Proposed Rule	−0.8	2.7	−7.9	−19.5	−8.7	−34.2

[57] If the phase-in rate increases linearly over the first year, the rule would not be fully effective until the second month of FY 2008. As a rough approximation, it is assumed that the effective rate of implementation throughout FY 2007 averages 50%, and that the effective rate of implementation in the first month of FY 2008 (the last month of the phase-in period) is 11/12.

TABLE 8.—PROJECTED COST OF WIC FOOD PACKAGE REVISIONS, ASSUMING A 10% INCREASE IN DAIRY PRICES—Continued

[In $ millions]

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	Total
Difference	−20.2	−45.6	−48.1	−50.2	−52.6	−216.7

Negative values are cost reductions.

2. Reduce Assumed Preference for Soy Beverage

FNS anticipates that 10% of women will request soy beverage in place of liquid milk, if provided the choice. AC Nielsen Homescan data indicate that approximately 10% of households with WIC-eligible incomes purchased some soy beverage during FY 2003. The IOM cites high rates of lactose maldigestion and low rates of cultural acceptability of milk among African American and Asian women as important factors in its decision to introduce substitutes for milk.[58] African American women are represented in the WIC population at a level disproportionate to their share of the general population. In part for that reason, it is appropriate to assume a WIC participant preference for soy beverage is at or near the upper range of estimates of soy beverage consumption in the U.S. as a whole. And because WIC participants may choose freely between milk and the more expensive soy substitute, without regard to cost, a natural response is consumption at a rate above the rate of those whose choice between the two products does not have personal cost impact.

FNS identified each of the women on its 2002 WIC prescription dataset who were provided neither milk nor cheese. Those individuals, as a group, are assumed to be the WIC participants most inclined to request a prescription of soy beverage in place of milk. FNS' simulation model prescribes an amount of soy beverage to those individuals equal to the maximum allowed under their respective food packages. The program then substitutes soy beverage for the existing milk prescriptions of other WIC participants to the extent necessary to reach the 10% participant target. The program prescribes cheese and tofu before soy beverage; it does not replace the prescription of those milk substitutes with soy beverage. IOM took a similar approach in developing its cost estimate; it assumed that soy beverage would replace 10% of liquid milk prescriptions. In IOM's analysis, 8.7% of all milk and milk substitutes prescribed to women is in the form of soy beverage. FNS' methodology, which incorporates the more detailed data available from PC2002, results in a somewhat lower 7.8% substitution rate for soy beverage.

Adequate data on which to base a soy beverage consumption rate for adult women is not available; it is not known whether consumption is appreciably higher or lower among women than among the population generally. For these reasons, the cost of the proposed rule has been re-estimated using two alternate assumptions. If soy beverage is prescribed to only 5% of women, the average package V, VI, and VII soy beverage substitution rate is 3.9%. Conversely if soy beverage is prescribed to 15% of women, the average package V, VI, and VII soy beverage substitution rate is 11.5%. Given the high cost of soy beverage relative to milk, these alternate scenarios would have has cost implications.

TABLE 9.—PROJECTED COST OF WIC FOOD PACKAGE REVISIONS, ASSUMING A CHANGE IN THE PERCENTAGE OF WOMEN PRESCRIBED SOY BEVERAGE

[In $ millions]

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	Total
Total Cost of Rule with alternative 5% prescription rate	−12.3	−23.4	−35.4	−48.3	−38.8	−158.3
Total Cost of Proposed Rule	−0.8	2.7	−7.9	−19.5	−8.7	−34.2
Total Cost of Rule with alternative 15% prescription rate	10.7	28.8	19.6	9.3	21.4	89.9
Difference between rule and alternatives	+/−11.5	+/−26.1	+/−27.5	+/−28.8	+/−30.2	+/−124.1

Negative values are cost reductions.

F. Alternatives

FNS considered several alternatives to the proposed rule. These alternatives are discussed below. Each of these alternatives was ultimately rejected because FNS believes that a food package which reflects the IOM recommendations as closely as possible within the constraint of cost neutrality best reflects current scientific consensus on how to best meet the dietary needs of WIC participants.

1. Include Yogurt as a Milk Substitute for Food Packages IV–VII

For Food Packages IV–VII, the IOM identified yogurt, tofu, and soy beverage as new milk substitutes to help ensure adequate calcium intake by those who cannot consume milk and to accommodate cultural preferences. Under the current rule cheese is also available as a milk substitute for up to three quarts of milk. IOM's recommendation specifically called for limiting substitutions of cheese, yogurt, and tofu to four quarts of milk for Food Packages IV, V and VI, and six quarts of milk for Food Package VII. Soy beverage would be allowed for the entire milk allowance for Food Packages V, VI, and VII.

In order to maintain cost-neutrality, the proposed rule eliminates yogurt as a milk substitute, but allows the substitution of tofu, cheese and soy beverages up to the IOM maximum substitution level. As shown in Table 10, the price of yogurt, $2.62 per quart, as compared to $.68 per quart for milk, considerably increases the monthly cost of Food Packages IV–VII. Soy beverage and tofu also have higher per unit costs than milk; however, the estimated amount of tofu purchased by WIC participants is substantially lower than that of yogurt, and soy beverage can serve as an alternative for all or part of the fluid milk for adult women making it a more cost-efficient substitute.

[58] IOM, p. 119.

TABLE 10.—PROJECTED COST OF YOGURT AS A MILK SUBSTITUTE

Food package	Estimated average prescribed amount (qt.)	Price per unit (inflated to FY04)	Cost per food package
IV	0.86	$2.62	$2.25
V	0.84	2.62	2.21
VI	0.66	2.62	1.74
VII	0.83	2.62	2.17

The economic impact of including yogurt as a milk substitute is shown in Table 11. The five year cost of the rule, as modified by this alternative, is $605.7 million. The cost of the proposed rule without yogurt is $ − 34.2 million (see Table 3.)

TABLE 11.—PROJECTED COST OF WIC FOOD PACKAGE REVISIONS, INCLUDING YOGURT AS A MILK SUBSTITUTE

[In $ millions]

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	Total
Total Cost of Rule with Alternate Assumption	58.6	137.4	134.0	129.0	146.6	605.7
Total Cost of Proposed Rule	− 0.8	2.7	− 7.9	− 19.5	− 8.7	− 34.2
Difference	59.4	134.7	141.9	148.5	155.3	639.9

2. Replace the Proposed Rule's Fruit and Vegetable Provision With a More Restrictive Dark Green and Orange Vegetable Rule

The 2005 Dietary Guidelines for Americans stresses the importance of consuming vegetables from each of five identified subgroups (dark green, orange, starchy, legumes, and ''all other.'') Overall consumption of vegetables by American adults tends to fall short of the levels recommended by the 2005 Dietary Guidelines for Americans.[59] But inadequate consumption varies by vegetable subgroup. Consumption of vegetables from the dark green, orange, and legume groups fall farthest from recommended levels.[60]

The current WIC food packages address inadequate consumption of legumes through the prescription of dried beans and peanut butter and the proposed rule would increase the quantity of those items in two of the food packages. The rule also attempts to increase the appeal of the legume subgroup by providing a canned option in packages IV through VII.

By contrast, the current WIC packages and the proposed revisions might appear to give too little attention to the lack of dark green and orange vegetables in the typical American diet. The current WIC food packages offer no vegetables from the dark green subgroup to any participant; carrots provided to breastfeeding women are the only vegetables from the orange subgroup currently offered through WIC. Development of the proposed rule presented the IOM and the USDA with an opportunity to add vegetables from these subgroups to the WIC packages. Perhaps surprisingly, the rule does not prescribe a specific quantity of vegetables from either of these subgroups. Despite recognizing potassium, folate, and vitamins A and C as priority nutrients lacking in the diets of some WIC subpopulations, the IOM chose not to emphasize the dark green and orange vegetable groups that tend to offer the highest concentrations of those nutrients.[61] Instead, the IOM recommended a fruit and vegetable option with few restrictions. Under the proposed rule, nutrition education offered by local WIC agencies will remain the primary method of encouraging participants to the most nutritious fruit and vegetable varieties; participants remain largely free to choose the fruits and vegetables that they find most appealing.

An alternative rule that excluded fruit from the WIC packages and limited vegetable choices to nutrient-dense dark green and orange varieties would increase the level of priority nutrients offered by the revised food packages. A restrictive vegetable rule might also reduce the inefficiency costs incurred by retailers as WIC participants mistakenly bring non-WIC items to the checkout counter. A small and definite list of WIC approved vegetables would allow retailers to affix labels to store shelves pointing WIC participants to each of their options. The same cannot be done as readily if the IOM recommended and USDA proposed approach is adopted. Although the rule offers substantial consumer choice, it also comes with significant restrictions on product form, especially for processed fruits and vegetables.

Specifically, this alternative would provide, in Food Packages III–VII, 3.75 pounds or 60 ounces of the following leafy green or dark orange vegetables: broccoli; carrots; leafy greens (kale, mustard, collard, turnip, spinach); sweet potatoes; and winter squash (i.e. Hubbard, acorn or butternut) in lieu of the fruit and vegetable voucher. Three and three quarters pounds of leafy greens or dark orange vegetables replace the current allowance of 2 pounds of carrots in Food Package VII. Allowable forms include fresh, canned, and frozen vegetables. This alternative allows substitution at a one-to-one rate, for example, one 16 ounce can per 1 pound of fresh vegetables and 1 pound frozen for 1 pound fresh. In order to contain costs and administrative burden, as well as to maintain the nutrient density of the food packages, the following are disallowed: creamed or sauced vegetables; vegetable-grain (e.g. pasta/rice) mixtures; mixed vegetables that include non-authorized vegetables; breaded vegetables; fresh vegetables prepared for immediate consumption such as those cleaned and chopped on salad bars; baby vegetables; and, those packaged in individual servings except for homeless participants. These fruits and vegetables would only be prescribed to those Food Package III participants who do not have a medical condition that would preclude consumption of leafy green or dark orange vegetables.

Cost is not an impediment to a limited, nutrient-dense vegetable option. Broccoli, carrots, mustard greens, kale, sweet potatoes, and spinach are among the least expensive fresh vegetables on a per serving basis, and are prime candidates for inclusion in any list of nutrient-dense, dark green and orange vegetables.[62] Collard and turnip greens are among the least expensive vegetables available in frozen form.[63]

Table 12 summarizes price per serving, and the total number of servings purchased, for several common vegetables.[64] Dark green leafy vegetables and deep orange vegetables are highlighted.

[59] USDHHS/USDA, p. 4.

[60] *Id.*

[61] USDHHS/USDA, p. 26.

[62] Jane Reed, Elizabeth Frazão, Rachel Itskowitz, *How Much Do Americans Pay for Fruits and Vegetables?*, Economic Research Service, U.S. Department of Agriculture, July 2004, p. 33.

[63] *Id.*

[64] ERS examined thirty common vegetables. The top ten by each measure (price and quantity), plus all of the dark green and orange vegetables are displayed. Prices are averages over all forms (fresh, frozen, canned, etc.) weighted by the number of servings purchased by form.

TABLE 12.—COMMONLY CONSUMED VEGETABLES, 1999: PRICE PER SERVING AND SERVINGS PURCHASED

Price per serving			Servings purchased		
Vegetable	Dollars	Rank (lowest = 1)	Vegetable	Billions	Rank (most = 1)
Cabbage	$0.05	1	Potatoes	26.21	1
Potatoes	0.07	2	Tomatoes	6.97	2
Radishes	0.11	3	Onions	6.01	3
Onions	0.12	4	Carrots	5.67	4
Cucumbers	0.12	5	Green beans	4.32	5
Broccoli	0.13	6	Cabbage	3.67	6
Celery	0.13	7	Sweet corn	3.43	7
Green beans	0.14	8	Broccoli	3.33	8
Carrots	0.14	9	Iceberg lettuce	3.23	9
Romaine lettuce	0.15	10	Bell peppers	2.52	10
Sweet potatoes	0.19	14	Sweet potatoes	0.94	16
Kale	0.19	15	Spinach	0.56	19
Mustard greens	0.19	16	Brussels sprouts	0.16	22
Brussels sprouts	0.27	23	Collard greens	0.06	26
Spinach	0.29	25	Mustard greens	0.05	27
Turnip greens	0.30	27	Turnip greens	0.04	28
Collard greens	0.32	29	Kale	0.02	30
30 vegetable average	0.21		30 vegetable average	2.62	
			Excluding potatoes	1.81	

Source: Figures were compiled from data contained in Reed, Frazao, Itskowitz, How Much Do Americans Pay for Fruits and Vegetables?, ERS, USDA, July 2004.

Averaged across all forms (fresh, frozen, and canned) five of the nine dark green and orange vegetables are available at prices below the 30 vegetable average. But just two of them are purchased at above average rates; the rest are purchased at rates well below average.

The overall cost of the proposed rule would be significantly reduced if modified to restrict consumption of vegetables to dark green and orange vegetables with a 3.75 pound maximum quantity. The five year cost of the rule, as modified by this alternative, is $−702.4 million as shown in Table 13.

The cost of the proposed rule, without modification or additional cost containment discussed above, is $−34.2 million (see Table 3.)

TABLE 13.—PROJECTED COST (+) / SAVINGS (−) ASSOCIATED WITH REPLACING FRUIT AND VEGETABLE PROVISION WITH MORE RESTRICTIVE DARK GREEN AND ORANGE VEGETABLES (3.75 LB MAXIMUM QUANTITY FOR PACKAGES III–VII)

[In $ millions]

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	All
Total Cost of Rule with Alternative	−71.4	−146.7	−154.2	−161.3	−168.8	−702.4
Total Cost of Proposed Rule	−0.8	2.7	−7.9	−19.5	−8.7	−34.2
Difference	−70.6	−149.4	−146.3	−141.8	−160.1	−668.2

The relative lack of popularity of these vegetables raises two concerns. The first is whether vendors will be willing to stock vegetables with such limited appeal. Historically, WIC has included only commonly consumed and widely available items in its food packages. These considerations serve, in part, to limit the costs incurred by WIC-approved vendors. Requiring vendors to maintain fixed supplies of little-consumed foods may prove too expensive, especially for the smaller proprietors common in neighborhoods with significant WIC-eligible populations. Of course, high concentrations of WIC-eligible shoppers might allow smaller vendors to stock these foods profitably, however, that raises the second concern about whether such a narrow vegetable option will increase consumption.

IOM and the USDA recognize the difference between a food package that simply offers needed nutrients to WIC participants, and one that encourages participants to increase their intake of those nutrients. IOM concluded that participant choice is among the keys to increased consumption of priority foods and nutrients.[65] Concluding that food package options with limited choice fail to provide ''incentives for participation,'' IOM suggests that poorly designed food packages may prevent WIC from reaching some at-risk populations at all.[66]

A rule that allows wide choice among vegetable varieties cannot guarantee delivery of priority nutrients at recommended levels. But, supported by local agency nutrition education, the proposed rule is expected to increase the intake of those nutrients. And to the extent that WIC participants, like Americans generally, consume too little from the fruit and vegetable groups overall, WIC-provided fruits and vegetables may displace less healthy foods from the diet, and help reduce the excess intake of food energy and saturated fat. IOM and USDA propose a minimally restrictive fruit and vegetable option with the expectation that it will increase consumption of targeted nutrients, and improve the diets of WIC participants, more effectively than a limited vegetable option with less participant appeal.

3. Do Not Offer Infant Food Fruits, Vegetables, or Meat to Infants Age Six Months and Older

The proposed rule adds infant food fruits and vegetables to revised Package II in part as a preferred replacement for fruit juice. This alternative questions whether the fruit juice eliminated from the infant food packages needs to be replaced at all.

With the exception of low iron and zinc intakes by the relatively small population of fully breastfed infants age six months and older, IOM identified no nutrient inadequacies among WIC infants. IOM understands that WIC foods are offered to supplement the diets of program

[65] IOM, p. 118.

[66] *Id.*

beneficiaries. ''Thus, food groups and nutrients that are lacking in the diet are to be emphasized, rather than staple foods that are already adequate in the diet.''[67] Accepting, for argument's sake, that parents are likely to introduce complementary foods to their infants at six months of age, regardless of the content of the WIC food packages, it may make sense to eliminate juice from the infant food packages without offering jarred infant foods as a replacement. If this assumption about parents' behavior could be substantiated, then elimination of jarred infant food from the proposed rule would reduce costs without placing infants at nutritional risk. Those savings could be used to allow for the full IOM-recommended level of fruits and vegetables or the savings could be redirected to other government priorities.

The overall cost of the proposed rule would be significantly reduced if modified to eliminate both juice and infant foods from the infant food packages. The five year cost of the rule, as modified by this alternative, is $−983.6 million. The cost of the proposed rule, without modification, is $−34.2 million (see Table 3.)

TABLE 14.—PROJECTED COST (+) / SAVINGS (−) ASSOCIATED WITH ELIMINATING INFANT FOOD FRUITS, VEGETABLES, OR MEAT FROM INFANT FOOD PACKAGES; REINSTATE CURRENT PACKAGE

[In $ millions]

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	All
Total Cost of Rule with Alternative	−89.0	−197.2	−218.5	−239.7	−239.2	−983.6
Total Cost of Proposed Rule	−0.8	2.7	−7.9	−19.5	−8.7	−34.2
Difference	−88.2	−199.9	−210.6	−220.2	−230.5	−949.4

The proposed infant food provision serves two of the broader goals of the WIC food package redesign effort. The first seeks to encourage WIC participants to increase their intake of fruits and vegetables. This effort, backed by the recommendations of current nutrition science, and reflected in the 2005 Dietary Guidelines for Americans, is weakened by this alternative food package proposal. The proposed rule, unlike this alternative, sends a clear message that a variety of semi-solid fruits and vegetables is preferred to fruit juice as an early complementary food as baby food fruits and vegetables serve to introduce older infants to new flavors and textures.[68]

A second goal of food package redesign effort that is not met through this alternative proposal is the promotion of breastfeeding. The proposed rule offers twice the amount of infant food fruits and vegetables to fully breastfed infants that it offers to partially or fully formula-fed infants. IOM and the USDA are optimistic that increasing the value of the food package offered to fully breastfed infants will provide the type of economic support that will encourage mothers to continue breastfeeding beyond six months. The introduction of infant food meat to the fully breastfed package is intended to provide the same incentive; it extends economic assistance to parents, and helps ensure the health of their infants with foods that deliver the only two priority nutrients found lacking in WIC's infant population. Because this alternative would undermine two the key goals of the WIC food package redesign effort, it was rejected.

4. Drop the Whole Grain Requirement for Both Bread and Cereal

The proposed rule requires that bread and the bread substitutes added to the children and women food packages meet FDA label standards for the health claim for whole grain foods with moderate fat content. In addition, the rule requires that cereal in all but the infant food packages meet the same whole grain standard. Relaxing the whole grain requirement is an alternative that may be supported with arguments similar to those behind the rule's broad fruit and vegetable provision. IOM's whole grain recommendation is motivated by nutrition research that recognizes low fiber intake as a health risk factor.[69] Nevertheless, low fiber intake is a consequence of consumer choice. Simply mandating that WIC grain products meet the FDA's whole grain standard may not increase whole grain consumption or fiber intake. Product variety is more limited, and cultural preferences may be difficult to meet, with a restrictive whole grain bread and cereal requirement.

However, refined grains are not lacking in the American diet. The proposed rule's fruit and vegetable provision encourages the consumption of foods that are underconsumed as a group. By contrast, the 2005 Dietary Guidelines for Americans recommend that refined grains be replaced (not supplemented) with whole grains.[70]

Other arguments that might be raised against the whole grain requirement are possible limited availability of whole grain products at some WIC vendor sites, and higher food package costs. Although the need to stock additional whole grain items will be an economic burden to some WIC vendors, increased sales to WIC participants may justify the added vendor expense.

Food package costs under the proposed rule will likely exceed the cost of otherwise equivalent packages that lack the whole grain requirement.[71] The overall cost of the proposed rule would be significantly reduced if modified to eliminate the whole grain requirement. Because this alternative provides less nutritional benefit relative to the 2005 Dietary Guidelines for Americans recommendations and saves very little, it was rejected.

TABLE 15.—PROJECTED COST (+) / SAVINGS (−) ASSOCIATED WITH ELIMINATING THE WHOLE GRAIN REQUIREMENT FOR BOTH BREAD AND CEREAL

[In $ millions]

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	All
Total Cost of Rule with Alternative	−$5.8	−$17.3	−$29.1	−$41.6	−$31.9	−$125.6
Total Cost of Proposed Rule	−0.8	2.7	−7.9	−19.5	−8.7	−34.2
Difference	−5.0	−20.0	−21.2	−22.1	−23.2	−91.4

[67] IOM, p. 81.

[68] IOM, p. 103.

[69] USDHHS/USDA, 2005, p. 5.

[70] *Id.*, p. 25.

[71] To estimate the cost of the alternative, AC Nielsen Homescan data were used. Prices paid by households with WIC-eligible incomes for whole wheat and multi-grain bread averaged $1.25 per lb in CY 2003. The comparable price for bread specified without the whole grain restriction was just $0.98. CY 2003 Homescan data suggest that low income households paid $1.17 per pound for brown rice, and just $1.05 for all varieties of rice. Selecting cereal brands representative of those allowed under current WIC rules produced an average CY 2003 price per ounce of $0.155; restricting those brands to ones identified by FNS as whole grain produced an average price of $0.152. (Given the uncertainty of a price difference between whole grain WIC cereals and all WIC cereals, the whole grain price, adjusted for inflation, was used in both the current program cost estimate and the cost of the proposed rule.)

G. Market Analysis

The proposed changes in the quantities and types of foods provided by the WIC program should result in changes in the quantities and types of foods that WIC participants buy with their WIC vouchers. The complete market impact of this rule is difficult to accurately quantify, because we do not know the extent to which WIC foods substitute for purchases WIC participants would have otherwise made with their own funds. Empirical research on this issue is inconclusive.[72] Because of this uncertainty, we present two scenarios. In the first (Table 16), we assume full substitution—that is, all foods purchased with WIC vouchers under the current packages would otherwise be purchased with the participants' own funds under the proposed rule. In the second (Table 17), we assume the alternate—that none of the foods purchased with WIC vouchers would otherwise be purchased with the participants' own funds. In both scenarios, the potential impact of the proposed rule on the total market size for most foods is relatively modest, as is the impact on WIC's share of the total market.

We estimated the total value of WIC sales[73] for each food item and the total annual U.S. retail sales for each WIC food item. To estimate WIC sales, we multiplied the average unit price per food item by an estimate of the quantity of food purchased by WIC participants (the average estimated participation multiplied by the amount of food prescribed to a participant throughout the course of a year).[74] To estimate total annual sales, 2004 AC Nielsen Productscan data was used to calculate total volume and annual grocery store sales of the different categories of food products.[75] We used calendar year (CY) 2004 participation, cost and sales estimates for our market share analysis. Although the rule does not take effect until FY2007, we cannot reliably make projections about the overall sales of WIC food items for the next three years; we believe the CY2004 data provides a good indication of the relative impact of the rule's changes on each food item.

It is important to note that this approach understates the size of the total markets for WIC food items (and thus overstates both WIC's market share and the potential impact of the proposed change on WIC food markets), because the data used to estimate total market size is limited to grocery store sales. Data on sales through other outlets was not available, but would likely significantly increase the estimated size of the total market for WIC foods.

TABLE 16.—ESTIMATED TOTAL ANNUAL SALES, WIC SALES, AND WIC PERCENT OF MARKET FOR CURRENT FOOD PACKAGE AND PROPOSED FOOD PACKAGE, ASSUMING FULL SUBSTITUTION OF WIC FOODS IN TOTAL ANNUAL SALES, CY2004

WIC food item	Current food package			Proposed food package		
	Estimated total annual sales ($)	Estimated total WIC sales ($)[76]	WIC % of market[77]	Estimated total annual sales ($)	Estimated total WIC sales ($)	WIC % of market[77]
Formula	3,827,207,300	2,218,376,592	58.0	3,827,207,300	1,861,708,927	48.6
Beans	1,594,508,550	28,452,447	1.8	1,594,508,550	74,093,164	4.6
Peanut butter	1,220,294,910	40,124,965	3.3	1,220,294,910	55,178,642	4.5
Milk	15,079,942,711	906,058,003	6.0	15,079,942,711	677,234,215	4.5
Adult cereal	10,659,174,187	371,248,425	3.5	10,659,174,187	371,248,425	3.5
Juice	9,054,815,014	554,654,178	6.1	9,054,815,014	281,605,147	3.1
Rice	1,555,487,249		0.0	1,555,487,249	47,771,371	3.1
Fruit and vegetables	20,885,553,820	3,257,252	0.0	20,885,553,820	423,909,963	2.0
Eggs	4,565,261,316	157,506,055	3.5	4,565,261,316	85,613,782	1.9
Cheese	14,115,201,047	420,378,841	3.0	14,115,201,047	252,558,109	1.8
Bread	9,639,041,0346		0.0	9,639,041,0346	85,756,306	0.9
Canned fish	1,876,855,676	3,635,931	0.2	1,876,855,676	4,313,082	0.2
Infant cereal[78]		37,109,290			27,928,716	
Baby food[78]					181,459,935	
Tofu[78]					1,354,354	
Soy beverage[78]					69,438,663	
Total[79]	94,073,343,126	4,740,801,978	5.7	94,073,343,126	4,501,172,621	4.5

[72] Mary Kay Fox, William Hamilton, Biing-Hwan Lin, *Effects of Food Assistance and Nutrition Programs on Nutrition and Health, Volume 3, Literature Review, Economic Research Service,* U.S. Department of Agriculture, Food Assistance and Nutrition Research Report Number 19–3. October 2004.

[73] WIC sales refer only to sales produced by the use of WIC vouchers, not the total sales from all purchases made by WIC participants.

[74] Prescription amounts used in this market share analysis are the same as those used in the cost analysis.

[75] Total annual sales include foods that fit in the category of food product, but may not be WIC eligible (i.e., within cereal, total sales include cereals of any sugar content and cereals without whole grains). This was done to accurately portray the impact of the proposed food package on the whole market and not just the narrow sub-market of ''WIC eligible'' food. Because AC Nielsen Productscan data covers approximately 70% of the total grocery market, total annual sales were adjusted by dividing by 70%.

[76] Total WIC sales reported here are less than the $5.2 billion dollars (pre-rebate) reported in WIC 2004 food costs. The estimates of total WIC food sales for the current and proposed packages are likely to be lower than actual WIC food expenditures because the AC Nielsen Productscan and Homescan data used to estimate food prices may not fully capture the higher prices charged by WIC vendors such as small, non-chair, convenience and ''WIC-Only'' stores.

[77] ''WIC % of Market'' estimates are calculated only for items for which we have both a numerator and denominator.

[78] We were unable to assess the market impact of four items in the WIC food package; tofu, soy beverage, baby food, and infant cereal. These items are not included in the Productscan data; however, we are able to estimate WIC sales because these items are part of the Homescan data, which is our source for item price data.

[79] Total ''WIC % of Market'' estimates are calculated only for items for which we have both a numerator and denominator.

TABLE 17.—ESTIMATED TOTAL ANNUAL SALES, WIC SALES, AND WIC PERCENT OF MARKET FOR CURRENT FOOD PACKAGE AND PROPOSED FOOD PACKAGE, ASSUMING NO SUBSTITUTION OF WIC FOODS IN TOTAL ANNUAL SALES, CY2004

WIC food item	Current food package			Proposed food package		
	Estimated proposed total annual sales	Estimated total WIC sales ($) [80]	WIC % of market [81]	Estimated total WIC sales ($)	Estimated total WIC sales ($)	WIC % of market [81]
Formula	3,827,207,300	2,218,376,592	58.0	3,470,539,636	1,861,708,927	53.6
Beans	1,594,508,550	28,452,447	1.8	1,640,149,267	74,093,164	4.5
Peanut butter	1,220,294,910	40,124,965	3.3	1,235,348,407	55,178,642	4.5
Milk	15,079,942,711	906,058,003	6.0	14,851,118,924	677,234,215	4.6
Adult cereal	10,659,174,187	371,248,425	3.5	10,659,174,187	371,248,425	3.5
Juice	9,054,815,014	554,654,178	6.1	8,781,765,983	281,605,147	3.2
Rice	1,555,487,249		0.0	1,603,258,620	47,771,371	3.0
Fruit and vegetables	20,885,553,820	3,257,252	0.0	21,306,206,531	423,909,963	2.0
Eggs	4,565,261,316	157,506,055	3.5	4,493,369,043	85,613,782	1.9
Cheese	14,115,201,047	420,378,841	3.0	13,947,380,315	252,558,109	1.8
Bread	9,639,041,346		0.0	9,724,797,652	85,756,306	0.9
Canned fish	1,876,855,676	3,635,931	0.2	1,877,532,826	4,313,082	0.2
Infant cereal [82]		37,109,290			27,928,716	
Baby food [82]					181,459,935	
Tofu [82]					1,354,354	
Soy beverage [82]					69,438,663	
Total [83]	94,073,343,126	4,740,801,978	5.7	93,590,641,391	4,501,172,621	4.5

It is important to note that current and proposed estimated WIC sales differ from the costs reported in Table 3 mainly because the market analysis uses pre-rebate formula costs as compared to the cost estimate which factors in the post-rebate savings. In addition, the data in the market impact analysis is based on CY2004 participation whereas the cost estimate uses the projected participation estimates for 2007 and beyond. Finally, the market analysis does not take into account any phase-in period.

Overall, the changes in the WIC food package will have a modest impact on WIC sales as a percentage of total annual sales of these food item categories. Market shares are slightly higher under the no substitution scenario. (See Table 17). For the foods that are currently part of the food package, the proposed food package has the largest dollar impact on the infant formula market. Under the proposed food package, the market share of WIC sales for infant formula is less than with the current food package. The decline is mostly due to a reduction in the maximum allowance of infant formula for partially breastfed and fully formula-fed infants 6 through 11 months of age (Food Package II FF).

The other markets that will be impacted and are currently part of the food package are the milk, juice, eggs, bean, cheese, peanut butter, and fruit and vegetable markets. The market share of these items will change slightly. The items that will have decreases are milk, juice, eggs, and cheese, while the items that will have increases are beans, peanut butter, and fruits and vegetables. The WIC market share of milk will change from 6% to 4.5%–4.6% due to lower prescription amounts and the ability of participants to substitute tofu, and soy beverage for fluid milk. The decline in cheese is also due to these reasons. The share of the juice market shifts from 6.1% to 3.1%–3.2%, while the share of the egg market shifts from 3.5% to 1.9%. Both of these declines stem from changes in the package that are designed to improve the overall nutritional benefit of the package. Participants will be receiving less juice, but more fruits and vegetables. The amount of eggs will be lowered consistent with recommendations of the IOM on cholesterol intake and to permit a wider variety of foods to be included in the WIC food packages. The market share of beans will increase from 1.8% to 4.5%–4.6%. The majority of this impact stems from the fact that participants can now substitute canned beans, which are more expensive, for dried beans. The market share of peanut butter will increase from 3.3% to 4.5%. Lastly, the WIC percent of the fruit and vegetable market will increase from 0% to 2.0%–3.1%. This is due to the fact that the only fruit or vegetable that WIC participants currently receive are carrots and only exclusively breastfeeding mothers receive them. Under the new rule, the fruit and vegetable vouchers will provide WIC's women and children participants with much greater access to these foods.

For the foods being added to the WIC food package, the WIC market share percentages are, for the most part, small, 0.9% and 3.0%–3.1%, for bread and rice, respectively. We were unable to assess the market impact of four items in the food package: tofu, soy beverage, baby food, and infant cereal. These items are not included in the Productscan data; however we are able to estimate WIC sales because these items are part of the Homescan data, which is our source for item price data.

Given the changes in market share and potential changes in total market demand, changes in the purchases of WIC-provided foods could theoretically have an impact on prices for WIC foods. However, because the demand impacts for most foods are small and impossible to estimate precisely, we are unable to determine the potential price effects.

WIC purchases of infant formula represent a larger share of the total market of WIC-provided foods than do WIC purchases of the other WIC foods. The Economic Research Service (ERS) recently studied the relationship between retail prices of infant formula and demand for WIC-provided formula. ERS findings suggest that the amount of WIC-provided formula purchased has an effect on retail prices; specifically, larger WIC demand leads to higher retail prices for non-WIC consumers who purchase the state's contract brand of formula.[84] ERS found that the larger the relative size of the WIC program, the greater the retail price of the contract brand of infant formula, ranging from 8 to 14 cents across brands of milk-based powder infant formula and from 3 to

[80] Total WIC sales reported here are less than the $5.2 billion dollars (pre-rebate) reported in WIC 2004 food costs. The estimate of total WIC food sales for the current and proposed packages are likely to be lower than actual WIC food expenditures because the AC Nielsen Productscan and Homescan data used to estimate food prices may not fully capture the higher prices charged by WIC vendors such as small, non-chain, convenience and ''WIC-Only'' stores.

[81] ''WIC % of Market'' estimates are calculated only for items for which we have both a numerator and denominator.

[82] We were unable to assess the market impact of four items in the WIC food package: tofu, soy beverage, baby food, and infant cereal. These items are not included in the Productscan data; however, we are able to estimate WIC sales because these items are part of the Homescan data, which is our source for item price data.

[83] Total ''WIC % of Market'' estimates are calculated only for items for which we have both a numerator and denominator.

[84] Victor Olivera, Mark Prell, David Smallwood, Elizabeth Frazão, *WIC and the Retail Price of Infant Formula,* Economic Research Service, U.S. Department of Agriculture, May 2004, p. 60.

11 cents across brands of non-contract powder infant formula for a one-unit change in relative size of WIC (e.g., WIC's share of all formula-fed infants increase from one-half to two-thirds of all formula-fed infants). However, it is difficult to project the exact impact of the reduction in WIC demand for infant formula under the proposed rule based on this study. The ERS analysis was limited to formulas sold in supermarkets, whereas projecting the impact of the rule on overall demand would require an analysis of the behavior of non-WIC consumers, which have more diverse purchasing habits. For instance, many non-WIC formula purchases are at prices below that of supermarkets from mass merchandisers that do not participate in the WIC Program. In addition, the change in WIC formula sales as a percentage of retail grocery sales due to this proposed rule (from 58% to 49%–54%) is smaller than the changes in WIC sales examined in the ERS report (from 50% to 66%). We invite comment on the impact of the proposed revisions to the WIC packages on food prices.

Appendix: Additional Cost Estimate Assumptions

TABLE A1.—FY 07 FOOD PACKAGE COSTS

[Post-rebate]

Food package	Current	Proposed
I—0 to 3 month infants	$25.41	$22.91
II—6 to 11.9 month infants	30.62	38.74
III—Participants with special medical needs[85]	0.00	34.36
IV—Children 1 to 4.9 years	35.60	33.54
V—Women: pregnant and partially breastfeeding	40.02	42.28
VI—Women: postpartum	32.41	33.14
VII—Women: fully breastfeeding	51.25	52.62

TABLE A2.—ANNUAL CURRENT FOOD PACKAGE COSTS (POST-REBATE) FY 07–FY 11

[In $ millions]

Food package	FY 07[86]	FY 08	FY 09	FY 10	FY 11
I	$282.08	$321.87	$336.70	$352.19	$368.52
II	304.34	347.27	363.27	379.97	397.60
III[85]	0.00	0.00	0.00	0.00	0.00
IV	1,660.65	1,894.92	1,982.24	2,073.38	2,169.55
V	554.12	632.28	661.42	691.83	723.92
VI	227.20	259.26	271.20	283.67	296.83
VII	79.57	90.80	94.98	99.35	103.96

TABLE A3.—ANNUAL PROPOSED FOOD PACKAGE COSTS (POST-REBATE) FY 07–FY 11

[In $ millions]

Food package	FY 07[86]	FY 08	FY 09	FY 10	FY 11
I	$267.02	$290.30	$303.49	$317.45	$332.17
II	339.08	438.53	459.61	480.74	503.04
III[85]	8.15	18.56	19.58	20.50	21.48
IV	1,612.74	1,779.82	1,854.27	1,932.70	2,015.25
V	569.79	665.23	693.47	722.65	767.75
VI	229.75	263.72	274.56	285.81	304.93
VII	80.64	92.92	96.92	101.07	107.06

TABLE B.—FY 04 PRICE INFLATION ASSUMPTIONS USING FY 04 FOOD SPECIFIC CPIS

Food item	Inflation rate (percent)
Infant cereal	−0.8
Infant food fruit and vegetables:	
Infant food meat	2.6
Bananas	−1.0
Milk:	
Whole	11.0
Reduced fat	9.1
Cheese	5.2
Tofu	3.0

TABLE B.—FY 04 PRICE INFLATION ASSUMPTIONS USING FY 04 FOOD SPECIFIC CPIS—Continued

Food item	Inflation rate (percent)
Soy beverage	3.0
Juice	−1.4
Adult cereal:	
Whole grain	−0.8
Current WIC cereals	−0.8
Eggs	11.3
Beans:	
Dry	0.4
Canned	0.4

TABLE B.—FY 04 PRICE INFLATION ASSUMPTIONS USING FY 04 FOOD SPECIFIC CPIS—Continued

Food item	Inflation rate (percent)
Peanut butter	0.6
Whole grain bread	0.4
Brown rice	5.7
Tuna	0.1
Salmon	0.1
Carrots	1.3

[85] Current Food Package III is $0 because the analysis only considers the incremental costs associated with the proposal. Proposed Food Package III represents the incremental costs as a result of the changes in the proposed rule. FNS does not have comprehensive data on the current cost of medical foods provided in Food Package III. However, the medical foods associated with this package stay the same under the current and proposed rules. The incremental cost is extending foods from other packages to food package III recipients. All other food package costs reflect the full package costs.

[86] FY 07 is multiplied by 11 months.

TABLE C.—INFLATION ASSUMPTIONS, FY 04–FY 11

Year	Thrifty food plan (% change)	CPI: Fruit and vegetables (% change)
FY 04	n/a	3.01
FY 05	2.46	3.22
FY 06	2.33	3.29
FY 07	2.40	3.26
FY 08	2.40	3.32
FY 09	2.41	3.29
FY 10	2.40	3.29
FY 11	2.44	3.33

TABLE D.—PROJECTED PARTICIPATION IN THE WIC PROGRAM, BY FOOD PACKAGE TYPE: CURRENT PACKAGES

Food package	FY07	FY08	FY09	FY10	FY11
I 0–3 month Infants:					
Fully formula-fed	510,062	521,009	532,192	543,614	555,282
Partially breast-fed	78,699	80,388	82,113	83,876	85,676
Fully breast-fed	83,033	84,815	86,635	88,495	90,394
	671,794	686,212	700,941	715,985	731,352
II 4–6 month Infants:					
Fully formula-fed	418,052	427,025	436,190	445,552	455,115
Partially breast-fed	38,534	39,361	40,205	41,068	41,950
Fully breast-fed	54,361	55,528	56,719	57,937	59,180
7–12 month Infants:					
Fully formula-fed	609,727	622,813	636,181	649,835	663,783
Partially breast-fed	55,529	56,721	57,938	59,182	60,452
Fully breast-fed	64,501	65,885	67,299	68,744	70,219
	1,240,703	1,267,332	1,294,532	1,322,317	1,350,698
III Participants with special medical needs	86,375	88,229	90,123	92,057	94,033
IV Children: 1–4.9 years	4,240,829	4,331,850	4,424,825	4,519,794	4,616,803
V Women:					
Pregnant	1,138,091	1,162,518	1,187,469	1,212,955	1,238,989
Partially breastfeeding	120,786	123,378	126,026	128,731	131,494
	1,258,877	1,285,896	1,313,495	1,341,686	1,370,483
VI Women: Postpartum	637,268	650,946	664,917	679,188	693,766
VII Women: Fully breastfeeding	141,155	144,184	147,279	150,440	153,669
Total	8,277,000	8,454,649	8,636,111	8,821,468	9,010,803

TABLE E.—PROJECTED PARTICIPATION IN THE WIC PROGRAM, BY FOOD PACKAGE TYPE: PROPOSED RULE

Food package	FY07	FY08	FY09	FY10	FY11
I 0–3 month Infants:					
Fully formula-fed	510,062	521,009	532,192	543,614	555,282
Partially breast-fed	78,699	80,388	82,113	83,876	85,676
Fully breast-fed	83,033	84,815	86,635	88,495	90,394
4–5 month Infants:					
Fully formula-fed	275,914	281,836	287,885	294,064	300,376
Partially breast-fed	25,432	25,978	26,536	27,105	27,687
Fully breast-fed	35,878	36,648	37,434	38,238	39,059
	1,009,018	1,030,674	1,052,796	1,075,392	1,098,473
II 6–12 month Infants:					
Fully formula-fed	751,865	768,002	784,486	801,323	818,522
Partially breast-fed	68,630	70,103	71,608	73,145	74,715
Fully breast-fed	82,983	84,764	86,583	88,442	90,340
	903,478	922,870	942,677	962,910	983,577
III Participants with special medical needs	86,375	88,229	90,123	92,057	94,033
IV Children:					
1–1.9 years	1,400,314	1,430,369	1,461,069	1,492,427	1,524,459
2–4.9 years	2,840,515	2,901,481	2,963,756	3,027,367	3,092,343
	4,240,829	4,331,850	4,424,825	4,519,794	4,616,803
V Women:					
Pregnant	1,138,091	1,162,518	1,187,469	1,212,955	1,238,989
Partially breastfeeding	120,786	123,378	126,026	128,731	131,494
	1,258,877	1,285,896	1,313,495	1,341,686	1,370,483
VI Women: Postpartum	637,268	650,946	664,917	679,188	693,766
VII Women: Fully breastfeeding	141,155	144,184	147,279	150,440	153,669
Total	8,277,000	8,454,649	8,636,111	8,821,468	9,010,803

TABLE F.—TIMEFRAME FOR IMPLEMENTATION

Food package category	Who may implement	Timeframe for implementation
Pregnant Women	All State Agencies	One Year from Publication of Interim Rule.
Postpartum Women	All State Agencies	One Year from Publication of Interim Rule.
Full Breastfeeding Women	All State Agencies	One Year from Publication of Interim Rule.
Partially Breastfeeding Women	Not More Than 32 sites (4 sites within each of up to 8 state agencies).	One Year from Publication of Interim Rule (The selected sites will have authority to issue the revised packages for no more than 3 years.).
Fully Formula-Fed Infants	All State Agencies	One Year from Publication of Interim Rule.
Partially Breastfed Infants	The sites selected for Partially Breastfeeding Women's Package.	One Year from Publication of Interim Rule (The selected sites will have authority to issue the revised packages for no more than 3 years.).
Fully Breastfed Infants	All State Agencies	One Year from Publication of Interim Rule.
Juice Elimination from Infant Food Packages	All State Agencies	Six months from Publication of Interim Rule.
Children	All State Agencies	One Year from Publication of Interim Rule.
Participants with Certain Medical Conditions (Women, Infants and Children).	All State Agencies	One Year from Publication of Interim Rule

[FR Doc. 06–6627 Filed 8–4–06; 8:45 am]

BILLING CODE 3410–30–P

Federal Register

Monday,
August 7, 2006

Part III

Department of Labor

Office of the Secretary

Office of the Assistant Secretary for Administration and Management; Request for Comments on the Departmental FY 2006–2011 Draft Strategic Plan; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Office of the Assistant Secretary for Administration and Management; Request for Comments on the Departmental FY 2006–2011 Strategic Plan

AGENCY: Office of the Secretary, Labor.

ACTION: Request for Comments on the Draft *Strategic Plan* FY 2006–2011.

SUMMARY: The Department of Labor (DOL) is seeking public comment on its draft *Strategic Plan* for fiscal years 2006–2011.

DATES: Comments should be provided no later than August 25.

ADDRESSES: Written comments can be provided by e-mail: *strategic-plan@dol.gov.*

Fax: (202) 693–7954.

Mail: U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Center for Program Planning and Results, Room S–3317, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Richard French, (202) 693–4088.

SUPPLEMENTARY INFORMATION: The Department of Labor's Draft FY 2006–2011 Strategic Plan is provided as part of the strategic planning process under the Government Performance and Results Act (GPRA) to ensure that agency stakeholders are provided an opportunity to comment on this plan.

This document integrates the Department's many diverse missions and different program objectives into a presentation of performance goals under four overreacting strategic goals. These four strategic goals are *A Prepared Workforce;* A *Competitive Workforce; Safe and Secure Workplaces;* and *Strengthened Economic Protections.* The strategic planning process is an opportunity for the Department to further refine and strengthen the strategic goal structure currently in place. For comparison purposes, the current DOL Strategic Plan FY 2003–2008 can be viewed at *http://www.dol.gov/_sec/stratplan.*

The Department has made significant progress in its strategic and performance planing efforts. As we build on this progress we look forward to receiving your comments by August 25. The text of the draft strategic plan is available in a ''pdf'' downloadable format and ''html'' through the Department of Labor Web site: *http://www.dol.gov/_sec/stratplan-draft.*

For those who may not have Internet access, a hard copy can be requested from the contact point, Richard French, 202–693–4088.

Dated: August 1, 2006.

Patrick Pizzella,

Assistant Secretary for Administration and Management.

[FR Doc. 06–6685 Filed 8–4–06; 8:45 am]

BILLING CODE 4510–23–M

Federal Register

Monday,
August 7, 2006

Part IV

Department of Housing and Urban Development

24 CFR Parts 91 and 570
Proposed Timeliness Expenditure Standards for the Insular Areas Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 570

[Docket No. FR–5012–P–01]

RIN 2501–AD15

Proposed Timeliness Expenditure Standards for the Insular Areas Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a regulatory timeliness standard for the Insular Areas Program, as established by the Housing and Community Development Act of 1974 (HCD Act). This proposed rule follows publication of a February 22, 2005, final rule implementing a 2003 amendment to the HCD Act. This amendment moved the Community Development Block Grant (CDBG) program assistance for Insular Areas from section 107 to section 106 of the HCD Act. The expenditure standards proposed ensure that grantees carry out their programs in a timely manner. These standards take into consideration and reflect the unique circumstances faced by Insular Areas in their ability to expend CDBG allocations. This proposed rule would also establish provisions for the distribution of assistance made available either as a result of reductions or if an Insular Area fails to submit a final statement for CDBG funds. This proposed rule also makes technical and conforming changes to the Insular Areas Program.

DATES: *Comment Due Date:* October 6, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001. Communications should refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

Public Inspection of Public Comments. All comments and communications submitted to HUD will be available, without charge, 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, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Rhodeside, Senior Program Officer, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7184, Washington, DC 20410–7000, telephone (202) 708–1322 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The CDBG program authorized by the Housing and Community Development Act of 1974 (HCD Act) (42 U.S.C. 5301, *et seq.*) provides flexible funding for communities across the nation, including Insular Areas, to develop and implement community and economic development strategies that primarily benefit low- and moderate-income individuals.

Title V of the American Dream Downpayment Act (Pub. L. 108–186, 117 Stat. 2685, approved December 16, 2003) (Title V) amended the HCD Act, moving the Insular Areas funding authorization from section 107(a) (42 U.S.C. 5307(a)) to section 106(a) (42 U.S.C. 5306(a)). This amendment to the HCD Act provided for a specific portion of the CDBG allocation to be distributed to Insular Areas, separate from the distribution for special purpose grants as well as from the entitlement and state formula distribution. The change provides the Insular Areas of Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa with greater assurance of annual CDBG program funding. On June 10, 2004, the Department published interim regulations (69 FR 32774) to implement the statutory change. The Department adopted the interim rule without change on February 22, 2005 (70 FR 8705).

The preamble of the June 10, 2004, interim rule stated that ''HUD will establish timeliness standards for the Insular Areas Program under section 106 by regulation at a later date. Until then, Insular Area jurisdictions that will be funded under section 106 are encouraged to adopt and achieve the timeliness standards for § 570.902(a) currently applicable to entitlement jurisdictions. In the meantime, HUD specifically invites comments on the idea of adopting the § 570.902(a) standards as the Insular Areas Program timeliness standards under section 106.'' In response to the interim rule, no comments were received concerning timeliness standards.

II. This Proposed Rule

This proposed rule would establish a new § 570.902(c), which would establish the timeliness standards for the Insular Areas Program. As of 60 days prior to the conclusion of the Insular Areas' most recent program years, the amount of grant funds available but undisbursed was 3.39 times the amount of American Samoa's most recent grant, 1.63 times Guam's most recent grant, 1.63 times the Commonwealth of the Northern Mariana Islands' most recent grant, and 2.57 times the Virgin Islands' most recent grant. Although there is a clear need to improve the expenditure rate for the Insular Areas Program, the Department recognizes that Insular Areas Program grantees face unique geographic and administrative challenges in implementing their CDBG program. For example, due to the islands' remoteness, it takes much longer for supplies to reach the Insular Areas than other CDBG grantees. As a result, HUD believes that it should set a standard for the Insular Areas Program, but that the standard should be less stringent than that for the Entitlement Grant Program.

HUD therefore proposes that the timeliness standard for the Insular Areas Program be that 60 days prior to the conclusion of an Insular Area's most recent program year, the amount of grant funds available but undisbursed

should be no more than two times the amount of the Insular Areas grantee's most recent grant. If the grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control, the grantee shall be deemed to be untimely. A grantee that has less than two times its most recent grant in its CDBG line of credit 60 days prior to the conclusion of its most recent program year shall also be deemed to be untimely if the amount of CDBG program income the recipient has on hand 60 days prior to the end of the program year, together with the amount of funds in its CDBG line of credit, exceeds twice the amount of the grantee's most recent grant, unless the grantee is able to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control. In determining the corrective action for untimely expenditure, HUD will consider the likelihood that the recipient will expend a sufficient amount of funds over the next program year to bring the grantee into compliance with the timeliness requirements.

The first timeliness review under these standards will take place 60 days prior to the conclusion of the 2006 funding year. As a result, the first review would take place on August 2, 2007, for Insular Areas that do not change their program year start dates. This will give the Insular Areas transition time to adjust to the new policy. In keeping with the policy that is used for entitlement grantees, once a grantee is deemed to be untimely under the new standard, the grantee will be given 12 months, to the grantee's next 60-day test, to reach the timeliness standard. Failure to meet the standard may cause HUD to reduce the next grant by 100 percent of the amount in excess of twice the Insular Area's most recent CDBG grant, unless HUD determines that the untimeliness resulted from factors outside of the grantee's reasonable control. The earliest that HUD will reduce grants under this regulation will be in Fiscal Year (FY) 2008, should an Insular Areas grantee be untimely 60 days prior to the conclusion of its FY 2006 and 2007 program years.

A new § 570.442 entitled ''Reallocations'' would be added to subpart F of part 570. This provision would provide that amounts that become available as a result of reductions under subpart O, or as a result of an Insular Area not submitting a final statement for CDBG funds, shall be reallocated to the remaining eligible Insular Areas on a pro rata basis.

III. Technical Corrections

Subpart O of part 570 would be revised to reference the Insular Areas Program in §§ 570.900, 570.901, 570.903, 570.910, and 570.911. This revision would implement the changes enacted by Title V. In addition, the reference to § 570.304(d) would be deleted from § 570.910(b)(8), since § 570.304(d) was previously removed from the regulations (60 FR 56891). In addition, the references to the Housing Assistance Plan would be deleted from § 570.900, since the Housing Assistance Plan would no longer be required. Section 570.903(d) would also be deleted, since the Department is no longer funding new Small Cities grants in the State of New York.

Section 570.600 would be revised to reflect the fact that § 570.612 does not apply to Insular Areas grants. Section 570.209(b)(2) would be revised to have § 570.209(b)(2) apply to Insular Areas by program year for all Insular Areas grants that are made from section 106 of the HCD Act.

IV. Consolidated Plan

Section 570.440(a) of the interim regulation published on June 10, 2004, permitted Insular Areas grantees to either submit an abbreviated consolidated plan under § 91.235, or a complete consolidated plan in accordance with subpart C of part 91 of the regulations. HUD specifically requested comments on whether Insular Areas grantees should continue to have the choice of submitting an abbreviated consolidated plan or whether they should be required to submit a full consolidated plan. The Department has received no comments to date on this requirement. This proposed rule would revise § 570.903 to state that an abbreviated consolidated plan would be considered to be a consolidated plan for the purposes of § 570.903. This revision would specifically make the section applicable to Insular Areas grantees that choose to submit an abbreviated consolidated plan. Section 91.235(a) would be revised to permit Insular Areas receiving HOME funding to submit abbreviated consolidated plans. Section 91.235(c)(4) would require Insular Areas that submit an abbreviated consolidated plan to follow the Submissions, Certifications, Amendments, and Performance Reports requirements of § 570.440. Section 91.235(e) would be revised to require Insular Areas submitting an abbreviated consolidated plan to follow the citizen participation requirements of § 570.441. If submission of a full consolidated plan would help a grantee integrate its CDBG, HOME and Emergency Shelter Grant programs, the grantee should strongly consider submitting a full consolidated plan.

V. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (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, as provided under section 3(f)(1) of the order). The docket file is available for public inspection in the Regulations Division, Office of 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 file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

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 government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct 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. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule only codifies in HUD's regulations procedures that will enable the Department to enforce its timeliness policy for the Insular Areas Program. As such, the rule does not significantly differ from the current status in terms of the impact on the number of entities, the amount of funding, or the governing requirements applicable. Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

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 in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made 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(2)(C)). 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. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding 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 number for the Insular Areas Program is 14.225.

List of Subjects

24 CFR Part 91

Aged, Grant programs-housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

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, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, HUD proposes to amend 24 CFR parts 91 and 570 as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

1. The authority citation for 24 CFR part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

2. In § 91.235 revise paragraphs (a), (b)(3), and (e) and add paragraph (c)(4) to read as follows:

§ 91.235 Special case; abbreviated consolidated plan.

(a) *Who may submit an abbreviated plan?* A jurisdiction that is not a CDBG entitlement community under 24 CFR part 570, subpart D, and is not expected to be a participating jurisdiction in the HOME program under 24 CFR part 92, as well as an Insular Area that is a HOME grantee, may submit an abbreviated consolidated plan that is appropriate to the types and amounts of assistance sought from HUD, instead of a full consolidated plan.

(b) * * *

(3) *Limitation.* For the HOME program, an abbreviated consolidated plan is permitted only with respect to reallocations to other than participating jurisdictions (see 24 CFR part 92, subpart J), and for Insular Areas that submit an abbreviated consolidated plan pursuant to 24 CFR part 570.440. For the CDBG program, an abbreviated plan may be submitted for the HUD-administered Small Cities program (except that an abbreviated plan may not be submitted for the HUD-administered Small Cities program in the State of Hawaii), and for Insular Areas pursuant to 24 CFR 570.440.

(c) * * *

(4) *Submissions, Certifications, Amendments and Performance Reports.* An Insular Area that submits an abbreviated consolidated plan under this section must comply with the submission, certification amendment, and performance report requirements of § 570.440.

* * * * *

(e) *Citizen Participation.* An Insular Area that submits an abbreviated consolidated plan under this section must comply with the citizen participation requirements of § 570.441.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

3. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

4. Revise § 570.209(b)(2)(i) to read as follows:

§ 570.209 Guidelines for evaluating and selecting economic development projects.

* * * * *

(b) * * *

(2) *Applying the aggregate standards.* (i) A metropolitan city, an urban county, or an Insular Area shall apply the aggregate standards under paragraph (b)(1) of this section to all applicable activities for which CDBG funds are first obligated within each single CDBG program year, without regard to the source year of the funds used for the activities. For Insular Areas, the preceding sentence applies to grants received in program years after Fiscal Year 2004. A grantee under the HUD-administered Small Cities program in New York, or Insular Areas CDBG programs grants prior to Fiscal Year 2005, shall apply the aggregate standards under paragraph (b)(1) of this section to all funds obligated for applicable activities from a given grant; program income obligated for applicable activities will, for these purposes, be aggregated with the most recent open grant. For any time period in which a community has no open HUD-administered grant, the aggregate standards shall be applied to all applicable activities for which program income is obligated during that period.

* * * * *

5. Add § 570.442 to read as follows:

§ 570.442 Reallocations—Insular Areas.

(a) Any Insular Area funds that become available as a result of reductions under subpart O of this part, shall be reallocated in the same or future fiscal year to any remaining eligible Insular Areas grantees pro rata according to population.

(b) Any Insular Areas grant funds for a fiscal year reserved for an applicant that chooses not to submit a final

statement in accordance with § 570.440 to receive such funds, shall be reallocated in the same or future fiscal year to any remaining eligible Insular Areas grantees pro rata according to population.

(c) No amounts shall be reallocated under this section in any fiscal year to any applicant whose grant amount in such fiscal year was reduced under subpart O of this part or who did not submit a final statement in accordance with § 570.440 for that fiscal year.

(d) Insular Areas grantees receiving additional funds under this section will be evaluated for timeliness under § 570.902 based upon the original grant amount plus the additional funds received. Accordingly, references in § 570.902 to an Insular Area's grant amount for its current program year include such additional funds, and references to unexpended or undisbursed funds include such additional funds.

6. Revise § 570.600(a) to read as follows:

§ 570.600 General.

(a) This subpart K enumerates laws that the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to States made pursuant to section 106(d) of the Act, for purposes of the Secretary's determinations under section 104(e)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. This subpart K applies to grants made under the Insular Areas Program in § 570.405 and § 570.440 with the exception of § 570.612. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws that the Secretary will treat as applicable to grants made to States under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(e)(2) of the Act, see § 570.487.

* * * * *

7. In § 570.900, revise paragraphs (a)(1) and (b)(1) to read as follows:

§ 570.900 General.

(a) *Performance review authorities—(1) Entitlement, Insular Areas, and HUD-administered Small Cities performance reviews.* Section 104(e)(1) of the Act requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the recipient has carried out its activities in a timely manner, whether the recipient has carried out those activities and its certifications in accordance with the requirements and the primary objectives of the Act and with other applicable laws, and whether the recipient has a continuing capacity to carry out those activities in a timely manner.

* * * * *

(b) * * *

(1) The Department will determine the performance of each entitlement, Insular Areas, and HUD-administered small cities recipient in accordance with section 104(e)(1) of the Act by reviewing for compliance with the requirements described in § 570.901 and by applying the performance criteria described in §§ 570.902 and 570.903 relative to carrying out activities in a timely manner. The review criteria in § 570.904 will be used to assist in determining if the recipient's program is being carried out in compliance with civil rights requirements.

8. In § 570.901, revise the introductory paragraph, redesignate existing paragraphs (f), (g), and (h), as paragraphs (g), (h), and (i) respectively, and add a new paragraph (f) to read as follows:

§ 570.901 Review for compliance with the primary and national objectives and other program requirements.

HUD will review each entitlement, Insular Areas, and HUD-administered small cities recipient's program to determine if the recipient has carried out its activities and certifications in compliance with:

* * * * *

(f) For Insular Areas Program grants only, the application and amendment requirements at § 570.440, the citizen participation requirements at § 570.441, the displacement policy requirements of § 570.606, and the lead-based paint requirements of § 35.940;

* * * * *

9. In § 570.902, revise the introductory paragraph, and add a new paragraph (c) to read as follows:

§ 570.902 Review to determine if CDBG-funded activities are being carried out in a timely manner.

HUD will review the performance of each entitlement, HUD-administered small cities, and Insular Areas recipient to determine whether each recipient is carrying out its CDBG-assisted activities in a timely manner.

* * * * *

(c) *Insular Areas recipients.* (1) Before the funding of the next annual grant and absent contrary evidence satisfactory to HUD, HUD will consider an Insular Areas recipient to be failing to carry out its CDBG activities in a timely manner if:

(i) Sixty days prior to the end of the grantee's current program year, the amount of Insular Areas grant funds available to the recipient under grant agreements but undisbursed by the U.S. Treasury is more than 2.0 times the Insular Area's grant amount for its current program year; and

(ii) The grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.

(2) Notwithstanding that the amount of funds in the line of credit indicates that the Insular Areas recipient is carrying out its activities in a timely manner pursuant to paragraph (c)(1) of this section, HUD may determine that the recipient is not carrying out its activities in a timely manner if:

(i) The amount of CDBG program income the recipient has on hand 60 days prior to the end of its current program year, together with the amount of funds in its CDBG line of credit, exceeds 2.0 times the Insular Area's grant amount for its current program year; and

(ii) The grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.

(3) In determining the appropriate corrective action to take with respect to a HUD determination that a recipient is not carrying out its activities in a timely manner pursuant to paragraphs (c)(1) or (c)(2) of this section, HUD will consider the likelihood that the recipient will expend a sufficient amount of funds over the next program year to reduce the amount of unexpended funds to a level that will fall within the standard described in paragraphs (c)(1) and (2) of this section when HUD next measures the grantee's timeliness performance. For these purposes, HUD will take into account the extent to which funds on hand have been obligated by the recipient and its sub-recipients for specific activities at the time the finding is made and other relevant information.

(4) If a recipient is determined to be untimely pursuant to paragraphs (c)(1) or (c)(2) of this section in one year, and the recipient is again determined to be untimely in the following year, HUD may reduce the recipient's next grant by 100 percent of the amount in excess of twice the Insular Area's most recent CDBG grant, unless HUD determines that the untimeliness resulted from

factors outside of the grantee's reasonable control.

(5) The first review under paragraphs (c)(1) and (c)(2) will take place 60 days prior to the conclusion of the Fiscal Year 2006 program year.

10. In § 570.903, revise the introductory paragraph, paragraph (a), and remove paragraph (d) to read as follows:

§ 570.903 Review to determine if the recipient is meeting its consolidated plan responsibilities.

The consolidated plan, action plan, and amendment submission requirements referred to in this section are in 24 CFR part 91. For the purpose of this section, the term consolidated plan includes an abbreviated consolidated plan that is submitted pursuant to 24 CFR part 91.235.

(a) *Review timing and purpose.* HUD will review the consolidated plan performance of each entitlement, Insular Areas, and Hawaii HUD-administered Small Cities grant recipient prior to acceptance of a grant recipient's annual certification under 24 CFR part 91.225(b)(3) to determine whether the recipient followed its HUD-approved consolidated plan for the most recently completed program year, and whether activities assisted with CDBG funds during that period were consistent with that consolidated plan, except that grantees are not bound by the consolidated plan with respect to the use or distribution of CDBG funds to meet non-housing community development needs.

* * * * *

11. In § 570.910, revise paragraphs (b)(2)(iii) and (b)(8) to read as follows:

§ 570.910 Corrective and remedial actions.

* * * * *

(b) * * *

(2) * * *

(iii) For entitlement and Insular Areas recipients, canceling or revising affected activities that are no longer feasible to implement due to the deficiency and re-programming funds from such affected activities to other eligible activities (pursuant to the citizen participation requirements in 24 CFR part 91); or

* * * * *

(8) In the case of an entitlement or Insular Areas recipient, condition the use of funds from a succeeding fiscal year's allocation upon appropriate corrective action by the recipient. The failure of the recipient to undertake the actions specified in the condition may result in a reduction, pursuant to § 570.911, of the entitlement or Insular Areas recipient's annual grant by up to the amount conditionally granted.

12. Revise § 570.911(b) to read as follows:

§ 570.911 Reduction, withdrawal, or adjustment of a grant or other appropriate action.

* * * * *

(b) *Entitlement and Insular Areas grants.* Consistent with the procedures described in § 570.900(b), the Secretary may make a reduction in the entitlement grant amount either for the succeeding program year or, if the grant had been conditioned, up to the amount that had been conditioned. The amount of the reduction shall be based on the severity of the deficiency and may be for the entire grant amount.

* * * * *

Dated: July 12, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 06–6702 Filed 8–4–06; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Monday,
August 7, 2006

Part V

Department of Education

Proposed Guidance on Maintaining, Collecting and Reporting Data on Race and Ethnicity to the U.S. Department of Education; Notice

DEPARTMENT OF EDUCATION

Proposed Guidance on Maintaining, Collecting and Reporting Data on Race and Ethnicity to the U.S. Department of Education

AGENCY: Department of Education.

ACTION: Request for comments.

SUMMARY: The Secretary is proposing guidance to modify the standards for data on race and ethnicity used by the Department of Education. Once adopted, this guidance will provide educational institutions and other recipients of grants and contracts from the Department with straightforward instructions for their collection and reporting of data on race and ethnicity.

We request from all interested parties written comments on the proposed guidance.

DATES: We must receive your comments on or before September 21, 2006.

ADDRESSES: Address all comments regarding this proposed guidance to Patrick J. Sherrill, US Department of Education, 400 Maryland Avenue, SW., Room 6C103, Washington, DC 20202–0600. If you prefer to send your comments through the Internet, you may address them to us at the U.S. Government Web site: *http://www.regulations.gov*.

Or you may send your Internet comments to us at the following address: *comments@ed.gov*.

You must include the phrase ''Guidance for Data on Race and Ethnicity'' in the text of your paper document or the subject line of your electronic message to ensure that your comments will be considered.

FOR FURTHER INFORMATION CONTACT: *For general information:* Patrick J. Sherrill, US Department of Education, 400 Maryland Avenue, SW., Room 6C103, Washington, DC 20202–0600, telephone: (202) 708–8196 or Edith K. McArthur, US Department of Education, National Center for Education Statistics, 1990 K Street, NW., Room 9115, Washington, DC 20006, telephone: (202) 502–7393.

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 one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed guidance. During and after the comment period, you may inspect all public comments about this proposed guidance in Room 6C103, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Public Record

On request, we will supply an appropriate aid to an individual with a disability who needs assistance to review the comments or other documents in the public record for the proposed guidance. If you want to schedule an appointment for this type of aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Proposed Guidance

I. Purpose

This proposed guidance is provided to the public to solicit comments on how the US Department of Education (the Department) is proposing to modify standards and aggregation categories for collecting information on race and ethnicity. The proposed changes are necessary in order to implement the Office of Management and Budget's (OMB) 1997 Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (1997 Standards).[1] The 1997 Standards instituted a number of changes for how Federal agencies should collect data on race and ethnicity.

This proposed guidance is designed to be straightforward and easy to implement. Whenever possible, we have proposed a Department-wide standard. However, in certain situations, we have tailored the standard to the different needs of the institutions collecting data.[2] The Department recognizes that implementing the changes required by OMB to improve the quality of data on race and ethnicity may result in an additional burden to educational institutions. In developing this proposed guidance, we have sought to minimize the burden of implementation on local and State educational agencies (LEAs and SEAs), schools, colleges, universities, (hereinafter collectively referred to as ''educational institutions''), and other recipients of grants and contracts from the Department (hereinafter referred to as ''other recipients''), while developing guidance that would result in the collection of comprehensive and accurate data on race and ethnicity that the Department needs to fulfill its responsibilities. We have done so by using the same reporting categories used by the Equal Employment Opportunity Commission (EEOC), so that local educational agencies can use the same reporting requirements for students and staff.

This proposed guidance applies to the collection of individual-level data and to aggregate data on race and ethnicity reported to the Department. Aggregate data mean the total data on race and ethnicity that are reported to the Department by educational institutions and other recipients. The data are collected by them and reported in the aggregate to the Department. This proposed guidance directly addresses three sets of issues:

(A) How educational institutions and other recipients will collect and maintain data on race and ethnicity from students and staff;

(B) How educational institutions and other recipients will aggregate data on race and ethnicity when reporting those data to the Department; and

(C) How data on multiple races will be reported and aggregated under the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB).

In addition, this proposed guidance provides information regarding the implementation schedule for these changes.

II. Background

In October 1997, OMB issued revised standards for the collection and reporting of data on race and ethnicity. A transition period was provided in order for agencies to review the results of Census 2000, the first national data collection that implemented the revised standards. (See the discussion in Part

[1] *See* OMB, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 FR 58781 (October 30, 1997); *http://www.whitehouse.gov/omb/fedreg/1997standards.html*.

[2] For example, for the purposes of No Child Left Behind, States are allowed to define major racial and ethnic groups using categories that may be different than the seven categories announced in this guidance. These differences may reflect the State using more categories than the seven, less categories than the seven, or a decision to use subsets of the seven categories announced in this guidance. Additionally, in the Integrated Postsecondary Education Data Systems (IPEDS) and Rehabilitation Services Administration (RSA) data collections, grantees are permitted to use a race unknown category, while in elementary and secondary programs use of a race unknown category is not permitted.

IV.) The Department plans to begin the process of implementing all necessary changes by the school year beginning in the Fall of 2006, with the implementation required to be completed by the Fall of 2009.[3]

The 1997 Standards include several important changes:

A. OMB revised the minimum set of racial categories by separating the category ''Asian or Pacific Islander'' into two separate categories—one for ''Asian'' and one for ''Native Hawaiian or Other Pacific Islander.'' Therefore, under the 1997 Standards, there are five racial categories:

(1) American Indian or Alaska Native,

(2) Asian,

(3) Black or African American,

(4) Native Hawaiian or Other Pacific Islander, and

(5) White.

B. For the first time, individuals have the opportunity to identify themselves as being of or belonging to more than one race. In the 2000 Census, 2.4 percent of the total population (or 6.8 million people) identified themselves as belonging to two or more racial groups. For the population under 18 years old, 4.0 percent (or 2.8 million children) selected two or more races.[4]

C. In an effort to allow individuals—rather than a third party—to report their race and ethnicity, the 1997 Standards strongly encourage ''self-identification'' of race and ethnicity rather than third party ''observer identification.''

D. Under the 1997 Standards, OMB strongly encouraged the use of a two-question format when collecting data on race and ethnicity; *i.e.*, individuals should first indicate whether or not they are of Hispanic/Latino ethnicity; then, individuals may select one or more races from the five racial categories.

III. Summary of Guidance

The Department proposes to modify its standards for the collection and reporting of data on race and ethnicity in the following manner:

A. Educational institutions and other recipients will be required to collect data on race and ethnicity using a two-question format on the educational institution's or other recipient's survey instrument. The first question would be whether or not the respondent is Hispanic/Latino. *Hispanic or Latino* means a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term, ''Spanish origin,'' can be used in addition to ''Hispanic or Latino.''

The second question would ask the respondent to select one or more races from the following five racial groups:

(1) *American Indian or Alaska Native.* A person having origins in any of the original peoples of North and South America (including Central America), and who maintains a tribal affiliation or community attachment.

(2) *Asian.* A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(3) *Black or African American.* A person having origins in any of the black racial groups of Africa.

(4) *Native Hawaiian or Other Pacific Islander.* A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(5) *White.* A person having origins in any of the original peoples of Europe, the Middle East, or North Africa. *See* 1997 Standards, 62 FR 58789 (October 30, 1997).

(*See* the discussion in Part IV.A.1 and 2 of this notice.)

B. Educational institutions and other recipients should allow students, parents, and staff to ''self-identify'' race and ethnicity unless self-identification is not practicable or feasible. (*See* the discussion in Part IV.A.3 of this notice.)

C. The Department encourages educational institutions and other recipients to allow all students and staff the opportunity to re-identify their race and ethnicity under the 1997 Standards. (*See* the discussion in Part IV.A.4 of this notice.)

D. The Department proposes to have educational institutions and other recipients report aggregated data on race and ethnicity in 7 categories:

(1) Hispanics of any race; and, for Non-Hispanics only,

(2) American Indian or Alaska Native,

(3) Asian,

(4) Black or African American,

(5) Native Hawaiian or Other Pacific Islander,

(6) White, and

(7) Two or more races. (*See* the discussion in Part IV.B.1 of this notice.)

E. The Department proposes to continue its current practice for handling the reporting of individuals who do not self-identify a race and/or an ethnicity. Elementary and secondary educational institutions will continue to use observer identification when a respondent refuses to self-identify his or her race and/or ethnicity. The Department would not include a ''race and/or ethnicity unknown'' category in its aggregate elementary and secondary collections of data on race and ethnicity. The Integrated Postsecondary Education Data System (IPEDS) would continue to use the category of ''nonresident alien'' as an alternative to collecting race/ethnicity from nonresident aliens (information that is not needed for civil rights reporting purposes). IPEDS would also continue to include a ''race and/or ethnicity unknown'' category for reporting aggregate data from postsecondary institutions. Similarly, RSA will continue to use a ''race and/or ethnicity unknown'' category for reporting aggregate data. The ''race and/or ethnicity unknown'' category would not appear on forms provided to postsecondary students and staff or to clients and staff of RSA recipients. (*See* the discussion in Part IV.B.2 of this notice.)

F. When the Department asks educational institutions and other recipients to report data on race and ethnicity, the Department indicates in the instructions to the collection how long educational institutions and other recipients are required to keep the original individual responses from staff and students to requests for data on race and ethnicity. In addition, at a minimum, generally, a Department grantee or sub-grantee must retain for three years all financial and programmatic records, supporting documents, statistical records, and other records that are required to be maintained by the grant agreement or the Department regulations applicable to the grant or that are otherwise reasonably considered as pertinent under the grant or Department regulations. One exception is when there is litigation, a claim, an audit, or another action involving the records that has started before the three-year period ends; in these cases the records must be maintained until the completion of the action. (*See* the discussion in Part IV.A.5 of this notice.)

G. States will continue to have discretion in determining which racial and ethnic groups will be used for accountability and reporting purposes under the ESEA. (*See* the discussion in Part IV.C of this notice.)

H. Educational institutions and other recipients will be required to implement this guidance, once issued in final, no later than by the Fall of 2009 with data regarding the 2009–2010 school year,

[3] Although not required to do so, educational institutions and other recipients already collecting individual-level data in the manner specified by this notice are encouraged to immediately begin reporting aggregate data to the Department in accordance with this notice.

[4] *See* United States Census Bureau, The Two or More Races Population: 2000, Census 2000 Brief, at p. 9 (November 2001) (hereinafter ''The Two or More Races Population''); this information is on the Internet at the following address: *http://www.census.gov/prod/2001pubs/c2kbr01–6.pdf.*

and are encouraged to do so before, if feasible. (*See* the discussion in Part VI. of this notice.)

IV. The Department's Proposed Implementation of OMB's 1997 Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity

The Department has been carefully examining its options for implementing the 1997 Standards for some time. Department staff have met or spoken with a variety of individuals and organizations representing educational institutions to ascertain their needs and interests. The Department has consistently heard that major revisions to the collection of data on race and ethnicity will impose a substantial burden on educational institutions and other recipients as they adopt new data systems or modify existing systems, prepare new forms, and train staff at all levels to implement these changes. Furthermore, the Department's implementation plan must be effective for the Department's diverse uses for data on race and ethnicity, such as research and statistical analysis, measuring accountability and student achievement, civil rights enforcement, and monitoring of the identification and placement of students in special education.

Finally, the Department repeatedly has heard from educational institutions that they would prefer that the various Federal agencies involved in data collection all use the same aggregate categories so that the burden of implementing changes is minimized and educational institutions are not forced to provide different and/or inconsistent data on race and ethnicity to Federal agencies. In response to these repeated requests, the Department decided to wait to propose its implementation plan until after the EEOC announced its final implementation plan, which was published in November 2005, because the EEOC collects data on race and ethnicity for staff in elementary and secondary schools and districts.[5]

A. *How Educational Institutions and Other Recipients Will Be Required to Collect Data on Race and Ethnicity from Students and Staff.* This portion of the proposed guidance, Part A, presents a proposal for how educational institutions and other recipients will *collect* data on race and ethnicity; Part B, which follows, proposes how data on race and ethnicity will be *reported* to the Department.

1. *Educational Institutions and Other Recipients Will be Required to Allow Students and Staff To Select One or More Races from Five Racial Groups.* Educational institutions and other recipients will be required to allow students and staff to select one or more races from the following five racial groups:

(1) American Indian or Alaska Native;
(2) Asian;
(3) Black or African American;
(4) Native Hawaiian or other Pacific Islander; and
(5) White.

This is the minimum number of categories that educational institutions and other recipients will be required to use for purposes other than NCLB reporting. Any additional categories that educational institutions and other recipients choose to use to collect information must be subcategories of these categories (such as Japanese, Chinese, Korean, and Pakistani—subcategories of Asian). Students and staff would then be able to select one or more of these subcategories.

2. *Educational Institutions and Other Recipients Will be Required to Use a Two-Question Format When Collecting Data on Race and Ethnicity Whenever Feasible.* Educational institutions and other recipients will be required to collect data on race and ethnicity using a two-question format, except as provided in the following paragraph. Using the two-question format, the first question asks whether or not the respondent is Hispanic/Latino. The second question allows individuals to select one or more races from the five racial groups listed in paragraph 1 of this part, and Hispanic/Latino is NOT included in the list of racial categories. A two-question format provides flexibility and ensures data quality. In particular, a two-question format typically results in more complete reporting of Hispanic ethnicity; however, the most frequent cases of an individual not reporting a race occur for individuals who identify themselves as Hispanic/Latino. Therefore, educational institutions and other recipients should include instructions that encourage students and staff to answer both questions.

A combined one-question format in which Hispanic ethnicity is included in the list of options with the racial categories may be used if necessary for observer-collected data on race and ethnicity. (*See* the discussion in Part IV.A.3 of this notice on using self-identification of the race and ethnicity of respondents.)

3. *Educational Institutions and Other Recipients Should Allow Students and Staff to Self-Identify Their Race and Ethnicity Unless Self-Identification Is Not Practicable or Feasible.* Educational institutions and other recipients should allow students and staff to self-identify their race and ethnicity unless self-identification is not practicable or feasible. If a student or staff member does not provide his or her race and ethnicity, educational institutions and other recipients should ensure that the respondent is refusing to self-identify rather than simply overlooking the question. If the educational institution or other recipient has provided adequate opportunity for the respondent to self-identify and he or she still leaves the items blank or refuses to complete them, observer identification may be used.

Educational institutions and other recipients also may allow parents to identify the race and ethnicity of their child when the educational institution or other recipient believes that this is appropriate, such as when a child is too young to self-identify.

4. *The Department Encourages Educational Institutions and Other Recipients To Allow All Current Students and Staff to Re-Identify Their Race and Ethnicity Using the 1997 Standards.* Students are typically asked their race and ethnicity upon entrance or application to an educational institution. Staff members typically provide this information upon employment or application for employment. The Department encourages educational institutions and other recipients to allow all students and staff, and other individuals that data is collected from the opportunity to re-identify their race and ethnicity under the 1997 Standards.[6] Re-identification will provide all students, staff and other individuals the opportunity to select more than one race and to report both their ethnicity and their race separately, and will allow all individuals who previously identified themselves as within the Asian or Pacific Islander category the opportunity to select either ''Asian'' or

[5] *See* EEOC, Agency Information Collection Activities: Notice of Submission for OMB Review; Final Comment Request (EEO–1), 70 FR 71294—71303 (November 28, 2005) (hereinafter ''EEOC Notice''); this notice is on the Internet at the following address: *http://www.eeoc.gov/eeo1/ See also* EEOC, Agency Information Collection Activities: Revision of the Employer Information Report (EEO–1) Comment Request, 68 FR 34965, 34967 (June 11, 2003).

[6] This recommendation is consistent with the recommendations of the Education Information Advisory Committee of the Chief State School Officers and the Policy Panel on Racial/Ethnic Data Collection, a panel sponsored by the National Postsecondary Education Cooperative, of the National Center for Educational Statistics and the National Science Foundation in April 1999. Both have recommended that all respondents be permitted to identify their race and ethnicity under the 1997 Standards.

''Native Hawaiian or Other Pacific Islander,'' thereby conforming all racial and ethnic information to the 1997 Standards. If all individuals are not provided the opportunity to identify their race and ethnicity in a manner that is consistent with the 1997 Standards, data within schools, districts, and States will not accurately reflect the diversity of the population; and data on those who were permitted to identify their race and ethnicity under the 1997 Standards will not be easily comparable with data on those who were not permitted to identify their race and ethnicity under the 1997 Standards.

The Department's proposal does not mandate re-identification because we recognize the considerable one-time cost that re-identification would entail. Also, the 1997 Standards do not require existing records to be updated. However, the Department's proposal reflects our expectation that most educational institutions and other recipients will provide all respondents the opportunity to re-identify their race and ethnicity under the 1997 Standards.

The proposal requires educational institutions and other recipients to provide students and staff who enter an educational institution or other recipient program on or after the implementation deadline the opportunity to identify their race and ethnicity in a manner that is consistent with this proposed Department guidance. Thus, those educational institutions and other recipients that do not conduct a re-identification will transition to the new standard over time as new staff and students enter.

5. *Maintaining the Original Responses from Staff and Students to Requests for Data on Race and Ethnicity.* When the Department requests data on race and ethnicity from educational institutions and other recipients, the Department indicates in the instructions to the collection how long each office asks, or requires, educational institutions to keep the original individual responses to the request.

At a minimum, under 34 CFR 74.53 and 80.42, generally, a Department grantee or sub-grantee must retain for three years all financial and programmatic records, supporting documents, statistical records, and other records that are required to be maintained by the grant agreement or the Department regulations applicable to the grant or that are otherwise reasonably considered as pertinent to the grant agreement or Department regulations and these would include records on race and or ethnicity data and the individual responses. One exception is when there is litigation, a claim, an audit, or another action involving the records that has started before the three-year period ends; in these cases the records must be maintained until the completion of the action.

If additional information on the race or ethnicity of a respondent is needed for the Department to perform its functions fully and effectively, the Department will request this information from educational institutions and other recipients, such as when the Office for Civil Rights (OCR) requests information to investigate a complaint or undertake a compliance review under 20 U.S.C. 3413(c)(1) and 34 CFR 100.6(b).

B. *The Aggregate Categories Educational Institutions and Other Recipients Will be Required to Use to Report Data on Race and Ethnicity to the Department and How to Handle Missing Data.* In contrast to the discussion in Part IV.A of this notice, which addressed how educational institutions and other recipients will collect data on race and ethnicity, this section will examine how educational institutions and other recipients will report these data on race and ethnicity to the Department.

1. *The Aggregate Categories Educational Institutions and Other Recipients Will be Required to Use to Report Data on Race and Ethnicity to the Department.* The Department proposes to have educational institutions and other recipients report aggregated data on race and ethnicity in the following 7 categories:

(1) Hispanics of any race; and, for Non-Hispanics only,

(2) American Indian or Alaska Native,

(3) Asian,

(4) Black or African American,

(5) Native Hawaiian or Other Pacific Islander,

(6) White, and

(7) Two or more races.

The definitions in the 1997 Standards will be used for each category. (*See* the discussion in Part III.A of this notice.)

The Department proposes to have reports use these 7 aggregate categories for several reasons. Reporting these 7 aggregate categories allows data on race and ethnicity to achieve an appropriate balance that reflects the growing diversity of our Nation while minimizing the implementation and reporting burden placed on educational institutions and other recipients. The growing diversity is illustrated by the fact that in the 2000 Census, children and youth reported being of more than one race at a substantial rate—more than twice the rate of adults.[7]

Finally, the proposed approach provides for reporting the race and ethnicity of individuals in a manner that permits effective analysis of data by agencies that are responsible for civil rights monitoring and enforcement. In those instances in which more detailed information is needed by civil rights monitoring and enforcement agencies or other offices in the Department about individuals in the ''two or more races'' category, educational institutions and other recipients will be contacted directly for more detailed information about the individuals.

The Department's proposed aggregate reporting categories do not separately identify the race of Hispanics. The Department's proposal reflects its assessment that the inclusion of Hispanics of any race in one category is appropriate in light of both the implementation burden and cost that these changes will place on educational institutions and other recipients and the Department's need to adopt an approach that provides the Department sufficient information to fulfill its various functions. If the Department required the reporting of the same racial categories for Hispanics as non-Hispanics, 6 additional aggregate categories would be reported to the Department.

The cost and burden of these 6 additional cells would be substantial because each racial and ethnic category is often cross tabulated with other relevant information, such as the individual's sex, disability category, or educational placement, thereby multiplying the number of categories in which information must be reported. The Department has determined that it can effectively fulfill its responsibilities that involve information on race and ethnicity if Hispanics of any race are reported in one category. The Department notes that its proposal not to separately aggregate Hispanics by race is consistent with the final implementation plan of the EEOC.

Finally, the Department's reporting requirement for data on Hispanics in one category is different from the Department's collection requirements discussed in Part IV.5 of this notice, which require educational institutions and other recipients to maintain information on the racial identification of Hispanics. As discussed above, the

[7] For individuals 18 and over, 1.9 percent (3,969,342 in the 2000 Census) of individuals reported more than one race; while 4 percent (2,856,886) of individuals under 18 reported more than one race.*See* The Two or More Races Population.

Department will require educational institutions and other recipients to keep the original individual responses from staff and students to requests for data on race and ethnicity for the length of time indicated in the instructions to the collection. If the Department determines that additional information will be needed to perform its functions effectively in a specific instance, the Department will request this additional information from educational institutions and other recipients.

The EEOC published a notice in November 2005 that provided for the use of 7 categories to collect data on race and ethnicity from private employers. These 7 categories are:

(1) Hispanics of any race; and, for non-Hispanics,

(2) American Indian or Alaska Native,

(3) Asian,

(4) Black or African American,

(5) Native Hawaiian or Other Pacific Islander,

(6) White, and

(7) Two or more races.

It is the Department's understanding that EEOC intends to use these 7 categories to collect data on race and ethnicity from LEAs on their employees. The adoption of 7 categories for the Department collections would mean that the Department and EEOC would collect the same categories of data on race and ethnicity from LEAs.

2. *Reporting on Individuals Who Do Not Self-Identify a Race or Ethnicity.* Some individuals will refuse to self-identify their race and/or their ethnicity. The Department currently has a different approach for how educational institutions and other recipients may handle such respondents at the elementary and secondary level as compared with the postsecondary level and with adults served under the RSA programs. Currently elementary and secondary institutions must use observer identification if a student (or his or her parents) does not self-identify a race, and postsecondary institutions also may use observer identification. In addition, since 1990, postsecondary institutions have been permitted to report aggregate information on students or staff members who do not identify a race for the IPEDS in a ''race unknown'' category. Similarly, RSA recipients have been permitted to report aggregate information on its clients and staff using a ''race unknown'' category when clients or staff do not identify a race.

The Department proposes to continue its current practice for handling missing data.[8] Elementary and secondary institutions and other recipients would continue to use observer identification when a respondent leaves blank or refuses to self-identify his or her race and/or ethnicity. The Department would not include a ''race and/or ethnicity unknown'' category in its aggregate elementary and secondary collections of data on race and ethnicity. IPEDS would continue to include a ''race and/or ethnicity unknown'' category for reporting aggregate data from postsecondary institutions. Similarly, the RSA will continue to use a ''race and/or ethnicity unknown'' category for reporting aggregate data. The ''race and/or ethnicity unknown'' category would not appear on forms provided to postsecondary students and staff or RSA recipients' clients and staff.

C. *Multiple Race Responses under the No Child Left Behind Act of 2001.* The creation of a multiple race aggregation category implicates several requirements under the ESEA as reauthorized by NCLB regarding race and ethnicity. First, States, districts, and schools are held accountable for making adequate yearly progress (AYP) based, among other factors, on the proficiency in reading/language arts and mathematics of major racial and ethnic groups of students.[9] Neither ESEA nor the ESEA regulations define what is a ''major'' racial and/or ethnic group. States have this responsibility and the Department checks to ensure that States carry out that responsibility.

Second, each State and school district that receives ESEA Title I funds must issue a report card that includes information on student achievement at each proficiency level on the State assessment, disaggregated by race and ethnicity, among other factors, at the State, district, and school levels.[10] The same racial and ethnic groups that are examined to determine AYP are typically the groups examined in State report cards.[11]

Finally, the creation of a ''two or more races'' group will affect two provisions that require comparisons to prior years' data. State report cards must report the most recent two-year trend in student achievement by racial and ethnic group.[12] In addition, to take advantage of the ''safe harbor'' method of making AYP (where a school can make AYP by decreasing the percent of students who are not proficient on statewide assessments by 10%), a State must compare a group's current assessment data to the prior year's data, and must examine the group's performance on the State's additional indicator, including its graduation rate.[13]

States will continue to have discretion in determining what racial and ethnic groups will be deemed ''major'' for purposes of fulfilling these ESEA requirements. The States vary substantially in the number and distribution of multiple race individuals and are in the best position to decide how these requirements should be applied to their populations. States implementing this new guidance will not necessarily be changing the race and ethnicity categories used for AYP purposes. If a State makes changes to the racial and ethnic categories it will use under the ESEA, the State must submit an amendment to its Title I accountability plan to the Department.

D. *Bridging Data to Prior Years' Data.* States, educational institutions and other recipients also may propose to ''bridge'' the ''two or more races'' category into single race categories or the new single race categories into the previous single race categories. Bridging involves adopting a method for being able to link the new data collected using the two-part question with data collected before the publication of this guidance by the Department. If States, educational institutions and other recipients do bridge data, the bridging method should be documented and available for the Department to review, if necessary.

One method is to redistribute the new data collected under this guidance using the new racial categories and relate them back to the racial categories used before the publication of this guidance. For example, if a State's new data collection results in 200 students falling in the ''two or more races'' category at the same time that there is a combined drop in the number in the two single race categories of Black or African American students and White students, the State can adopt a method to link the 200 students in the ''two or more races'' category to the previously used Black and White categories.

Another method is assigning a proportion of the ''two or more races'' respondents into the new five single-race categories. If educational institutions or other recipients choose to bridge, they may use one of several bridging techniques. For example, they

[8] The Department proposes to continue to include a ''race unknown'' category in IPEDS because the experience of the National Center for Education Statistics has shown that (1) a substantial number of college students have refused to identify a race and (2) there is often not a convenient mechanism for college administrators to use observer identification. RSA grantees have had similar experiences.

[9] 20 U.S.C. 6311(b)(2)(B) and 6311(b)(2)(C)(v)(I)(bb); (34 CFR 200.13).

[10] 20 U.S.C. 6311(h)(1) and (2).

[11] 20 U.S.C. 6311(h)(1)(C)(i).

[12] 20 U.S.C. 6311(h)(1)(C)(iv).

[13] 20 U.S.C. 6311(b)(2)(I)(i); (34 CFR 200.20(b)).

may select one of the bridging techniques in OMB's Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity.[14] Educational institutions and other recipients also may choose to use the allocation rules developed by OMB in its Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement.[15] If a bridging technique is adopted, the same bridging technique must be used when reporting data throughout the educational institution or other recipient. For example, the same bridging technique should be used by the entire State for the purposes of NCLB.

V. OMB Guidance on Aggregation and Allocation of Multiple Race Responses for Use in Civil Rights Monitoring and Enforcement

OMB issued guidance in March 2000, for how Federal agencies will aggregate and allocate multiple race data for civil rights monitoring and enforcement.[16] The guidance was issued to ensure that as the 1997 Standards are implemented, Federal agencies maintain their ''ability to monitor compliance with laws that offer protections for those who historically have experienced discrimination.'' Furthermore, OMB sought to ensure consistency across Federal agencies and to minimize the reporting burden for institutions such as businesses and schools that report aggregate data on race and ethnicity to Federal agencies.

This OMB guidance encourages Federal agencies to collect aggregated information on a given population using the five single race categories and the four most common double race combinations. These four double race combinations are: (1) American Indian or Alaska Native *and* White, (2) Asian *and* White, (3) Black or African American *and* White, and (4) American Indian or Alaska Native *and* Black or African American. In addition to these categories, the March 2000 OMB guidance also encourages the aggregation of data on any multiple race combinations that comprise more than one percent of the population of interest to the Federal agency. The Bulletin also encourages the reporting of all remaining multiple race data by including a ''balance'' category so that all data sum to 100 percent.

The OMB guidance also addresses how Federal agencies, including the Department, should allocate multiple race responses for the purpose of assessing and taking action to ensure civil rights compliance. The Department believes that requiring educational institutions and other recipients to report these four most common double race reporting combinations or information on multiple race individuals who represent more than one percent of the population on a state-by-state basis or other geographical basis would impose a substantial burden on educational institutions and other recipients without a corresponding benefit for recurring, aggregate data collections. However, in order to ensure that the Department has access to this information when needed for civil rights enforcement and other program purposes, the Department proposes to require educational institutions and other recipients to keep the original individual responses for data on race and ethnicity. This approach will provide the Department with access to this important information when needed. (*See* discussion in Part IV.A.5. of this notice.)

VI. The Implementation Schedule

Educational institutions and other recipients have consistently informed the Department that they will need three years from the time that the Department provided them final guidance to implement the new race and ethnicity standards.

Educational institutions and other recipients will be required to implement this guidance, once issued in final, by the Fall of 2009. Although not required to do so, educational institutions and other recipients already collecting individual-level data in the manner specified by this notice are encouraged to immediately begin reporting aggregate data to the Department in accordance with this notice.

Many educational institutions and other recipients have already taken significant steps to develop and implement new data systems for collecting, aggregating, and reporting data on race and ethnicity. Since the mid-1990s and certainly subsequent to the October 30, 1997, issuance of the 1997 Standards, the Department has been meeting with educational agencies and organizations regarding the need for changes to the collection of data on race and ethnicity to be consistent with the 1997 Standards. The opportunity for students and parents on their behalf to report their multiple race identity is vitally important. Multiple race children and their families were one of the primary impetuses for initiating the review of and modifying the standards. Also, with increasing automation of educational data systems, the Department believes that less than three years should be needed to implement data systems consistent with guidance in this area. The Department will work expeditiously to review any comments we receive and issue final guidance.

The Department recognizes that its delay in issuing proposed guidance, including its decision to delay issuing guidance until after EEOC issued its guidance in final form as discussed in Part IV of this notice, may result in implementation difficulties for some educational institutions and other recipients. The Department regrets any inconvenience that its delay in issuing guidance may cause. Nevertheless, given the vital importance of collecting data on race and ethnicity under the 1997 Standards and the fact that educational institutions and other recipients are being provided a considerable amount of time to comply with the 1997 Standards, the Department expects that all educational institutions and other recipients will meet this deadline.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 31, 2006.

Margaret Spellings,

Secretary of Education.

[FR Doc. 06–6695 Filed 8–4–06; 8:45 am]

BILLING CODE 4000–01–P

[14] *See* OMB, Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity, December 15, 2000; *http://www.whitehouse.gov/omb/inforeg/statpolicy.html#dr* (Appendix C).

[15] For civil rights monitoring and enforcement purposes, OMB issued guidance in March 2000 on how Federal agencies can allocate multiple race responses to a single race response category. Multiple race responses that combine one minority race and white, for example, are to be allocated to the minority race. OMB, Bulletin 00–02, Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement, (March 9, 2000); *http://www.whitehouse.gov/omb/bulletins/b00-02.html* (OMB 2000 Guidance).

[16] OMB 2000 Guidance.

Federal Register

Monday,
August 7, 2006

Part VI

Department of Homeland Security

Transportation Security Administration

49 CFR Part 1572

Drivers Licensed by Canada or Mexico Transporting Hazardous Materials to and Within the United States; Interim Rule

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1572

[Docket No. TSA–2006–25541; Amendment No. 1572–6]

RIN 1652–AA50

Drivers Licensed by Canada or Mexico Transporting Hazardous Materials to and Within the United States

AGENCY: Transportation Security Administration, DHS.

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule announces that a commercial motor vehicle driver licensed in Canada or Mexico who holds a Free and Secure Trade (FAST) program card may use that card as an acceptable credential to transport placarded amounts of hazardous materials or any quantity of a material listed as a select agent or toxin in 42 CFR part 73 within the United States. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires that, as of August 10, 2006, commercial motor vehicle drivers licensed in Canada or Mexico who transport hazardous materials in the United States must undergo a background check similar to the one required of U.S.-licensed operators with a hazardous materials endorsement (HME) on a commercial drivers license (CDL). The Transportation Security Administration (TSA) has determined that the background check required to obtain a credential under the FAST program meets the background check requirements of SAFETEA–LU. TSA invites comment on any other existing background check programs that satisfy the requirements under SAFETEA–LU. This interim rule also removes pre-existing procedures for commercial drivers who transport explosives into the United States from Canada, and replaces it with a revised provision that applies to commercial drivers who transport explosives, as well as other hazardous materials, into and within the United States.

DATES: *Effective Date:* This rule is effective on August 10, 2006.

Comment Date: Comments must be received by October 6, 2006.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket web site at *http://dms.dot.gov*. You also may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov*.

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001; Fax: 202–493–2251.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Stephen Sadler, Director, Maritime and Surface Credentialing, Office of Transportation Threat Assessment and Credentialing, TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2492; facsimile (703) 603–0409; e-mail *stephen.sadler@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This interim rule is being adopted without prior notice and prior public comment. However, to the maximum extent possible, operating administrations within DHS will provide an opportunity for public comment on regulations issued without prior notice. Accordingly, TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. See **ADDRESSES** above for information on where to submit comments.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and Sensitive Security Information (SSI) [1], TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS'') FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

19477), or you may visit *http://dms.dot.gov.*

You may review the comments in the public docket by visiting the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located on the plaza level of the Nassif Building at the Department of Transportation address, previously provided under **ADDRESSES.** Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*; or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Abbreviations and Terms Used in This Document

CBP—Bureau of Customs and Border Protection
CDL—Commercial drivers license
CHRC—Criminal history records check
DHS—Department of Homeland Security
FAST—Free and Secure Trade program
HME—Hazardous materials endorsement
Hazardous Materials (hazmat)—Materials transported in quantities requiring placarding under regulations issued by the U.S. Department of Transportation or any quantity of a material listed as a select agent or toxin in 42 CFR part 73
SAFETEA–LU—The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
TSA—Transportation Security Administration
TWIC—Transportation Worker Identification Credential

I. Background

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) was enacted on August 10, 2005.[2] Section 7105(h) of SAFETEA–LU requires that a commercial motor vehicle driver licensed by Canada or Mexico shall not operate a commercial motor vehicle transporting hazardous materials in the United States until the driver has undergone a background records check similar to the one required of commercial motor vehicle operators licensed in the United States to transport hazardous materials. This provision was to become effective six months after the date of enactment. However, the statute gave TSA the discretion to extend the implementation date an additional six months if necessary. On February 10, 2006, TSA published a notice in the **Federal Register** announcing that TSA had extended the deadline until August 10, 2006.[3] Accordingly, effective August 10, 2006, commercial motor vehicle operators licensed in Canada or Mexico who intend to transport hazardous materials in the United States must be able to demonstrate that they have undergone a background check similar to the background check required of U.S.-licensed drivers transporting hazardous materials.

II. Threat Assessment Standards for Transportation of Hazardous Materials

The current background check requirement for U.S.-licensed drivers of hazardous materials is found in TSA's hazardous materials rule (hazmat rule), which requires a security threat assessment for U.S. commercial drivers who apply for a new, renewal, or transfer of a hazardous materials endorsement (HME) on a commercial drivers license (CDL).[4] The hazmat rule applies to commercial drivers who transport hazardous materials in quantities requiring placarding under regulations issued by the U.S. Department of Transportation (DOT)[5] or who transport any quantity of a material listed as a select agent or toxin in 42 CFR part 73.[6] Persons who transport hazardous materials not requiring placarding and who do not transport any quantity of a material listed as a select agent or toxin in 42 CFR part 73 are not required to have an HME or a TSA threat assessment.

U.S.-licensed drivers who apply for, transfer, or renew a CDL with an HME must undergo fingerprint-based criminal history record checks (CHRC) and name-based checks against relevant immigration, intelligence, and international databases. An applicant is disqualified if he or she does not meet certain citizenship and immigration standards, is wanted or under indictment for certain felonies, has a conviction in military or civilian court for certain felonies, has been adjudicated as lacking mental capacity or involuntarily committed to a mental institution, or is determined to pose a security threat based on a review of pertinent databases.[7] TSA's hazmat rule also includes appeal and waiver procedures.

The hazmat rule, however, only applies to drivers who receive a CDL with an HME issued by a state of the United States or the District of Columbia. Therefore, under the hazmat rule, drivers licensed in Canada or Mexico who transport hazardous materials in the U.S. do not undergo the background records check that is required of U.S. licensed hazmat drivers.

TSA previously published a rule concerning the transportation of explosives from Canada (explosives rule) into the United States by drivers who are not U.S. citizens or lawful permanent residents.[8] In pertinent part, the rule, which was codified at 49 U.S.C. 1572.201 and is now superseded by this interim rule, provided that shipments of explosives entering the United States from Canada via commercial motor vehicles must be transported by U.S. citizens, lawful permanent residents, or a ''known carrier, known driver, and known offeror'' as determined by the governments of Canada and the United States. To implement this rule for drivers licensed in Canada, Canada conducts a check of commercial drivers licensed in Canada and authorized to transport explosives, and provides a list of the approved drivers to TSA. TSA conducts periodic name-based checks of the individuals on the list to confirm their continued eligibility to enter the

[2] Pub. L. 109–59, August 10, 2005, sec. 7105, codified at 49 U.S.C. 5103a(h).

[3] 71 FR 7057 (February 10, 2006).

[4] 69 FR 68720 (November 24, 2004); now codified in 49 CFR parts 1570, 1572.

[5] 49 CFR part 172.

[6] 49 CFR 383.5, 383.93(b)(4).

[7] 49 CFR 1572.5(c).

[8] 68 FR 6083 (February 6, 2003); formerly codified in 49 CFR 1572.201.

United States with explosives shipments and provides the list of approved drivers to the Bureau of Customs and Border Protection (CBP).[9] Prior to the effective date of this interim rule, all operators transporting explosives into the United States were required to appear on the list to be granted entry into the United States.

The threat assessment required in the explosives rule that is being replaced by this rule, however, was not as extensive as the one required of U.S.-licensed drivers under the hazmat rule. Further, the explosives rule applied only to the transport of explosives, a subset of the hazardous materials covered by the hazmat rule, and the explosives rule did not apply to drivers entering the United States from Mexico. Accordingly, the explosives rule does not provide a process similar to the one required of U.S. commercial motor vehicle operators who obtain an HME, and thus does not satisfy the requirements of SAFETEA–LU.

III. Bureau of Customs and Border Protection FAST Card

TSA has identified a program currently in place that is conducted by the Bureau of Customs and Border Protection (CBP), an agency within the Department of Homeland Security (DHS), which requires a background records check that satisfies the vetting standard requirements as set forth under SAFETEA–LU for commercial vehicle operators licensed to operate in Mexico or Canada.[10] FAST is a voluntary program for those who seek expedited processing at U.S. borders and CBP exercises full discretion in determining whether a person may be authorized to participate (or continue to participate) in this program.

The FAST program is a cooperative effort between CBP and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the border. Eligibility for the FAST program requires participants (carriers, commercial drivers, importers, and southern border manufacturers) to submit an application and, if applicable, a security profile.[11] The FAST program allows known, low-risk participants to receive expedited border processing. Under the FAST Commercial Driver Program, commercial truck drivers licensed in Canada, Mexico, or the United States may volunteer to undergo a background records check and, if they complete it satisfactorily, may receive their individual FAST card and expedited entrance privileges for commercial purposes at the northern and southern borders, subject to other requirements.

Under the FAST Commercial Driver program, CBP verifies and validates applicant information, conducts a personal interview with each applicant, examines driver original identification and documentation, obtains fingerprints and a photograph, and conducts fingerprint-based criminal history records checks and name-based checks of pertinent intelligence and immigration databases. In addition, in accordance with the cooperative effort, Canada conducts a similar background records check of applicants seeking FAST privileges on the northern border. Upon acceptance into the program, the driver is issued a FAST card that is valid for five years, subject to CBP suspension or revocation for violation of membership rules.[12] CBP also periodically checks the backgrounds of those who hold FAST cards against relevant databases to confirm ongoing eligibility. The background check conducted for FAST commercial driver applicants both meets the vetting standard set forth under SAFETEA–LU and is widely available to drivers licensed in Canada or Mexico.

TSA has concluded that the FAST background records check for commercial driver applicants is similar to that required for domestic HME drivers. Accordingly, TSA concludes that acceptance into the FAST Commercial Driver program is sufficient evidence that the holder of the card has undergone a threat assessment similar to that required for domestic HME holders.

TSA's conclusion that the background checks for the FAST program and for the HME program are similar is based on the general comparison summarized briefly in the table below. Both include thorough criminal history records checks, immigration status checks, and intelligence-based checks. Both request a substantial quantity of information from applicants to provide assurance of the individual's identity. As a result, TSA has determined that the FAST background check is similar to the one required of U.S.-licensed HME drivers.

COMPARISON OF HME AND FAST BACKGROUND CHECKS

	TSA assessment, HME	FAST card[13]
Application criteria:		
Full legal name (and aliases)	Y	Y
Current residence	Y	Y
Mail address (if different from residence)	Y	Y
Previous residence	Y	Y (5 yrs.).
Date of birth	Y	Y
Other personal identification information	Y	Y
Immigration status	Y	Y
Alien registration number	Y	Y
CDL number	Y	DLN or CDL.
Security threat assessment procedures:		
Intelligence-based checks	Y	Y
Fingerprint collected	Y	Y
Criminal records check	Y	Y
Application fee	Y	Y
Personal interview	N	Y
Validity period	5 years	5 years.

[9] Formerly 49 CFR 1572.201.

[10] 49 U.S.C. 5103a(h)(1).

[11] Membership in the Customs-Trade Partnership Against Terrorism (C–TPAT), another CBP voluntary trade security program, is also required for some applicants. A security profile is required of C–TPAT applicants.

[12] FAST membership on the northern border is likewise subject to suspension by the Canadian government.

COMPARISON OF HME AND FAST BACKGROUND CHECKS—Continued

	TSA assessment, HME	FAST card [13]
Disqualifying offenses	Temporary and permanently disqualifying crimes are listed in 49 CFR 1572. Conviction of any listed crime disqualifies the individual unless he or she obtains a waiver.	Consideration of crimes including, but not limited, to those listed in 49 CFR 1572, as well as customs and immigration offenses. Commission of some offenses does not lead to automatic ineligibility; considerations include date of offense, seriousness, and other factors.
Other eligibility criteria	U.S. citizenship or lawful status	Citizen or permanent resident of U.S., Mexico, or Canada.

For drivers who are denied participation in the FAST program, TSA is actively exploring other options for satisfying the SAFETEA–LU requirement. To date, TSA has not identified, and the Canadian and Mexican governments have not shown, another credential or process that demonstrates the holder has undergone a threat assessment similar to the one required of domestic HME holders. As a result of the SAFETEA–LU requirement, until TSA determines that another background check is similar to that prescribed in 49 CFR § 1572.5, commercial motor vehicle drivers licensed by Canada or Mexico who wish to transport hazardous materials into or within the United States will have to apply to the FAST Commercial Driver Program, successfully complete the FAST background records, and pay certain associated enrollment fees to transport hazardous materials in the United States.

It is important to remember that this IFR does not require drivers licensed in Canada and Mexico to obtain FAST cards; participation in FAST is voluntary. Rather, it provides an exception from the prohibition that SAFETEA–LU would impose otherwise, providing drivers the option of taking advantage of this opportunity to qualify to transport hazardous materials in the U.S. if they conclude that it is beneficial.

To apply for FAST, commercial drivers must fill out an application form. The application is available to review and download *http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ctpat/fast/*. There are separate forms for northern and southern border participation. Northern border (Canada-based) applicants must be approved by CBP, Citizenship and Immigration Canada (CIC), and Canada Border Services Agency (CBSA). The United States and Canada honor northern border FAST cards. For southern border (Mexico-based) applicants, the vetting process is completed exclusively by CBP. Northern and southern border FAST driver cards are equally valid at any CBP land border port of entry.

Applications for the northern border FAST participation should be mailed to: FAST Commercial Driver Program, 4551 Zimmerman Avenue, P.O. Box 66, Niagara Falls, ON L2E 6T1, Canada.

Southern border FAST applications should be mailed to: FAST Commercial Driver Program, U.S. Customs and Border Protection, Box 371124, Pittsburgh, PA 15251–7124, U.S.A. Express mail submissions of southern border applications may be mailed to: FAST Commercial Driver Program, U.S. Customs and Border Protection, Attn: 371124, 500 Ross St. 154–0640, Pittsburgh, PA 15250, U.S.A.

If TSA becomes aware of another background check that is similar to the threat assessment conducted on HME drivers, TSA will notify the public. TSA invites any person who knows of another background check that may be comparable to the one conducted for HME applicants to contact Stephen Sadler, Director, Maritime and Surface Credentialing, Office of Transportation Threat Assessment and Credentialing (see **FOR FURTHER INFORMATION CONTACT** section).

IV. TSA Determination

TSA has determined that commercial vehicle drivers licensed in Canada or Mexico who have been accepted into the FAST Commercial Drivers program by CBP have completed a background records check that satisfies the requirement under 49 U.S.C. 5103a (Section 7105(h)) of SAFETEA–LU. Use of the FAST card for these drivers brings consistency to the current rules so that the required background checks are conducted on individuals who transport hazardous materials in the U.S., regardless of the authority that issues the license.

Commercial vehicle drivers licensed in Canada or Mexico who have been admitted to the FAST Commercial Driver program will be deemed to have satisfied the requirements of section 7105(h) of SAFETEA–LU and thus will not be prohibited under SAFETEA–LU from transporting placarded amounts of hazardous materials or any quantity of a material listed as a select agent or toxin in 42 CFR part 73 within the United States, for as long as their FAST card remains valid. CBP will be responsible for enforcing these SAFETEA-LU requirements at all U.S. land borders.

Note that all other requirements relating to the transport of hazardous materials continue to apply, including those imposed by the U.S. Department of Transportation. Further, this rule does not supersede the requirements of Mexico and Canada for their drivers, such as for the appropriate drivers licenses and hazardous materials training.

V. Good Cause for Immediate Adoption and Immediate Effective Date

This action is being taken without providing prior notice and the opportunity for comment, and it provides for an effective date less than 30 days after publication in the **Federal Register**.

Sections 553(b) and (d) of the Administrative Procedure Act (APA) (5 U.S.C. 553) authorize agencies to dispense with certain notice procedures for rules when they find ''good cause'' to do so. Under section 553(b), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Section 553(d) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed

[13] The criteria outlined in this FAST card column are representative of the factors considered by CBP in reviewing applications for FAST participation. This is not a complete list of factors that may be considered by CBP and does not represent the factors that may be considered by the Canadian government for persons applying for FAST on the northern border. Persons applying for FAST on the northern border must be approved for participation by both CBP and the Canadian government.

effective date requirement in section 553.

TSA finds that delaying the effective date of the rule and providing an opportunity for prior notice and public comment on this final rule is contrary to the public interest. This rule will be published shortly before August 10, 2006, the date on which commercial drivers licensed in Canada or Mexico will be unable to transport hazardous materials into and within the United States unless this rule has become effective. There is a significant public interest in ensuring that commerce in hazardous materials between Canada and the United States and between Mexico and the United States is not interrupted. Such an interruption could cause economic harm to the United States as a result of the loss of important materials required by U.S. industry, and could also negatively impact the Canadian and Mexican economies.

VI. SAFETEA–LU Procedures

As a result of TSA's determination that: (1) The FAST background records check is similar to the security threat assessment standard required for hazmat drivers licensed in the United States; and (2) it meets the requirements of SAFETEA–LU, the procedures outlined below must be followed:

1. *Application for FAST cards.* Beginning immediately, commercial vehicle drivers licensed by Canada or Mexico may apply for admission to the FAST Commercial Driver program.

2. *Commercial drivers licensed in Canada or Mexico transporting hazmat.* As of August 10, 2006, commercial vehicle drivers licensed by Canada or Mexico may use possession of a FAST card as evidence that they have undergone a background check similar to the background check required of U.S.-licensed drivers to transport hazardous materials or any quantity of a material listed as a select agent or toxin in 42 CFR part 73 within the United States.

3. *Other requirements.* All other requirements relating to the transport of such materials continue to apply, such as those imposed by the U.S. Department of Transportation for transport of hazardous materials, and those imposed by the Governments of Mexico and Canada, as appropriate.

VII. Transportation of Explosives From Canada

In 2002, Congress amended section 842(i) of Title 18, United States Code (18 U.S.C. 842(i)); the amended section prohibits aliens from transporting explosives in interstate or foreign commerce. However, section 845(a)(1) of 18 U.S.C., provides an exception to section 842(i). Section 845(a)(1) provides that the prohibitions in section 842(i) do not apply to aspects of the transportation of explosive materials that pertain to safety, including security, and that are regulated by the Department of Transportation or DHS. Therefore, to the extent that TSA rules address matters in section 842(i) (such as by addressing the security risk posed by the transportation of explosives by aliens), section 842(i) does not apply.

As noted above, in a separate rulemaking, TSA previously published a rule (explosives rule), then codified at 49 CFR 1572.201, concerning the transportation of explosives from Canada into the United States by drivers who are not U.S. citizens or lawful permanent residents.[14] The explosives rule rendered 18 U.S.C. 842(i) inapplicable to commercial motor vehicle drivers licensed by Canada transporting explosives in commerce. This interim rule implementing section 7105(h) of SAFETEA–LU applies to the transport of placarded amounts of explosives by motor vehicle within the meaning of 18 U.S.C. 845(a)(1); therefore, the prohibitions of 18 U.S.C. 842(i) do not apply to commercial motor vehicle drivers licensed by Canada or Mexico engaged in such transportation in commerce.

In pertinent part, the explosives rule provided that shipments of explosives entering the United States from Canada via commercial motor vehicle must be conducted by U.S. citizens, lawful permanent residents, or a ''known carrier, known driver, and known offeror'' as determined by the Governments of Canada and the United States. To implement this rule for its drivers, Canada conducts a check of drivers authorized to transport explosives and provides a list of the approved drivers to U.S. border control agents. TSA conducts periodic name-based checks of the individuals on the list to confirm their continued eligibility to enter the United States with explosives shipments.[15] All commercial drivers licensed in Canada transporting explosives into the United States had to appear on the list or they were not granted entry into the United States.

This interim rule removes the previous version of 49 CFR 1572.201 on the effective date of this rule and replaces it with this interim rule. Accordingly, commercial drivers licensed in Canada who transport explosives into the United States will need to hold FAST cards and will no longer be subject to the requirements of the previous version of 49 CFR 1572.201.

The explosives rule applied to the transport of all explosives from Canada, both in placarded and non-placarded loads. However, after the explosives rule was published, TSA and the Pipeline and Hazardous Materials Safety Administration (PHMSA)[16] determined in the hazmat rulemaking that only placarded loads of explosives present a security and safety threat warranting the security threat assessment requirements of the hazmat rule for purposes of the security of domestic explosives transportation.[17] As a result of that determination, certain criminal provisions that previously applied to the transportation of non-placarded explosives no longer apply.[18] TSA now makes a similar determination with respect to the transportation of non-placarded explosives by non-U.S. registered drivers. TSA has examined the security aspects of the transportation of explosives by non-U.S. registered drivers and determined that only explosives shipped in the amount and type that require placarding present a security threat that warrants a background check similar to the check TSA conducts on U.S. licensed drivers. Based on this determination and to make the background records check requirements for commercial drivers licensed in Canada similar to those for U.S. drivers, commercial drivers licensed in Canada with non-placarded loads of explosives will no longer be required to comply with the explosives rule, nor will they be required to comply with § 1572.201 as it is adopted in this interim rule. In light of this determination, the provisions of 18 U.S.C. 842(i) do not apply to the transport of non-placarded explosives by commercial vehicle drivers licensed by Canada or Mexico engaged in such transportation in commerce.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or

[14] 68 FR 6083 (February 6, 2003); formerly codified in 49 CFR 1572.201.

[15] Formerly 49 CFR 1572.201.

[16] PHMSA, an agency within the U.S. Department of Transportation, was formally called Research and Special Programs Administration.

[17] 68 FR at 23832, 23835–36 (May 5, 2003).

[18] 18 U.S.C. 845(a)(1); 18 U.S.C. 842(i).

requires through regulations. As protection provided by the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TSA has determined that there are no current or new information collection requirements associated with this rulemaking.

Economic Impact Analyses

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

Executive Order 12866 Assessment

In conducting these analyses, TSA has determined:

1. This rulemaking is not an economically ''significant regulatory action'' as defined in the Executive Order as the costs and benefits do not exceed $100 million in any one year. The rulemaking is significant for other reasons as explained below.
2. This rulemaking is unlikely to have a significant impact on a substantial number of small entities.
3. This rulemaking will not impose significant barriers to international trade.
4. This rulemaking does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

Executive Order 12866 provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. TSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 because there is significant public interest in security issues.

This rulemaking implements the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) which requires that, as of August 10, 2006, commercial motor vehicle drivers licensed in Canada or Mexico who transport hazardous materials in the United States must undergo a background check similar to the one required of U.S.-licensed operators with a hazardous materials endorsement (HME) on a commercial drivers license (CDL). However, the statute gave TSA authority to allow commercial motor vehicle drivers licensed in Canada or Mexico to transport hazardous materials in the United States if TSA determines that they have undergone a background check similar to that required for U.S. drivers. TSA has concluded that the background check required for a FAST card is similar to that required of U.S. drivers. Accordingly, commercial drivers licensed in Canada or Mexico may transport hazardous materials in the United States if they are in possession of a valid FAST card.

The benefits of this rule include preserving hazardous materials commerce between Canada and Mexico and the United States while enhancing the security of the United States. Hazardous materials, by definition, are ''capable of posing an unreasonable risk to health, safety, and property.'' [19] Drivers transporting hazardous materials have the capability to inflict harm purposely to people or property. This rule improves security by requiring Canadian- and Mexican-licensed commercial motor vehicles drivers transporting hazardous materials to pass an individual risk assessment conducted by CBP.

Before CBP issues a FAST card, each applicant must successfully pass a background check based on a risk assessment process. This process differs depending on which border the applicant chooses to cross. For a northern border applicant the driver must successfully pass a risk assessment by the Canadian government. Upon approval from Canada, CBP will conduct a full U.S. risk based assessment.[20] A southern border application is sent to the CBP Risk Assessment Center. In both cases, the driver must report to a CBP issuance center to finalize the process and receive the FAST card. Only Canadian- and Mexican-licensed commercial motor vehicles drivers who are considered low risk and meet other criteria are approved for a FAST card and will be permitted to transport hazardous materials into the United States.

Canadian-licensed drivers who transport explosives into the United States are currently regulated by the explosives rule (49 CFR 1572.201), and will be affected by this rulemaking. Currently, these drivers must submit their names to the Canadian Government, which, in turn, provides a list of their names to TSA for periodic name-based checks of the listed individuals. This rule eliminates the need for multiple background checks by the U.S. Government.

Commercial vehicle drivers licensed in Canada or Mexico who currently have a valid FAST card may transport hazardous material in the U.S. As of June 2006, CBP has approved nearly 56,000 FAST cards for drivers licensed in Canada and over 8,000 FAST cards for drivers licensed in Mexico. These figures represent the entire population of commercial motor vehicle drivers, not only those who carry hazardous materials. TSA is unable to estimate precisely the number of drivers licensed in Canada or Mexico who still need to obtain FAST cards to continue to transport hazardous materials in the United States. The Canadian Government estimates 20,000 drivers carry hazardous materials across the U.S.-Canada border. DOT estimates 3,000 drivers carry hazardous materials across the U.S.-Mexico border. Using the Canadian and DOT estimates with other information, TSA is able to use a threshold approach to verify that the rule is not economically significant.

In May 2006, Transport Canada [21] issued a statement to stakeholders strongly recommending all commercial motor vehicle operators registered to operate in Canada who transport dangerous goods to apply for a FAST card prior to August 10, 2006. CBP has observed no significant increase in FAST applications since Transport

[19] 49 CFR 105.5.

[20] U.S. Customs and Border Protection Bureau. FAST Fact Sheet. Accessed July 6, 2006. *http://www.cbp.gov/linkhandler/cgov/import/commercial_enforcement/ctpat/fast/fast.ctt/FASTBrochure.doc.*

[21] Transport Canada is the department within the government of Canada responsible for transportation regulations, policy, and services.

Canada's announcement. This observation leads TSA to believe that a large percentage of Canadian drivers who carry hazardous materials already have FAST cards to expedite border crossings.

In order for the rule to have an annual impact on the economy of $100 million or more, all of the 23,000 drivers licensed in Canada or Mexico who transport hazardous materials in the United States would have to incur average annual costs in excess of $4,347. The application fee for the card is $50. CBP provides FAST enrollment sites located at several border locations. Using the fully loaded average U.S. truck driver wage rate of $25.27,[22] 170 hours of opportunity cost would have to be incurred per card annually to reach the threshold. This upper limit is determined by multiplying the upper limit of the number of drivers by the hours of opportunity cost in getting the card times the average wage: 23,000 drivers × [$50/card + (N hours × $25.27/hr)] = $100,000,000. N ≈ 170 hours.

TSA estimates that each application would require approximately 1 hour per driver, resulting in a $75 total cost per driver. For the 23,000 estimated drivers a 1 hour opportunity cost would create a total rule cost of approximately $1.7 million for all drivers assuming 1 FAST card per driver: 23,000 drivers × [($50/card) + (1 hour × $25.27/hr)] ≈ $1.7 million.

Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act (RFA) of 1980 requires that agencies 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 as described in the RFA. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity.

Because good cause exists for issuing an interim final rule and the agency did not publish a general notice of proposed rulemaking, this rule does not require a regulatory flexibility analysis. Although this rule does not require a regulatory flexibility analysis, we will consider the effects of this interim rule under the Regulatory Flexibility Act.

This rule impacts only commercial motor vehicle drivers licensed in Canada and Mexico to carry hazardous materials in the United States. TSA assumes most of these drivers already have a FAST card. Drivers licensed in Canada or Mexico who are owner-operators and could be classified as small entities may be impacted. For those owner-operators who must apply for a FAST card, the burden is the cost of application plus opportunity cost, which is perhaps a total of $75 as discussed above. At this low cost, there is no individual annual business revenue so low that TSA could envision both a viable business and a significant cost to revenue ratio. Lastly, as each owner-operator will evaluate the personal benefits as a business decision, only those that find it a benefit will take steps to obtain a FAST card.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this rulemaking and has determined that it will impose the same costs on domestic and international entities and thus have a neutral trade impact.

Currently, all U.S.-licensed operators with a hazardous materials endorsement on a commercial driver's license are required to undergo a background check. This rule allows drivers licensed in Canada and Mexico to transport hazardous materials in the United States if they obtain FAST cards. The effect of this rule is to place Canada-licensed and Mexico-licensed drivers who transport hazardous materials on an equal footing with U.S. drivers. Even if the total costs were $1.7 million as estimated, this cost would have no noticeable impact on either trade or the U.S. economy.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 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 a $100 million or more expenditure (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.''

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

Executive Order 13132, Federalism

TSA has analyzed this interim final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Environmental Analysis

TSA has reviewed this action under the Department of Homeland Security (DHS) Management Directive 5100.1, ''Environmental Planning Program'' (effective April 19, 2006), which guides TSA compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). We have determined that this proposal is covered by the following categorical exclusions (CATEX) listed in Table 1 of the DHS regulation: A3(a) (administrative and regulatory activities involving the promulgation of rules and the development of policies); A3(d) (guidance documents that interpret or amend an existing regulation without changing its environmental effect); and B10 (identifications, inspections, surveys or monitoring of imported products that cause little or no physical alteration of the environment). In addition, we have determined that the conditions set out in paragraph 3.2 (Conditions and Extraordinary Circumstances) are satisfied. This IFR is issued to ensure that the motor vehicle transportation of hazardous materials between Canada and the United States and between Mexico and the United States meets U.S. laws, without significant interruption. This IFR will not cause any change in the technical aspects of commercial transportation of hazardous materials across the northern and southern U.S. borders after August 10, 2006.

Energy Impact Analysis

The energy impact of the action has been assessed in accordance with the Energy Policy and Conservation Act

[22] Wage rates are from the BLS Web site accessed on July 14, 2006. *http://data.bls.gov/PDQ/outside.jsp?survey=cm.* Occupation Code: 53–3032, Truck Drivers, Heavy and Tractor-Trailer, for a mean rate of $17.05 and a fringe multiplier from Transportation and Material Moving Occupations, All Civilian; *http://www.bls.gov/oes/current/oes_nat.htm#b53-0000.*

(EPCA), Pub. L. 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1572

Commercial drivers license, Criminal history background checks, Explosives, Hazardous materials, Motor carriers, Motor vehicle carriers, Security measures, Security threat assessment.

The Amendments

■ For the reasons set forth in the preamble, the Transportation Security Administration amends Chapter XII of Title 49, Code of Federal Regulations, by amending part 1572 as follows:

PART 1572—CREDENTIALING AND BACKGROUND CHECKS FOR LAND TRANSPORTATION SECURITY

■ 1. The authority citation for part 1572 continues to read as follows:

Authority: 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; Sec. 520, Pub. L. 108–90, 117 Stat. 1156 (6 U.S.C. 469).

Subpart C—Transportation of Hazardous Materials to and Within the United States by Land Modes

■ 2. Revise the heading for Subpart C as set forth above.

■ 3. Revise § 1572.201 to read as follows:

§ 1572.201 Transportation of hazardous materials via commercial motor vehicle from Canada or Mexico to and within the United States.

(a) *Applicability.* This section applies to commercial motor vehicle drivers licensed by Canada or Mexico.

(b) *Terms used in this section.* For purposes of this section:

FAST means Free and Secure Trade program of the Bureau of Customs and Border Protection (CBP), a cooperative effort between CBP and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the border.

Hazardous materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73. *See* 49 CFR 383.5.

Hazardous materials endorsement (HME) means the authorization for an individual to transport hazardous materials in commerce, which must be indicated on the individual's commercial driver's license.

(c) *Background check required.* A commercial vehicle driver who is licensed by Canada or Mexico may not transport hazardous materials into or within the United States unless the driver has undergone a background check similar to the one required of U.S.-licensed operators with a hazardous materials endorsement (HME) on a commercial drivers license, as prescribed in § 1572.5.

(1) A commercial vehicle driver who holds a current Free and Secure Trade (FAST) program card satisfies the requirements of this section.

(2) Commercial vehicle drivers who wish to apply for a FAST program card must contact the FAST Commercial Driver Program, Bureau of Customs and Border Protection (CBP), Department of Homeland Security.

Issued in Arlington, Virginia, on August 2, 2006.

Kip Hawley,

Assistant Secretary.

[FR Doc. 06–6754 Filed 8–3–06; 1:57 pm]

BILLING CODE 9110–05–P

Reader Aids

Federal Register

Vol. 71, No. 151

Monday, August 7, 2006

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives. gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documentsor regulations.

FEDERAL REGISTER PAGES AND DATE, AUGUST

43343–43640 1
43641–43954 2
43955–44180 3
44181–44550 4
44551–44882 7

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7747 (See Proclamation 8039) 43635
8038 43343
8039 43635
Executive Orders:
11651 (See Proclamation 8039) 43635
13222 (See Notice of August 3, 2006) 44551
Administrative Orders:
Notices:
Notice of August 3, 2006 44551

5 CFR

591 43897
1001 43345
Proposed Rules:
890 44592

7 CFR

301 43345
762 43955
922 43641
1218 44553
Proposed Rules:
246 .....43371, 44784
250 43992
305 43385
319 43385
352 43385
1483 43992

9 CFR

327 43958
381 43958
Proposed Rules:
95 44234

10 CFR

Proposed Rules:
20 43996
30 43996
31 43996
32 43996
33 43996
35 43996
50 .....43996, 44593
61 43996
62 43996
72 43996
110 43996
150 43996
170 43996
171 43996
431 44356

12 CFR

268 44555
611 44410

14 CFR

23 .....44181, 44182
39 .....43352, 43961, 43962, 43964, 44185
43 44187
71 .....43354, 43355, 43356, 43357, 44188
97 .....44560, 44562
Proposed Rules:
35 43674
39 .....43386, 43390, 43676, 43997
71 .....43678, 43679, 43680

15 CFR

764 44189

17 CFR

Proposed Rules:
38 43681

18 CFR

42 43564

19 CFR

10 44564
163 44564
178 44564
Proposed Rules:
4 43681
122 43681

20 CFR

Proposed Rules:
404 44432

21 CFR

341 43358
510 43967
520 43967
529 43967
Proposed Rules:
106 43392
107 43392

24 CFR

Proposed Rules:
91 44860
570 44860

25 CFR

Proposed Rules:
502 44239
546 44239

26 CFR

1 .....43363, 43968, 44466
31 44466
Proposed Rules:
1 .....43398, 43998, 44240,

44247, 44600
31 44247

29 CFR

1614 43643
2700 44190
2704 44190
2705 44190

31 CFR

208 44584

32 CFR

362 43652
Proposed Rules:
312 44602
318 44603

33 CFR

100 ....43366, 44210, 44213
117 ....43367, 43653, 44586
165 ....43655, 43973, 43975, 44215, 44217
Proposed Rules:
100 43400
165 ....43402, 44250

36 CFR

242 43368

37 CFR

1 44219

40 CFR

52 ....43978, 43979, 44587
180 ....43658, 43660, 43664, 43906
300 43984
Proposed Rules:
59 44522
122 44252
412 44252

42 CFR

Proposed Rules:
414 44082
484 44082

47 CFR

1 43842
54 43667
64 43667
Proposed Rules:
1 43406
2 ....43406, 43682, 43687
4 43406
6 43406
7 43406
9 43406
11 43406
13 43406
15 43406
17 43406
18 43406
20 43406
22 43406
24 43406
25 ....43406, 43687
27 43406
52 43406
53 43406
54 43406
63 43406
64 43406
68 43406
73 ....43406, 43703
74 43406
76 43406
78 43406
79 43406
90 43406
95 ....43406, 43682
97 43406
101 43406

48 CFR

Ch. 1 ....44546, 44549
6 44546
12 44546
26 44546
52 44546
Proposed Rules:
1804 43408
1852 43408

49 CFR

594 43985
1507 44223
1572 44874
Proposed Rules:
1111 43703
1114 43703
1115 43703
1244 43703

50 CFR

18 43926
100 43368
648 44229
660 44590
679 ....43990, 44229, 44230, 44231, 44591
680 44231
Proposed Rules:
17 43410
216 44001
622 43706
648 43707

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 7, 2006

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Critical habitat designations—
  - Northern right whale; Pacific Ocean; published 7-6-06

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Bering Sea and Aleutian Islands king and tanner crabs; published 7-6-06

ENVIRONMENTAL PROTECTION AGENCY

Superfund program:
- Toxic chemical release reporting; community right-to-know—
  - North American Industry Classification System; published 6-6-06

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Universal Service Fund; oversight responsibilities reassigned; published 7-6-06

Radio stations; table of assignments:
- Illinois; published 7-12-06

FEDERAL RESERVE SYSTEM

Equal opportunity rules:
- Non-citizen employees; sensitive information access requirements; published 8-7-06

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
- Florida; published 8-7-06

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:
- Seasons, limits, and shooting hours; establishment, etc.; published 7-28-06

NUCLEAR REGULATORY COMMISSION

Annual financial reports submission; requirement elimination; published 5-22-06

Nuclear equipment and material; export and import:
- Energy Policy Act; nuclear export and import provisions; implementation; published 4-20-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Pilatus Aircraft Ltd.; published 6-22-06
- Raytheon; published 6-26-06

Standard instrument approach procedures; published 8-7-06

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
- Child restraint systems—
  - Exposed webbing; minimum breaking strength; published 6-7-06

TREASURY DEPARTMENT

Fiscal Service

Financial Management Service:
- Federal agency disbursements management—
  - Victims of disasters and emergencies; Federal payments delivery; facilitation; published 8-7-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Avocados grown in South Florida; comments due by 8-16-06; published 7-24-06 [FR E6-11739]

Cherries (sweet) grown in Washington; comments due by 8-18-06; published 6-19-06 [FR E6-09598]

Onions (Vidalia) grown in Georgia; comments due by 8-14-06; published 6-15-06 [FR E6-09235]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Foot-and-mouth disease and rinderpest; disease status change—
  - Namibia; comments due by 8-14-06; published 6-15-06 [FR 06-05440]

Poultry improvement:
- National Poultry Improvement Plan and auxiliary provisions; amendments; comments due by 8-18-06; published 6-19-06 [FR 06-05468]

AGRICULTURE DEPARTMENT

Forest Service

National Forest System timber; sale and disposal:
- Contract modifications in extraordinary conditions; noncompetitive sale; comments due by 8-15-06; published 6-16-06 [FR E6-09424]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Healthy Forests Reserve Program; implementation; comments due by 8-15-06; published 5-17-06 [FR 06-04587]

COMMERCE DEPARTMENT

Foreign-Trade Zones Board

Applications, hearings, determinations, etc.:
- Georgia
  - Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging; Open for comments until further notice; published 7-25-06 [FR E6-11873]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Critical habitat designations—
  - Southern Resident killer whale; comments due by 8-14-06; published 6-15-06 [FR 06-05439]

Fishery and conservation management::
- Northeastern United States fisheries—
  - Atlantic mackerel, squid, and butterfish; comments due by 8-17-06; published 8-2-06 [FR E6-12482]

International fisheries regulations:
- Antarctic marine living resources; centralized vessel monitoring system; fresh toothfish imports; comments due by 8-14-06; published 7-13-06 [FR 06-06166]

DEFENSE DEPARTMENT

Defense Acquisition Regulations System

Acquisition regulations:
- Aviation into-plane reimbursement card; comments due by 8-15-06; published 6-16-06 [FR E6-09488]
- Free trade agreements—
  - El Salvador, Honduras, and Nicaragua; comments due by 8-15-06; published 6-16-06 [FR E6-09500]
- Perishable food, and fish, shellfish, or seafood; Berry Amendment exceptions; comments due by 8-15-06; published 6-16-06 [FR E6-09485]
- Protests, disputes, and appeals; comments due by 8-15-06; published 6-16-06 [FR E6-09491]
- Security-guard services contracts; comments due by 8-15-06; published 6-16-06 [FR E6-09486]

DEFENSE DEPARTMENT

Acquisition regulations:
- Contractor personnel authorized to accompany U.S. Armed Forces; comments due by 8-15-06; published 6-16-06 [FR E6-09499]

EDUCATION DEPARTMENT

Postsecondary education:
- Academic Competitiveness Grant and National Science and Mathematics Access to Retain Talent Grant Programs; grant and loan programs amendments; comments due by 8-17-06; published 7-3-06 [FR 06-05937]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Synthetic organic chemical manufacturing industry; comments due by 8-14-06; published 6-14-06 [FR 06-05219]

Air pollution; standards of performance for new stationary sources:
- Solid waste incineration units; comments due by 8-14-06; published 6-28-06 [FR E6-10095]

Air quality implementation plans; approval and

promulgation; various States; air quality planning purposes; designation of areas:
West Virginia; comments due by 8-14-06; published 7-13-06 [FR E6-11042]
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
California; comments due by 8-18-06; published 7-19-06 [FR E6-11450]
Air quality implementation plans; approval and promulgation; various States:
Montana; comments due by 8-18-06; published 7-19-06 [FR E6-11344]
Pennsylvania; Philadelphia-Trenton-Wilmington nonattainment area; comments due by 8-14-06; published 7-14-06 [FR E6-11109]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bacillus mycoides isolate J; comments due by 8-14-06; published 6-14-06 [FR E6-09282]
Potassium silicate; comments due by 8-14-06; published 6-14-06 [FR E6-08939]

FEDERAL DEPOSIT INSURANCE CORPORATION
Assessments:
Dividend requirements; implementation; comments due by 8-16-06; published 5-18-06 [FR E6-07585]
One-time assessment credit; implementation; comments due by 8-16-06; published 5-18-06 [FR E6-07583]
Quarterly assessment collection and three-year retention period; comments due by 8-16-06; published 5-18-06 [FR 06-04657]

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
Thrift Savings Plan:
Service Office and ThriftLine contact information; update; comments due by 8-14-06; published 7-14-06 [FR E6-11064]

FEDERAL TRADE COMMISSION
Industry guides:
Nursery industry guides; comments due by 8-14-06; published 6-13-06 [FR E6-09185]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Delaware; comments due by 8-14-06; published 6-29-06 [FR E6-10247]
New Jersey; comments due by 8-14-06; published 6-29-06 [FR E6-10249]
Great Lakes pilotage regulations:
Rate adjustments; comments due by 8-14-06; published 7-13-06 [FR E6-11062]
Regattas and marine parades:
Cambridge Offshore Challenge, Choptank River, Cambridge, MD; comments due by 8-14-06; published 7-13-06 [FR E6-10982]
Chesapeakeman Ultra Triathlon, Choptank River, Cambridge, MD; comments due by 8-14-06; published 7-13-06 [FR E6-10976]
Sunset Lake Hydrofest, Wildwood Crest, NJ; comments due by 8-14-06; published 7-13-06 [FR E6-10975]

HOMELAND SECURITY DEPARTMENT
Immigration:
Aliens—
Unauthorized and unlawful hiring or continued employment; safe-harbor procedures for employees who receive a no-match letter; comments due by 8-14-06; published 6-14-06 [FR E6-09303]

HOMELAND SECURITY DEPARTMENT
Immigration and Customs Enforcement Bureau
Immigration regulations:
Employment Eligibility Verification (Form I-9); electronic signature and storage; comments due by 8-14-06; published 6-15-06 [FR E6-09283]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Manufactured home installation program; establishment; comments due by 8-14-06; published 6-14-06 [FR 06-05389]
Mortgage and loan insurance programs:
Single family mortgage insurance—
Adjustable rate mortgage; comments due by 8-18-06; published 6-19-06 [FR 06-05494]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Appalachian monkeyface mussel et al.; comments due by 8-14-06; published 6-13-06 [FR 06-05233]
Hunting and fishing:
Refuge-specific regulations; comments due by 8-16-06; published 7-24-06 [FR 06-06318]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Wyoming; comments due by 8-15-06; published 7-31-06 [FR E6-12188]

MINE SAFETY AND HEALTH FEDERAL REVIEW COMMISSION
Federal Mine Safety and Health Review Commission
Procedural rules, etc.:
Mine Improvement and New Emergency Response Act of 2006; implementation; comments due by 8-17-06; published 7-18-06 [FR E6-11300]

PERSONNEL MANAGEMENT OFFICE
Combined Federal Campaign; eligibility requirements and public accountability standards; comments due by 8-14-06; published 6-29-06 [FR 06-05795]
Health benefits, Federal employees:
Payment of premiums for periods of leave without pay or insufficient pay; comments due by 8-15-06; published 6-16-06 [FR E6-09418]

STATE DEPARTMENT
Legal and related services:
Intercountry adoption; Hague Convention certificates and declarations issuance in Convention adoption cases; comments due by 8-15-06; published 6-16-06 [FR E6-09507]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Child restraint systems; additional types that may be furnished and used on aircraft; comments due by 8-14-06; published 7-14-06 [FR E6-11112]
Airworthiness directives:
Air Tractor, Inc.; comments due by 8-18-06; published 6-20-06 [FR E6-09639]
Airbus; comments due by 8-15-06; published 6-16-06 [FR 06-05425]
BAE Systems (Operations) Ltd.; comments due by 8-14-06; published 7-13-06 [FR E6-11022]
Boeing; comments due by 8-14-06; published 6-30-06 [FR 06-05874]
CFM International; comments due by 8-15-06; published 6-16-06 [FR E6-09446]
Fokker; comments due by 8-18-06; published 7-19-06 [FR E6-11416]
Raytheon; comments due by 8-15-06; published 6-16-06 [FR 06-05327]
Class D airspace; comments due by 8-17-06; published 7-18-06 [FR 06-06282]
Class D and Class E airspace; correction; comments due by 8-16-06; published 7-17-06 [FR E6-11168]
Class E airspace; comments due by 8-17-06; published 7-18-06 [FR 06-06281]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Repeal of tax interest on nonresident alien individuals and foreign corporations received from certain portfolio debt investments; public hearing; comments due by 8-14-06; published 6-13-06 [FR E6-09151]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual

pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4456/P.L. 109–258

To designate the facility of the United States Postal Service located at 2404 Race Street in Jonesboro, Arkansas, as the ''Hattie W. Caraway Station''. (Aug. 2, 2006; 120 Stat. 661)

H.R. 4561/P.L. 109–259

To designate the facility of the United States Postal Service located at 8624 Ferguson Road in Dallas, Texas, as the ''Francisco 'Pancho' Medrano Post Office Building''. (Aug. 2, 2006; 120 Stat. 662)

H.R. 4688/P.L. 109–260

To designate the facility of the United States Postal Service located at 1 Boyden Street in Badin, North Carolina, as the ''Mayor John Thompson 'Tom' Garrison Memorial Post Office''. (Aug. 2, 2006; 120 Stat. 663)

H.R. 4786/P.L. 109–261

To designate the facility of the United States Postal Service located at 535 Wood Street in Bethlehem, Pennsylvania, as the ''H. Gordon Payrow Post Office Building''. (Aug. 2, 2006; 120 Stat. 664)

H.R. 4995/P.L. 109–262

To designate the facility of the United States Postal Service located at 7 Columbus Avenue in Tuckahoe, New York, as the ''Ronald Bucca Post Office''. (Aug. 2, 2006; 120 Stat. 665)

H.R. 5245/P.L. 109–263

To designate the facility of the United States Postal Service located at 1 Marble Street in Fair Haven, Vermont, as the ''Matthew Lyon Post Office Building''. (Aug. 2, 2006; 120 Stat. 666)

H.R. 4019/P.L. 109–264

To amend title 4 of the United States Code to clarify the treatment of self-employment for purposes of the limitation on State taxation of retirement income. (Aug. 3, 2006; 120 Stat. 667)

S. 310/P.L. 109–265

Newlands Project Headquarters and Maintenance Yard Facility Transfer Act (Aug. 3, 2006; 120 Stat. 668)

S. 1496/P.L. 109–266

Electronic Duck Stamp Act of 2005 (Aug. 3, 2006; 120 Stat. 670)

Last List August 3, 2006

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $1195.00 domestic, $298.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250**.

Title	Stock Number	Price	Revision Date
1	(869–060–00001–4)	5.00	[4]Jan. 1, 2006
2	(869–060–00002–0)	5.00	Jan. 1, 2006
3 (2003 Compilation and Parts 100 and 101)	(869–056–00003–1)	35.00	[1] Jan. 1, 2005
4	(869–060–00004–6)	10.00	Jan. 1, 2006
5 Parts:			
1–699	(869–060–00005–4)	60.00	Jan. 1, 2006
700–1199	(869–060–00006–2)	50.00	Jan. 1, 2006
1200–End	(869–060–00007–1)	61.00	Jan. 1, 2006
6	(869–060–00008–9)	10.50	Jan. 1, 2006
7 Parts:			
1–26	(869–060–00009–7)	44.00	Jan. 1, 2006
27–52	(869–060–00010–1)	49.00	Jan. 1, 2006
53–209	(869–060–00011–9)	37.00	Jan. 1, 2006
210–299	(869–060–00012–7)	62.00	Jan. 1, 2006
300–399	(869–060–00013–5)	46.00	Jan. 1, 2006
400–699	(869–060–00014–3)	42.00	Jan. 1, 2006
700–899	(869–060–00015–1)	43.00	Jan. 1, 2006
900–999	(869–060–00016–0)	60.00	Jan. 1, 2006
1000–1199	(869–060–00017–8)	22.00	Jan. 1, 2006
1200–1599	(869–060–00018–6)	61.00	Jan. 1, 2006
1600–1899	(869–060–00019–4)	64.00	Jan. 1, 2006
1900–1939	(869–060–00020–8)	31.00	Jan. 1, 2006
1940–1949	(869–060–00021–6)	50.00	Jan. 1, 2006
1950–1999	(869–060–00022–4)	46.00	Jan. 1, 2006
2000–End	(869–060–00023–2)	50.00	Jan. 1, 2006
8	(869–060–00024–1)	63.00	Jan. 1, 2006
9 Parts:			
1–199	(869–060–00025–9)	61.00	Jan. 1, 2006
200–End	(869–060–00026–7)	58.00	Jan. 1, 2006
10 Parts:			
1–50	(869–060–00027–5)	61.00	Jan. 1, 2006
51–199	(869–060–00028–3)	58.00	Jan. 1, 2006
200–499	(869–060–00029–1)	46.00	Jan. 1, 2006
500–End	(869–060–00030–5)	62.00	Jan. 1, 2006
11	(869–060–00031–3)	41.00	Jan. 1, 2006
12 Parts:			
1–199	(869–060–00032–1)	34.00	Jan. 1, 2006
200–219	(869–060–00033–0)	37.00	Jan. 1, 2006
220–299	(869–060–00034–8)	61.00	Jan. 1, 2006
300–499	(869–060–00035–6)	47.00	Jan. 1, 2006
500–599	(869–060–00036–4)	39.00	Jan. 1, 2006
600–899	(869–056–00037–5)	56.00	Jan. 1, 2005
900–End	(869–060–00038–1)	50.00	Jan. 1, 2006
13	(869–060–00039–9)	55.00	Jan. 1, 2006
14 Parts:			
1–59	(869–060–00040–2)	63.00	Jan. 1, 2006
60–139	(869–060–00041–1)	61.00	Jan. 1, 2006
140–199	(869–060–00042–9)	30.00	Jan. 1, 2006
200–1199	(869–060–00043–7)	50.00	Jan. 1, 2006
1200–End	(869–060–00044–5)	45.00	Jan. 1, 2006
15 Parts:			
0–299	(869–060–00045–3)	40.00	Jan. 1, 2006
300–799	(869–060–00046–1)	60.00	Jan. 1, 2006
800–End	(869–060–00047–0)	42.00	Jan. 1, 2006
16 Parts:			
0–999	(869–060–00048–8)	50.00	Jan. 1, 2006
1000–End	(869–060–00049–6)	60.00	Jan. 1, 2006
17 Parts:			
1–199	(869–060–00051–8)	50.00	Apr. 1, 2006
200–239	(869–060–00052–6)	60.00	Apr. 1, 2006
240–End	(869–060–00053–4)	62.00	Apr. 1, 2006
18 Parts:			
1–399	(869–060–00054–2)	62.00	Apr. 1, 2006
400–End	(869–060–00055–1)	26.00	[6]Apr. 1, 2006
19 Parts:			
1–140	(869–060–00056–9)	61.00	Apr. 1, 2006
141–199	(869–060–00057–7)	58.00	Apr. 1, 2006
200–End	(869–060–00058–5)	31.00	Apr. 1, 2006
20 Parts:			
1–399	(869–060–00059–3)	50.00	Apr. 1, 2006
400–499	(869–060–00060–7)	64.00	Apr. 1, 2006
500–End	(869–060–00061–5)	63.00	Apr. 1, 2006
21 Parts:			
1–99	(869–060–00062–3)	40.00	Apr. 1, 2006
100–169	(869–060–00063–1)	49.00	Apr. 1, 2006
170–199	(869–060–00064–0)	50.00	Apr. 1, 2006
200–299	(869–060–00065–8)	17.00	Apr. 1, 2006
300–499	(869–060–00066–6)	30.00	Apr. 1, 2006
500–599	(869–060–00067–4)	47.00	Apr. 1, 2006
600–799	(869–060–00068–2)	15.00	Apr. 1, 2006
800–1299	(869–060–00069–1)	60.00	Apr. 1, 2006
1300–End	(869–060–00070–4)	25.00	Apr. 1, 2006
22 Parts:			
1–299	(869–060–00071–2)	63.00	Apr. 1, 2006
300–End	(869–060–00072–1)	45.00	[10]Apr. 1, 2006
23	(869–060–00073–9)	45.00	Apr. 1, 2006
24 Parts:			
0–199	(869–060–00074–7)	60.00	Apr. 1, 2006
200–499	(869–060–00075–5)	50.00	Apr. 1, 2006
500–699	(869–060–00076–3)	30.00	Apr. 1, 2006
700–1699	(869–060–00077–1)	61.00	Apr. 1, 2006
1700–End	(869–060–00078–0)	30.00	Apr. 1, 2006
25	(869–060–00079–8)	64.00	Apr. 1, 2006
26 Parts:			
§§ 1.0–1–1.60	(869–060–00080–1)	49.00	Apr. 1, 2006
§§ 1.61–1.169	(869–060–00081–0)	63.00	Apr. 1, 2006
§§ 1.170–1.300	(869–060–00082–8)	60.00	Apr. 1, 2006
§§ 1.301–1.400	(869–060–00083–6)	47.00	Apr. 1, 2006
§§ 1.401–1.440	(869–060–00084–4)	56.00	Apr. 1, 2006
§§ 1.441–1.500	(869–060–00085–2)	58.00	Apr. 1, 2006
§§ 1.501–1.640	(869–060–00086–1)	49.00	Apr. 1, 2006
§§ 1.641–1.850	(869–060–00087–9)	61.00	Apr. 1, 2006
§§ 1.851–1.907	(869–060–00088–7)	61.00	Apr. 1, 2006
§§ 1.908–1.1000	(869–060–00089–5)	60.00	Apr. 1, 2006
§§ 1.1001–1.1400	(869–060–00090–9)	61.00	Apr. 1, 2006
§§ 1.1401–1.1550	(869–060–00091–2)	58.00	Apr. 1, 2006
§§ 1.1551–End	(869–060–00092–5)	50.00	Apr. 1, 2006
2–29	(869–060–00093–3)	60.00	Apr. 1, 2006
30–39	(869–060–00094–1)	41.00	Apr. 1, 2006
40–49	(869–060–00095–0)	28.00	Apr. 1, 2006
50–299	(869–060–00096–8)	42.00	Apr. 1, 2006

Title	Stock Number	Price	Revision Date
300–499	(869–060–00097–6)	61.00	Apr. 1, 2006
500–599	(869–060–00098–4)	12.00	[5]Apr. 1, 2006
600–End	(869–060–00099–2)	17.00	Apr. 1, 2006
27 Parts:			
1–399	(869–060–00100–0)	64.00	Apr. 1, 2006
400–End	(869–060–00101–8)	18.00	Apr. 1, 2006
28 Parts:			
0–42	(869–056–00102–9)	61.00	July 1, 2005
43–End	(869–056–00103–7)	60.00	July 1, 2005
29 Parts:			
0–99	(869–056–00104–5)	50.00	July 1, 2005
100–499	(869–056–00105–3)	23.00	July 1, 2005
500–899	(869–056–00106–1)	61.00	July 1, 2005
900–1899	(869–056–00107–0)	36.00	[7]July 1, 2005
1900–1910 (§§ 1900 to 1910.999)	(869–056–00108–8)	61.00	July 1, 2005
1910 (§§ 1910.1000 to end)	(869–056–00109–6)	58.00	July 1, 2005
1911–1925	(869–056–00110–0)	30.00	July 1, 2005
1926	(869–056–00111–8)	50.00	July 1, 2005
1927–End	(869–056–00112–6)	62.00	July 1, 2005
30 Parts:			
1–199	(869–056–00113–4)	57.00	July 1, 2005
200–699	(869–056–00114–2)	50.00	July 1, 2005
700–End	(869–056–00115–1)	58.00	July 1, 2005
31 Parts:			
0–199	(869–056–00116–9)	41.00	July 1, 2005
200–499	(869–056–00117–7)	33.00	July 1, 2005
500–End	(869–056–00118–5)	33.00	July 1, 2005
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–056–00119–3)	61.00	July 1, 2005
191–399	(869–056–00120–7)	63.00	July 1, 2005
400–629	(869–056–00121–5)	50.00	July 1, 2005
630–699	(869–056–00122–3)	37.00	July 1, 2005
700–799	(869–056–00123–1)	46.00	July 1, 2005
800–End	(869–056–00124–0)	47.00	July 1, 2005
33 Parts:			
1–124	(869–056–00125–8)	57.00	July 1, 2005
125–199	(869–056–00126–6)	61.00	July 1, 2005
200–End	(869–056–00127–4)	57.00	July 1, 2005
34 Parts:			
1–299	(869–056–00128–2)	50.00	July 1, 2005
300–399	(869–056–00129–1)	40.00	[7]July 1, 2005
*400–End & 35	(869–060–00130–1)	61.00	July 1, 2006
36 Parts:			
1–199	(869–056–00131–2)	37.00	July 1, 2005
200–299	(869–056–00132–1)	37.00	July 1, 2005
300–End	(869–056–00133–9)	61.00	July 1, 2005
37	(869–056–00134–7)	58.00	July 1, 2005
38 Parts:			
0–17	(869–056–00135–5)	60.00	July 1, 2005
18–End	(869–056–00136–3)	62.00	July 1, 2005
39	(869–056–00139–1)	42.00	July 1, 2005
40 Parts:			
1–49	(869–056–00138–0)	60.00	July 1, 2005
50–51	(869–056–00139–8)	45.00	July 1, 2005
52 (52.01–52.1018)	(869–056–00140–1)	60.00	July 1, 2005
52 (52.1019–End)	(869–056–00141–0)	61.00	July 1, 2005
53–59	(869–056–00142–8)	31.00	July 1, 2005
60 (60.1–End)	(869–056–00143–6)	58.00	July 1, 2005
60 (Apps)	(869–056–00144–4)	57.00	July 1, 2005
61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
63 (63.1200–63.1439)	(869–056–00148–7)	50.00	July 1, 2005
63 (63.1440–63.6175)	(869–056–00149–5)	32.00	July 1, 2005
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
64–71	(869–056–00152–5)	29.00	July 1, 2005
72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–056–00154–1)	60.00	July 1, 2005
86 (86.1–86.599–99)	(869–056–00155–0)	58.00	July 1, 2005
86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
87–99	(869–056–00157–6)	60.00	July 1, 2005
100–135	(869–056–00158–4)	45.00	July 1, 2005
136–149	(869–056–00159–2)	61.00	July 1, 2005
150–189	(869–056–00160–6)	50.00	July 1, 2005
190–259	(869–056–00161–4)	39.00	July 1, 2005
260–265	(869–056–00162–2)	50.00	July 1, 2005
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–056–00166–5)	61.00	July 1, 2005
700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–056–00168–1)	61.00	July 1, 2005
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–056–00169–0)	24.00	July 1, 2005
101	(869–056–00170–3)	21.00	July 1, 2005
102–200	(869–056–00171–1)	56.00	July 1, 2005
201–End	(869–056–00172–0)	24.00	July 1, 2005
42 Parts:			
1–399	(869–056–00173–8)	61.00	Oct. 1, 2005
400–429	(869–056–00174–6)	63.00	Oct. 1, 2005
430–End	(869–056–00175–4)	64.00	Oct. 1, 2005
43 Parts:			
1–999	(869–056–00176–2)	56.00	Oct. 1, 2005
1000–end	(869–056–00177–1)	62.00	Oct. 1, 2005
44	(869–056–00178–9)	50.00	Oct. 1, 2005
45 Parts:			
1–199	(869–056–00179–7)	60.00	Oct. 1, 2005
200–499	(869–056–00180–1)	34.00	Oct. 1, 2005
500–1199	(869–056–00171–9)	56.00	Oct. 1, 2005
1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
1–40	(869–056–00183–5)	46.00	Oct. 1, 2005
41–69	(869–056–00184–3)	39.00	[9]Oct. 1, 2005
70–89	(869–056–00185–1)	14.00	[9]Oct. 1, 2005
90–139	(869–056–00186–0)	44.00	Oct. 1, 2005
140–155	(869–056–00187–8)	25.00	Oct. 1, 2005
156–165	(869–056–00188–6)	34.00	[9]Oct. 1, 2005
166–199	(869–056–00189–4)	46.00	Oct. 1, 2005
200–499	(869–056–00190–8)	40.00	Oct. 1, 2005
500–End	(869–056–00191–6)	25.00	Oct. 1, 2005
47 Parts:			
0–19	(869–056–00192–4)	61.00	Oct. 1, 2005
20–39	(869–056–00193–2)	46.00	Oct. 1, 2005
40–69	(869–056–00194–1)	40.00	Oct. 1, 2005
70–79	(869–056–00195–9)	61.00	Oct. 1, 2005
80–End	(869–056–00196–7)	61.00	Oct. 1, 2005
48 Chapters:			
1 (Parts 1–51)	(869–056–00197–5)	63.00	Oct. 1, 2005
1 (Parts 52–99)	(869–056–00198–3)	49.00	Oct. 1, 2005
2 (Parts 201–299)	(869–056–00199–1)	50.00	Oct. 1, 2005
3–6	(869–056–00200–9)	34.00	Oct. 1, 2005
7–14	(869–056–00201–7)	56.00	Oct. 1, 2005
15–28	(869–056–00202–5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
29–End	(869–056–00203–3)	47.00	Oct. 1, 2005
49 Parts:			
1–99	(869–056–00204–1)	60.00	Oct. 1, 2005
100–185	(869–056–00205–0)	63.00	Oct. 1, 2005
186–199	(869–056–00206–8)	23.00	Oct. 1, 2005
200–299	(869–056–00207–6)	32.00	Oct. 1, 2005
300–399	(869–056–00208–4)	32.00	Oct. 1, 2005
400–599	(869–056–00209–2)	64.00	Oct. 1, 2005
600–999	(869–056–00210–6)	19.00	Oct. 1, 2005
1000–1199	(869–056–00211–4)	28.00	Oct. 1, 2005
1200–End	(869–056–00212–2)	34.00	Oct. 1, 2005
50 Parts:			
1–16	(869–056–00213–1)	11.00	Oct. 1, 2005
17.1–17.95(b)	(869–056–00214–9)	32.00	Oct. 1, 2005
17.95(c)–end	(869–056–00215–7)	32.00	Oct. 1, 2005
17.96–17.99(h)	(869–056–00215–7)	61.00	Oct. 1, 2005
17.99(i)–end and 17.100–end	(869–056–00217–3)	47.00	Oct. 1, 2005
18–199	(869–056–00218–1)	50.00	Oct. 1, 2005
200–599	(869–056–00218–1)	45.00	Oct. 1, 2005
600–End	(869–056–00219–0)	62.00	Oct. 1, 2005
CFR Index and Findings Aids	(869–060–00050–0)	62.00	Jan. 1, 2006
Complete 2006 CFR set		1,398.00	2006
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2006
Individual copies		4.00	2006
Complete set (one-time mailing)		325.00	2005
Complete set (one-time mailing)		325.00	2004

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.

[10] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.